

Green, Kyle W LTCOL USAF OSD OGC (US)

From: [REDACTED]
Sent: Thursday, September 19, 2013 3:27 PM
To: Green, Kyle W LTCOL USAF OSD OGC (US)
Subject: Fwd: Re: Fwd: Re: UK fact sheet from GWU Law School Dean

----- Original Message -----

From: "[REDACTED]" <[REDACTED]>
To: "[REDACTED]" <[REDACTED]>
Cc: "Houlter QC, Bruce" <[REDACTED]> "Houlter QC, Bruce" [REDACTED]
[REDACTED] "THOMAS, M Lord" <[REDACTED]>
Date: September 19, 2013 at 8:25 PM
Subject: Re: Fwd: Re: UK fact sheet from GWU Law School Dean
Dear Kyle

Having now read Ms Shenck's paper in detail, I have done an analysis of some of her statistical conclusions.

You should have the court martial and summary statistics which I provided earlier today. If not, please let me know, as they are important for comparison purposes. As a matter of courtesy, I have copied the Director Service Prosecutions on the distribution of this message, as he has kindly assisted me with comments to Ms Schenck's paper, as I am not the best placed to argue the statistics, other than to point out the discrepancies which I believe exist. However, I can say that I found the statistical analysis difficult to follow. But I am not a statistician.

I confess that the statistical information makes assessments which I have been unable to agree with, namely, that "the UK [armed forces] only tried an average of 2.3 sex offenses per year by courts-martial." It must be pointed out that in 2009 alone on the figures which one sees from the FOI link she refers to, there were 39 CMs for sexual offences across the services, and 34 in 2010, and not the average 2.3 she cites. If we look at just the British Army figures, it is clear that from 2000 to 2011 there is an average of 28.5 prosecutions for sexual offences per year. It is in the Royal Navy where the figures are closer to those Ms Schenck cites, namely an average of 2.4 prosecutions per year over the same period.

When one then regards the later remarks, "The 2013 Defence report to Parliament, supra note 28, indicates the number of sex offenses referred to trial (it might include disposition at Summary Dealing, a lower level than courts-martial) as follows: 2010—9 cases; 2011—7 cases; and 2012—14 cases, or an average of 10 cases each year, resulting in a .057 (10/175,940) rate per thousand, whereas the DoD rate per thousand is 3.9 times higher than the UK rate per thousand." These figures do not compute with those provided to you by me and obtained from the SPA. It is clear that in 2010, 35 sexual cases were tried by court martial (with 28 convictions); in 2011 there were 40 courts martial for sexual offences (34 convictions); and in 2012 there were 25 courts martial for sexual offences (10 convictions).

I also believe her conclusion does not relate to the statistics: "With an average of ten or less courts-martial prosecutions of sex offenses per year and about 90 sex offenses investigated annually, the UK model does not seem to be a framework that the United States Armed Forces should adopt." As one will see from the SPA statistics, Total CMs for Sex Crimes (Rape & Sexual Assault) from 2009 to 2012(August) amount to 125 which, divided by 5 gives 25 (but this year has not ended), not the 10 alluded to by Ms Schenck. If one excludes

this year's incomplete stats, the average figure is 30.5 prosecutions per annum.

She suggests that "If the goal is to prosecute more sex offenses, the UK system seems not to be the model for DoD to emulate." That is clearly a matter upon which the Panel will make a recommendation in due course, hopefully having assessed all statistical information provided. I had understood the main concern to be command influence in the post-trial process, founded upon the principle that the power to give a binding decision which may not be altered by a non-judicial authority is inherent in the very notion of "tribunal"- if so, one might consider the UK system is very pertinent to this.

There is also a caveat about investigations - it ought to be said that statistics produced by the investigators will hardly ever directly correlate with those of the prosecuting authority, as cases investigated one year may not be prosecuted until the following year, or the charge may change, or the complainant may withdraw the complaint, or move away or even die.

May I invite you to bring these comments to the attention of the Panel.

Bets regards

[Anthony Paphiti](#)



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[Anthony](#)