

## Response Systems Panel

Public Meeting November 8, 2013

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 RSP held a public meeting on November 7-8, 2013. The public meeting on November 8, 2013, began at 8:45 a.m. and concluded at 5:10 p.m. at the U.S. District Court for the District of Columbia, 333 Constitution Avenue NW, Washington, D.C. 20001. Transcript of November 8, 2013 proceedings will be appended and is incorporated herein by reference.

Meetings for the November 7, 2013, portion of the public meeting are filed separately.

### Participants

Honorable Barbara S. Jones – Chair  
Colonel (ret) Holly Cook  
Ms. Mai Fernandez  
Professor Elizabeth Hillman  
The Honorable Elizabeth Holtzman  
Vice Admiral James Houck (Ret.), USN  
Brigadier General Colleen McGuire (Ret.), USA

### Response Systems Panel Staff:

Colonel Patricia Ham, USA, Staff Director  
Mr. David Gruber, Branch Chief, Victim Services

### Other Participants:

Ms. Maria Fried, Designated Federal Officer

### Presenters:

Command Sergeant Major Julie Guerra, U.S. Army  
Mr. Brian Lewis  
Ms. BriGette McCoy  
Ms. Ayana Harrell  
Ms. Sarah Plummer  
Ms. Marti Ribeiro  
Colonel James McKee, U.S. Army  
Colonel Carol Joyce, U.S. Marine Corps  
Captain Karen Fischer-Anderson, U.S. Navy  
Captain Sloan Tyler, U.S. Coast Guard  
Colonel Dawn Hankins, U.S. Air Force

Mr. Chris Mallios, Attorney Advisor for AEquitas  
Ms. Theo Stamos, Commonwealth Attorney, Arlington, Virginia  
Ms. Marjory Fisher, Chief, Special Victims Unit, Queens, New York  
Ms. Keli Luther, Deputy County Attorney, Maricopa County, Arizona  
Mr. Mike Andrews, Managing Attorney, D.C. Crime Victims Resource Center  
Colonel Peter Cullen, U.S. Army  
Colonel Joseph Perlak, U.S. Marine Corps  
Captain Charles Purnell, US. Navy  
Colonel Dan Higgins, U.S. Air Force  
Commander Ted Fowles, U.S. Coast Guard  
Mr. David Court of Court and Carpenter, Stuttgart, Germany  
Mr. Jack Zimmermann of Lavine, Zimmermann and Sampson, P.C., Houston, Texas  
Ms. Bridget Wilson, Attorney, San Diego, California

### PANEL MEETING

At 8:45 a.m., Ms. Maria Fried opened the public meeting. Judge Jones provided a brief overview of the agenda for the day.

#### Command Sergeant Major (CSM) Julie Guerra, U.S. Army

CSM Guerra is an active duty Soldier and a victim of sexual assault. She addressed the panel describing her personal experience as a survivor of sexual assault within the military. She attributes her career success and ability to overcome her assault to her command. As such, she does not believe commanders should be removed from the military justice process. She then provided advice and guidance, based on her experiences, to those contemplating coming forward with reports of sexual assault.

#### Mr. Brian Lewis

Mr. Lewis described his personal experiences as a male victim of sexual assault while serving in the U.S. Navy. He then discussed concerns about sexual assault in the military. He asked the panel to consider removing the commander from the military justice process and to investigate the military's use of improper behavior health diagnoses in the administrative discharge of sexual assault survivors. He mentioned that he was discharged from the Navy in 2001 with a personality disorder after being diagnosed with post-traumatic stress disorder following his rape. Mr. Lewis also raised concerns about victims being ostracized by their peers and leaders following an allegation of sexual assault.

#### Ms. BriGette McCoy

Ms. McCoy described her personal experience as a survivor of a sexual assault within the military. She served in the U.S. Army from 1987 to 1991. Ms. McCoy expressed concern regarding the military's treatment of victims following an allegation of sexual assault. She asked the panel to consider removing the commander from the criminal justice system in an effort to increase confidence in the system by victims.

### Ms. Ayanna Harrell

Ms. Harrell provided a detailed description of her assault in 2001 and the negative treatment she received after reporting the incident to a senior non-commissioned officer. She then listed several organizations that have helped her overcome the assault but expressed concern over the military's handling of sexual assault. She then provided recommendations to improve victim support within the military, such as passage of the Military Justice Improvement Act and placing more attention and emphasis on policy for military sexual assault.

### Ms. Sarah Plummer

Ms. Plummer first described her personal experience as a rape survivor prior to being commissioned into the Marine Corps and how reporting this incident negatively affected her ability to attend flight training. She served on active duty for seven years. Ms. Plummer discussed the military's overall inability to properly care for and support victims of sexual assault. Following this discussion, she provided several recommendations to improve victim care, reporting of sexual assault, and prevention of sexual assault. These recommendations included removing the chain of command from the criminal justice system and improving the care victims receive following a report of sexual assault.

### Ms. Marti Ribeiro

Ms. Ribeiro used her own experience as a victim of sexual assault to address several myths about sexual assault in the military. She served for eight years in the U.S. Air Force. She maintained victims of sexual assault were not always "dirt bag" soldiers, dressed provocatively, or drank alcohol. Ms. Ribeiro then described her attack while deployed to Afghanistan in 2006 and the lack of support she received immediately following the event. She then provided recommendations on how to improve the military's handling of sexual assault, such as ensuring there is a clear understanding of how to contact the SARC in a deployed environment, ensuring there are rape kits in deployed locations, and proper training of SARC personnel.

### Questions by the Panel

Judge Jones opened the discussion to questions from the panel members. The panel members' questions initially focused on the adequacy of the victim services an individual is eligible to receive following their exit from the military. All of the presenters sought treatment with the Veterans Administration (VA) following their exit from the military and a majority believed the VA did not offer adequate treatment for victims of sexual assault. At least one panel member also expressed concern that the services offered to active duty members were not adequate and led to the misdiagnosis of military sexual trauma as a "personality disorder."

Subsequent questions by the panel members focused on whether individuals were generally aware of a victim's ability to receive disability payments as a result of a sexual assault. The presenters all agreed this information was not generally known but efforts were being made to

increase awareness on this topic. In discussing this issue, some presenters expressed concern over having to obtain a mental health diagnosis in order to obtain the available benefits.

Judge Jones recessed the panel for ten minutes.

Colonel (COL) James McKee, U.S. Army

COL McKee currently serves as the program manager of the Army's Special Victims' Counsel (SVC) Program. COL McKee first provided the panel with a brief overview of his qualifications and military experience. He then described the capabilities of his office and the functionality of the Army's SVC Program. Currently, the program falls under the Army's Legal Assistance Program and the individual counsel are assigned to the local legal assistance office for administrative purposes. COL McKee then listed the responsibilities of an SVC and the training they receive prior to entering the position. Lastly, COL McKee provided the Army's future vision for the program.

Colonel (Col) Carol Joyce, U.S. Marine Corps

Col Joyce currently serves as the Officer in Charge of the Marine Corps Victims' Legal Counsel (VLC) Organization. Col Joyce provided the panel with a brief overview of her military and criminal justice experience. She then described the Marine Corps' VLC Organization and her role as the Officer in Charge. She informed the panel the VLC Organization is set up similarly to the trial defense services where the program has its own chain of command and administrative support. Col Joyce then discussed eligibility requirements and the role of the VLC in advocating for victims' rights.

Captain (CAPT) Karen Fischer-Anderson, U.S. Navy

CAPT Fischer-Anderson is the Chief of Staff for the Navy VLC Program. CAPT Anderson first provided the panel with an overview of her military experience and her current duties as the Chief of Staff for the VLC Program. She then described the current operational capabilities of the program and provided the Navy's future goals and plans for the program.

Captain (CAPT) Sloan Tyler, U.S. Coast Guard

CAPT Tyler serves as the Director of the Coast Guard's Office of Special Victim's Counsel (SVC). After describing his career history, CAPT Tyler presented the panel a brief overview of the goals of the SVC Program currently being implemented by the Coast Guard. The goal of the program is to provide appropriate legal support to victims of sexual assault and to ensure victims understand their rights in the legal process. CAPT Tyler also described the duties and responsibilities of the individual counsel.

Colonel (Col) Dawn Hankins, U.S. Air Force

Col Hankins is the Chief of the Air Force SVC Program. After providing a brief history of her professional career, Col Hankins described the Air Force Program and her role as the Chief of

Staff. She then explained the current duties and responsibilities of the SVC in the Air Force and methods utilized by the Air Force to ascertain whether victims are satisfied by the services received.

#### Question and Answer from the Panel to the Presenters

Judge Jones opened the discussion for questions from the panel members to the presenters. The initial questions addressed the amount of resources expended by each service to support their individual programs. All presenters responded that significant resources have been expended on the programs, which evidences the military's long term commitment to ensuring the programs succeed. Some of the presenters also acknowledged that other programs, such as legal assistance, may have been negatively impacted by the need to resource the SVC program.

Next, the panel asked about procedural aspects of the SVC Programs and when the attorney-client relationship begins and terminates. The general consensus of the presenters was the relationship ended upon the Convening Authority's final action. However, if the client had questions or concerns following action, the SVC could provide limited assistance. In this discussion the presenters acknowledged military counsel could not serve in permanent billets and civilian counsel may be a means to assist with continuity of representation.

The questions then focused on the similarities and the differences between the individual service programs. The panel expressed some concern over the issue of collateral misconduct and how each service intended to handle the issue. While the Air Force indicated a SVC may advise a victim on minor collateral misconduct, the majority of presenters stated the victim would be referred to trial defense services for advice on collateral misconduct.

The questions and answers then focused on eligibility requirements and when a victim is advised of his or her right to obtain services. Lastly, the presenters were asked if victims' rights should be codified within the UCMJ. At least one presenter responded in the affirmative.

Judge Jones thanked the Presenters and the panel broke for lunch.

#### Mr. Chris Mallios, AEquitas

Mr. Mallios is an attorney-advisor at AEquitas, a resource center focused on improving the quality of justice in sexually based offenses. After providing a brief overview of his career experience and the functions of his office, Mr. Mallios discussed the differences between the military and civilian criminal justice systems. Mr. Mallios expressed concern over certain aspects of the military justice system, including: the Article 32, UCMJ, investigation; the potential for a victim to be charged with collateral misconduct; the lack of experience of military prosecutors in sexual assault cases; and factual sufficiency review at the appellate level. Mr. Mallios then discussed his experiences dealing with victim rights attorneys as a prosecutor.

Ms. Theo Stamos, Arlington, Virginia

Ms. Theo Stamos currently serves as the Commonwealth's attorney for Arlington County and the City of Falls Church, Virginia. Ms. Stamos first provided an overview of her experience as a prosecutor of sexually related offenses and the role of the victim-advocate within her office. She then addressed the panel and expressed her concerns about the SVC programs in the military. Ms. Stamos believed a SVC could negatively impact the relationship between a prosecutor and the victim which, in turn, could impede the prosecution of a perpetrator.

Ms. Marjory Fisher, Queens, New York

Ms. Fisher has served as a sex crimes prosecutor for over thirty years and has served as the bureau chief for the sex crimes unit for twenty-three of those thirty years. Based on her experience, Ms. Fisher informed the panel that early case enhancement, vertical prosecution, pre-arrest interviews, and an effective team approach were the most important components to achieving a successful prosecution of sex assault cases. Each component required building a rapport with the victim and ensuring the victim was well informed and satisfied with the process. Ms. Fisher then expressed her concern over the use of SVCs and the possible impact on the relationship between a prosecutor and a victim.

Ms. Keli Luther, Maricopa County, Arizona

Ms. Keli Luther currently serves as a deputy county attorney in Maricopa County, Arizona. Ms. Luther shared her experiences as a victim rights attorney and, currently, as a prosecutor in a jurisdiction where victim rights are codified within the State Constitution. Ms. Luther then explained the mechanisms utilized in Arizona to enforce victim rights.

Mr. Mike Andrews, Washington D.C.

Mr. Andrews is the managing attorney for the District of Columbia Crime Victims' Resource Center. Mr. Andrews addressed the panel and advocated for the military to codify the Crime Victims' Rights Act within the UCMJ.

Question and Answer from the Panel to the Presenters

Judge Jones opened the discussion for questions from the panel members to the presenters. The initial questions and answers focused on the availability of victim services both during and after the trial. When answering the questions, several of the panel members reiterated their concerns about the SVC programs. In response to these concerns, Ms. Luther explained the role of the victims' rights attorney in the civilian system. The panel was then asked to comment on whether the SVC being a military member posed any additional concerns. Several presenters acknowledged the potential issues surrounding *Brady* material and the likelihood of future litigation.

Next, the panel asked the presenters to discuss their interpretations of the Article 32, UCMJ, investigation. Each of the presenters expressed concern over the use of the Article 32 as a

discovery tool by the defense. They, instead, believed the military should utilize a system similar to the civilian grand jury proceeding. The presenters were then asked to provide their perspectives on how to improve the military's prosecution of sexual assault cases. Several presenters agreed experienced prosecutors would be the most important factor.

Lastly, the questions focused on methods of reporting in the civilian systems and whether restricted reporting existed. While the terminology is not the same, at least one of the presenters acknowledged victims were able to make confidential or anonymous reports in the civilian systems.

Judge Jones recessed the hearing.

Colonel (COL) Peter Cullen, U.S. Army

COL Cullen currently serves as the Chief of the Army's Trial Defense Services. COL Cullen first provided the panel with a brief overview of his qualifications and the Trial Defense Services within the Army. He then explained the daily challenges faced by trial defense attorneys when representing their clients prior to, during, and after trial. COL Cullen requested the panel consider several additional challenges posed by the implementation of the Special Victims' Counsel Program and other proposed legislation. He argued these programs and policies were being implemented without due concern for the impact on an accused's right to obtain a fair and impartial trial. In support of this argument, COL Cullen listed several rights the accused already forfeits through the military justice system.

Colonel (Col) Joseph Perlak, U.S. Marine Corps

Col Perlak is the Chief Defense Counsel and the Officer in Charge of the Marine Corps Defense Services. Col Perlak provided an overview of the defense services within the Marine Corps. He then requested the panel consider the rights of the accused when making any decision on the military justice system.

Captain (CAPT) Charles Purnell, U.S. Navy

CAPT Purnell currently serves as the Commanding Officer of the Navy's Defense Service Southeast. CAPT Purnell provided a brief overview of the Navy's Defense Services and the qualifications of defense counsel assigned to the office. He then expressed concern over the effects of pending legislation and policies on the rights of an accused at trial.

Colonel (Col) Dan Higgins, U.S. Air Force

Col Higgins is the Chief of the Air Force's Trial Defense Division. He first provided an overview of the defense services available within the U.S. Air Force. He then expressed his concern over the potential rush to modify the UCMJ, especially when the changes were not the result of a systemic review of the process as a whole. He asked the panel to consider the fact that a change to legislation without a systemic review could erode the legitimacy of the military justice system.

Commander (CDR) Ted Fowles, U.S. Coast Guard

CDR Fowles currently serves as the Deputy of the Office of Legal and Defense Services for the Coast Guard. After briefly describing the defense services within the Coast Guard, CDR Fowles requested the panel consider the Constitutional protections afforded to an accused when making any recommendations on changes to the UCMJ. He also requested the panel consider the negative ramifications of changing the UCMJ without a systemic thorough review of the entire system.

Mr. David Court, Court & Carpenter, Stuttgart, Germany

Mr. Court is a civilian defense counsel headquartered in Stuttgart, Germany. Mr. Court began by providing an overview of his thirty-year career defending military service members. He then set forth his concern over the use of the term “victim” in the programs being implemented by the services. He believed use of the term provided credibility to the alleged victim at the expense of an accused who is innocent until proven guilty. He also asked the panel to remember the military is a unique environment and an individual may have additional motives to make a false report of sexual assault. He then expressed concern over the recommended changes to the Article 32, UCMJ, investigation and implementation of the Special Victims’ Counsel Program.

Mr. Jack Zimmerman, Zimmerman & Sampson, P.C., Houston, Texas

Mr. Zimmerman is a civilian defense counsel from Houston, Texas. Mr. Zimmerman served as a judge advocate and commander in the Marine Corps and then as a civilian defense counsel representing service members at trial. Mr. Zimmerman addressed the panel and discussed changes to the UCMJ he believed would be beneficial to the military justice system and the military as a whole. This included prohibiting individuals with criminal convictions from enlisting or commissioning in a service and enhancing whistleblower protections for those who come forward with reports of sexual assault or other misconduct. Mr. Zimmerman then addressed his concerns over proposed changes to the UCMJ which would negatively impact good order and discipline, justice, and the rights of the accused.

Ms. Bridget Wilson, Attorney, San Diego, California

Ms. Wilson is a civilian defense attorney in San Diego, California who represents Soldiers, Sailors, Airmen, and Marines before Courts-Martial. She addressed the panel and expressed her concern over legislation to change the military justice system. She also discussed the negative repercussions of the heightened focus on sexual assault in the military by members of congress. She then requested the panel consider a long term review of the military justice system prior to making any recommendations for reform.

Question and Answer from the Panel to the Presenters

The first questions focused on the issue of collateral misconduct and the interaction of defense counsel with the Special Victim Counsel. The presenters agreed this matter was still unsettled



and the procedures were unclear. The presenters then reiterated their concern over the role of the Special Victim Counsel and the possible impact of the program on the accused's constitutional rights. The presenters were then asked to provide an overview of the Article 32, UCMJ, investigation and discovery process within the military justice system.

Next, the panel asked the presenters if additional resources have been provided to the defense following the implementation of the Special Victim Programs for the prosecution. While recognizing some additional resources have been provided to the defense for training and oversight, some of the presenters expressed concern that experienced litigators were being funneled to the prosecution, leaving the defense with relatively inexperienced litigators in need of assistance and training. The presenters were then asked to provide their opinions on the investigatory process in sexual assault cases in the military. One of the presenters expressed the opinion that investigators begin their investigation with the assumption that a crime has been committed and are not open to other possibilities. The presenter did state; however, that he has been involved with cases where the investigator did a thorough investigation and found evidence favorable to the defense.

The Designated Federal Officer closed the public meeting at 5:10 p.m.

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



Barbara Jones  
Chair

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