

1                   RESPONSE SYSTEMS TO ADULT SEXUAL  
2                                   ASSAULT CRIMES PANEL

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6                                   PUBLIC SESSION

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11                                   Thursday,  
12                                   November 7, 2013

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17                   United States Federal District Court  
18                                   for the District of Columbia  
19                                   333 Constitution Avenue, NW  
20                                   Ceremonial Courtroom No. 20  
21                                   Washington, D.C.

1 PANEL MEMBERS PRESENT:

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3 HONORABLE BARBARA JONES

4 HONORABLE ELIZABETH HOLTZMAN

5 BRIGADIER GENERAL (RET.) MALINDA DUNN, USA

6 COLONEL (RET.) HOLLY COOK, USA

7 PROFESSOR ELIZABETH HILLMAN

8 VICE ADMIRAL (RET.) JAMES HOUCK, USN

9 BRIGADIER GENERAL (RET.) COLLEEN MCGUIRE, USA

10 HARVEY BRYANT

11 MAI FERNANDEZ

12 MARIA FRIED, Designated Federal Official to the

13 Response Systems Panel

14 COLONEL PATRICIA HAM, USA, Staff Director

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1 start at about 8:35 and go until 9:05, which is a  
2 little different than the published agenda. Second,  
3 the public meeting is being video recorded by  
4 Department of Defense officials at the Panel's request  
5 in order to post a video recording on the Panel's  
6 website. Other members of the media have also  
7 requested to audio record portions of this meeting.

8 Third, the Panel received written public  
9 comments from the following individuals: Donna Adams  
10 who has also requested to speak during the public  
11 comment session this afternoon, Caprice Manos, Heath  
12 Phillips, Diana Gonzales, and Christina Thundathil. We  
13 also received public comments from the organization  
14 Protect our Defenders for the following individuals:  
15 Terri Odom, Terri Youngs, Jen McClendon, Georgena Gray,  
16 and Heath Phillips. The members have all been provided  
17 hard copies of the public comments, and they are also  
18 posted on the Panel's website, which can be found at  
19 [responsesystemspanel.whs.mil](http://responsesystemspanel.whs.mil).

20 All materials presented today or provided to  
21 the members will also be posted on the website over the  
22 next week or so, including a verbatim transcript of the

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1 proceedings.

2           Madam Chair, are you ready to make your opening  
3 remarks?

4           CHAIRMAN JONES: Yes, thanks, Colonel. I want  
5 to welcome everyone as Colonel Ham just has and say  
6 good morning. This is our third public meeting of the  
7 Panel, and this is a two-day meeting, which will run  
8 today and tomorrow. For your information and your  
9 planning, our next public meeting is December 11 and 12  
10 at the University of Texas in Austin.

11           Congress charged this Panel to conduct an  
12 independent systemic review and assessment of the  
13 systems used to investigate, prosecute and adjudicate  
14 crimes involving adult sexual assault and related  
15 offenses under Article 120 of the Uniform Code of  
16 Military Justice for the purposes of developing  
17 recommendations regarding how to improve the  
18 effectiveness of those systems. The Panel has focused  
19 much of its efforts so far on the role of the military  
20 commander in the military justice system, and we will  
21 continue to examine that role during this and later  
22 meetings.

1           In addition, we will continue our comprehensive  
2 examination and assessment of the systems and  
3 procedures the Department of Defense currently has in  
4 place to support and protect victims in all phases of  
5 the investigation, prosecution, and adjudication of  
6 adult sexual assault offenses. Our assessment also  
7 includes a comparison to civilian systems that provide  
8 support and protection to victims, including  
9 identifying civilian best practices that may be  
10 incorporated into the military justice system.

11           I want to extend the Panel's sincere thanks to  
12 all of the presenters from civilian jurisdictions who  
13 will participate in this meeting today. Your  
14 assistance is really invaluable to us, and we fully  
15 understand that you have very busy jobs in all of your  
16 jurisdictions, and we greatly appreciate you all taking  
17 the time to be here today and tomorrow.

18           With those goals in mind, today's session  
19 begins with an overview of the Department of Defense's  
20 current systems and policies in place to support and  
21 protect victims. This first session will also include  
22 a short update on the latest data about reporting of

1 sexual assault offenses and other items that the  
2 Department of Defense is measuring in order to assess  
3 whether all of these policies are having any positive  
4 or negative effects.

5           The Department of Defense Sexual Assault,  
6 Prevention, and Response Office prepared a 2013 update  
7 for us and in response to questions that I and other  
8 Panel members raised during our last public meeting in  
9 September, and my request during that meeting for this  
10 information. I want to thank the Secretary of Defense  
11 and Major General Patton, who's here -- General Patton  
12 -- who's the head of DoD Sexual Assault, Prevention,  
13 and Response Office, for expediting the release of this  
14 data so that the Panel could hear and consider it as  
15 quickly as possible. We understand that it is still  
16 being compiled and finalized, and we'll hear from  
17 General Patton on this.

18           After we hear the policies that DoD is  
19 currently -- has currently in place to support and  
20 protect victims, during our second session this morning  
21 the services will tell us how they implement those  
22 policies. Then we'll hear from providers on the

1 ground, so to speak -- people who actually provide some  
2 of these services to victims at military installations  
3 around the world. In that same session, presenters  
4 from civilian jurisdiction in Texas, Maryland,  
5 Virginia, and Georgia will provide us their perspective  
6 as a means to allow this Panel to begin to compare DoD  
7 policies and programs with programs in the civilian  
8 world.

9           The Panel will also hear today from victim  
10 advocacy organizations, including Protect Our Defender,  
11 Service Women's Action Network, and others. We look  
12 forward to hearing their perspectives and ideas on how  
13 to improve victim services and the investigation,  
14 prosecution, and adjudication of sexual assault  
15 offenses in the military.

16           We are very fortunate to have the opportunity  
17 to hear from victims and survivors of sexual assault as  
18 well. And we thank them for agreeing to appear before  
19 the Panel to discuss their personal experiences. We  
20 understand how difficult it is to talk about these  
21 experiences, and the Panel deeply appreciates these  
22 survivors' willingness to come here.

1           Tomorrow we will also have two panels  
2 discussion victim participation in judicial  
3 proceedings. First, we'll hear from the heads of all  
4 the services Special Victim Counsel Programs. This is  
5 a new program that Secretary Hagel directed be provided  
6 or actually be implemented. And the purpose is to  
7 provide lawyers to sexual assault victims. This grew  
8 out of an Air Force pilot program that began last  
9 January.

10           Our second panel on this same issue includes  
11 perspectives from civilian jurisdictions on victim  
12 participation.

13           Finally, we will hear from the Military Defense  
14 Bar tomorrow, including the Chiefs of all the military  
15 -- of all of the services trial defense organizations  
16 and some civilian attorneys as well who practice in the  
17 military justice system. This Panel is very attuned to  
18 the requirements of due process and we'll discuss that,  
19 and the presumption of innocence. And we look forward  
20 to the Defense Bar's perspective on the issues before  
21 the Panel.

22           Before we begin hearing from all of our

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1 presenters, I want to provide an update from one of our  
2 subcommittees, which is the Subcommittee on the Role of  
3 the Commander. As you may remember, as the Chair I  
4 decided to establish three subcommittees so that we can  
5 better -- be better organized to do the work of the  
6 Panel. They are the Role of the Commander, Victim  
7 Services, and Comparative Systems.

8           In addition to serving as the Chair of the  
9 Panel, I also serve as Chair of the Role of the  
10 Commander Subcommittee, and this committee --  
11 subcommittee met on October 23rd. All the materials  
12 from that meeting, including a verbatim transcript, are  
13 available on the Panel's website. And as Chair of the  
14 Role of the Commander Subcommittee, what I'm going to  
15 do now is turn to a briefing of the full Panel on the  
16 Subcommittee's activities on October 23rd and an  
17 initial assessment, which our Role of the Commander  
18 Subcommittee has reached a consensus on.

19           And I guess just to make sure everyone  
20 understands, there are Panel members, one or more --  
21 well, more than one Panel member on each of these  
22 subcommittees, usually at least three or four. The

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1 remaining Subcommittee members are separately appointed  
2 through the same process that the Panel members were to  
3 these subcommittees as subject matter experts and to  
4 help the Panel with its work.

5           So the October 23rd meeting, which as I said  
6 before, you can read the discussion in its entirety,  
7 has reached some assessments here with respect to one  
8 issue relating to the role of the commander.

9           Just as background, one of the tasks  
10 established for the Role of the Commander Subcommittee  
11 is to assess the roles and effectiveness of commanders  
12 at all levels in preventing sexual assault and  
13 responding to reports of sexual assault crimes. One  
14 focus of the Subcommittee's work has been the authority  
15 assigned to designated senior commanders to refer  
16 criminal offenses for trial by courts martial. A  
17 specific focus of our inquiry has been to assess  
18 whether removing the commander as convening authority  
19 will increase the confidence of sexual assault victims  
20 in the military justice system, and thereby increase  
21 reporting of sexual assault offenses.

22           To examine the impact on reporting of sexual

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1 assault crimes in the militaries -- so one of our first  
2 issues was to examine the impact on reporting of sexual  
3 crimes in the militaries of our allies. And in order  
4 to do that, we reviewed both the justice systems for --  
5 we reviewed both the justice systems for military  
6 personnel and the systems of sexual assault reporting  
7 in other nations.

8           Experts on the allied military justice systems  
9 and their senior military representatives from  
10 Australia, Canada, Israel, and the United Kingdom  
11 explained these non-U.S. military justice systems.  
12 They described their evolution, and they provided  
13 statistics and information about sexual assault  
14 reporting and response systems. They also offered  
15 their opinions as to how the structures of various --  
16 of their various military justice systems affected the  
17 ability of non-U.S. militaries to address the problem of  
18 military sexual assault.

19           This information was provided to our  
20 Subcommittee for its consideration, and on October  
21 23rd, as I mentioned, we met to review and discuss the  
22 materials the testimony on our allied systems. The

1 following represents the findings and assessments of  
2 the Subcommittee:

3           Prosecutorial authority has been removed from  
4 commanders in the military justice systems of our  
5 allies for reasons unrelated to military sexual  
6 assault. These legal reforms were made as early as  
7 1955 and as recently as 2009. Israeli adopted the  
8 Military Justice Law in 1955, which vested  
9 prosecutorial discretion in an independent military  
10 advocate general, and the adjudication system for  
11 members of the IDF has remained largely the same since  
12 that date.

13           Canada removed the chain of command from the  
14 prosecutorial decision for serious criminal offenses  
15 and created a Director of Military Prosecutions through  
16 the 1999 amendments to the National Defense Act.  
17 Changes to the Canadian military justice system were  
18 made subsequent to fundamental changes in the Canadian  
19 Charter of Rights and Freedoms which necessitated these  
20 changes and reflected general societal concern for the  
21 rights of the accused.

22           In 2006, the Australian Parliament enacted

1 legislation to establish the Director of Military  
2 Prosecutions as the convening authority to convene  
3 courts martial under the Defense Force Discipline Act.  
4 This legislation was also enacted out of concern that  
5 the public perceived the system as unfair to  
6 defendants.

7           In the United Kingdom, the Armed Forces Act of  
8 2006 became effective on November 1, 2009, thereby  
9 removing authority for prosecution of serious offenses  
10 from the chain of command and placing such authority in  
11 a new, independent Director of Service Prosecutions.  
12 These changes were also made out of concern for the  
13 rights of defendants raised both within the United  
14 Kingdom and before the European Court of Human Rights,  
15 the rulings of which the United Kingdom is bound by  
16 treaty to follow.

17           Now, comparing U.S. military sexual assault to  
18 military sexual assault in foreign militaries is  
19 difficult, and it's made difficult by a significant  
20 variance in critical data points, including the  
21 definitions of sexual assault, the various means of  
22 disposition of allegations, and the rates of incidence,

1 reporting, and prosecution. The nature of the offenses  
2 described within the reported statistics vary by  
3 country based on the systems available for tracking  
4 sexual assault data and the specifically statutory  
5 offenses encompassed within each country's definition  
6 of sexual assault.

7           For example, sexual assault under the DFDA in  
8 Australia refers only to rape and attempted rape, while  
9 sexual offense reporting data provided by the IDF  
10 includes the offenses of rape and attempted rape,  
11 indecent assault, physical and/or verbal harassment,  
12 and peeping.

13           Likewise the time factors for reported  
14 information also varied. Data from Canada was provided  
15 from 2007 to 2010, while the United Kingdom provided  
16 data from 2005 to 2012. The variations in tracking  
17 methods, offenses reflected, and reporting periods make  
18 comparisons of the data to different -- of different  
19 countries difficult.

20           Despite the difficulty of comparing systems  
21 with incomplete data, we asked current and former  
22 military officials from our allied partners to assess

1 whether the structural changes that removed the  
2 commander from the prosecution of cases had a  
3 connection to reporting trends for sexual assault  
4 offenses. None of the representatives made this  
5 connection. The Deputy Military Advocate General for  
6 the IDF noted an increase in sexual assault complaints  
7 in the IDF between 2007 and 2011. However, the reason  
8 for the increase in reporting is unclear. The Military  
9 Advocate General stated that the increase could  
10 represent an increase in the number of offenses or it  
11 could be a result of campaigns by service authorities  
12 to raise awareness on the issue.

13 The Judge Advocate General of the Canadian  
14 armed forces found no discernible trend in data between  
15 2005 and '10. The Canadians were unable to present  
16 statistics addressing whether the change in the  
17 military justice system affected sex crime reporting.

18 The Commodore of the Navy Legal Services for  
19 the Royal Navy assessed that recent structural changes  
20 to the military justice system in the United Kingdom  
21 had no discernible effect on the reporting of sexual  
22 assault offenses.

1           The Director General Australian Defense Force  
2 Legal Service noted that Australian reforms were not  
3 targeted at sexual offenses in particular, and he noted  
4 no significant trend for reporting statistics after the  
5 2003 and 2006 reforms.

6           So the Subcommittee has examined the military  
7 justice systems of Israel, the UK, Australia, and  
8 Canada, as I've just noted. And we've done this to  
9 determine the impact of the role of the commander on  
10 the reporting of sexual assaults. We make no  
11 suggestions or recommendations to the Panel at this  
12 point as to whether the commander should or should not  
13 be removed as the convening authority for sexual  
14 assaults and other serious crimes in our military  
15 justice system. We do find that none of the military  
16 justice systems of our allies was changed or set up to  
17 deal with the problem of sexual assault, and none of  
18 them can attribute any changes in the reporting of  
19 sexual assault to changing the role of the commander.  
20 Lastly, we have seen or found -- we have found no  
21 evidence that the removal of the commander from the  
22 decision making process of non-U.S. military justice

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1 systems has affected the reporting of sexual assaults.

2 And that concludes the report out from the Role  
3 of the Commander Subcommittee to the full Panel.

4 At this time, I would like to open this up for  
5 discussion among our Panel members, and I'd like to  
6 hear any comments, objections, or suggestions that you  
7 might have to the Subcommittee for further information.

8 (No response.)

9 CHAIRMAN JONES: Okay. Well then, I would just  
10 mention to all of you here that this report out was the  
11 consensus of the Subcommittee, and in substance is the  
12 consensus of the full Panel. And it is not, just so  
13 you know, intended to be the final text, which -- of  
14 the report and recommendation that we make. But it is  
15 our consensus on the issue that I described.

16 MR. BRYANT: Madam Chairperson --

17 CHAIRMAN JONES: Mr. Bryant, yes?

18 MR. BRYANT: Thank you. For those who are  
19 present and those on the Panel that this is just one  
20 aspect of what the Subcommittee is looking into,  
21 whether or not the role of the commander, they found  
22 any evidence that would affect the reporting. But

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1 there are still other aspects that the Subcommittee is  
2 looking into regarding the role of the commander in the  
3 entire process.

4           CHAIRMAN JONES: Absolutely. I want to make it  
5 clear if I didn't earlier that this is the examination  
6 of one issue, and that is what we could or not learn  
7 from our military justice allies and the changes that  
8 they made in their military systems. That's the only  
9 aspect that this Subcommittee report relates to.

10           MR. BRYANT: Yes, thank you.

11           CHAIRMAN JONES: Anything else?

12           (No response.)