

WATERFALL SLIDES

Judge Jones and members of the panel, thank you for the opportunity to address you today.

As you will notice right off, the Army's "waterfall slides" look very different from those found in the Annual Report to Congress. This is because the Army believes the data presented in the Annual Report to Congress needs to be broken down by offense in order to properly examine the disposition decisions made by Army commanders.

Some of the critics of our system have used the Annual Report slides to claim that the Services have a very low prosecution and conviction rate. These critics take the number of completed convictions at court-martial, found at the end of the waterfall slides, and compare that figure to the total number of reports in a fiscal year at the top of the waterfall slides.

This method is flawed for four primary reasons:

- a. First, the Annual Report is a snapshot in time. The total reports figures include reports made throughout the fiscal year so will necessarily include reports that have not yet been investigated or disposed of by a commander. In fact, at any given time, approximately half of current reports are still pending investigation and disposition. No meaningful prosecution rate would include allegations that have not yet been investigated.
- b. Second, the total reports figure includes reports in which a Soldier is a victim but the offender is a civilian and does not fall under the jurisdiction of the Army. No meaningful prosecution rate would include allegations against subjects outside the jurisdiction of the system.
- c. Third, the total reports figure includes restricted reports, in which a victim has elected not to have the allegation reported to law enforcement for investigation or to the command for disposition. No meaningful prosecution rate would include allegations that will never be investigated or subject to prosecution.
- d. Fourth, and most importantly for today, the total reports figure covers a wide spectrum of 8 separate offenses that range from rape to an unwanted touch over the clothing. The grouping together of disposition data collectively across that spectrum of offenses does not accurately measure the disposition decisions. At one end of the spectrum, rape, commanders should be considering General Courts-Martial while at the other end of the spectrum, unwanted touch, a non-judicial or administrative punishment is likely more appropriate. No meaningful prosecution rate would group together disposition data from such a wide spectrum of offenses.

Therefore, in order to accurately study the disposition decisions of Army commanders, the Army has broken down the data to examine offenses separately in which there was jurisdiction over the offender, a completed investigation and a disposition decision made by a commander.

Today, I will be walking you through 8 slides that clarify Army commander's disposition of allegations of rape and aggravated sexual assault (involving a sleeping or intoxicated victim), the two most serious penetrative crimes covered in the Annual Report. The first 4 slides address rape allegations and slides 5-8 address aggravated sexual assault allegations. This, I believe, will give you the fidelity to understand our efforts.

On Slide 1, in the FY12 Annual Report to Congress, the Army had a total of 476 subjects in completed investigations of a rape allegation. This includes subjects from FY12 reports and subjects from previous fiscal years that were still pending investigation when the prior fiscal year ended.

Of the 476 allegations, 358 were founded and 118 were unfounded.

Founding is a probable cause determination. In the Army, as in all civilian jurisdictions, the decision to found an allegation is made by the prosecutor. In the Army, the commander does not have a role in founding or un-founding a case. Founded cases are presented to commanders for disposition. Unfounded cases are not presented to commanders for disposition, but are maintained as a permanent law enforcement record for the titled subject.

Let's now look at these founded cases.

On Slide 2, we look at the 358 subjects in founded allegations.

In this slide, we first subtract the 66 subjects who are civilians or unknown perpetrators because the Army did not have jurisdiction to prosecute those subjects.

Next, we subtract the 68 subjects who were a Soldier offender over which there was concurrent jurisdiction but the Soldier but the civilian authorities elected to take the case.

Finally we subtract the 38 subjects who had a completed investigation but were still pending a disposition by an Army commander.

This leaves us with 186 subjects, in cases in which there was jurisdiction over the offender and a final disposition. Army commanders preferred court-martial charges against 104 subjects. This would result in a 56% prosecution rate.

On this same slide, if you look to the box to the right of the 68 Soldiers subject to a prosecution by a civilian jurisdiction, the Army also tracked the results of those civilian prosecutions.

Of the 68 subjects, 7 were prosecuted for the sexual assault offense alleged, 11 subjects were prosecuted for a lesser, non-sexual assault offense and 22 subjects had all charges dismissed. This would result in a 17% prosecution rate by civilian authorities.

On Slide 3, we look at the 104 cases in which court-martial charges were preferred.

Of the 104 cases, 38 were still pending findings (or a verdict) at the time that the fiscal year ended, leaving 66 cases complete.

Of the 66 completed cases, some cases were dismissed prior to the completion of trial.

16 cases were dismissed sometime in the process for evidentiary issues.

For 9 enlisted Soldiers and 1 officer or Cadet, the convening authority granted a request by the Subject to be discharged or resign in lieu of court-martial, commonly referred to as a Chapter 10. In these cases, the 10 Soldiers receive a less-than honorable discharge. The victim in each of these cases is consulted and concurred with the decision to grant a discharge in lieu of court-martial. Typically, these discharges are granted when there are evidentiary issues or when a victim is reluctant to testify in court-martial proceedings.

On the right hand side of Slide 3, you will see that of the 40 cases that were tried to findings or verdict, 31 subjects were convicted and 9 were acquitted. This would calculate to a 78% conviction rate.

Finally, on **Slide 4**, we look at the 82 subjects in founded allegations, where there was jurisdiction over the offender and final disposition, but no court-martial charges were preferred.

In all of these cases, an Army commander, with advice of a judge advocate, determined that there was insufficient evidence to prosecute the rape allegation at court-martial. However, the commanders in these cases still have a variety of disciplinary tools to take some action against these subjects.

Of those 82 subjects, 6 were administratively separated with a less-than honorable discharge for a non-sexual assault offense, 2 Soldiers were administratively separated for the rape after the victim declined to cooperate, 17 Soldiers were given Nonjudicial punishment (Art. 15) for a non-sexual assault offense, 4 Soldiers were given some type of adverse administrative action for a non-sexual assault offense, 30 Soldiers were given no punishment because there was insufficient evidence of any offense to prosecute, and 23 Soldiers were given no punishment because the victim declined to cooperate in the investigation/prosecution and there was no other available evidence to support prosecution of any offense.

With these 4 slides, the Army accounts for every allegation of rape in fiscal year 12 to a level of detail unequalled in any jurisdiction federal or civilian. Each allegation can be traced to a name of a victim and a subject in our database. A description of each of these offenses and the exact punishment imposed is publically available on the DoD SAPRO website. Transparency is important to the Services and to understanding our system.

Slides 5 through 8 repeat this same process for the penetrative crime of sexual assault/aggravated sexual assault involving a sleeping or intoxicated victim.

As you will see on **Slide 5**, only 19% of the total allegations were unfounded after an investigation and opine by prosecutors.

On Slide 6, you will see that in cases in which there was jurisdiction over the offender and a final disposition, Army commanders had a prosecution rate of 59%. Soldiers subject to a civilian prosecution result in a corresponding 14% prosecution rate by civilian authorities.

Again, like before in the rape cases slides:

We start with 379 subjects in founded allegations with a completed investigation.

We first subtract the 23 subjects who are civilians or unknown perpetrators because the Army did not have jurisdiction to prosecute those subjects.

Next, we subtract the 37 subjects who were a Soldier offender over which there was concurrent jurisdiction but the Soldier but the civilian authorities elected to take the case.

Finally we subtract the 53 subjects who had a completed investigation but were still pending a disposition by an Army commander.

This leaves us with 266 subjects, in cases in which there was jurisdiction over the offender and a final disposition. Army commanders preferred court-martial charges against 157 subjects. This would result in a 59% prosecution rate.

On this same slide, if you look to the box to the right of the 37 Soldiers subject to a prosecution by a civilian jurisdiction, the Army also tracked the results of those civilian prosecutions.

Of the 37 subjects, 4 were prosecuted for the sexual assault offense alleged, 10 subjects were prosecuted for a lesser, non-sexual assault offense and 14 subjects had all charges dismissed. This would result in a 14% prosecution rate by civilian authorities.

Slide 7 illustrates alternate dispositions reached after charges were preferred then indicates that for cases tried to findings, the Army had a 78% conviction rate.

Slide 8 again demonstrates the ability and willingness of Army commanders to use other disciplinary tools to punish Soldiers when the evidence in a sexual assault allegation does not support a prosecution at court-martial.

The Army has conducted a similar analysis of the Fiscal Year 2011 data for rape and aggravated sexual assault that yielded very similar results and slides illustrating that data can be provided separately.

Finally, if you look at **Slide 9**, we have broken down the data for the offense at the other end of the spectrum of crime (unwanted touches or contact).

The Annual Report indicates that in 88% of the founded allegations of wrongful sexual contact (238/272), Army commanders took action against the offender that ranged from court-martial

(25% or 68/272), administrative separation (12% or 33/272), Article 15 non-judicial punishment (33% or 91/272) or adverse administrative action (17% or 46/272). In only 12% of the cases (34/272) Army commanders did not have sufficient admissible evidence to take action or the victim declined to cooperate with the investigation.

These offenses are often not criminalized in civilian jurisdictions and rarely investigated or prosecuted. The range of tools available in the military justice system allow Commanders to address the entire spectrum of crime. The Annual Report data indicates that Army Commanders are effectively addressing the more minor behaviors that could be precursors to more serious offenses. The commander's message to the unit that this type of conduct will not be tolerated is strong and unequivocal.

My final slide, **Slide 10**, shows the success of the SVP program. The Army, recognizing the need for additional training and resources for the prosecution of sexual assault, established the Special victim Prosecutors and Sexual Assault Investigators programs in 2009. Working with commanders at every level, these hand-selected professionals develop an expertise in sexual assault cases that is unprecedented. Since these efforts started, the Army has seen an over 100% increase in prosecutions, convictions and sentences that include a punitive discharge. This program is now being expanded to include a paralegal and a Special Victim Witness Liaison. These efforts demonstrate that the Army takes accountability very seriously.

Thank you for your patience and I will be happy to answer any of your questions.