

Response Systems Panel
Victim Services Subcommittee
Minutes of November 21, 2013 Meeting

The Response Systems to Adult Sexual Assault Crimes Panel (RSP) is a federal advisory committee within the Department of Defense (DoD) operating pursuant to the National Defense Authorization Act for Fiscal Year 2013, Section 576(a), the Federal Advisory Committee Act of 1972, the Government in Sunshine Act of 1976, and other appropriate federal regulations. The Victim Services Subcommittee (VSS) of the RSP held a meeting at One Liberty Center, 875 North Randolph Street, Arlington, Virginia 22203 on November 21, 2013. The meeting began at 9:25 a.m. and concluded at 4:45 p.m. The transcript of the November 21, 2013 proceedings will be appended and is incorporated herein by reference.

Participating VSS Members:

Ms. Mai Fernandez, Chair
Honorable Elizabeth Holtzman
Honorable Christel Marquardt
Dean Michelle Anderson
Dean Lisa Schenck
Ms. Meg Garvin
Mr. Bill Cassara

Participating RSP Staff Members:

Colonel Patricia Ham, USA, Staff Director
Mr. David Gruber, RSP Panel Staff
Commander Sherry King, USN, Branch Chief, Victim Services Subcommittee, RSP Panel Staff
Ms. Julie Carson, Staff Attorney, Victim Services Subcommittee, RSP Panel Staff
Ms. Kristin McGrory, Staff Attorney, Victim Services Subcommittee, RSP Panel Staff

Other Participants:

Mr. William Sprance, Designated Federal Officer

Presenters:

Ms. Shawn Wren, Director, USCG SAPR
Ms. Tanya Rogers, Program Analyst, USN SAPR Program
Lieutenant Colonel Mike Lewis, USAF, VWL SME

Ms. Lisa Surette, USAF, SARC/VA SME
Captain Allison DeVito, JAJM, VWL, SME
Ms. Peggy Cuevas, Director, USMC MARFORRES SARC
Gunnery Sergeant Yesenia Rodriguez-Hower, UVA, MCB Quantico
CWO-3 Dancy Simons, Regional VWL Officer, NCR
Ms. Carolyn Collins, USA, SAPR Program
Ms. Janet Mansfield, USA, OTJAG
Ms. Bette Stebbins Inch, Senior Victim Services Advisor, DoD SAPRO
Commander Sherry King, USN, Joint Service Committee on the UCMJ
Captain Nicholas Carter, USAF, Joint Service Committee on the UCMJ

The meeting was opened at 9:25 a.m. Colonel Ham began the meeting by introducing herself and thanking the subcommittee members for their patience through the process of bringing them on board.

Colonel Ham proceeded to review key requirements of the Federal Advisory Committee Act with the Subcommittee. She introduced Mr. William Sprance as the Alternate Designated Federal Official (DFO) and noted that the subcommittee cannot meet without a DFO present. Colonel Ham informed the subcommittee that their ultimate goal is to present their findings and recommendations to the full Panel in an open meeting for the Panel to deliberate and accept, reject or modify such findings and recommendations for the final report. Colonel Ham then introduced the Chair of the subcommittee, Ms. Mai Fernandez for her opening remarks.

Ms. Fernandez thanked the subcommittee members for committing their service and time to this important issue. She informed the group that they were going to be hearing from the SAPRO office about SARCs and Victim Advocates and that in the afternoon they would receive a briefing from the Joint Service Committee on the UCMJ about their recently completed comprehensive survey of civilian practices with respect to victims' services and support. Ms. Fernandez then told the group about her background and had each of the subcommittee members say a word about themselves.

Next, Mr. Gruber had the Staff introduce themselves and he proceeded to go over the materials provided to the subcommittee which included bios of the members, draft future agendas, the relevant statute and terms of reference, a summary of victim services and the Request for Information Responses (RFIs) received so far from the Services and DoD relating to victim services.

Rep. Holtzman had some questions about the letters to and about SARCs and VAs provided by the Army. She was concerned that they were all laudatory. Colonel Ham and Mr. Gruber explained that these letters were not specifically solicited from the Army, but provided to

the Panel by the Army in response to the request for victim testimony. Colonel Ham explained that a request could be made by the Panel for similar letters from the other services and to include critical as well as complimentary letters if they wished to make such a request. Colonel Ham also explained to the subcommittee that Judge Jones had requested that the staff prepare and send letters to a number of victim advocacy organizations around the country to solicit information and input if they would like to provide it for the Panel's consideration. Colonel Ham asked the subcommittee to let the staff know if there were any additional people or organizations to whom they would like to send similar letters requesting information.

Rep. Holtzman commended the effort to request information from outside organizations, and she suggested having people in the military who deal on a day-to-day basis with victims to provide suggestions, critiques or comments about how the system is or isn't working. She recommended trying to look at the problem from the bottom up rather than from the top down. Colonel Ham responded that the December Texas trip would give the subcommittee an opportunity to visit with a number of SARCs and VAs for this kind of information. She also noted that when the Panel requests witnesses from the Services, it is the Services who determine who they send.

Dean Anderson noted that the feedback the subcommittee has looked at is from people who reported their sexual assaults. She is interested in how the group could obtain anonymous feedback from people who have chosen not to report. Colonel Ham responded that DoD SAPRO does track the number of people who don't report and reasons for not reporting in their annual reports. She also noted that the Panel accepts and invites public comment from anyone, and to date, there have been no anonymous comments received despite the fact that there have been press releases issued to media outlets. Mr. Gruber added that we have asked two organizations, Protect Our Defenders (POD), and the Service Women's Action Network (SWAN) to publicize the meetings within their constituencies.

Rep. Holtzman commented that she tried to go to the website and that there was virtually nothing there. Dean Anderson also commented that the links were broken. Colonel Ham responded that the staff is working to get the material up as quickly as possible and that the June and September meetings are up, though the November 7-8 meetings have not yet had the transcripts finalized. Mr. Gruber added that we will work to get them posted as quickly as possible.

Ms. Fernandez welcomed the first group of presenters, thanked them for the work they are doing and called on the Coast Guard to begin.

Ms. Shawn Wren, USCG, SAPR Program Director

Ms. Wren began by informing the subcommittee that the Coast Guard is part of the Department of Homeland Security (DHS) not the Department of Defense (DoD). She noted that as one of the five armed services, they do align with DoD whenever they can. She explained that as the Program Manager for the Coast Guard, her top priority is always taking care of the sexual assault response coordinators (SARCs) so that they can do their job of taking care of victims.

Ms. Tanya Rogers

Ms. Rogers explained that she has worked in a number of different capacities in the Navy's Sexual Assault Prevention Program over the last five years and that those experiences have given her insight at both the micro level of direct services and the macro level of policy development. She began her career in victim services as a rape crisis counselor, then as a sexual abuse specialist and she worked as a Correctional Counseling Program Leader for the Arkansas Department of Corrections, where she worked with sex offenders. She began working for the Hampton Roads SAPR Program in Norfolk in 2008 which supported over 75,000 active duty Navy personnel. Ms. Rogers' primary responsibility was to ensure that the five installation SARCs were providing direct services to victims and that they were providing oversight to the SAPR Victim Advocates and providing training and consultation to commands. She also provided victim care when necessary and co-chaired the Monthly Sexual Assault Case Management Group where all open, unrestricted cases were reviewed. She is now a SAPR Program Analyst performing data analysis and evaluation.

Ms. Rogers reported that the Navy has updated the initial SARC training, provides monthly webinars, bimonthly web-based SARC meetings and quarterly SARC meetings where they can discuss best practices and collaborate. In FY13, the Navy hired 66 civilian SARCs and 66 professional SAPR VAs according to Ms. Rogers. Additionally, she stated that to date the Navy has over 4,415 unit SAPR VAs who have been successfully credentialed. She reported that the Navy has implemented a regional model with a regional SARC in each of 11 individual regions. Ms. Rogers explained that some of the Navy initiatives include Deployed Resiliency Counselors and Victims' Legal Counsel.

Lieutenant Colonel Mike Lewis, USAF

Lt Col Lewis expressed first that the Air Force has a robust training program for victim liaisons that includes judge advocates and takes place at the Air Force JAG School at Maxwell AFB in Alabama. He next explained the difference between Victim Witness Liaisons (VWLs) and SARC/VAs. He noted that sexual assaults only make up about six percent of the crime

victims that VWLs work with. Lt Col Lewis read a letter from a sexual assault victim praising her VWL.

Ms. Peggy Cuevas

Ms. Cuevas introduced herself as the SAPR Program Manager for Marine Forces Reserves Headquarters in New Orleans. Previously she was the director of a rape crisis center, then worked with the Navy and signed on with the Marine Corps in 2010. She reported that the USMC has hired 3 full-time SARC's and two full-time civilian victim advocates to supplement the 320 trained UVAs across the force at 184 sites.

Ms. Carolyn Collins

Ms. Collins introduced herself as the Deputy Director for the Army Sexual Harassment/Assault Response and Prevention (SHARP) program and noted that she has been with the program for several years. She reported that the Army has an 80 hour training course for both VAs and SARC's and that they are expanding to an eight week course for the full-time brigade level positions. She reported that the Army currently has 829 full-time positions at the brigade level for SARC's and VAs, that the Army has implemented extensive new screening criteria, and that SARC's must be appointed by a general officer and VAs must be appointed by an O-6 or brigade commander. Ms. Collins added that the Army will be bringing in about 250 full-time military and about 450 full-time civilians to do the brigade-level work. She stated that the Army's overall commitment for full-time personnel for VAs and SARC's is a little over \$62 million.

Ms. Bette Stebbins Inch

Ms. Inch introduced herself as the Senior Victim Assistance Advisor at SAPRO. She stated that she has been in this position since 2007. Ms. Inch announced that SAPRO has been working on victim assistance standards since 2011 and that the Instruction was just signed within the last two days. She reported that the Instruction provides guidance to the Services on what they have to do for victims. She explained that there are four victim assistance related programs throughout DoD: the Family Advocacy Program, SAPR, VWL and the Military Equal Opportunity Office. Ms. Inch noted that these standards were adapted from the DOJ standards. Ms. Inch then discussed the provisions of DoDI 6495.02 which is the Instruction on sexual assault response that provides the DoD policy. Ms. Inch concluded her remarks and she was the last presenter.

Questions from the Subcommittee

After the presentations were completed, Ms. Fernandez opened by asking the question of how a victim begins engaging with the system. Ms. Collins responded that there is a 24/7 hotline at the local level as well as the DoD Helpline, then the person is assigned a victim advocate who engages with them immediately. Questions and a discussion followed about the length of time forensic evidence is kept for a restricted sexual assault report. Ms. Collins responded that it is kept for 5 years. Dean Anderson then asked a question about what services are available to a victim who chooses not to report. Ms. Collins relayed that they are free to get medical or behavioral care and not divulge that they have been sexually assaulted. Dean Anderson next asked Ms. Collins what percentage of victims do not report at all according to the Army. Ms. Collins replied that overall, the report rate for sexual assault crimes is 42%. She added that for penetration crimes, the report rate is 54%.

The next line of questions and discussion was around the negative impact of seeking behavioral health services on military members' careers and whether the command has access to this information followed by questions about the privileged communications with SARCs and Special Victims' Counsel (SVC). Also discussed was how a SVC is appointed and how the victim is informed. Mr. Gruber stated that the SVC program will be the topic of a subsequent subcommittee meeting where these questions can be explored in depth.

Ms. Garvin next asked a question about how insurance covers off-base medical access, and a robust series of questions on this topic ensued with presenters offering several different answers. Rep. Holtzman then referred back to the discussion about the stigma associated with seeking mental health care and whether a Service member's record will follow them. There were a number of questions raised on this issue. The presenters were not subject matter experts on medical records and therefore the responses varied and were without a consensus. Ms. Inch suggested consulting with Mental Health Affairs for more clarity on the issues.

The questions next focused around whether the SARC keeps a case when the victim transfers and what happens at the next installation. There was then a lengthy line of questioning about a commander's "need to know" medical and counseling information as a privilege exception. Colonel Ham read the list of exceptions that included several that could be interpreted broadly enough for a commander to get the information. There was discussion about the types of military jobs that require a commander to know about the mental state of the member and the ways in which a commander finds the information.

The follow-up questions were related to what the military is doing to improve the protection of victims' privacy and whether that has an impact on reporting. Captain Devito mentioned that the newly implemented DoD requirement that a commander provide monthly

updates to victims about their cases has helped a great deal in allowing the flow of information both ways and victims can let the command know if there is a problem with gossip or leaking information. Ms. Fernandez asked the presenters what the gap is in all the initiatives that are underway and asked them what they feared most when the media stops focusing on the issue. Ms. Wren responded first that it has been a slow shifting in society, much like drunk driving and car seats, and that the shift with sexual assault is taking place but it will take time. Ms. Rogers pointed to the bystander prevention training as possibly the most beneficial initiative and her fear was in losing the momentum that the public attention has driven. Lt Col Lewis responded that it is all about the culture of the organization. He noted that the military culture involving alcohol was also an issue. With respect to the question about what gap exists, Lt Col Lewis highlighted the issue of how victims' rights will be properly enforced and also of resources.

The next topic discussed was whether SARCs and VAs volunteer for the positions or are assigned to them. Ms. Cuevas commented that in the Marine Corps, out of a class of 40, there may be two or three who volunteered for the position, the rest are assigned. Ms. Collins said that this was initially an issue for the Army but they have addressed it by making it a skill identifier and career enhancing for promotions. Ms. Rogers reported that she has not heard that there is a problem from the Navy SARCs. Ms. Surette reported that in the Air Force uniformed victim advocates are all volunteer, but that they do have difficulty in some locations filling the spots. A possible solution mentioned by Ms. Cuevas is that in the Marine Corps they are giving awards to the active UVAs as an incentive.

The next topic was brought up by Ms. Cuevas when she reported that in the last two years the USMC has been so busy rolling out new initiatives that they haven't had a chance to implement everything that is already in place before something else is rolled out. Mr. Gruber asked about the average caseload for VAs and how they are assessed for the emotional resiliency needed for the job. Gunnery Sergeant Rodriguez-Hower reported that at Quantico, what she sees is that the VAs are not emotionally ready for the job. Ms. Cuevas reported that they try to give them only one case at a time, although at stand-alone sites, VAs may have two cases at a time at most. Ms. Surette reported that the Air Force only assigns one victim to a VA at a time.

Ms. Fernandez asked Ms. Inch what a victim can do if they believe they are retaliated against by a commander. Ms. Inch responded that there is already a mechanism in place with the Article 138, UCMJ, complaint process and a victim can speak with Legal Assistance for help in filing a complaint. Colonel Ham and Mr. Gruber went on to explain the Article 138, UCMJ, complaint process. Mr. Gruber indicated it is primarily used for a grievance that is cognizable and clearly defined. Ms. Inch also noted that the special victims' counsel is now a very good option for a victim to report a complaint or even the trial counsel because they are in a position of authority and will be listened to by the commander. Lt Col Lewis also noted that in the Air Force they have seen the special victims' counsel help in this way frequently. Colonel Ham

added that the annual SAPRO report indicates that much of the problem with retaliation is with the victim's peer group rather than the command.

Rep. Holtzman asked a question regarding the bystander prevention training applying to male victims. It was agreed by the presenters that more could be done on this front and Ms. Inch indicated that DoD is revamping their 2008 prevention strategy currently to implement best practices taken from academia. Rep. Holtzman also asked the presenters if they believed removing the commander from the court-martial decision would enhance victim reporting. Ms. Inch, Ms. Cuevas and Lt. Col Lewis all indicated no, they did not think it would.

A lunch recess was taken.

Joint Service Committee Presentation on civilian jurisdictions

Lt Col Lewis introduced himself in his capacity as the Chairman of the Joint Service Committee on Military Justice and provided an overview of the Joint Service Committee (JSC) organization. He reported that the Sexual Assault Subcommittee (JSC-SAS) was set up in 2013 after a letter of concern was sent from the House Armed Services Committee to the SECDEF. As a result, the JSC-SAS was tasked to study civilian systems from the prosecution level, the investigation level, and the victim support level, and determine what best practices the military justice system could implement. Because the report has not been approved by the DoD General Counsel yet, the specific recommendations of the JSC were not presented, only factual assertions of what was seen by those doing the interviews and their personal opinions were offered.

Lt Col Lewis then handed the floor over to Commander King and Captain Carter. CDR King reported that the subcommittee talked with 18 jurisdictions in 14 different states. Colonel Ham asked how the jurisdictions were selected. CDR King responded that the selection was partly based on information from the HASC and SASC on where they would like the subcommittee to go and partially based on contacts that the group had. Captain Carter added that they also tried to vary in size from small jurisdictions like Dover, Delaware to large metropolitan jurisdictions like Manhattan, New York, and also West Coast as well as East Coast.

Ms. Garvin asked whether the group had done any assessment of the weakness or strength of the victims' laws in the jurisdictions studied and CDR King replied that they did not. CDR King went on to report that they interviewed prosecutors to learn how they charge cases, how they deal with investigators and victim advocates, how they work with the victim, and how they prepare for trial, post-trial and sentencing. They learned that every state is a little different.

CDR King reported that the civilian prosecutors are much more experienced in the number of cases they have tried before they ever do a sexual assault prosecution than military

prosecutors and that these cases are usually handled by a specialized unit. Dean Anderson asked for the presenters to offer comparisons with how the military operates differently. CDR King noted that the civilian jurisdictions have many more cases than the military does.

CDR King reported that at the hospital or police station, there is generally a community victim advocate from a rape-crisis center available to assist the victim. She explained that some jurisdictions have advocates with the police and some have advocates who work with the prosecutors. CDR King went on to report that typically the victim advocates from the rape-crisis centers or police advocates will work with the victim until the case is referred to a prosecutor's office. At that time a victim advocate from the prosecutor's office typically takes over. However, CDR King stated that in most jurisdictions sometimes one advocate stays with the victim all the way through if they have built a bond with the victim.

CDR King reported that some jurisdictions work well with victim lawyers and others do not and that these lawyers are funded through government grants or pro bono for the most part. She also reported that it is a small number of cases where victims do have lawyers. Captain Carter and CDR King discussed the role civilian attorneys play in arguing victims' privacy interest in motions and noted that they also help to prepare statements at sentencing.

Mr. Cassara raised the issue of *Brady* considerations for special victims' counsel. Ms. Garvin reported that *Brady* is irrelevant in Federal and state courts when there is a victim counsel because they are not an arm of law enforcement and that this has been litigated. Ms. Garvin went on to explain how victim standing is recognized in several different jurisdictions.

The next series of questions dealt with scope of representation of victims' attorneys. CDR King reported that the representation agreements for civilian victim attorneys were usually very limited. Following that, Rep. Holtzman asked about victim impact statements. CDR King responded that in the military they are sworn and therefore subject to cross-examination unlike the civilian jurisdictions where a victim can give an unsworn impact statement.

Ms. Fernandez asked to have a side-by-side analysis of the victim counsel in civilian versus military systems and also commented on looking into victims' rights impacting defendants' due process. She stated that the *Brady* and due process questions are what the subcommittee needs to really focus on. Ms. Garvin recommended bringing in Federal prosecutors to discuss how the CVRA has been litigated rather than the state systems.

Captain Carter next described the role of victim advocates in the prosecutors' offices visited. He said the victim advocates knew the justice system extremely well and were very knowledgeable about community resources also. He further reported that in jurisdictions where special victims' counsel isn't as prevalent, the victim advocates were the ones who made sure the

victims' rights were complied with and they also were instrumental in ensuring that the prosecutor kept the trust of the victim.

Ms. Garvin asked about collateral misconduct of sexual assault victims. Captain Carter noted that collateral misconduct is an issue in the military because drug use, for example, will be cause for separation and also the concern that someone may allege sexual assault to get out of the collateral misconduct. Captain Carter noted that collateral misconduct is frequently not charged in civilian jurisdictions; often the prosecutors weigh the harm to society as the standard of whether or not to prosecute. CDR King and Captain Carter also discussed the impact on job performance that necessitates consequences in the military that isn't comparable with the civilian criminal justice system. Dean Schenck raised the issue of whether the special victim counsel would be helpful in dealing with the collateral misconduct issue. Lt Col Lewis added that a commander can also delay a discipline decision on collateral misconduct until the sexual assault is dealt with. There were a number of follow-up questions with respect to collateral misconduct.

Deliberation Session

Following a ten minute break, the subcommittee resumed the meeting to begin a deliberation session to discuss future meetings and direction forward. Mr. Gruber pointed out the draft agendas provided in the materials and the subcommittee discussed the December Texas trip and what kind of meetings could be arranged. Mr. Gruber also raised the possibility of a January visit to Norfolk, VA. The logistics and options for future subcommittee meetings were also discussed.

After the discussion of meetings and site visits, Mr. Gruber suggested that the group begin discussing possible recommendations they would like to explore. Ms. Fernandez asked the group to each bring up impressions and issues identified and noted that they weren't to the point of making recommendations yet. Mr. Cassara suggested that the subcommittee needed to figure out what the end state should be and what their view of success is. Judge Marquardt suggested looking at the fact that victims don't appear to have many rights now in the military system and she expressed concern about the dual system of handling criminal issues that has been proposed in legislation. Rep Holtzman noted that all of the presenters have mentioned that changing the culture is very important and she also suggested looking more closely at the prevention side and at previous victimization. Dean Schenck mentioned that she had spoken with the female commander at Parris Island, General Reynolds, and she noted that the Marines do separate female training with female drill sergeants and that this may provide strong female role models to young female recruits. She also noted that while on the appellate bench she saw cases of re-victimization and predatory drill sergeants.

Ms. Fernandez asked whether it was possible to screen recruits to determine whether they had been either victims or offenders and suggested that this be looked at rather than delving into why victims are re-victimized. Rep Holtzman also suggested that this is something the subcommittee should look into as well as the Article 32, UCMJ, hearings where victims can be subjected to harsh questioning. Ms. Fernandez next brought up that it appeared from the testimony that has been heard so far, it looks like the locations for these incidents have been identified as at the barracks or in hotel rooms and recommending that this be looked into for solutions. Mr. Gruber discussed a new Navy initiative to begin shore patrols to look for problems. Ms. Fernandez suggested instituting something like university resident advisors in barracks. Dean Schenck then discussed the history of decreasing restrictions on barracks access in the Army and how that has led to drinking and parties in the barracks as well as sexual assaults. Mr. Gruber noted that efforts to prevent destructive behavior patterns in new recruits was something the subcommittee can learn more about and hear presentations on.

The last issue brought up was by Mr. Cassara pointing out the problem of liquor stores on bases. He indicated that many of them sell alcohol 24/7 and that this is a practice that should be looked into. There was much discussion among the subcommittee members about this issue and the option of requiring liquor sales to stop after 10:00 pm.

The subcommittee meeting ended at approximately 4:25 p.m.

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


Mai Fernandez
Chair
Victim Services Subcommittee