

Study of Sexual Assault In Civilian and Military Justice Systems

by

The Joint Services Committee
Sexual Assault Subcommittee
(JSC-SAS)

Agenda

- The 5 W's of the JSC-SAS Study and Background Information
- Evolution of the JSC-SAS and RSP tasks
- JSC-SAS Action Plan
- Summary of Interviews
 - Police, Prosecution Offices & Public Defenders
 - Experts, NGO's, & Victim Advocates
- Findings
- Challenges
- Way Ahead

5 W's of the JSC-SAS Study

- Who: (1) JAG Representative from Each Service
- What: Collect information regarding the investigation, prosecution, adjudication of sexual assault in civilian and military justice systems as well as victim support and services
- Where: 20 Jurisdictions across the country
- When: February – October 2013
- Why: To conduct a nationwide comparative study and recommend civilian best practices to DoD to improve the military's response to sexual assault

JSC-SAS Overarching Tasks

- Gather facts in order to conduct a comprehensive assessment of the investigation, prosecution and adjudication of sexual assault cases in civilian jurisdictions
- Collect information regarding federal and state victim rights and legal representation
- Develop report with findings to improve the legal response to sexual assault in the military and provide the information to JSC, DOD General Counsel, HASC, SASC, and the RSP

Evolution of JSC-SAS & RSP

- 13 September 2012: Rep. Buck McKeon's Letter to Sec Def
 - Requested SecDef's input for a NDAA FY13 Commission/Panel to focus on sexual assault in the military
- 8 November 2012: Sec. Panetta's Letter to Rep. McKeon
 - SecDef stated he would direct the JSC to do a study to address concerns to gather materials regarding the investigation, prosecution, and adjudication of sexual assault in civilian jurisdictions
 - JSC WG's information would go to independent panel to write a report
 - Requested Rep. McKeon's input to determine the best the jurisdictions to compare for the study
- 2 January 2013: FY13 NDAA Section 576 became effective
 - Response Systems Panel (RSP) to compare military and civilian justice systems for sexual assault
 - Assess / Compare military and civilian justice systems, role of the commander, victim support and services, and legislative proposals
- January – February 2013: JSC-SAS Established by HASC and DOD
 - Met with HASC to determine jurisdictions
 - 2 prong goal:
 - Gather materials that would support SecDef's intent and
 - Meet many of the information needs of RSP to compare civilian and military jurisdictions
- March – May 2013: Researched Materials and Developed Methodology
- June – August 2013: Conduct interviews nationwide
- September – October 2013: Complete follow-up, Finalize Research, and Develop Report

Corresponding Tasks for JSC-SAS and RSP

Response Systems Panel

- Compare military and civilian justice systems for sex assault offenses
- Assess/compare military and civilian conviction rates
- Assessment of advisory sentencing guidelines
- Assess training level of military defense and trial counsel
- Assess roles and effectiveness of commanders in preventing and responding to sexual assault
- Assess legislative initiatives to modify the role of military commanders in the MJ system
- Assess adequacy of systems and procedures to support victims
- Additional items to review:
 - Role of commander
 - Special Victims' Counsel legislation
 - Victims Rights laws

JSC-SAS

- Gather and assemble information concerning the investigation and prosecution of sexual assault incidents common to both military and civilian jurisdictions, and identify best practices
- Collect information regarding the training level of civilian prosecutors, defense counsel, victim advocates and attorneys, and investigators
- Identify substantive and procedural statutes for specific sexual assault offenses and disposition authorities
- Identify systems, procedures, and statutes to support victims to include victim advocates and attorneys
- Inquire into any areas regarding sexual assault that would be helpful to the RSP, HASC, SASC, and DoD
- Provide the data and information collected to the staff of the RSP, professional staffs of the Armed Services Committees, and the DOD General Counsel's office

Action Plan

- Completed:

- Research sexual assault studies and develop methodology
- Developed standard set of questions
- Established an SOP
- Conducted Practice Run
- Interviewed 14 jurisdictions & 11 NGOs/Experts
- Drafting Interim Report for JSC

- Way Ahead:

- Visit 5 more jurisdictions
 - San Diego, Arizona, Columbia, Florida, Georgia, Philadelphia
- Complete “Study” Portion: Research & Follow-up
- Write Final Report

Jurisdictions: 3 Camps

Progressive Statutes	Supportive Statutes	Traditional Statutes
Anchorage, Alaska	Austin, Texas	Arlington, Virginia
Portland, Oregon	Baltimore, Maryland	Dover, Delaware
Washington, D.C.	San Diego, Ca. *	Everett, Washington
Phoenix, Arizona *	Atlanta, Georgia *	Grand Rapids, Michigan
Columbia, SC *		Philadelphia, Penn. *
Jacksonville, Florida *		New York City
		- Bronx
		- Brooklyn
		- Manhattan
		- Queens

** = To Be Interviewed*

Program Highlights

Jurisdiction	State Sexual Assault Program
Anchorage, Ak.	Office of Victim Rights attorneys work with Prosecutors
Arlington, Va.	Consolidated prosecutor, investigator, VWL
Austin, Tx.	Active VA, VC program; prosecutor sits at APD 3 times / week
Baltimore, Md.	SARC audit program and close ties between NGO, PD, Prosecutors
Dover, De.	VWL heavily involved, move cases along relatively quickly
Everett, Wash.	Dawson's place – one stop shop, multidisciplinary approach
Grand Rapids, Mi.	YWCA – one stop shop, multidisciplinary approach
Portland, Or.	NCVLI; Victims rights advocacy and services are benchmark
Washington D.C.	Close working relationship between Victim Attorney and AUSA
NYC – Bronx	SART program, specialized investigators, therapy offered in house
NYC – Brooklyn	Victim centric program, VWL very involved, outreach activities
NYC – Manhattan	1 st Sex Assault Program 30 years ago; Prosecutors are the key
NYC - Queens	Ride Along Program – Specialized Prosecutors involved at the start

Experts, NGOs, and Victim Advocates Visited to Date

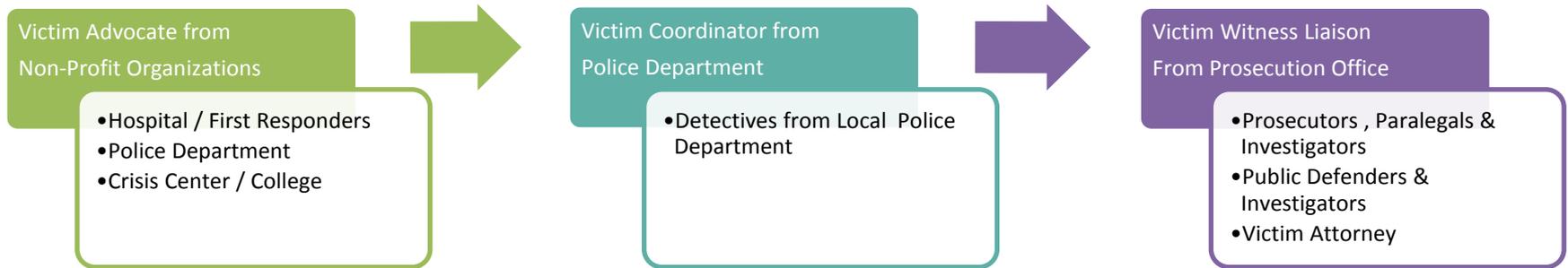
- Alaska Office of Victims' Rights
- National Crime Victims Legal Institute
- PERF
- Russ Strand, Army CID
- Maryland and Washington D.C. Crime Victims' Resource Center
- Texas Association Against Sexual Assault (TAASA)
- Texas Legal Services
- Turn Around Inc. (Baltimore Rape Crisis Center)
- SafePlace (Austin Rape Crisis Center)
- DOD SAPRO Philadelphia/NY Trip (PERF, ICAP)
- University of Texas, Dr. Busch's Team for the UT Schools of Law, Nursing, and Social Work

Topics

- Organizational Structure
- Training: Prosecutors, Defenders, Investigators, Victim Advocates & Attorneys
- Role of Victim Advocates & Attorneys
- Victims' Rights Statutory Schemes and Enforcement Mechanisms
- Process
 - Reporting
 - Charging Decision
 - Investigations
 - Trial Preparation
 - Guilty Plea Negotiations
 - Sentencing
 - Post-Trial
- Defenders' Perspective
- Challenges

Findings

Organizational Structure



- Military Special Victim Capability

- FY12 NDAA requires multidisciplinary approach with Specialized Investigators, Prosecutors, Paralegals, and Victim Advocates/Liaisons
- DOD SAPRO will establish by January 2014

- Civilian Full Menu

- Victim Advocates (VA), Victim Coordinators (VC), Victim-Witness Liaisons (VWLs)
- Specialized Sex Crime Prosecutors, Specially Trained Investigators, Paralegals, Public Defenders with Investigators, and Victim Attorneys

Types of Victim Support Services

- Titles vary in every jurisdiction
- Community Based Victim Support Personnel
 - **Victim Advocate (VA)**: NGO's located in hospitals & rape crisis centers
- System Based Victim Support Personnel
 - **Victim Coordinator (VC)**: Work within police departments and show up right away
 - **Victim Witness Liaison (VWL)**: Work within prosecution office and develop strong relationship with prosecutor with power to tell prosecutor when victim rights are at issue, however there may be lag time between incident and first meeting
- **Victim Attorneys**
 - Government funded through grants (free for victim)
 - Private attorneys (paid by victim)

3 Approaches

1. Full Support & Services: Texas, Alaska, Oregon



2. Mission Essential Support & Services: Manhattan



3. Select Support & Services: Delaware, Arlington, Bronx, Brooklyn



Summary of Civilian Jurisdictions

Training & Experience

- Prosecutors: 5-30 years experience for felony level sexual assaults
- Defenders: Usually very experienced, although level may depend on pay scale equivalent to the prosecution office
- Investigators: Trauma training, victim interviewing skills
- Victim Advocates: 40 hour training course regarding trauma, role of each government actor and justice system, OJT
- Victim Attorneys: Usually former prosecutors or legal aid work who attend annual NCVLI training for CLE

Common Progression for Sex Crimes Attorneys

- Misdemeanors (Horizontal prosecution)
 - All misdemeanor crimes (including sexual assaults)
 - Civil commitment hearings
 - Juvenile court
- Property, Drugs, Guns, Domestic Violence
- Serious Felony Offenses (Vertical prosecution)
 - Felony Sexual Assaults, Rape, Child Sex Abuse
 - Homicide

Role of Victim Advocates

- **Military: Victim Advocate & Victim Witness Liaison**
 - Victim advocate part of first responders to refer for support and services for restricted & unrestricted reports
 - Victim Witness Liaison is part of SJA's office / prosecution team and they help facilitate the prosecution
- **Civilian Jurisdictions Victim Advocates/Coordinators/Witness Liaisons**
 - Local Victim Advocates
 - NGOs with volunteers & staff from rape crisis center
 - No victim advocate privilege in most states
 - Police Department Victim Coordinators: social workers to coordinate interviews throughout investigative phase
 - Prosecutor's Office: social workers as witness liaisons to help facilitate the prosecution and obtaining the victim's input for charging, pleas, and impact statements
 - Victims' Attorneys in criminal cases: limited to motions & appeals regarding specific victims' rights issues
- **Consolidated Multi-disciplinary Facility**
 - One stop shop, often part of child sex crimes
 - SANE, victim advocate, investigator, prosecutor co-located

Role of Victim Attorney

- **Military**
 - Air Force Pilot Program
 - Other services TBD (Legal Assistance Plus)
 - Informed of right to attorney immediately
- **Civilian Jurisdictions**
 - Approach 1 – no involvement or no standing
 - Approach 2 – limited scope
 - Approach 3 – adversarial approach
 - Usually involved late in the process

Victims' Rights Statutory Schemes & Enforcement Mechanisms

- Best Practice: Incorporate into Judge's Script to ensure prosecution has consulted with victim and the Judge asks for the victim's position regarding the delay request, plea agreement, sentencing, etc.
- Military: DoD Policy details victims' rights which is modeled after the Federal Victim Rights Statute, currently no enforcement mechanism
- Civilian Jurisdictions:
 - Traditional Approach 1: Notification primary concern
 - Supportive Approach 2: Statutory rights, no enforcement mechanism which focuses more on compliance efforts (training, sanctions)
 - Progressive Approach 3: Statutory rights with enforcement mechanism

Reporting

- Military
 - Restricted report: Victim advocate, health professional
 - Unrestricted report: all other reports
- Multiple Avenues in Civilian Jurisdictions
 - Types of Reports
 - “No report” modeled after military’s restricted report
 - Report to law enforcement (same as DOD unrestricted report)
 - Anonymous report available in a few jurisdictions
 - No duty to report to police – VA’s focus on informing victim
 - Difficult to determine actual number of sexual assaults that occur because there are multiple hospitals, police departments, Colleges with each prosecutor’s jurisdiction

Charging Decisions

- Military:
 - Investigator, JAG, Command decision for preferral/referral
 - Charges subject to change after Article 32 investigation
 - Charges subject to change with guilty plea
- Civilian:
 - Power of PD's initial charges varies among jurisdictions
 - Point at which a prosecutor gets involved varies among jurisdictions
 - Generally:
 - Initial Patrol assessment
 - If arrested, then consult with prosecutor for PC
 - If not arrested, investigator will develop charges
 - Charges reviewed/revised prior to and after Grand Jury
 - Charges subject to change with guilty plea

Investigation

- Civilian Standard Practice
 - Initial patrolman's checklist obtains limited information to determine if arrest is necessary
 - Referred to sex crimes Detective/investigator
 - Victim interviews audio/videotaped (sometimes)
 - Suspect interviews usually videotaped
 - Investigators search for collateral evidence
 - Detective coordinates with victim advocate or victim coordinator extensively throughout investigation phase
 - Lead investigator may sit at prosecution table in some jurisdictions (depends on sequester rules)
- Unique Programs
 - Separate set of investigators in prosecution office to do follow-up
 - Investigators in public defenders offices

Preparation for Trial

- Civilian Standard Practice
 - VWL & Prosecutor meet victim before Grand Jury proceeding
 - Explain justice process, strengths & weakness of case
 - Victim may testify before Grand Jury
 - Review victim's original statement
 - Visit court room
 - Victim advocate/liaison involved to provide emotional, non-trial preparation to help manage expectations
- Other matters handled by other personnel
 - Security/protection usually civil matter (protective orders)
 - Landlord-tenant, employment, or other personal issues handled by civil attorney or victim attorney

Decision to Decline Cases

- Prosecutors Advice:
 - Be honest, up front. Start by believing victim.
 - Explain decision is evidence based, go through elements
 - Do not want to put victim on stand if not enough corroboration
 - Have a VA/VC/VWL present at “break up” meeting
- Police
 - Unfounded Cases / Clearance Rates – discretion varies among jurisdictions
 - Definitions vary for false or made-up reports (unfounded) versus insufficient evidence to prove beyond a reasonable doubt
 - Some jurisdictions now require form to be completed and approved by supervisor
- Prosecutors Before Indictment
 - Refer it back to PD to close case due to lack of evidence
- Prosecutors Before After Indictment/Before Trial
 - Prosecutor notes on record, but do not detail reasons for public review to avoid victim blaming
 - Note goes in prosecutors file (Attorney work product)

Guilty Plea Negotiations

- Military:
 - Agreement between the commander & accused
 - Lengthy written agreement, often with detailed stipulation of fact
- Civilian
 - Some jurisdictions happens in the hallways
 - Other jurisdictions require line officer to obtain approval

Sentencing

- **Military**
 - 0 to Max. Punishment established by the President
- **Civilian**
 - Sentencing guidelines are the norm
 - Truth in sentencing initiatives
 - High mandatory minimums impacting plea negotiations and charging decisions

Post Trial

- **Military**
 - Right to appeal for clemency from GCMCA
 - Each service's court of appeals
 - Court of Appeals of the Armed Forces (CAAF)
- **Civilian**
 - State appellate process
 - Clemency from Governor

Defenders' Perspective

- Different interpretation of *Brady* obligations
- Victims' Rights impacting Defendants' Due Process Rights
- Police Departments and Investigators
- Prosecution
- Victim Advocates & Attorneys
- Sentencing Guidelines
- Resources

Challenges for Sexual Assault Cases

- These Are Difficult Cases:
 - Cases often involve drugs, alcohol, prostitution or acquaintance
 - Evidence requires immediate reporting – need to collect evidence quickly
 - Special toxicology kit required for date rape drugs with short half life
 - Surveillance video
 - Controlled phone call the day after the incident occurred
 - Lack of corroborating evidence, especially in delayed reports
 - Success depends on how many blanks can be filled in and determining if a “crime” occurred
 - Identification issues if drugs or alcohol involved
 - Consent issues (pass out vs. black out)
 - Most states require some level of force
- Ensuring the coordination among all services and supporters
- Limiting the number of victim interviews
 - Police, investigators, prosecutors, defense, and victim attorneys
 - Memory recollection in trauma victims
 - Information to SANE, victim advocates
- Juries want DNA, forensic evidence, squad car videos
- Prosecutor has to overcome jury bias / victim blaming – cultural barriers
- Victim fatigue because these cases can take up to a year to get to trial

Data Collection Obstacles

- **Contrasting Systems vs. Comparable Information**
 - Right of privacy trumps reporting requirements in civilian jurisdictions
 - Multiple Reporting Channels in Civilian Jurisdictions
 - Police & Prosecution Discretion
 - Different Discovery Obligations
 - Varying Systems: Preliminary Hearings, Grand Juries (Sometimes No Grand Jury), versus Article 32
- **Difficulty Obtaining Statistics**
 - No requirement to track declinations or prosecutions in civilian jurisdictions
 - Variations in State Statutes and UCMJ, Art. 120 make comparisons difficult
 - May be able to gather information regarding number of police reports and victims assisted
- **Metrics to Measure Success**
 - Surveys
 - Focus Groups
 - Audits of Investigations

Way Ahead

- Intended travel in the next 30 days:
 - San Diego, California
 - Phoenix, Arizona
 - Philadelphia, Pennsylvania
 - Columbia, South Carolina (including the South Carolina Victim Assistance Network)
 - Jacksonville, Florida
- Complete “Study” Portion
 - Conduct further research on each area visited
 - Conduct follow-up interviews to complete Q&A
 - Attempt to collect more statistical information and/or examples of metrics
- Write Final Report
 - Overview and highlights of each area’s and organizations’ programs
 - Findings: organizational structure, training levels of all stakeholders, victim services and statutory schemes, common best practices, multi-disciplinary models, plea practices, alternative disposition options, sentencing guidelines, post-trial issues, statistics and metrics.
 - Appendix: references, detailed narratives of all interviews, statistics

Questions & Concerns

Backup Slides

Interview Summaries

Points of Contact & Program Highlights

Program Highlights

Jurisdiction	State Sexual Assault Program
Anchorage, Ak.	Office of Victim Rights attorneys work with Prosecutors
Arlington, Va.	Consolidated prosecutor, investigator, VWL
Austin, Tx.	Active VA, VC program; prosecutor sits at APD 3 times / week
Baltimore, Md.	SARC audit program and close ties between NGO, PD, Prosecutors
Dover, De.	VWL heavily involved, move cases along relatively quickly
Everett, Wash.	Dawson's place – one stop shop, multidisciplinary approach
Grand Rapids, Mi.	YWCA – one stop shop, multidisciplinary approach
Portland, Or.	NCVLI; Victims rights advocacy and services are benchmark
Washington D.C.	Close working relationship between Victim Attorney and AUSA
NYC – Bronx	SART program, specialized investigators, therapy offered in house
NYC – Brooklyn	Victim centric program, VWL very involved, outreach activities
NYC – Manhattan	1 st Sex Assault Program 30 years ago; Prosecutors are the key
NYC - Queens	Ride Along Program – Specialized Prosecutors involved at the start

Anchorage, Alaska

- Who we met with:

- Clint Campion, Deputy District Attorney
- Paul J. Miovas, ADA and head of Sex Crimes Prosecutions
- Shaun Sehl, Victim Attorney at the Office of Victim Rights
- 2 Public Defenders

- Highlights of Program:

- Local law enforcement has dedicated sex assault detectives
- Record all victim and suspect interviews
- Paralegal serves as the VWL
- Statute specifies that victim attorneys will not interfere with prosecution
- Prosecutors work closely with Office Victim Rights attorneys
 - Prosecutors do not have standing to represent victim's privacy rights
 - Prosecutors refer victims to OVR for assistance on specific issues
- Victim Attorneys enter a limited entry of appearance and represent victims for privacy issues such as health or substance abuse records, 412, victim rights violations at trial & appellate levels
- OVR funded through forfeiture of state's permanent fund dividends

Arlington, Virginia

- Who we met with:

- Theo Stamos, Commonwealth Attorney
- Molly Newton, Deputy Commonwealth attorney
- Carrie Steele, Prosecutors
- Greg Sloan, Investigator
- Autumn Jones, Victim Witness Liaison

- Highlights of Program:

- Consolidated office with prosecutor, investigator, and victim witness liaison
 - Specialized unit of detectives for sex assault cases
 - 3 Attorneys primarily handle sex assault cases
 - VWL heavily involved with victim care and support throughout process , sits with victim throughout trial
- System based victim support – Virginia is prime example for various approaches
 - Arlington: Victim Witness Liaison
 - Fairfax: Victim coordinator
 - Alexandria: Victim advocate
- Victim and suspect interviews taped
- No criminal victim attorneys; civil attorneys not involved in interviews
- Law enforcement makes initial charging decisions
- Usually require some level of corroboration to prosecute sex assault cases, especially if alcohol involved
- Victim testifies at preliminary hearing; Discovery in Virginia is very limited
- Virginia is 1 of 5 states that have sentencing by jury

Austin, Texas

Who we met with:

- Torie Camp, Texas Association Against Sexual Assault
- Paula Pierce + 2 other Victim Attorneys, Texas Legal Services

- Mary Farrington, Chief Prosecutor for FJD criminal division
- Dana Nelson, ADA, Sex Crimes Liaison for Travis County's DA's office

- Lieutenant Gena Curtis, Austin Police Department
- Tess Sherman, Senior Crime Analyst
- Delores Liton, Austin PD Special Victim Services (Victim coordinator)
- Camille Haberman, Victim Services Counselor with APD (Victim coordinator)
- Sergeant Kelly Davenport, Sex Crimes Unit Austin Police Department
- Sergeant Elizabeth Donegon, Founder of Sex Crimes Unit Austin Police Department
- Jenny Black, SANE Coordinator / Co-Chair SARC
- Briano Criocco, Intern from University of Texas Nursing School
- Gail Rice, Coordinator of Family Violence Protection Team at SafePlace

Austin, Texas

- Travis County Police Department

- SANE introduces victim to SafePlace victim advocate and provides APD “Pink Pamphlet”
- Austin Police Department has separate department dedicated to Victim Services
- Local victim advocate from SafePlace co-located with Austin PD
- 2004-06 APD Participated in MAD Project which completely changed PD approach
- “We believe” motto – culture change through training and protocols
- Video tape victim and suspect interviews
- Consult with ADA as investigation progresses, run everything by prosecutor first
- Cases suspended rather than closed

- Travis County Prosecutors Office:

- ADA spends half day at Austin PD 3 days a week, on call 24/7
- Prosecution office also has VWL who initially processes the case file
- VWL schedules meetings, escorts victim, tailors resources, refers to counseling, registration for VINE
- Prosecution office does “Grand Jury Education”
- Wait at least 2 sleep cycles to meet with victim
- Allow victim opportunity to appear before Grand Jury
- 2 ADA’s sit at table for every trial

Austin, Texas

- Highlights of TAASA and TSL Programs:
 - Texas Legal Services (Victim Attorneys)
 - Constitution provides victims with standing, but legislation does not provide remedy or enforcement mechanism
 - TSL would like to see legislation to allow victims to make a statement to judge before findings; currently victim statement limited to after sentencing
 - Try not to duplicate local services; will assist with protective orders and legal assistance
 - Victim attorneys limited representation. They work with prosecutors - let victims understand victim's point of view, but will not get in the way of the prosecution
 - Assists with squashing medial records subpoenas with law for standing for subpoenas (not victim rights)
 - Victim Attorneys prefer Federal system with enforceable victim rights and US Attorneys trained on those rights
 - University of Texas has an active group called “UT Voices against Violence” that focuses on policy, prevention, and awareness. Students usually report to campus police and get assistance from UT
 - TAASA oversees 84 rape crisis centers, provides training for victim advocates and law enforcement, provides resources, awareness campaigns, and assists with public policy
 - TAASA won DOJ award for “Pole tax” in April 2013
 - Texas statutory requirement for 40 hours training for victim advocates
 - Rape Crisis Centers
 - Austin has SafePlace which also serves as a domestic violence shelter, with 1 victim advocate
 - San Antonio has a stand alone rape crisis center (counselors, hotline, and offices) with 3 victim advocates to accompany victims to hospital

Baltimore, Maryland

- Who we met with:

- Lisa Phelps, Chief Special Victims Prosecution at State Attorney's Office
- Kate Briddell, Team Leader for Prosecutions of Adult Sex Crimes
- Martin Bartness, Captain of Special Investigations, Baltimore Police Department
- Heather Bratner, Mayor's Office SART Coordinator
- Ross Brassner, Turnaround Inc.
- Maryland Crime Victims Resource Center (Upper Marlboro, Md.)

- Highlights of SART, PD and Prosecution Program:

- 2009 Audit after highest "Unfounded" rate in the country
 - SART continues to audit – looks for timeliness, accusatory language, victim focus
 - Process: Detective to SGT to LT of sex offenses to SART for final review in unfounded cases
- Collaborative effort with SART, PD, Prosecution on call 24/7
- Change language when closing a case from "crime not committed" to "can't prosecute"
- No written plea agreements, state does recitation in open court, victim has been invited up to the table to provide input or some judges will ask prosecutor for victim's opinion
- Partnered with Johns Hopkins to research survey possibilities and received recommendation against doing survey because they would not get information they are looking for or obtain a valid data analysis; Use Focus Groups instead as part of out reach campaign
- Vertical Advocacy –
 - keep same victim advocate from Turnaround; important victim knows that advocate just works for her (not PD or prosecution)
 - Notify 3 times of Turnaround availability: (1) Hospital ,(2) PD, (3) State Attorney

Upper Marlboro, Maryland

- Who we met with:

- Russell Butler, Executive Director of MCVRC
- Victor Stone, Victim Attorney
- Pauline Mandell, Director of Legal Services
- Dee Gardner, Victim Advocate

- Highlights of Maryland Crime Victims Resource Center:

- MCVRC provides victim services, legal advice, policy work
- Victim advocates within MCVRC gather information and assess need for attorney
- Victim advocate educates victim of their rights
 - VA provides information and options for protective orders, services, etc.
 - They are eyes and ears through process; with 3 attorneys on staff, victim attorneys can't be everywhere
 - If VA finds victim has been excluded from the process, the case will be referred to an attorney
- Apply law to victim as they need it – be creative, developing motions first impression
- Try to facilitate meetings with State Attorney's Office
- State rule provides that victim attorney can enter an appearance and appellate court just enacted an express remedy with an avenue for a direct appeal
- Prosecutors try cases, victim attorneys do motions and appeals
- MCVRC found that the Victim attorneys involvement tends to preclude the need for enforcement

Everett, Washington

- Who we met with:

- Mark Roe, Prosecuting Attorney for Snohomish County, Washington
- Lisa Paul, DA's Office
- Matt, DA's Office
- Detective Steve Martin from Snohomish County Sherriff's Office SUI with office located in Dawson's Place
- Detective, Everett Police Department Special Assault Unit
- Rebecca Hughes, VWL
- Tricia Stemler, Criminal Records Management Supervisor
- Sonja Jacobsen, Public Defender

- Highlights of Program:

- Consolidated office with prosecutor, investigator, and victim witness liaison called Dawson Place for child and adult sex crimes
 - One stop shop for victims
 - All professionals have close working relationship and communicate regularly
 - Hold multi-disciplinary team meetings
 - Drawback - Public defenders views all services as part of prosecution
- Victim Advocates and VWL's heavily involved with victim care & support
- Suspect and victims interviews taped (with victim consent)
- Detectives sit at prosecution table during trial
- Working dog assists with interviews, calming victims and providing mental health support for victims (works especially well with children or younger victims)
- Prosecutors rotate through the Sexual Assault Unit (SAU) every 3 years

Kent County, Delaware

- Who we met with:

- Ken Haltom, Chief Prosecutor

- Highlights of Program:

- Investigators trained in victim care; Victim coordinator in Police Department
- 16 Prosecutors in Kent County office
- Specialized Sex Crimes Unit (SCU): 2 prosecutors and 1 VWL (Social Worker)
- Experience in SCU: Lead Attorney 20 yrs., Asst. Attorney 5 yrs., VWL 15 yrs.
- Video tape victim's interview and avoid subjecting victim to additional interviews
- 1992 Victim's Bill of Rights passed:
 - Mandated notifications for victims
 - Truth in sentencing guidelines
 - Services such as Victims' Compensation Assistance Programs
- Key to success: VWL is "crucial" to their office to keep victim informed, managing victim services, and providing emotional support throughout process. VWL has the most interaction with the victim.

New York City: Bronx

- Who we met with:

- Robert T. Johnson, District Attorney
- Maria Rivero, Bronx DA Office
- Joseph Muroff, Child Abuse/Sex Crime Bureau
- Astrid Brogstedt, Trial Counsel
- Bethann Holzhay, Victim Asst. Unit in DA's Office
- Michael Osgood, LT at the Bronx NYPD Special Victim Unit
- Austin Morange, NYPD

- Highlights of Program:

- SART Program very effective – victim will be seen within 1 hour, and receive SANE exam and victim advocate within 40 hours of incident
- Victim interviews not taped or written by victim – PD notes using 6 page checklist
- VWL's explain what to expect from the system & what system expects of them;
 - they do not sit in on interviews, but will accompany to provide an "informed emotional presence" serving as conduit from/to DA to ensure victim's voice is being heard
 - Victims do not need to have a case to have VWL services
 - Average case can take 2-3 years, so VWL is consistent POC
 - VWL role continues post-trial
- Will be co-locating for multi-disciplinary approach in winter 2015
- Attorneys go to training at NY Prosecutor Training Institute (NYPTI)
- Case first goes from PD to DA's "complaint room" who interview victim (not in depth), then assigned to ADA within sex crimes unit (vertical prosecution from that point forward)
- Licensed therapists within prosecutors office to help counsel victims; do not need a case for services
- No criminal victim attorneys; civil/family attorneys do not sit in on victim interviews
- Start prevention and awareness training at 8th Grade
- NYPD just started program to video tape those accused of committing sexual assault
- Provide written declination statements and give to police officer to release accused or they will announce it on the record if it occurs after arraignment; call it "deferred prosecution" rather than declining case
- Victims usually talk to defense counsel – vigilant public defenders who get victims to write out statements
- All sex crimes receive determinative sentence with a firm number of years; by law they must serve 6/7 of that sentence
- Never see pardons with sex crimes

New York City: Brooklyn

- Who we met with:

- Rhonnie Jaus, Chief of Sex Crimes & Crimes Against Children Unit (Chief since 1992)

- Highlights of Program:

- Consolidated office with prosecutor, investigator, and victim witness liaison for the sex crimes bureau
- Police get victim to hospital, then SVU PD do in depth interview at precinct
- VWL heavily involved with victim care & support (25 social workers)
 - Such a diverse, populous area – social workers are the key to success , help manage expectations
 - PD does not have social workers/victim coordinators
 - Any conflict between VWL and prosecutor, then they resolve it and explain it
- 1st degree sex cases - Riding Program ADA to scene to assist investigation
- 2nd degree sex cases – ADA on call 24 hours, go through facts, e-case assessment
- Victim driven
 - “We don’t do anything without the victim”
 - Obtain victim signature and reasons why the victim agrees with the plea deal
- Centralized supervision: Ms. Jaus makes all felony deals and Louise does all Grand Jury charging
- Nobody tries a case alone – there are two prosecuting attorneys on every case
- Worked extensively to change reporting culture in Orthodox Jewish Community where there were a lot of male victims
- Do not allow victim attorneys to be involved

New York City: Manhattan

- Who we met with:

- Martha Bashford, Manhattan DA's Office, Chief Sex Crimes Unit
- Melissa Morgues, Cold Case Files in Manhattan DA's Office
- Linda Fairstein, former member of Manhattan's DA Office
- 2 Investigators & Paralegal

- Highlights of Program:

- 50 ADAs that work sex crimes, usually 4 years minimum experience
- Majority of training conducted in-house, and prosecutors help train VWLs
- Investigators are part of DA office (usually former NYPD) and try to get involved in the case as early as possible
- Try to get prosecutors involved before arrest is made
 - DA's office does not have VWL – it is prosecutor's job to keep victims engaged in the process
 - "Witness aid" and support services are provided by hospital based victim advocates
 - Prosecutors meet with local victim advocates every 6 weeks to ensure prosecutors maintain good relationship with the providers
- CAC set up at certain hospitals with a response capability to include the ADA, investigator, VA social worker, medical, and ability to video tape
- Controlled calls and additional investigative services done by DA's investigators
- Riding program – ADA called in as soon as call comes in for a serious case and the ADA who takes the call will often be the one to prosecute case from start to finish
- No one is allowed to sit in on interviews
- Suspect interviews are always taped; victim interviews are not taped
- Rarely see privately retained victim attorneys
- A lot of investigations do not lead anywhere; NY requires victim to be "physically helpless" or passed out
- Prosecutors spend a lot of time explaining to victims why they cannot prosecute their cases and write declination memo, always have two attorneys present at "break up interview"
- Will ask victim what his/her preferred outcome is
- More defendants are beginning to testify at Grand Jury
- Manhattan has very aggressive public defenders who can talk to victims
- Plea negotiations are usually informal; defendants offered "immunity for a day" to get defendant's side of story (not videotaped)
- Biggest challenge is to receive reports from college campuses
- The consistency of the office is a real strength; leaders have 30 years experience

New York City: Queens

- Who we met with:

- Marjory Fisher, Bureau Chief for Special Victims Bureau (SVB) (Since 1990s)
- Eric Rosenbaum, Chief, DNA Prosecutions Unit in the SVB
- Kenneth Appelbaum, Deputy Bureau Chief, SVB

- Highlights of Program:

- “Victory over Violence” – one of highest conviction rates (87.5%)
- Trust between prosecutor and victim is the key to success
- Riding Program
 - All sex crimes go to SVB, attorney on call 24/7 and meet victim and witnesses at scene
 - Truly vertical prosecution: 1 attorney takes case from beginning to end, helps with the investigation and becomes personal advocate for the victim
- For non-crisis or delayed reporting, prosecutor conducts joint interview with investigator which helps establish relationship with victim
- Prior to arrest, NYPD involved; After arrest, SVB investigators with same police power conduct follow up
- SVB is heavily involved in training the police
- All ADA’s have forensic training
- 2 hospitals have SART with victim advocates that the SVB help train
- Victim has to testify in the Grand Jury, so if accused pleas, the offer will be much higher
- Approximately 5% cases go to trial
- Supervisors approve plea deals after victim is informed
- Victim has the right to speak at sentencing or write a letter
- Elite unit of prosecutors: must have completed 10-15 felony trials, CLE program, conduct mock trials, supervisors watch all cases involving younger assistants
- “We are serving every victim and they should leave the process feeling ok”

Portland, Oregon

- Who we met with at NCVLI:
 - Meg Garvin, Executive Director of the NCVLI
- Highlights of Program:
 - NCVLI: provides training, assistance to victim attorneys, and case updates for the field
 - Victim attorneys have standing for certain issues, none of it controls prosecutors' discretion
 - When victim attorneys do it right, they do not interfere and maintain a good relationship with prosecution
 - Never been a mistrial or reversal of a conviction based on victim rights' issues in civilian court; do not want to interfere with defendant's rights

Portland, Oregon

- Prosecutors & Victim Services Personnel we met with:
 - Helen O'Brien, Multnomah County DA Program Coordinator (Portland)
 - Kate Petersen, Deputy District Attorney, Multnomah County
 - Debra Bridges, Yamhill County DA Director, Crime Victim Services
 - Executive Director of Sexual Assault Task Force
 - Executive Director of Oregon Victim Crime Center
- Highlights of Program
 - Office of victim services is attached to DA's Office
 - Victims rights emphasized over last 10 years
 - Specialized team is best practice because of dynamics in SA cases
 - Relationship with law enforcement is great and work with detectives handling sexual assault
 - Prosecution VWL responds to hospital, no matter what kind of report
 - Friction between NGO victim advocates and PD, but can't advocate well for victim if you do not trust the system
 - Oregon victim advocates attend 40 hour basic academy; VA needs to understand justice system
 - Bench looks at victim attorney seriously and realizes that attorney adds weight to the issue
 - Move to quash overreaching subpoenas
 - Required to do victim post card survey – how do you feel about victim services (at outcome of case), but they struggle to get 10% return rate
 - Meet victim day of Grand Jury, VA / VWL has contact before that
A lot of sex crime cases go to trial due to several penalties with Measure 11
 - Police have discretion to dispose of case before getting to prosecutor
 - Prosecutor can decline case with boss approval & writes memo (keep information minimal so don't expose victim)
 - Guilty pleas are written offers
 - Relationship between prosecutor and victim advocates is the office's strength
 - After audit in 2007, prosecutor sat in PD, but do not have resources to continue that practice
 - Pendulum swinging to victim rights, however out of fairness of accused, should not be victim driven
 - Prefers not to video victim interviews
 - Detectives are allowed to sit at table

Portland, Oregon

- Public Defenders we met with:

- Lane Borg, Executive Director at Metropolitan Public Defender's Office
- Amy Lammers, Public Defender
- Kathleen Dunn, Public Defender

- Highlights of Program:

- Large pay disparity makes retention difficult
- Training from Oregon's criminal def. & in office trainer
- Jessica's Law – serious sentencing consequences so they use 2 attorneys and 2 investigators to staff as a team
- Prosecutors are competent, but dispute over what constitutes *Brady* material
- Receive scientific reports day before trial
- Victims get information from defense attorneys, we inform them of the process, victims cooperate, but prosecution's effort to cut off communication can be really detrimental
- Victim Attorneys
 - Ethical concerns with victim attorneys. For example, client tells victim attorney that she lied, then victim attorney should have ethical obligation to tell defense attorney
 - Victims want someone to provide them with information that is not coming from the DA
 - Victim attorneys handle contempt issues and contact with the victim concerns
 - There are some instances where victim attorneys explain process and obtain resources
- Public defenders want statement on the record that victim has been notified
 - Prosecution's mistake, but defendant pays price when victims' rights are violated
- Process is to protect right of accused
- Medical records or Rape Shield Law Issues: procedure is to issue subpoena for records through court, DA asserts rights, and Judge conducts an in camera review – everyone uses professional judgment. Already safeguards with HIPPA and Privacy Act, so it is helpful for court to review it first.
- Sex offender registry statute is not as big a concern for defendants as the mandatory minimums (Measure 11)
- Oregon sentencing guidelines are resource based; Federal guidelines are what defendants deserve
- Easily obtain experts: write a request with number of hour, justification, and it is funded
- Complaints from defendants: police officers unprofessional / illegal surveillance
- Would like depositions to know what victim is going to say; cases could be resolved sooner and not have as much impact on victim if we could flesh out facts before trial

Washington, D.C.

- Who we met with:

- Mike Andrews, Victim Attorney
- AUSA Jehlan Stewart, Felony Crime Prosecutor & Chief of Victim Witness Assistance Unit

- Highlights of Program:

- Federal & Local Court – apply Federal CVRA to both court systems
- Misdemeanor Sex Crimes and Felony Sex Crimes prosecution units
- Rely heavily on victim witness liaison from prosecution office
- Team approach - Work closely with victim attorneys and provide victims' with list of 3 when victim rights' issues arise (Georgetown, GW, American, DCCVR with Mike Andrews)
- VA from MPD or FBI will initially be involved, but VWL handles case proceedings at grand jury – victim may keep VA and VWL
- VWL's are crucial to accompany to court and provide emotional support when attorney has to focus on trial
- Victim attorney is another resource/reminder for prosecutor that the victim will want to speak or have restitution issues. Victims more receptive to hearing information from victim attorney
- DOJ has a guide that clearly sets forth responsibilities and training
- Cards are provided to victims with CVRA and DC Crime Victim Rights Act
- Before the CVRA in 2004, cases were tried without even telling the victim
- Victim rights and victim attorneys
 - Victim attorneys enter appearance in Federal and DC Superior Court, annotating that he is there to enforce rights of CVRA
 - Victim attorney cannot go in grand jury
 - Victim attorney does not look over prosecutor's shoulder; outside of client's rights, victim attorney is not involved
 - Remedy: enforcement mechanism: victim can ask to have plea or sentence re-opened