

Judicial Proceedings Panel Subcommittee Site Visits

In order to assess the effects of numerous changes in law and policy on the investigation, prosecution, and defense of sexual assault offenses in the military, the Judicial Proceedings Panel (JPP) tasked the JPP Subcommittee with conducting site visits to military installations to talk to the men and women who work in the military justice system.

From July through September 2016, members of the JPP Subcommittee visited military installations throughout the United States and Asia. They spoke to more than 280 individuals representing 25 military installations and all of the Services, including prosecutors, defense counsel, special victims' counsel/victims' legal counsel, paralegals, commanders, investigators, and sexual assault response coordinators and other victim support personnel. These individuals spoke without attribution so that the JPP Subcommittee could gain an unfiltered, candid assessment of how changes in sexual assault laws and policies have affected the military justice system.

To ensure anonymity, the JPP Subcommittee Site Visit Reports do not identify the branch of Service, installation, command, or name of participating individuals.

The following chart outlines the installations visited and the members of the Judicial Proceedings Panel Subcommittee who conducted the site visits.

Installation Site Visits Attended by Members of the JPP Subcommittee

Dates	Installations Represented	Subcommittee Members
July 11–12, 2016	Naval Station Norfolk, VA¹ Joint Base Langley-Eustis, VA	Hon. Elizabeth Holtzman Dean Lisa Schenck BGen (R) James Schwenk
July 27–28, 2016	Fort Carson, CO Peterson Air Force Base, CO Schriever Air Force Base, CO U.S. Air Force Academy, CO	Ms. Lisa Friel Ms. Laurie Kepros Professor Lee Schinasi Ms. Jill Wine-Banks
August 1–2, 2016	Fort Bragg, NC Camp Lejeune, NC	Ms. Laurie Kepros Professor Lee Schinasi BGen (R) James Schwenk
August 8–9, 2016	Naval Station San Diego, CA Marine Corps Recruiting Depot San Diego, CA Marine Corps Air Station Miramar, CA Camp Pendleton, CA	Hon. Barbara Jones Ms. Laurie Kepros Ms. Jill Wine-Banks
August 22–23, 2016	Marine Corps Base Quantico, VA Joint Base Andrews, MD U.S. Naval Academy, MD Navy Yard, Washington, DC	Dean Lisa Schenck BGen (R) James Schwenk Ms. Jill Wine-Banks
September 12–14, 2016	Osan Air Base, South Korea Camp Humphreys, South Korea Camp Red Cloud, South Korea Camp Casey, South Korea U.S. Army Garrison Yongsan, South Korea Camp Butler, Japan Camp Zama, Japan Kadena Air Base, Japan Yokota Air Base, Japan	Hon. Elizabeth Holtzman Ms. Jill Wine-Banks

¹ Installations in bold type are the actual meeting locations for the site visits.

JPP Subcommittee Site Visit
Tabulation of Interviews Conducted

Overall Total Interviewed – 284

Trial Counsel – 56	Defense Counsel/Defense Paralegals – 47
SVCs/VLCs/Paralegals – 36	Investigators – 43
SARCs/VAs/VWAPs – 62	Commanders – 19
SJAs – 6	Others – 15

1. Site Visit A

Trial Counsel – 6 (2 were senior trial counsel/special victim prosecutors)
Defense Counsel – 6 (1 was a senior defense counsel)
SVC/VLC/Paralegal – 2 and 1 paralegal
MCIO Investigators – 2
SARCs/VAs/VWAPs – 10
Commanders – 1

Total Interviewed – 28

2. Site Visit B

Trial Counsel – 2 (1 was a senior trial counsel/special victim prosecutor)
Defense Counsel – 2 (1 was a senior defense counsel)
SVC/VLC – 3 (1 was a supervisor)
MCIO Investigators – 3
SARCs/VAs/VWAPs – 3
Commanders – 1
Company Grade Officers – 2

Total Interviewed – 16

3. Site Visit C

Trial Counsel – 3 (1 was a senior trial counsel/special victim prosecutor)
Defense Counsel – 5
SVC/VLC – 3
MCIO Investigators – 5
SARCs/VAs/VWAPs – 4
Commanders – 1

Total Interviewed – 21

4. Site Visit D

Trial Counsel – 2
Defense Counsel – 2 (both were senior defense counsel)
SVC/VLC – 4 (1 was a senior SVC/VLC)
MCIO Investigators – 3
SARCs/VAs/VWAPs – 5
Commanders – 1

Total Interviewed – 17

5. Site Visit E

Trial Counsel – 4
Defense Counsel – 3
SVC/VLC – 3
MCIO Investigators – 3
SARCs/VAs/VWAPs – 4
Commanders – 1
SJAs – 1

Total Interviewed – 19

6. Site Visit F

Trial Counsel – 7 (2 were senior trial counsel/special victim prosecutors)
Defense Counsel – 6 and 1 paralegal
SVC/VLC/Paralegal – 3 and 1 paralegal
MCIO Investigators – 7
SARCs/VAs/VWAPs – 8
Commanders – 3
SJAs – 2 SJAs and 10 judge advocates

Total Interviewed – 48

7. Site Visit G

Trial Counsel – 7 (3 were senior trial counsel/special victim prosecutors)
Defense Counsel – 4 (1 was a senior defense counsel)
SVC/VLC – 4
MCIO Investigators – 5
SARCs/VAs/VWAPs – 8
Commanders – 1

Total Interviewed – 29

8. Site Visit H

Trial Counsel – 7 (1 was a senior trial counsel/special victim prosecutor)

Defense Counsel – 4 (1 was a senior defense counsel)

SVC/VLC – 4

MCIO Investigators – 4

SARCs/VAs/VWAPs – 12

Commanders – 1

Total Interviewed – 32

9. Site Visit I

Trial Counsel – 11 (3 were senior trial counsel/special victim prosecutors)

Defense Counsel – 9 (most had prior experience)

SVC/VLC – 4

MCIO Investigators – 6 and 1 civilian PD detective

SARCs/VAs/VWAPs – 5

Commanders – 2

SJAs – 2

Total Interviewed – 40

10. Site Visit J

Trial Counsel – 7 (3 were senior trial counsel/special victim prosecutors)

Defense Counsel – 5 (1 was a senior defense counsel)

SVC/VLC – 3 and 1 paralegal

MCIO Investigators – 4

SARCs/VAs/VWAPs – 3

Commanders – 7

SJAs – 1

Military Judges – 3 former military judges

Total Interviewed – 34

Judicial Proceedings Panel Subcommittee Site Visit A

The Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (JPP), is a federal advisory committee established pursuant to Section 576(a)(2) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013, as amended by Section 1731(b) of the NDAA for FY 2014 and Section 546 of the NDAA for FY 2015, and in accordance with the Federal Advisory Committee Act of 1972, the Government in Sunshine Act of 1976, and governing federal regulations.

At the Secretary of Defense's (the Secretary's) direction, the JPP Subcommittee (the Subcommittee) was established under the JPP. The Subcommittee is to support the JPP by assisting with the Secretary's objectives for an independent review of the judicial proceedings conducted under the Uniform Code of Military Justice (UCMJ) involving adult sexual assault and related offenses since the amendments made to the UCMJ by Section 541 of the NDAA for FY 2012.

Participating JPP Subcommittee Members

Three members of the JPP Subcommittee participated in a preparatory session to gather information, conduct research and analyze relevant issues and facts in preparation for future JPP meetings. The preparatory session started at 8:30 a.m. and concluded at 3:45 p.m.

Participating JPP Staff Members

Captain Tammy Tideswell, U.S. Navy, JPP Staff Director
Lieutenant Colonel Glen Hines, U.S. Marine Corps, JPP Attorney Advisor
Mr. Dale Trexler, JPP Chief of Staff
Ms. Jan Chayt, JPP Investigator and Session Recorder

Participants

Session participants are not listed by name as all discussions were conducted in a non-attribution environment. The information below contains opinions expressed by the presenters and does not represent the views of the Department of the Defense (DoD) or the Services.

In-Brief

The installation commander welcomed the participants. The commander provided the members with an overview of how the Service is currently dealing with the problem of sexual assault. The commander felt that victims feel more comfortable coming forward, the military takes sexual assault very seriously, and is very proactive. One of the big issues is that the criminal justice system is slow. Delays may result in victims who decline to cooperate with an investigation or trial. The commander further commented that among all of DoD's recent efforts to combat sexual assault, the Victims' Counsel program is the "best thing that has ever happened."

Roundtable with Trial Counsel

The Subcommittee spoke with the prosecuting attorneys. All of the participants were O-3s.

- Training. Everyone in the group had attended their basic lawyer course at their respective judge advocate school. Several of the students had attended the Special Victim Unit Course for agents at Fort Leonard Wood, Missouri, and a number had attended the Sex Crimes Investigations Training Program for agents at the Federal Law Enforcement Training Center. The attorneys who attended Military Criminal Investigation Organization (MCIO) sexual assault training thought it was good training and appreciated the opportunity to see how agents approach sexual assault cases, to include learning about interview techniques. There is also an intermediate and advanced course for attorneys at the Air Force Judge Advocate General's (JAG) School, Maxwell Air Force Base, Alabama. Several also attended training from the National District Attorneys Association. Attorneys from one Service advised they must be certified as a litigator, and before being certified, must sit as second chair counsel with an experienced attorney in a sexual assault trial.

- Initial Disposition Withholding Policy. The attorneys felt that the main impact of the initial disposition change is the requirement to draft a long legal review memorandum, which must include input from the victim regarding his/her preference for disposition of the case.

- New Article 32 Procedures. The group commented that many defendants are waiving the Article 32 proceeding. Many saw the current Article 32 proceedings as nothing more than a "rubber stamp," with very little being done at the hearing. They noted that there is now no chance to determine if the victim will be a good witness, since the first time a victim testifies and faces cross-examination is at trial. This can make the victim appear unprepared, which negatively affects the victim's credibility.

- Victims' Counsel (VC) Program. The participants commented that the delay in communication with the victim hurts both the case and the victim. There is some confusion on whether the trial counsel or the VC, who has already built a rapport with the victim, should be responsible for preparing the victim for trial. Moreover, the group noted that counsel need to explain the reasonable doubt standard to victims in order to properly manage expectations at trial.

- Relationship with the MCIO. The participants stated they had a good working relationship with their respective law enforcement agents.

Trial counsel indicated there was no way to stop a case when the evidence failed to support going forward to trial. Recommendations from trial counsel are often ignored by the staff judge advocate tasked with advising the convening authority. Some counsel noted that this was an ethical dilemma, especially based on their state ethical rules which prohibit pursuing charges with little to no evidence. Counsel implied that due to political pressure, convening authorities will always move forward with sexual assault charges, even when the evidence is weak.

Roundtable with Defense Counsel

- Training. The Subcommittee spoke with defense counsel all of whom attended the basic lawyer course at their respective JAG schools. They also attended Defense Counsel 101 and 201, an introduction to defense and regional training. Additional training was obtained from the National Association of Criminal Defense Lawyers, the National Criminal Defense Counsel Organization and the Bronx Defenders, all of which the defense counsel found helpful.
- Initial Disposition Withholding Policy. The change in the withholding policy has had no impact on the defense except for the impression that more cases are moving forward to trial.
- New Article 32 Procedures. Counsel noted that the change in the Article 32 process has been horrible and the hearings are no longer useful for the defense. The hearing can no longer be used as a method for discovery. Service defense counsel rarely waive the Article 32 hearing. The defense believes that all allegations of sexual assault - whether supported by evidence or not - are moving forward to trial.
- VC Program. Overall, defense counsel like the VC program and have many frank discussions with VCs about alternative dispositions. Some felt that VCs push their clients to go to trial and the program lacks boundaries.

There is interest in obtaining defense investigators to assist defense counsel with obtaining additional information for trial preparation. Efforts by defense attorneys to receive investigative assistance from the MCIO or the judiciary have routinely been denied.

Roundtable with Victim Assistance Personnel

The Subcommittee spoke with individuals in victim assistance roles – four Sexual Assault Response Coordinators (SARCs), three Victim Advocates (VA), one Victim Witness Liaison, and two advocates from the Family Advocacy Program (FAP).

- Training. All of the advocates and SARCs were certified as VAs at different levels based on training and experience through the National Organization for Victim Assistance (NOVA). One SARC attended a seven-week course at the Sexual Harassment/Assault Response and Prevention (SHARP) Academy in Fort Leavenworth, Kansas. The VAs attended a two-week program at Air University. The VAs from FAP explained they came to the job qualified as advocates. Any additional training they receive is through their own efforts and at personal expense. Sexual Assault Prevention and Response (SAPR) personnel attend ongoing training on-line and through conferences. The participants agreed that the training, while mostly good, did not completely prepare them for the job.

The FAP VAs advised that the Service instruction recently changed the definition of “intimate relationships” to now include all relationships from “dating to divorce.” This has increased the clientele served. If the case is handled by FAP it is not included in the SAPR database and is not reported in the Department of Defense Annual Report on Sexual Assault in the Military. In

cases where the victim is a service member in a dating relationship they get to choose which agency they want to work with, FAP or SAPR.

The group's working relationships with counsel were mostly positive. The group noted that the VCs were very overworked. The group felt that there needed to be clear guidance regarding their ability to accompany victims to meetings with the VC. VCs are invited to participate in the Case Management Group/Sexual Assault Review Boards (CMG/SARB) but often are unavailable to attend and have to participate by phone.

The participants wanted a way to collaborate, share best practices, and network. They explained they all work well together, but could work smarter. Many would like to see the CMG/SARB changed to more than just an overview of victim services. Expedited transfers were an issue of concern, because the policy can be abused.

Roundtable with Law Enforcement Personnel

The Subcommittee spoke with two MCIO agents.

- Training. Both agents had attended specialized training on sexual assault investigations. The agents' main concern was the time and resources dedicated to relatively minor cases. Actions that in the past would have been considered "buffoonery," such as a slap on the butt with a towel, are now fully investigated. They also stated that the acronyms "SHARP and SAPR" have become a verb; young service members will threaten to "SHARP" or "SAPR" someone who bothers them. The group noted that the troops have been over-trained and the training is losing its effectiveness. The training teaches that all cases are credible. There are some false reports, and any case that is found to be false must contain information on why the case was a false report.

One participant recommended adding the First Sergeant or immediate supervisor in the chain of command to the list of those to whom a victim can make a restricted report to. They noted that telling your non-commissioned officer that you need to make a report to the SAPR office should not result in the case becoming unrestricted.

- VC Program. The group noted that the VC program results in delays in scheduling victim interviews in furtherance of the investigation.

The group also addressed instances where trial counsel requested investigative actions that are not legitimate. The agent explained a trial counsel reviewed a case and provided a list of 25 things that needed to be done. After reviewing the list the agent only identified three items that were legitimately investigative issues.

Roundtable with Victims' Counsel

The Subcommittee spoke with two VCs and one paralegal.

- Training. Both attorneys had attended the basic legal course and one of the Victims' Counsel courses. They noted that one of the most important aspects of the job was customer service, i.e., being able to work with the clients and explain the process while managing victim/client expectations. They would like to see more training and better communication with other VCs to share best practices and to answer questions. The participants explained that they are often tasked with assisting clients in other geographic locations, which makes it difficult to provide services to many of their clients. They are aware that the VC program has hindered the trial counsel's ability to build rapport with the victim, but added that often the trial counsel does not seek out opportunities to talk with the victim. The VCs also feel they should be included in the CMG/SARB which is not always the case.

The session concluded at 3:45 p.m.

Certification

I hereby certify, to the best of my knowledge, that the foregoing is accurate and complete.

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Member, Judicial Proceedings Panel Subcommittee