

Response Systems Panel – Victim Services Subcommittee

December 10, 2013 Preparatory Session Minutes

Fort Hood Army Base

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 of the Response Systems Panel held a preparatory session on December 10, 2013, at Fort Hood, Texas, to gather information in preparation for future RSP meetings. Members of the Comparative Systems Subcommittee visited Fort Hood to interact directly with first responders, civilians and soldiers tasked with providing supportive services to crime victims, including victims of sexual assault and providing legal representation to sexual assault victims. The preparatory session at Fort Hood began at 0800 and concluded at 1715. Participants for meetings are noted below.

Participants at Fort Hood, TX Victim Service Subcommittee Sessions:

Ms. Mai Fernandez, Victim Services Subcommittee (VSS) Chair

Ms. Lisa M. Schenck, VSS member

Ms. Terri Saunders, Deputy Director, RSP Panel

CDR Sherry King, VSS Staff Attorney

Ms. Julie Carson, VSS Staff Attorney

Fort Hood Participants:

Participants are not listed by name as all discussions were conducted in a non-attribution environment .

[The participants were taken on a driving (windshield) tour of the base.]

Command Brief:

The preparatory session began with the RSP Staff Director, COL Ham, addressing the subcommittee members and reminding them that this is a preparatory session, which is a meeting of two or more subcommittee members convened solely to gather information and conduct research in preparation for an RSP meeting. COL Ham told the subcommittee members that the purpose of the session was to gather information and the subcommittee members were not to engage in any kind of deliberation with each other. After COL Ham's remarks, the subcommittee members received a briefing on the history and current mission of III Corps and Fort Hood.

The general briefing included the following information: Fort Hood spans 342 square miles, with a post population of over 91,000, with another 70,000 living in neighboring communities. About 43,000 soldiers are assigned to the base. The total supported population is over 400,000, including the National Guard and Reserve components. Fort Hood has a 10,000-foot runway that is routinely used by the Air Force for training, and a large impact area used by the Air Force

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to practice bombing runs. A new hospital that will double the space and increase service to retirees in the area is currently being built (Encl 1).

Court Martial Process:

The subcommittee members next received a briefing and overview on sexual assault prosecutions at Fort Hood. This briefing included the following information:

There are two general court-martial convening authorities (GCMCA) on Fort Hood: III Corps and First Cavalry Division, each of which has its own Staff Judge Advocate (SJA) with a full complement of attorneys and other personnel. One issue with sexual assault cases is the need to determine which version of Article 120 (Uniform Code of Military Justice) to use in charging and prosecuting sexual assault cases. Some cases overlap the applicable dates of the various versions of Article 120 [pre 1 Oct 2007; 1 Oct 2007-27 June 2012; 28 June 2012-present]. Fort Hood is in full compliance with the requirement for an O6-level command with special court-martial convening authority (SPCMCA) to review and act on all sexual assault complaints. The requirements of DODI 6495.02 of 28 Mar 13, that the Army's Criminal Investigation Division (CID) investigate all sex crimes is stressed at pre-command and sergeants major courses. These same requirements are emphasized again in the CID briefing. The base is implementing SECDEF's memo of 14 Aug 13, requiring the use of JAG officers as the investigating officer for all Article 32 pretrial investigations, and the establishment of Special Victim Counsel capability, organized under client services. Sexual assault victims are advised of their right to a Special Victim Counsel, and one is made available if the victim requests.

In response to a subcommittee member's question about the ability of a soldier to make a restricted report after confiding in a friend, the briefer provided the following information: The best person to answer that line of inquiry would be a representative from the SHARP office; however there is a provision in DoD policy that exempts a confidante from the requirement to report a sexual assault, as long as the confidante is not in the chain of command of the alleged victim.

The briefing went on to include the following information: Commanders at the O6 level have numerous command assignments and a dedicated legal advisor. The requirement for review at the O6 level is not unique to sexual assault offenses; this requirement was instituted for other offenses some time ago, including offenses committed by officers and senior enlisted personnel, which might even be withheld to the general officer level.

Company commanders have the opportunity to make a recommendation, which will be reviewed at the higher level. The rationale for forwarding these cases is that senior commanders make

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more objective decisions. However, the O6-level commander may refer the matter back to a lower level for disposition if he or she determines that higher level action is inappropriate.

Withholding disposition can create the perception that the crime is so serious that disposition is solely in the domain of the O6. However, a lower-level commander can ask for permission to act on the case, and the senior commander retains final disposition authority. At Fort Hood, no matter who actually takes final disposition, the record of action taken (DD4833) can only be signed by the brigade commander. The commander is advised by a lawyer from the Office of the Staff Judge Advocate SJA and CID. If CID receives an action-taken memo on a sexual assault that was not signed by an O6, coordination is made to ensure it was reviewed and approved by the O6.

[COL Ham reminded the subcommittee members that there was no DFO present, and that the purpose of the preparatory meetings was to gather facts and not deliberate, in accordance with FACA requirements that prevent deliberation without a DFO present. The presentation continued with an explanation of unrestricted sexual assault complaints, which are documented in the military police daily “blotter,” a summary of all police activity within a 24-hour period.]

For such cases a Serious Incident Report (SIR) is completed and transmitted within 24 hours to responsible higher level commanders. When an unrestricted report of sexual assault is made on Fort Hood, immediate coordination also occurs with the CID office. The SVU team and other on-call agents will respond to assess the situation. Regardless of the outcome of the initial investigation, CID does a report of investigation (ROI). Even in cases involving delayed complaints, CID makes every effort to fully investigate the case, to include locating and processing the crime scene. Victims are interviewed when they are ready to talk about the incident. If there will be a delay before the interview, the victim is asked to write down notes to capture information on the incident. The special prosecutors (two at Fort Hood) are co-located with the Special Victim Unit Investigators (two at Fort Hood) at the CID office and are brought in and involved in the case as soon as possible. Within 24 hours an initial report goes out to CID Command, base leadership, the victim’s commander, and, if the subject is known, the subject’s commander. An investigative plan is developed in coordination with the special victim prosecutor. The individuals assigned as SVPs are selected through a competitive process; they must be very experienced litigators and highly rated, and the jobs are highly coveted. Unlike other billets, SVPs can litigate when they are O4s or O5s, and get to be in the court room and brief the CG personally.

[The presenter reviewed the statistics for the base and the organization of the SJA offices. (See Encl 2)]

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Special Victim Counsel are part of Client Services; in addition to the chief there are three attorneys trained to act as special counsel. It is a resource drain; providing SVCs takes away from other legal services.

It was noted after a question that the slides reflected that the use of drugs or alcohol was reported by the victim in only 47% of the sexual assault cases. It was estimated that the number of cases involving drugs and alcohol was much higher. This information is based on the percentage of victims who self-reported that they had used drugs or alcohol prior to the incident and did not indicate drug or alcohol use by the accused. Over three quarters of the cases involved junior enlisted soldiers.

In FY 12, CID opened 977 investigative actions. In FY 13, there were 1089 total cases for CID. Sexual assault cases numbered 171 in FY 12 and 239 in FY 13. [These numbers include cases that are not part of the SHARP report, and include those not subject to SHARP services.]92 of 102 cases referred to court-martial resulted in conviction, which includes guilty pleas. The numbers show more cases being contested than in previous years, which are mostly cases involving drinking and victims who do not remember what happened or had previously been in a relationship with the alleged subject in which the accused raised the mistake of fact defense. To date there have not been any reported issues regarding retaliation; any such allegation would be taken very seriously. Prior to taking any action on possible collateral misconduct the totality of the circumstances are considered. Action may be delayed or dismissed depending on each situation. There is a concern within the JAG office that SVCs will tell their clients to invoke their right to remain silent and not provide vital information needed to proceed with the case against the accused. If the desired end state is to help the government convict the accused in court, invocation by the victim would not help. There is some level of risk, and the victims need to take responsibility.

Fort Hood has not seen any case of retaliation by the chain of command. However, some victims have stated they were harassed by the accused or by friends of the accused. Some victims have requested to transfer.

Every month the base has the Sexual Assault Review Board (SARB); part of the SARB is a pre-SARB. Moving the parties involved in sexual assault complaint cases is something considered at the SARB, along with no-contact orders, risk mitigation to separate and deescalate any potential situation. Part of this is a sit-down with CID and the Provost Marshal's Office (PMO) to look at cases from prosecution and victim needs. The pre-SARB is victim-focused; it is designed for components to get on the same sheet of music and coordinate with civilian authorities also. This is driven by Department of the Army (DA) requirements.

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The program of instruction (POI) for the commander/first sergeant course includes a discussion on retaliation. Retaliation could be out there; Fort Hood's command is sensitive to the idea that victim perception following a report is very important. During the pre-SARB, each case is discussed to look at what the victim thinks and what actions to take in cases involving collateral misconduct. There is no set answer, but retaliation is a consideration in the minds of commanders.

Meeting with Behavioral Health Personnel:

The VSS met with two behavior health personnel. Ms. Saunders provided an overview of the purpose of the meeting and explained that information obtained from the meeting was non-attribution, and that nothing stated would be attributed to any speaker. Unless specifically noted, text below is information provided by speakers.

One of the behavioral health personnel addressing the group described the structure of the behavioral health program at Fort Hood and noted that sexual assault counseling is only one of the services provided by the department which employs 270 personnel including psychologists, social workers and psychiatric nurse practitioners. The clinic offers both inpatient and outpatient services.

The speakers described the three major sub-departments within behavioral health: The first is the soldier-based services, which include sexual assault counseling. The second, which provides family-based services, is run by the Family Advocacy Program. It provides services for domestic violence cases as well as child and family behavioral outpatient treatment and a marriage clinic. The third sub-department is the inpatient clinic, which has 16 beds and provides substance abuse care and intensive outpatient PTSD services.

The soldier-based services offered by the behavioral health department are located at the Resilience and Restoration (R & R) Center. The R & R Center is a clinic offering services from a multidisciplinary team of professionals, and is located behind the hospital on post. Additionally, there are four imbedded clinics assigned to specific brigade commands. These four imbedded clinics each employ 13-member teams that include four social workers, two psychologists, a nurse case manager and an LPN, case managers and front desk personnel. These clinics are equipped to provide services to victims of sexual assault. If a victim does not want to see a behavioral health provider in their own unit, they may choose to go to the installation resilience and restoration clinic or another embedded clinic.

As soon as a victim comes into a clinic they are assessed for needs, and which facility will best serve their needs. The presenters told the subcommittee that assessments are done by a licensed

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provider, but also indicated that a case could be triaged to a mental health technician at the E3 level and up. The sexual assault care coordinators (SACCs) are all licensed clinical social workers at Fort Hood and are mostly civilian. There are 14 total with 7 at the restoration and resilience clinic and 7 at embedded clinics. In 2006 there was only one SACC for all of Fort Hood. The providers can be either military or civilian employees, but at Fort Hood, there are more civilian than military.

Once a sexual assault victim has been assessed, part of the assessment may be to determine that the victim would be best served at another of the clinics. Victims can receive services at any of them and the providers try to minimize the number of people a victim has to tell their story to.

Many of the patients come to behavioral health as referrals from the Sexual Harassment and Assault Response Program (SHARP) and often a victim will call SHARP for a warm hand-off to behavioral health or vice versa. The behavioral health providers contact a victim within 24 hours of receiving a referral and schedule an appointment with the victim to occur within 7 days. There are also instances where a patient is already receiving behavioral health services and at some point disclose a sexual assault. The provider in these cases assists in contacting the SHARP office.

Ms. Fernandez asked the presenters what types of issues the patients are presenting with.

The presenters responded that they are seeing assaults now that happened many years ago. Many of the referrals are for treatment of PTSD, sometimes related to sexual assault, but other times related to other issues instead of or in addition to sexual assault. The presenters also noted that the investigation has a big impact on the victim. They feel that some units are very supportive of victims through this process but that some are not. One concern they raised is that when an unrestricted report is filed, the initial investigation takes the soldier out of their duties for a couple of days and that this is often problematic. They also noted that the victim may not know that they don't have to talk to the investigator.

A question was asked regarding support from the command – the presenters indicated that they found problems were more related to “gossiping” by personnel within the command rather than the leadership.

When discussing restricted reports, one of the presenters described an instance where the victim told their parents, who then called the command, thus requiring the commander to report the assault to CID even though the victim did not want to.

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In sum, the presenters discussed that they provide treatment, case management and advocacy services for victims of sexual assault. They will typically see a victim weekly for the first month after referral and continuing with less frequency thereafter. The presenters noted that patients have to notify their command of any medical, dental or other appointments, so there is no way that this is truly private. However, the substance of what is said during the treatment sessions are not revealed without a specific requirement to do so.

Dean Schenck asked how seeking behavioral health treatment will impact a soldier's career.

The response was that it shouldn't unless the soldier is not able to function. Also it was noted that when taking psychotropic medication, a soldier must be stabilized for 90 days before they can deploy.

One of the presenters sits on the medical sexual assault review board (SARB) and on the installation SARB. When asked how effective they were, she replied that the 1st Cavalry SARB is effective because the commanders are involved.

The last item discussed by the presenters was the opportunities for soldiers to seek treatment off post. It was learned that a soldier has to sign a consent form that the off-site provider can communicate with the on-site provider, so the treatment can be noted in the military medical record of the soldier. The speakers weren't completely clear whether medical records follow the soldier off post.

Meeting with Family Advocacy Program Personnel:

The subcommittee next met with two personnel from the Fort Hood Family Advocacy Program. Ms. Saunders provided an overview of the purpose of the meeting and explained that information obtained from the meeting was non-attribution, and that nothing stated would be attributed to any speaker. Unless specifically noted, text below is information provided by speakers.

The first speaker discussed the avenues by which the Family Advocacy Program (FAP) receives referrals. The speaker indicated that a spouse can directly report, sometimes parents or other family members call, and SHARP reps, hospital social workers, clinics, local hospitals, law enforcement and criminal investigators (CID) all refer cases to FAP.

There are two basic programs involved in the Family Advocacy Program – Victim Services and the Department of Social Work (which provides treatment services).

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Victim Services provides services to victims such as safety planning (protection orders, help getting out of a relationship, contact with resources, etc), transition services, victim advocates, and related services. It also includes tracking of cases on review committees.

The Family Advocacy Advocates are primarily civilians who come on board to provide victim services. Their services include counselling and support through the court martial or criminal justice process.

FAP uses the Army Central Registry to track their cases. They ask all of their domestic violence referrals about sexual assault which they consider to be a type of abuse – the categories of abuse are emotional, sexual and physical. The FAP staff work for the Garrison and they are mostly civilian employees as opposed to the SHARP advocates who are mostly soldiers.

The Family Advocacy Program originally managed domestic violence cases as well as sexual assault cases. When the Army set up the SAPR program in 2005-2006, the FAP personnel trained the advocates and provided the resources to stand up the program. The two programs worked very closely together until last year. Two thirds of the staff were with the programs from the beginning, however most were contractors. When the DoD directive was issued which prohibits contractors from serving as sexual assault advocates and SARCS in 2013, they all were replaced. As a result, the two groups do not work as closely together now and the collective experience was lost.

The presenter reported that the FAP advocates must have two years of domestic violence experience and a bachelor's degree in a social science to qualify for the position. They are generally hired at the GS-9 level. The Family Advocacy advocates provide support (including "hand holding") for victims through the court process and throughout treatment. They often utilize county legal aid attorneys to assist victims when needed and even have a legal clinic for domestic violence issues on site. They reported that there are quite a few victims who are active duty soldiers.

Meeting with Sexual Assault Response Coordinator (SARC) and Victim Advocate (VA) personnel:

The subcommittee next met with a panel of nineteen participants, all of whom work as SHARP sexual assault response coordinators (SARCs) and victim advocates (VAs), or supervisors. Ms. Saunders provided an overview of the purpose of the meeting and explained that information obtained from the meeting was non-attribution, and that nothing stated would be attributed to any speaker. Unless specifically noted, text below is information provided by speakers.

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Each of the SARCs and VAs introduced themselves and identified the command in which they worked including how they got their jobs. They reported that there are 26 brigade level commands at the installation. There is one SARC whose duties are almost exclusively devoted to managing the DSAID database. There is one full time Victim Advocate and one full time SARC at the Brigade level, but the rest are part time active-duty victim advocates or SARCs.

Fort Hood has had an installation SARC since 1992 and a Garrison VA since 2005. Currently there is not an established Corps level SARC position. The III Corps SHARP Director has been in a temporary position and has been stabilized there until June of 2014, but there is no provision for a replacement because it is not an established position. All of the presenters agreed that this was an essential role to aggregate all of the brigade level SARCs' data to report to FORSCOM together rather than each reporting individually.

The SARCs and VAs presenting described viewing their positions as equivalent rather than having SARCs who supervise Victim Advocates.

Fort Hood was the location for the Army pilot program for SHARP and the presenters indicated that there was a great deal of pressure to fill the manning requirements of the NDAA, which led to people being assigned to the positions who didn't want them.

They discussed the way they had been selected for the positions, and many indicated that they had not volunteered for the positions.

In response to a question from a subcommittee member, all presenters agreed that there are people in these positions who are not necessarily cut out for this kind of work and who don't want the job. About half of them said with respect to themselves that they wanted the job and about half were assigned to it by their commands. Some of those who did not originally want the job, now indicate that they do like what they do and feel it is important.

Most of the SARCs and VAs felt that holding the job as a part time position is difficult because of the other duties placed on them by their commands. The VAs indicated that they would much prefer to do the job if it were full-time as opposed to collateral duty which doesn't allow them enough time to do as much for victims as they would like.

One of the SARCs indicated that the Army program is designed to change organizational behaviors, but that the majority of the cases reviewed at the monthly SARB meetings are 30-45 days old, meaning that they are fairly new. He believes an indication of change would be if the cases they are seeing were older ones that victims are just now feeling comfortable reporting.

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A universal complaint was that 80 hours was not enough training to learn how to help sexual assault victims adequately. One SARC suggested that the EOA program in Florida was a good model to follow. He reported that soldiers in that program spend 3 years on special duty assignments. For SARCs and VAs this duty is not an MOS, but gives them a 1B identifier that shows they have had training. Several of the participants indicated that they feel the sexual assault positions should be promotable within the helping fields to continue to build experience and a career in this field. Another suggested a traveling team of sexual assault trainers to bring all the installations up to speed and show them best practices. They noted that Fort Stewart had their first SHARP course in late October of this year.

One of the participants reported that the DEOMI training is far superior and “molds you into another person.” He said that some of the MTT instructors conducting the 80 hour VA/SARC training had never seen a case themselves. When asked about the training on military justice, participants indicated that they get a 3 and a half hour power point presentation at training and that is it. None reported that they had any involvement with the military justice system. It was also suggested by a participant that some people, in fact, use the training and these positions to perpetrate sexual assaults themselves.

The participants discussed the support they receive from some of the commanders, and difficulties they encounter when dealing with other commanders. The participants noted that the lower level commanders – those at the company and platoon level - do not get the exposure to this program that they should. They get a reported 45 minutes of training and don't trust their SARCs. For instance, participants explained that some of their commanders don't understand what information the VA/SARC can provide to the commander when there is a restricted report made, and will push to receive more information about the victim or accused perpetrator than the advocate is permitted to give. Most participants felt that this was mostly attributed to a lack of understanding rather than malicious intent, but felt that more training for the commanders about the SARC/VA role would be helpful.

Participants praised the support provided by the more senior commanders, such as the Brigade level commanders. They agreed that the program is more successful because of the involvement and support of these commanders. They further noted that there is Brigade level training offered every week for SARC and VA representatives, but many from the smaller (company) size commands are not able (or permitted to attend).

When asked to identify their top recommendations for change, the participants listed the following:

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- 1) The Army Regulation (600-20) need to be consistent with current practice. They said they have no credibility with commanders in advocating for victims when DoD policy requires them to do things that have not yet been updated in AR 600-20. Additionally, it is a problem that AR 600-20 does not include sexual harassment and this causes a great deal of confusion with EO in who handles cases.
- 2) SHARP advocates should be full-time positions that receive long-term training, and the program should be modeled after that of the career counselor program. The minimum qualification for SARCs and VA's should be Sergeant First Class (SFC) level.
- 3) There should be separate prevention training for military and civilian DoD employees because much of the military training is not relevant to the civilians.
- 4) It is essential to maintain Corps level SARC leadership after the current director leaves, and to make it a permanent position to ensure consistency and leadership in the long term.
- 5) Because all companies are different sizes, focus should be on quality of victim advocates not quantity.
- 6) There needs to be a soldier to soldier program.

The final topic of discussion was about access to SANE nurses. The participants reported that there are only 2 SANES in central Texas that handle Army cases, and that victims must be transported to Temple, Texas. They reported that the drive is approximately 40 minutes away from Fort Hood. Normally, victims making unrestricted reports would be transported by law enforcement. Victims who make a restricted report are not transported by law enforcement. Because of difficulty accessing government vehicles, the VA's indicated that they frequently drive victims who have made a restricted report of sexual assault to a SANE appointment in their personal vehicle. They also indicated that they frequently use personal cell phones for communication. They report that they do not have access to other means of transport for restricted reports, where the command does not have information about the incident or need for services, and investigators are not involved.

Meeting with Victim Witness Liaison personnel:

This session was led by a person in a leadership position at TCAP (Trial Counsel Assistance Program) and included a Victim Advocate from the U.S. Attorney's Office. Ms. Saunders provided an overview of the purpose of the meeting and explained that information obtained from the meeting was non-attribution, and that nothing stated would be attributed to any speaker. Unless specifically noted, text below is information provided by speakers.

The speakers discussed the prosecution in the Nidal Hasan trial and outlined some of the issues encountered with victim services that were encountered during the trial. They reported that the

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Fort Hood shooting in 2009 had the largest number of victims in a case the Army had prosecuted, in that there were 13 fatalities, 3 non-fatal gunshot wounds, 35 others who were in the building at the time of the shooting and all of the extended family members of the deceased and injured. Because of the magnitude of the services required the prosecutor looked to the DOJ, specifically, the participant, who runs the victim advocacy program for the US Attorney's office in Muskogee, Oklahoma to assist. When she arrived, she found that very little victim witness liaison (VWL) preparation had been done at all, and that the Army was simply not equipped to handle the volume of issues and victims in a case of this type or magnitude.

The first project for providing victims services was to identify the allied professionals from the Army who could assist. The list identified included: VWL, behavioral health, casualty assistance officers (LAO), survivor outreach services (SOS), Tragedy Assist Program for Survivors (TAPS), chaplains, public affairs officers (PAO), military and family life counselors and the USO.

The services they identified that needed to be provided to the victims were: notification of victim's rights; education on the military justice system; updating victims and families on the case status; providing an incident briefing; and working as a liaison to the trial counsel, defense counsel, judge and defendant.

To replicate the quantity and quality of services they were able to provide to the victims in the Hasan case, the Army has authorized 23 GS-11 level victim advocate positions at the corps and division level and at other large legal offices. There was no information yet available on when or how this program would be implemented.

The presenter also noted the need for a funding mechanism for victims, particularly for travel. He said the Office for Victims of Crime (OVC) at DOJ was able to provide funding for 30 of the wounded soldiers' families to attend the article 32 hearing and trial in the Hasan case and that that was extremely helpful. This was especially true for those involved who did not meet the traditional definition of being a "victim" of the crime, such as family members of shooting victims who survived their injuries.

Meeting with Special Victims' Counsel:

The final session of the day was held with four Army special victims' counsel. Ms. Saunders provided an overview of the purpose of the meeting and explained that information obtained from the meeting was non-attribution, and that nothing stated would be attributed to any speaker. Unless specifically noted, text below is information provided by speakers.

The discussion began with counsel describing some impediments they are still experiencing to providing what they consider to be appropriate representation – one example given was a recent Article 32 hearing in which the SVC felt her client was forced to testify too long, was treated

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poorly by the Investigating Officer (IO) who was a Judge Advocate (JA), and where the SVC was not permitted to address the IO or be involved on behalf of the client in the proceeding.

Discussion then turned to training. The SVCs at Fort Hood received four and a half days of training at the Army JAG School in Charlottesville, VA. According to the speaker, there are about 300 sexual assault reports per year at Fort Hood and the representation by an SVC is dependent on the victim's status at the time of the offense. If a victim is a military member, spouse or child, at the time of the offense, they may be represented by an SVC.

The SVCs at Fort Hood work out of the Legal Assistance Department also provide ancillary legal assistance to their clients such as writing letters to landlords, credit advocacy and working with the victim's chain of command. When there are allegations of collateral misconduct, the SVC refers the victim to Trial Defense Service (TDS) for representation on those issues. The SVC indicated that with respect to their SVCs, victims are most interested in understanding the military justice process. SVCs are able to talk with trial counsel and relay information to the victim which victims also find helpful. Another role of the SVC is supposed to be to advocate for the victim for MRE 412 hearings (pre-trial) and Article 32 hearings.

At trial, the mechanism being used at Fort Hood for the SVC to participate is when the Judge asks the victim if they would like to be heard, and they may then say, "Yes, I would like to be heard through my attorney." The SVC can then address the court on the victim's behalf.

The SVCs feel that the defense counsel are using Article 32 hearings as an unfettered discovery tool. Their recommendation is that the victim should be able to opt out of the Article 32 appearance and provide a written statement instead. They indicated that victims could then be separately deposed or interviewed by the defense with assistance of counsel.

One of the SVCs reported that the biggest problem faced is that the Investigating Officers (IOs) are overly concerned with protecting the defendant's rights. They indicated the IO subpoena power is often abused by trying to get medical records and bank records of the victims.

One question posed to the SVCs by the subcommittee was what they do if a victim confesses to them that they are lying about the sexual assault. The SVC indicated that if that were to happen they would ethically have to terminate their representation of the victim.

Finally, when asked what they would like to see changed, the SVCs indicated the following:

- 1) Based on the caseloads, they need more attorneys. There is an issue of lack of physical space, in that they do not all have private spaces to meet with clients.
- 2) Tighter, cleaner protection for victims during pretrial hearings.

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- 3) Better process and rules for receiving discovery, including statements made by the victim.
- 4) Depositions for victims rather than the requirement to testify at Article 32 hearings.
- 5) The ability to seek an interlocutory appeal from a judge's 412 ruling. They noted that many judges do not have recent trial experience and this impacts their decisions.
- 6) Confiscation and return of evidence from victim, including cell phones.

The meeting ended at 1715 and the subcommittee members departed from Fort Hood.

I hereby certify, to the best of my knowledge, the trip report is accurate and complete.

Mai Fernandez
Chair, Victim Services Subcommittee,
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