

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

---

<sup>1</sup> 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 G**

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

Two members of the JPP Subcommittee conducted a site visit to gather information, conduct research, and analyze relevant issues and facts in preparation for future JPP meetings. The session started at 8:30 a.m. and concluded at 5:00 p.m.

### Participating JPP Staff Members

Lieutenant Colonel Patricia H. Lewis, U.S. Army, JPP Deputy Staff Director  
Mr. Dale Trexler, JPP Chief of Staff

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 or the Services.

### Command Brief

The senior official for the base welcomed the participants. He provided the members with an overview on how the Service is currently dealing with the problem of sexual assault. He mentioned that the population of the base is growing due to the consolidation of many other installations. He recognized the serious nature of sexual assault as well as sexual harassment and said we cannot mediate a crime, which is why sexual harassment moved from EO to Article 120.

He also said that the installation has a "Zero Tolerance" policy and felt good about the work being done to reduce and, hopefully, one day eliminate the incidents of sexual assault.

## **Roundtable with Trial Counsel**

### **Article 32 Hearings.**

There was a consensus amongst the trial counsel that the Article 32 is a rubber stamp and a paper moving exercise. Article 32 hearings seem to be in the process of being phased out and some counsel wonder if the hearings are even necessary. The Article 32 used to be a discovery tool for both sides, but mostly for the defense. These hearings no longer serve that purpose. Some counsel believed that the Article 32s are a waste of time, no longer good for military justice and that the process should be more streamlined.

Some of the counsel appreciated the changes. They like the way the military is aligning with civilian courts. The standard in the Article 32 is low and the hearing is no longer intended to be a “mini-trial.” They did not like the old way of requiring the victim to testify at the hearing.

From the victim’s perspective, the changes to Article 32 have been great, as victims no longer have to testify until trial. However, having a victim avoid the Article 32 hearing does not necessarily protect the victim from the stress of testifying. In fact, many victims experience even more stress since the trial is the first venue where they take the stand and they are often not prepared. The old Article 32 was a way to help them prepare for trial.

The changes to the Article 32 hearings have also affected charging. Previously, if military investigators did not do a thorough job of interviewing witnesses, the Article 32 hearing would help to uncover additional facts that were not revealed during the interview.

There was a general consensus that when the Preliminary Hearing Officer (PHO) recommended against prosecution and the trial counsel and the Staff Judge Advocate (SJA) recommended they go forward, the case would go forward, regardless. One prosecutor said she went against the recommendation of the PHO, who recommended that they not go forward with the charges. The accused was tried and convicted.

Trial counsel were aware that in other jurisdictions defense counsel sometimes waived the Article 32 hearings. However, no one waives the Article 32 hearings at this location. It is the accused’s right to have the hearing, so they proceed with or without him/her, even if he or she waives and does not appear.

Counsel commented that setting up Article 32s like Grand Jury hearings might help to bring value back. They also suggested having a non-JAG officer serve as the PHO and use the JAG as the legal advisor.

### **Contact Offenses.**

Some trial counsel stated that the policy in their offices is not to take “butt grabbing” and other minor contact offenses to trial. They dispose of those acts via alternate dispositions. Other counsel who did take these cases to court said that barring unusual circumstances, they resulted in acquittals. Counsel commented that if we are going to hold a “butt-grabber” to the same

mandatory minimum as a rapist (e.g., having to register as a sex offender), it is no wonder the acquittal rate for contact is so high.

Trial counsel, across the board, believed the language for sexual contact is overbroad. Trial counsel noted that the mindset of the young people joining the Armed Forces in this generation is different. It is not unusual for individuals to slap one another on the behind or hit one another in the genitals (a.k.a. “nut taps”) just for fun. Consequently, what was once deemed horseplay and able to be disposed of with a Letter of Reprimand, Article 15, or Summary Court-Martial, now equates to a felony conviction with the need to register as a sex offender. All the trial counsel needs to show to prosecute these cases is the intent to abuse, degrade, or humiliate; if successful, the accused will be labeled for life. They wondered if this was truly Congress’ intent.

### **Sexual Assault Training.**

Trial counsel recommended that judge advocates be required to attend sexual assault training to answer questions, provide clarification, and ensure that what the trainer is teaching is correct. This will help to reduce bad information from being disseminated, such as the notion that “one sip or one drink of alcohol is too much for you to be able to consent to have sex.” This information was being taught by Victim Advocates (VAs) and some senior Non-Commissioned Officers (NCOs). One of the trial counsel spoke to the Chief for the VAs who said they no longer teach the “one drink equals sexual assault” rule.

Another problem with misinformation is the guidance provided by friends and peers who will tell a person who is unsure about what happened during the incident that if he or she was drinking, a sexual assault probably happened because they would not have been able to consent. This can be positive and negative. It is positive that the peers are looking out for one another and encouraging people to report incidents of alleged sexual assault. However, if the peers have incorrect information regarding what constitutes a sexual assault, and provide said information to someone who is not certain of the events that occurred, that “victim” might be disappointed in the process.

### **Probable Cause.**

Trial counsel had several cases in the investigative phase where no probable cause was found, even though the victim believed he/she was sexually assaulted.

Trial counsel noted that if there is no probable cause, they do not go forward with the case. They added that while they have some prosecutorial discretion in the early stages of the investigation, they have less than their civilian counterparts do.

Trial counsel noted that commanders send cases forward out of fear of losing their careers. For example, in one location, trial counsel requested jurisdiction for cases investigated and closed by civilian law enforcement, even though no probable cause was found. These cases were tried by courts-martial at the victim’s request. The consensus among the trial counsel was that if the victim wants to go forward, the case goes forward.



Counsel felt that there was no way to immunize decision makers from the political pressures that affect the court-martial process. The higher in rank the decision maker, the more likely he or she is to succumb to the political pressures to take a case to trial, even when everyone else in the chain of command recommends against it. A comment was made by a junior Service member that they have never seen anyone get “beat up” in the news for taking too many sexual assault cases to trial, but they are criticized for not taking cases to trial. This is why many convening authorities (CAs) are risk averse and decide to take every case to trial. Careers are at stake.

The trial counsel recommended that they should have more prosecutorial discretion. They also suggested that the JPP speak to commanders and CAs or retired commanders and CAs for their perspectives.

### **Relationship with Victims' Counsel (VC).**

Trial counsel commented that at times, the VCs hamper the process by serving as road blocks and preventing trial counsel from accessing the victim. Many of the trial counsel take pleasure in telling defense counsel to go to the VC if they want to speak to the victim.

### **Roundtable with Defense Counsel**

#### **Article 32 Hearings.**

Defense counsel noted that the new Article 32 has substantially changed the way they approach cases. While Article 32 hearings used to be a discovery tool, they have become paper cases that no longer have value for defense counsel. Trial counsel put no effort into the process and the amount of evidence presented to the PHO is limited. Consequently, if defense counsel tries to put on witnesses, the trial counsel will object, citing the limited scope of purpose or outside the scope of direct. Defense counsel noted that it would help them prepare for their cases if the right to discovery attached at preferral rather than referral.

Defense counsel also raised concerns about the experience of the PHOs. Judge advocates in charge of selecting PHOs have been selecting their friends “down the hall” to hear cases — these officers can also be biased. Furthermore, 0-4s with experience used to be selected to serve as PHOs, but now young and inexperienced counsel are being selected. Defense counsel suggested that for sexual assault cases, the PHO should hold the rank of 0-4 or higher. Defense counsel also believe the PHO should be a non-legal officer with a legal advisor available to provide assistance.

#### **Defense Counsel Resources.**

Defense counsel commented that the MCIO does not help defense counsel. Investigations by the MCIO are often biased and not thorough. The MCIO is supposed to conduct neutral investigations, but it is clear that they do not. Instead, the MCIO investigations are very targeted. Consequently, defense counsel have no ability to flesh out evidence because the

MCIO agents will not take evidence from the phone (e.g., text messages or pictures) or pursue other suggestions from defense counsel. For example, when asked by defense counsel to take and retrieve evidence from the victim's phone or to pursue other leads suggested by defense counsel, MCIO agents have been known to say to the accused, "We do not need the phone, we know you did it."

Defense counsel believe they need their own investigators. Right now, the Defense Counsel Assistance Program (DCAP) is pushing for defense counsel to receive funding to be able to hire their own investigators. Some defense counsel ask their clients to pay for their own private investigators. The problem is the need for funds and the ability to grow/create billets for investigators.

When asked if they believed accused still received due process in light of the new changes to military justice, one counsel summed it up by saying he would be loath to say that the accused received due process. The resources the defense counsel have are not the same, and the system is very lopsided in terms of access to paralegals, investigators, and experts. The paralegals given to defense offices are not seasoned enough to help with the basics, and trial counsel receive many more paralegals when compared to the number defense counsel receive. They recommended that senior paralegals should be sent to defense offices.

Additionally, counsel commented that defense paralegals should not be required to participate in installation tasks. They constantly lose their paralegals for installation beautification week, range training, or other tasks.

### **Victims' Unsworn Statements.**

Counsel noted that victims get to read an unsworn statement during trial. The judge and the defense counsel do not get to see the unsworn statement until after a plea deal is struck.

### **Relationship With VCs.**

Some defense counsel commented that the VC program can be a hindrance, but many of the defense counsel see it as a positive for the accused because the victim is often not prepared to testify. As a result, the first time the victim takes the stand is often at trial, and this can be very overwhelming. Defense counsel try to have a positive relationship with VC, because it is to their client's benefit.

Defense counsel noted that while not a requirement, VCs should be experienced. This may attract more counsel to the job. There should be more prestige attached to the assignment.

### **Political Pressure.**

Defense counsel universally agreed that there is political pressure for Article 120 cases. One counsel said he was aware of three cases where the PHO did not find probable cause yet the cases were still forwarded for courts-martial. Eventually all three cases received alternate dispositions.

Defense counsel noted that commanders are trying to preserve their careers. In the past, cases were disposed of at the lowest level possible. Now, because of the pressure, you have the opposite result. Defense counsel recommend following the Department of Justice model. There should be a career branch for military justice.

### **Roundtable with Victims Counsel (VCs)**

#### **Training and Roles.**

VCs are vetted by The Judge Advocate General (TJAG) to ensure that they have the maturity and experience for the job. The VCs receive monthly training on Military Rules of Evidence (MRE) 412 and 513 issues. They believe the training is effective and the VC program has the budget to ensure their counsel receive proper training.

The VCs expressed the same concerns mentioned by the defense counsel regarding their role as advocates. These concerns included:

- During the court-martial process, VCs are only heard on matters associated with MREs 412 and 513.
- Individuals with more experience should serve as VC.
- The turnover is swift, often leaving victims in limbo or with counsel who are halfway around the globe, if representation is not severed. During the last fiscal year, there were 10 VCs and 146 victims.

#### **Issues with Victims.**

Victims' counsel do not feel empowered or able to communicate their victims' needs. For example, victims often need to feel safe and cared for. They want to know that someone is listening to their needs. Many of the victims do not want a case to go to trial. Rather, they often preferred that the cases be disposed of at a lower level. Sometimes they just want the person moved, or an apology.

In this area, victims are usually new to the Armed Forces and between the ages of 18-21.

The accused is often older, about to end their tours, and leave the area.

While collateral misconduct is a concern, commanders are good about holding off on adjudicating these offenses, such as underage drinking, until the sexual assault allegation is dealt with.

#### **Reporting.**

The current sexual assault program requires that the commander and command E-7 are not informed about the incident if the victim requests a restricted report. The victim ends up being hurt by the lack of disclosure. As he or she attends doctor appointments and counseling and tends to other matters, which limits time in the workplace, that victim is seen as being nonproductive and their career suffers for it. If the commanders and/or

command E-7 were allowed to receive information about the incident, without being required to initiate an investigation, then they would understand why victims were absent and be able to lend support during the process.

Since commanders are required to report once they are made aware of an allegation of sexual assault, victims often give the details without providing the name of the perpetrator. This makes investigations very difficult.

### **Sexual Assault Training.**

Sometimes because of poor training and misinformation, a victim may not be sure whether he or she was even sexually assaulted. In order to help reduce or eliminate misinformation being taught at training, one VC was asked to attend the sexual assault training to make sure what was being communicated is in accordance with the law. Another VC said he attends all training and is available for questions.

### **Expedited Transfers.**

VCs believe that the SJAs think expedited transfers are used by victims to leave the area. They usually get one of their top three picks and they are off the installation within a month. One VC believed that the opportunity to take advantage of expedited transfers is more frequent at less desirable locations.

VCs have seen problems with trial delays because victims receive expedited transfers. Since the victims are no longer in the area, communication becomes more challenging because of the time difference. It takes a while to communicate and it creates many systematic problems. VCs suggested that the victim be moved to another unit in the same geographical area, away from the accused, to reduce negative speculation associated with expedited transfers. Unfortunately, the Service discourages keeping the victim in the area and the victim is typically removed.

### **Referral to Courts-Martial.**

VCs commented that the Service takes anything to trial that survives the Article 32 and this is not good. Sometimes the victim wants the case to go to trial and wants to be heard even though the case is weak.

### **MRE 412.**

VCs commented that PHOs are ruling on MRE 412 issues, which should not be the case. It is not appropriate for the PHO to address or decide on these matters because of the possibility that the victim's private matters will be made public and wrongfully so. Once the information is released, it is hard to put the genie back in the bottle and the victim may be scared away. Evidentiary issues should be left to the military judges who are more experienced.

## **Case Management System.**

VCs commented that the case management system is broken so there are times when cases slip through the cracks. One case is currently being held by the El Paso Police Department. They have had the case for a year, and no one in the Service asked for jurisdiction. Meanwhile the accused and the victim have their lives on hold. Another example is a case where a reservist was accused of having sex with a woman without her consent. The reservist left the area, demobilized, and returned to California. He was not called back to active duty. No investigation was initiated, and the case has not moved and it has been six months.

## **Lunch with Staff Judge (SJAs) and Defense Counsel**

### **VC Program.**

One SJA commented that he is a proponent of the VC program. He thinks it is a positive step because MRE 513 motions are more prevalent and victims do need to have an advocate who can explain the process and speak for them regarding their privacy rights.

Defense counsel think the VC program is working very well and are surprised how well defense counsel have been working with VCs. Some VCs have been very helpful with the interaction between defense counsel and victims.

TJAGs want all VCs to have a criminal justice background.

The consensus is that the attraction to serve as a VC will take time to grow organically. Once young judge advocates see that people are being promoted out of the job and it is not an obstacle to their careers, it will attract competitive candidates for future positions.

There is a concern that VCs are burning out. The ratio of victims to counsel is high and expedited transfers do not help. VCs must be able to make contact with their victims and it can be difficult with various time zones.

### **Pressure.**

There seems to be pressure on both sides. First, victims often feel pressure to proceed with cases when all they want to do is leave the area and not look back. Often victims are not interested in returning to the area for military justice proceedings, of any kind, once they leave.

Second, outside pressure also exists on the commanders when there is a victim who wants to go forward even though the evidence is insufficient to support the allegation. Defense counsel sense greater pressure at the junior commander level than at the senior commander level. Junior commanders seem less inclined to make a decision at their level or they do not believe they are in a position to make a decision.

Defense counsel remarked that they are seeing a lot more acquittals than they did 30 years ago.

## **Defense Counsel.**

Area SJAs take much better care of defense counsel than they did twenty years ago. They noted that defense counsel have all of the resources they need, with the exception of investigators that are specifically assigned to the defense office. They need independent investigators. Sometimes defense counsel ask the accused to pay for independent investigators because the MCIOs are not neutral and often refuse to provide the support requested by defense counsel.

## **Roundtable with Investigators**

### **Training.**

Investigators receive training from the Military Police School, which has a Special Victims Unit. Sometimes training takes from a few months to a few years depending upon the circumstance for new Special Agents (SA).

There is an annual conference entitled “Violence Against Women,” sponsored by Ending Violence Against Women International, which the senior investigators attend. Last year, the focus of this training was “Violence Against Men.” There is also an annual Sexual Assault Refresher Training. In the Agent’s Basic Course, they take the “Elements of Proof Course” and the “Sexual Victim Course.:

### **Relationships with Trial Counsel.**

Investigators believe they have a good working relationship with trial counsel. Trial counsel know that if they have any problems with the agents, they may contact their supervisors for assistance.

Trial counsel are offered the opportunity to be present when investigators interview victims.

### **Relationships with VCs.**

Investigators commented that the key to a successful relationship with VCs is often personality driven. They further noted that the existence of VCs hinders the investigation. Investigators would prefer to speak to the victim as soon after the alleged incident as possible; however, the way the VC program is set up, if the victim wants the VC at the interview, investigators have to wait for the VC. This hinders the investigators from getting the information they need for the case.

Investigators are strongly discouraged by their superiors or by VCs from questioning victims about collateral misconduct. Furthermore, many investigation questions are off limits because they may give rise to collateral misconduct (e.g., underage drinking).

One problem specific to this location is that there may not be enough VCs to help the investigators gain access to the victims. This is due to the travel involved, since the VCs also

cover other areas.

### **Reporting.**

The investigators commented that delayed reporting is a problem as it degrades the evidence. Over half of the sexual assaults that occur in the area are reported within a week after the offense is committed. The hotline that takes the call is manned by the Sexual Assault Response Coordinators (SARCs). VAs usually do a good job of speaking to victims and informing them of their benefits.

### **Relationship with Civilian Law Enforcement.**

The investigators noted that coordination with local authorities has improved. Under local privacy laws, local law enforcement usually withholds information about the victim. However, in the last year and a half, local law enforcement has stood up their own Victim Units and will now provide information to certain agencies. Unfortunately, local law enforcement does not recognize the MCIO as one of the agencies to whom they may provide information. The Department of Justice is currently working this issue to place the MCIO investigators on the list. Local law does state that if there is a joint investigation, local law enforcement will share information.

### **Relationship With the Defense Counsel.**

Investigators will allow defense counsel to see the investigation files. They can come to the MCIO office and look at the files. They stated that they will support a defense counsel's request to investigate a matter if the MCIO believes the matter to be legitimate.

### **Roundtable with Victim Witness Liaisons (VWLs)/Victim Advocates (VAs)/Sexual Assault Response Coordinators (SARCs)**

#### **Training.**

In general, all SARCs attend sexual assault training. There are a number of two-week courses that required to become a SARC.

When asked about the "One/Two Drink Rule," everyone denied teaching that concept. They did admit stating that it is important to be careful because everyone is different and you may not know how one drink will affect an individual. The folks from another unit denied putting out that information. It was mentioned that they had an example where they had to distinguish between "blackout drunk" and "still capable to consent drunk." They had to explain to Service members that their philosophy on drinking is going to come into play when looking at consent.

#### **VC Program.**

The participants commented that the VC program is great for victims. They noted that the VCs often help victims make better decisions. The biggest challenge is when victims move to

another location, or VCs move and the victims want to keep the same VC. This makes communication very difficult, especially when both victim and VC move to different locations and the VA remains in place.

The participants also expressed concern that VCs were handling interviews telephonically. They noted that you cannot see the emotions of the victims, and it is better for the victims if they are able to interact in person.

### **Tracking Cases.**

Each Service has a different board process used to help keep track of cases. The head of each board is responsible for inquiring about the status of each case, including why the cases may be taking so long. This is designed to prevent a case from falling through the cracks. The participants believed that the boards help move the cases along. The units come in and brief the board and the VC also attend to represent the victim

### **Resources.**

Victim Advocates noted that they do not have the resources they need. Some items are minor, such as bed sheets and food for the victim. If the alleged assault took place in his or her bedroom, it is likely that the sheets were taken as evidence to extract DNA. Some victims do not have another set to use immediately and VAs do not have any stocked. In addition, they do not have a stocked food pantry. At times victims are in the police station for hours being interviewed, or spending long hours in the hospital for the sexual assault nurse examination. They are tired and hungry and may not have the funds to be able to purchase a meal, or, it is so late that restaurants are closed. If the VAs had snacks (granola bars, dried fruit, crackers, Ramen noodle soup, or even peanut butter) to offer the victims, it would help to reduce the stress in an already traumatic situation.

Victim Advocates also suggested that there should be a place, such as a designated shelter, where the victims may reside temporarily. This way, the victim would not have to immediately return to the scene of the crime, or have to be alone or face friends of the accused if the accused is a fellow Service member.

### **Career.**

Participants noted that Unit VAs (UVAs), which are currently military part-time positions, should be a full-time position. The only full-time position is the higher headquarters VA. It is difficult for UVAs to meet the needs of the many victims in the area while still being required to carry out their daily responsibilities. If the Services are saying this job is so important, then in areas where there is a high service member population, the UVAs should serve full-time.

In one Service, the role of UVA is not a sought out position. Of the eleven UVAs assigned to the base, only three chose the job. The rest were “nominated” for the position. Once they have served, a skill identifier goes into their files. Consequently, they are assigned repeatedly and this does not help their careers.



In another service, personnel in the human resources field are leveraged to be UVAs. For them, being a UVA is a part-time assignment for twelve months. They recommend hiring full-time civilian VAs to serve as continuity for military who frequently transition in and out of the position.

### **Training Fatigue.**

Participants commented that they believe Service members are taking training less seriously. The Service members receive training as soon as they arrive. Then there is higher headquarters directed training, Unit training, Annual Refresher training, and online training. Six months later, there is Stand Down training and any other training the commander wants to add. This results in gross oversaturation and what one member mentioned as “training overload.”

### Certification

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

//signed//

Subcommittee Member, Judicial Proceedings Panel