

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 J

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 held 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 5:00 p.m.

Participating JPP Staff Members

Lieutenant Colonel Patricia Lewis, JPP Deputy Director
Ms. Meghan Peters, JPP Attorney Advisor
Ms. Julie Carson, JPP Attorney Advisor
Ms. Stayce Rozell, JPP Senior Paralegal and Session Recorder

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 Defense, or the Services.

Greeting and In-Brief with Commanders and Staff Judge Advocate

The Subcommittee members met with senior members of the command.

-New Program. The participants highlighted the Service's new program which was launched to focus on prevention of interpersonal violence at the peer level. This program covers more than just sexual assault, including domestic violence and other forms of interpersonal violence. The participants asserted that the Service has become good at handling the reactionary aspects of sexual assault but that it has become important to commanders to focus on prevention. The purpose of the program is to bring about a cultural shift in the Service by finding everyday Service members who are peer leaders in the trenches and who are influencers for other Service members. The program is then training these leaders to conduct the prevention training.

Additionally, a participant informed the Subcommittee members that for the first time this year commanders themselves are conducting the annual SAPR training rather than the SARCs.

-Reporting. Several of the participants noted that they are seeing a considerable increase in reporting of sexual assault incidents that happened previously, indicating that the environment has become increasingly favorable for victims to come forward.

-Expedited Transfer. For incidents that have happened more recently, several of the participants noted that the expedited transfer program has been beneficial and that they have not seen abuse of the program. They noted that it is common for victims to want to transfer but also that none had seen a large volume of transfers.

The participants also highlighted a couple of issues arising from expedited transfers. One observed that when victims transfer they lose interest in participating in the military justice process. Once the victim gets closer to family or in a safe place they often don't want to go through the process any longer. Another participant noted that transfers and subsequent changes of duty station can lead to the accused and other witnesses being located near the victim again. A participant also identified problems caused by social media because the career field communities are small and communications follow throughout the community via social media.

-Article 32 Hearings. A participant noted that not requiring victims to participate in the Article 32 hearings has been a big improvement and that it is keeping victims from dropping out of the process.

-Victims' Counsel (VC) Program. A participant stated that the VC program is the best change that has happened from a legal standpoint. The participant added that nearly all victims use them and they are often using the VC more than the SARCs and VAs.

Round Table with O-4 and O-5 Commanders

The Subcommittee members met with two O-4 and two O-5 officers.

-SAPR Training. The commanders all expressed concern that there is too much training and significant training fatigue among Service members. One commander noted that every time there is a high-profile case, Service members expect more training to trickle down from it. Another participant described current training as a "whack-a-mole" approach that doesn't fix the culture or address the mentality that Service members come in with.

-Investigations. One participant discussed the problem of the length of time investigations take and noted that it drags the whole unit through the investigation for a year.

-New Program. The commanders believe the peer-based program is a great concept, however, one noted that it is "gimmicky" and another feels it is just another iteration of the same thing and the culture is what needs to change.

-Withholding Disposition Authority. One participant said now that the authority has been elevated to a higher level it is more likely a case will be moved forward because at that level, commanders are well aware of the precedent set by previous high profile cases and are therefore more inclined to move cases toward prosecution.

-Expedited Transfer. One commander felt it is a problem that victims can only get a transfer at the beginning of the process. The commander believes that an accused should also have the opportunity to transfer, especially if acquitted.

-VC Program. One of the commanders commended the VC program but noted that more awareness of the program would be helpful.

Overall, the commanders felt the Service is doing better and covering the full spectrum from prevention to response. One noted that Service members want consistency and no more new programs. Another said they can't keep track of all the training requirements. Overall, they believe the message about sexual assault is out there and that people know it is serious.

Round Table with Trial Counsel

The Subcommittee members met with three trial counsel from one Service and four trial counsel from another Service.

-Training. One trial counsel reported that the initial training judge advocates receive is adequate to give exposure to special victim cases, but not enough to be prepared to serve as trial counsel in a special victim case. A different Service trial counsel expressed the opinion that judge advocates are not ready to prosecute a special victim case right out of military justice school.

A trial counsel told the Subcommittee members that in their Service, to become a lead trial counsel in a general court-martial, a judge advocate must spend six months as a trial counsel, try at least one case as lead in a special court-martial or as second chair in a general court-martial, and have the recommendation of a senior trial counsel.

Another trial counsel reported that their Service now requires judge advocates to be certified before they can be the lead prosecutor on special victim cases. One trial counsel noted that there isn't a set number of trials to be certified but that the average was three to five. Another trial counsel added that Article 120 cases will always have a senior trial counsel assigned.

With respect to additional training, a trial counsel reported that he had attended four week-long training courses including a FLETC course and the Special Victims' Counsel Course. Another counsel added that TCAP holds one-week intermediate annual training for trial counsel. Another trial counsel felt that the intermediate trainings are good but not very frequent. The trial counsel participants agreed that there are a lot of opportunities for training in sexual assault but there is no substitute for actually getting into court. Another trial counsel felt the most effective training comes from the people in the legal office.

An issue of concern raised by one trial counsel was that he went from military justice school directly to operational duties before doing litigation, which led to a steep learning curve once he was assigned to a litigation billet. Another trial counsel believes that military justice experience is impeded by the constant movement of personnel. He/she added that the system can work, but that it requires a lot of foresight on the part of those making staffing assignments. He/she recommended that trial counsel be assigned to the billet for their entire tour.

-Article 32 Hearings. A trial counsel with two years in the position told the Subcommittee members that he likes the changes to the Article 32 because he doesn't think there is any utility to having the victim testify at the preliminary hearing. The trial counsel feels that he doesn't have to put the victim on the stand to put forward his case and that by submitting just the documents, a good preliminary hearing officer can give helpful input on charging and insights on the evidence. Another trial counsel noted that looking back at the old Article 32 hearings, he doesn't feel that the cross-examination of victims was a necessary part of the Article 32.

Another trial counsel agreed that the changes to Article 32 have not hurt the government's ability to put on a case and noted that the Article 32 is still useful to get another set of eyes on the case and for recommendations on the way the case is charged. The counsel believes that the change has been a positive development for victims. Another trial counsel reported that he has seen an Article 32 last as little as 17 minutes and consist only of handing paper to the PHO. He said he doesn't think victims should be subjected to providing testimony if not needed, but added that he doesn't know if convening authorities are getting a better product as a result of the new system.

-Disposition Decisions. A trial counsel reported that he has not found a victim's preference to be the controlling factor for convening authorities. He noted that the victim's input is an important factor considered by convening authorities, but that he has seen cases where the convening authority, after allowing a victim to express their views, did not refer the case to trial.

On the other hand, another TC indicated that in his experience, a victim's preference is having a major impact on convening authorities' decisions to refer cases to trial including in some cases where the PHO recommends not going forward.

A recommendation made by a trial counsel was for PHOs to make recommendations on likelihood of conviction rather than just probable cause.

-Withholding to O-6. The trial counsel agreed that the withholding policy was a good one, expressing the opinion that O-5 commanders were not yet experienced enough with these cases and that the additional experience of an O-6 was beneficial. Another trial counsel noted that elevating the disposition authority is an easy way to improve the optics and that lower level commanders don't have a problem with elevating the decision-making authority.

-M.R.E. 412 and 513. The trial counsel first addressed the removal of the "constitutionally required" exception from M.R.E. 513. A trial counsel noted that the CAAF view is that if something is constitutionally required, it can't be taken away. But another trial counsel expressed concern about how issues will be handled by future judges who aren't aware of the exception having been part of the rule.

A trial counsel told the Subcommittee members that before the current changes to M.R.E. 513, trial counsel would typically ask for mental health records in advance and concede that *in camera* review was appropriate. The counsel believes that the new stricter burden offers much better protection for the victim. Another trial counsel said that defense counsel aren't filing motions to disclose records at all now because they don't think there is any chance for an *in camera* review.

-VC Program. The trial counsel had differing opinions of the VC Program. One thought it was a great idea at first, but after two years in the job as trial counsel, he no longer thinks it is a good idea. That counsel noted the importance of the prosecutor's rapport and relationship with the victim and felt that the VC get in the way of this. He also does not like having to go through the VC to talk to the key witness. Another trial counsel disagreed, stating that overall, the program has been an improvement. That counsel felt that although it does make it more difficult to establish rapport with the victim, having a VC available to explain the nuances of the process and victim's rights to victims is very helpful.

A former trial counsel was very skeptical of the program when it started but reported that in her personal experience VC have enhanced the ability of trial counsel to put on a case because the VC now takes care of a lot of things for the victim that trial counsel previously had to handle. She noted that while a VC does hinder the trial counsel's rapport-building with victims, this may be a good thing because a trial counsel is not counsel for the victim. She also noted that fellow senior trial counsel she has spoken with all expressed initial concerns about the program but feel it has turned out to be a value to the system.

-Investigations. A trial counsel believes that the process has been helped significantly by the requirement that investigators notify trial counsel within 24 hours of opening an investigation. He said that talking to the MCIO early has helped trial counsel develop cases as they move through the process and helps them to make better determinations about what cases should go to an Article 32 hearing. He also noted that by working with trial counsel, the MCIO is better documenting what is needed to successfully prosecute cases. Another trial counsel felt that investigations are hit and miss, but that the training and treatment of victims by the MCIO has improved considerably. The counsel added that investigators are contacting VCs and trial counsel earlier in the process now.

Round Table with Law Enforcement Personnel

The Subcommittee members met with an MCIO supervisor, senior special agent, and two special agents.

-Training. An MCIO investigator reported that their investigators attend the basic academy at FLETC and that the training is very adequate. He said investigators leave basic training able to investigate any type of crime but noted that there is a separate sex crimes investigation course. The investigator reported that he attended the course after having been an agent for 16 years, and still found it to be very useful. Another MCIO agent explained that their MCIO offers an advanced sexual assault training program and also noted that the FLETC training focuses on recognizing bias.

-VC Program. One Service's MCIO investigators told the Subcommittee members that the VC program was challenging at first but that it has gotten much better and has actually become helpful to investigators in getting information. They have found that the VC can give helpful feedback to investigators about what did and didn't work with interviewing victims. The MCIO investigator made positive comments about having the VC in interviews added that it has become a team environment with VC not presenting any barriers to investigators. He also reported that he has never had difficulty scheduling interviews because the VC is not available.

Another MCIO investigator reported that notifying victims of the right to a VC hasn't caused any problems. He noted that once investigators notify victims about their option to talk to a VC, the victim usually talks to the investigator anyway. The supervisor said that he hasn't ever had a victim ask for a VC on the spot. The MCIO investigator reported only having one case where a victim wanted counsel before an interview. The MCIO investigators agreed that typically victims go to the command VA first with their sexual assault reports, then to the SARC who informs law enforcement.

-Sexual Contact Cases. The investigators told the Subcommittee members that overall, things seem to be going smoothly and they didn't have any major complaints. The MCIO investigator said handling the sexual contact cases has not been a problem, though they need more resources to do it. He also said that there can be more to some contact cases than first appears. He told the story of an abusive sexual contact case the MCIO investigated that turned out to involve 20 more victims.

The police investigator reported that although the MCIO is now required to investigate all sex assault complaints, the police investigations office is open to taking the contact cases and is equipped to handle them.

A MCIO investigator said with respect to contact cases, 10 years ago many of these incidents would be reported to EEO as sexual harassment. He noted that the pendulum has now swung so far in the other direction that law enforcement is now dealing with issues like what is considered to be the inner thigh.

-Length of Investigations. Another MCIO investigator reported that the MCIO goal is to resolve cases in 90 days, but when labs are involved it always takes longer. The investigators noted that they have no input on whether a case should go forward and that often they are waiting on the sexual assault report to close a case. In some contact cases that takes well over a year.

-Collateral Misconduct. One MCIO investigator told the Subcommittee members that DODI 5505.19 is hampering rape investigations where there is collateral misconduct and the investigators are required to read the victim their rights once it is disclosed. For example, this happens when a victim is married and has committed the offense of adultery. The MCIO investigator said that this didn't used to be a problem, they would tell victims they are only interested in focusing on the serious crime, but with the current regulations they can't do this. Another MCIO investigator reported that the MCIO encourages investigators to use their discretion on collateral misconduct, and therefore the reading of rights for collateral misconduct is not an issue.

Military Judges

The Subcommittee members met with three former military judges over a working lunch.

-Sexual Contact Cases. A former judge reported that as an SJA he saw an increase in the breadth of abusive sexual contact and saw more sexual contact cases than sexual assault. He felt that progress is being made with respect to sexual assault cases, but that the contact issues are broadening and skewering the conversation. He said there is a policy issue over whether all of the conduct should be considered sexual assault and he believes that the MCIO shouldn't be investigating all of the contact cases.

-Inaccurate Charging. Another former judge noted that there are problems with what is now being charged as sexual assault. She referenced a case where a tampon string being pulled was charged as a sexual assault. The accused was acquitted, and the judge noted that if the case had been charged as an assault and battery, which would have been more appropriate, it might have resulted in a conviction.

Round Table with Defense Counsel

The Subcommittee members heard from four defense counsel and an appellate defense counsel from one Service and one regional defense counsel from another Service.

-Training. The defense counsel reported that they have a mandatory trial defense advocacy course as well as annual intermediate sexual assault training. The counsel also noted that the Service requires judge advocates to be trial counsel before serving as defense counsel. The defense counsel from the other Service, said that prior trial counsel experience is not required nor even preferred in his Service. He recommended that judge advocates not be defense counsel right out of justice school. He also reported that SAPR funds for training have been ample and that the Service has sent defense counsel to external training such as the Jerry Spence Advocacy Course and to Bronx Defenders.

-Withholding to O-6. A defense counsel reported, dispositions were always handled by the O-6 commanders, though it is a more formalized process now; however, another counsel noted that this wasn't the case at the training bases prior to the legislative change.

-Article 32 Hearing. A defense counsel reported that under the new structure she has yet to see a case fail to move forward from an Article 32 hearing and she doesn't see the point of having them anymore. The counsel noted a current case that had two Article 32 hearings, both recommending not going forward, and the case is in court-martial now. She explained that convening authorities are sending all cases forward because of the political pressure. If the victim's statement alleges all of the elements of the offense, the defense counsel reported, the policy is for the case to move forward, even where there is contradictory evidence.

Another defense counsel felt that the Article 32 hearings are now a worthless paper drill, though he noted the requirement that PHOs must now be lawyers has been an improvement because it is

giving convening authorities more cover to follow the recommendations of the PHO not to refer a case without as much fear of political fallout.

One concern raised by the defense counsel is that because so many of the cases are ending in acquittals, some due process issues arising for defendants are not able to be litigated at the appellate level. Another problem he highlighted was victims attending the Article 32s and hearing the testimony of witnesses. He said that defense counsel respond to this by not calling any witnesses at the 32 and then by filing motions for the victim to testify first at trial.

-VC Program. The defense counsel reported that he has worked with some VCs who are good, but that it was easier for defense counsel to talk with the victim when they were required to go through trial counsel than it is now that they have to work through the VC. He also expressed concerns about the VCs learning exculpatory information from the victim that will not be turned over to trial counsel because there are no Brady requirements for VCs.

The defense counsel had no positive comments about the VC program. The complaints they raised were that some of the VC have no justice experience and don't understand their obligations or the rules; that VCs are filing unreasonable motions that are unfairly slowing down the process for defendants; that VCs are controlling what evidence prosecutors will have to go forward with; and that there are cases where victims are using VCs to obstruct justice by using the information provided to them by VCs about the MCIO investigation inappropriately against defendants.

-M.R.E. 412 and 513. A defense counsel expressed concern that it is now being argued that the constitutionally required exception to M.R.E. 513 no longer applies since the enumerated exception has been removed, although the courts are not finding this to be the case. Another issue the defense counsel raised is that judges are now less likely to do an in camera review of requested mental health records, so the records are not attached to the record of trial for appellate review to determine if there is error. The defense counsel also mentioned pending litigation opposing appellate defense counsel review of 513 records.

-Sexual Assault Fatigue. A defense counsel discussed the current perception among Service members that the military is handling sexual assault cases badly. He reported that from what he has seen, Service members don't even want to talk to another person now without witnesses and that they believe what they see happening to coworkers who are accused is unfair.

-SAPR Training Issues. A defense counsel expressed concern about the misinformation being provided during SAPR training, reporting that SARCs are teaching E-2 Service members that "too drunk to remember" means "too drunk to consent." The defense counsel reported that SARCs are telling victims that if they give their top three locations, they will get transferred within three days. The counsel believes that lawyers should be in charge of sexual assault training, not SARCs.

Another issue raised by a defense counsel is that E-2 Service members are now reporting sexual assaults because they are being told they are victims by people with whom they talk about experiences, not because they themselves believe they have been sexually assaulted.

-Abuse of the System. A defense counsel asserted that some are taking advantage of the way sexual assaults are being handled in the military to seek out disability benefits and career retraining. He also noted that some are threatening partners with sexual assault reports.

Round Table with Victims' Counsel

The Subcommittee members met with two current VCs, one former VC, and a paralegal.

-Training. The former VC reported that the best training in his experience has been from other VC, particularly the senior VC. He had attended three of the VC training courses and noted that the Service has a bi-weekly webinar to highlight VC issues. Another VC relayed that her training at the VC course included all of the Services and she felt that was very beneficial. She also noted that there were some VCs in the course who had been in the position for a while before receiving the training, though she herself attended the training before assuming VC duties.

-Experience. The former VC served in the position from the beginning of the program and he still has 17 clients he is representing as a VC. The other VC had been in the position for three weeks and previously spent three years at a legal office. The former VC noted that in the Service, judge advocates are typically assigned to become VCs on their second or third assignments. He said that only one or two VCs have been defense counsel previously, but all of them have tried cases in legal offices before becoming a VC.

Another VC reported that in their Service, VCs are typically assigned to the position when on their second tour. She noted that she has been a VC for a few months and that she was a defense counsel previously. She reported that as a defense counsel at the time the program launched, she thought it was a terrible idea, but that the program has come a long way and with time and experience it has become more accepted.

-Interaction with Defense Counsel. One VC said that the relationship is better with defense counsel if he has worked with them before. He noted that there are still people who don't like the program and some defense counsel won't copy the VC on motions or will do other things to undercut the VC.

The VC also noted that because a lot of clients don't want the case to go to trial, it can be beneficial to both sides for the VC to be able to work with defense counsel.

-Interaction with Investigators. A VC reported that he hasn't had any difficulty obtaining investigation reports from his own Service, but found it to be much harder to get the investigation information from other Services. He reported that the relationship with the MCIO has improved considerably and noted that VCs are teaching at the MCIO school now.

-Input of Victims. One VC reported that he has had cases go forward because that is what the victim wanted, but has also had cases where the convening authority wanted to take the case to trial even though the victim didn't want it to go. The victim's preference isn't always persuasive, he added, but the convening authorities won't make a decision until they have heard

from them. The VC also referenced two cases he was involved in where the victim wanted to go forward but where there wasn't enough evidence and the convening authority didn't go forward.

-Retaliation. A VC said that clients always believe they are being retaliated against. He tries to resolve these issues without formally reporting it as retaliation because he hasn't found that to be an effective solution.

-Abuse of the System. A VC reported that she has 16 clients and one takes about 95% of her time. She believes that this client does not have a credible complaint and is using the system to obtain an expedited transfer. She added that the client is now being retaliated against and the VC is advocating for the transfer for that reason.

-Treatment by Judges. A VC told the Subcommittee members that the rules of trial practice have changed in the last few years and that judges generally treat VCs well in court. He added that the issues VCs face in court are really no different than for any counsel. Another VC reported that in their Service, VC treatment by judges is still an issue.

-Article 32 Hearings. One VC said that he doesn't recommend clients testify at Article 32 hearings.

-M.R.E. 412 and 513. With respect to mental health records, the VC noted that a problem arises with the medical evaluation boards because mental health records become part of the medical record and are then accessible.

Round Table with Sexual Assault Response Coordinators (SARCs), Victim Advocates (VAs), and Victim Witness Assistance Program (VWAP) Personnel

The Subcommittee members met with a SARC, VA, and a VWAP coordinator.

Training. The SARC and VA both took the initial 40 hour training and reported that it was pretty thorough. The VWAP coordinator took a 6 week online course and felt that in-person training would be better.

-Relationship with the Command. The participants reported that their relationships with the command vary based on the experience and knowledge of the commander.

-Relationships with Investigators. One of the participants noted that there has been a lot of turnover in the last year and said that while the previous investigators were not very interested in sexual assault, it is much better now and communication is much improved.

-Relationship with VCs. The participants reported that their relationships with VC are very good.

-Length of the Process. The participants cited the length of the process as the biggest complaint. One stated that there are months when a victim doesn't have contact with legal personnel and they are going ahead and moving on with their lives.

The second biggest complaint the participants noted was that many victims want something to happen to the accused, but not necessarily a trial, and they want it to happen sooner. They noted that often the victim wants an apology.

-Expedited Transfer. The VA reported that she has had positive experiences with the cases she has dealt with and has not seen abuse of the system. A SARC identified an issue she has seen where the losing commander doesn't contact the gaining commander and cases fall through the cracks. She said that she would like to see a warm hand-off between commanders and SARCs for expedited transfers.

-SAPR Training. The SARC told the Subcommittee members that the first term, E-2 Service member course covers the topic of consent. She said that he would provide the brief to the JPP.

Certification

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

//signed//

Member, Judicial Proceedings Panel Subcommittee