UNITED STATES DEPARTMENT OF DEFENSE

DEFENSE ADVISORY COMMITTEE ON INVESTIGATION,
PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT
IN THE ARMED FORCES

PUBLIC MEETING

FRIDAY
JULY 21, 2017

The Panel met in Suite 1432, One Liberty Center, 875 North Randolph Street, Arlington, Virginia, at 8:30 a.m., Martha Bashford, Chair, presiding.

PRESENT
Martha Bashford, Chair
MG(R) Marcia Anderson
Hon. Leo I. Brisbois
Ms. Kathleen Cannon
Hon. Paul W. Grimm
Dean Keith Harrison
Mr. A.J. Kramer
Ms. Jennifer Gentile Long
SGT(R) James Markey
Dr. Jenifer Markowitz
CMSAF(R) Rodney J. McKinley
Dr. Cassia Spohn
BGen(R) James Schwenk
Ms. Meghan Tokash*

Hon. Reggie Walton
WITNESSES
Captain Joseph Ahlers, U.S. Air Force - Service Representative
Mr. Michael J. Defamio - Division Chief for Family and Sexual Violence, U.S. Naval Criminal Investigative Service
Lieutenant Alexandra Nica, U.S. Navy - Service Representative
Mr. Paul Garst - Senior Advisor, Department of the Navy Sexual Assault Prevention and Response Office
Mr. Kevin Poorman - Associate Director, Criminal Investigations, U.S. Air Force Office of Special Investigations
Mr. Christopher Redmond - Department of Defense, Office of the Inspector General
Lieutenant Colonel Mary Catherine Vergona, U.S. Army - Chief, Policy Branch, Army Criminal Law Division
Ms. Beverly A. Vogel - Senior Special Agent, U.S. Coast Guard Criminal Investigative Services
Ms. T.L. Williams - Deputy Chief, Policy Branch, U.S. Army Criminal Investigation Command

STAFF
Ms. Julie K. Carson - Legislative Analyst/Attorney
Ms. Meghan Peters - Attorney Advisor
Ms. Stayce Rozell - Senior Paralegal
Ms. Terri Saunders - Attorney Advisor
Captain Tammy P. Tideswell, U.S. Navy - Staff Director
Dale L. Trexler - Chief of Staff

DESIGNATED FEDERAL OFFICIAL
Mr. Dwight Sullivan - Designated Federal Official (DFO)

* Present via telephone
C-O-N-T-E-N-T-S

Welcome and Introduction

Designated Federal Officer Opens the Meeting
Remarks of the Chair

Presentation on the Mechanics of a Military Sexual Assault Investigation

Ms. T.L. Williams, Deputy Chief, Policy Branch, U.S. Army Criminal Investigation Command

Mr. Kevin Poorman, Associate Director, Criminal Investigations, U.S. Air Force Office of Special Investigations

Mr. Michael J. Defamio, Division Chief for Family and Sexual Violence, U.S. Naval Criminal Investigative Service

Ms. Beverly A. Vogel, Senior Special Agent, U.S. Coast Guard Criminal Investigative Services

DAC-IPAD Strategic Planning Session

Public Comment

Meeting Adjourned
MR. SULLIVAN: Good morning. The third public meeting of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces is now open.

I am Dwight Sullivan. I am the designated federal officer for the Committee. Ms. Bashford, the last time I began with a Naval phrase, you have the con.

Well, today I am going to begin with a decidedly legal phrase. The gavel is yours.

CHAIR BASHFORD: Thank you.

Thank you, Mr. Sullivan. Good morning. I'd like to welcome the members, participants, and everyone in attendance today to the third meeting of the Defense Advisory Committee on the Investigation, Prosecution, and Defense of Sexual Assault in the Armed forces, or DAC-IPAD.

The Secretary of Defense appointed 16
members to the committee, 15 of whom are
participating here today. Committee Member
Meghan Tokash is participating by phone.

The DAC-IPAD was created by provisions
in the National Defense Authorization Acts for
fiscal years 2015 and 2016. Our mandate is to
advise the Secretary of Defense on the
investigation, prosecution, and defense of
allegations of sexual assault and other sexual
misconduct involving Members of the Armed Forces.

Please note that today's meeting is
being transcribed, and the complete written
transcript will be posted on the DAC-IPAD
website.

We will begin today's meeting with the
presentation on the mechanics of a military
sexual assault investigation by officials from
the criminal investigation organizations of the
Military Services, followed by a Committee
strategic planning session.

Each public meeting of the DAC-IPAD
will include time to receive input from the
public. The Committee received no request for public comment at today's meeting.

Thank you for joining us today. We are ready to begin the meeting. Our presenters from the military criminal investigation organizations are Mr. Kevin Poorman, Associate Director of Criminal Investigations for the U.S. Air Force Office of Special Investigations; Ms. T. L. Williams, Chief of the Policy Branch of the U.S. Army Criminal Investigation Command; Mr. Michael Defamio, Division Chief of the Family and Sexual Violence Division of the Naval Criminal Investigation Service; and Ms. Beverly Vogel, Sex Crimes Program Manager and Senior Special Agent for the U.S. Coast Guard Investigative Service.

Thank you all for joining us today, and we look forward to hearing from each of you.

MR. POORMAN: Well, good morning,

Madam Chair --

CHAIR BASHFORD: Good morning.

MR. POORMAN: -- and distinguished members of the Committee. We represent the four
Military Criminal Investigative Organizations,
and we look forward to introducing to you, at our
first presentation, an overview of the military
criminal investigative agencies and how we --

MR. KRAMER: I am having trouble

hearing.

CHAIR BASHFORD: Yes, I don't know if

you're turned on or not.

MS. TREXLER: They should all be live.

It may be dependent on how close you are.

MR. POORMAN: Is that better?

MR. TREXLER: I'll check for you. Go
ahead. Just speak up a little.

MR. POORMAN: Okay. In your read-

ahead materials, you were provided with DoD

Instruction 5505.18, which deals with sexual

assault in the Military Services.

You were also provided with a summary

of other instructions that directly relate to how

we conduct investigations in the Department.

Additionally, the results of three DoD

IG assessments have been provided to you --
summarizes of those assessments that have been conducted of our organizations over the last few years.

We have provided here an overview already in terms of introductions. We had some introductions that we had prepared, but Madam Chair has already provided those, and so we have been introduced.

We today hope to go over and provide you with an overview of some of our organization, our training, some data, and some trend information that gives you an initial introduction to who we are, what we do, and some of the policies and process, and some of the issues that we have in common between our organizations and within our agencies.

We decided to try to present this in an integrated way, going over organization first, training, then going into some of the data and information we have, because we do have four different agencies presenting. And while we have a lot of similarities, there are some structural
dissimilarities in how we organize our delivery of services.

CHAIR BASHFORD: Mr. Poorman, I am just going to ask you to try to keep your voice up. You tend to trail off a little bit.

MR. POORMAN: So organization, that we will go into, first starting with CID, Ms. Williams. Please.

MS. WILLIAMS: Good morning.

Again, I am T.L. Williams with Army CID, and CID is headquartered at Quantico and co-located with OSI and NCIS. The Coast Guard decided to stay closer to the water, so they didn't come with us.

We are commanded by a major general who reports directly to the Secretary and the Chief of Staff of the Army to help reduce any undue command influence.

The CID structure is listed on the slide. It's only representative of our agents that investigate sexual assault since that's what we are talking about today.
There are the 3rd -- we have the 3rd and the 6th groups that have responsibility worldwide fulfilling investigation mission for the Army.

3rd group is at Hunter Army Air Field. 6th group is at Joint Base Lewis-McChord. The groups' area of responsibility is divided at the Mississippi.

There are eight battalions that have command and control over five to ten CID offices. In 3rd group, there are five battalions, and in 6th group, there are three battalions.

CID is also the executive agency for the U.S. Army Laboratory. So we also have that responsibility, and they are commanded out of Gillem Enclave, and they are responsible for -- they come under the Defense Forensic Science Center, which is a branch of the Defense Forensic Science Center -- the U.S. Army Criminal Investigation Laboratory is a branch under that, and they are the ones with responsibility for the sexual assault investigations.
And from that we have -- they also are -- they have all the forensic examinations concerning drugs, chemistry, trace evidence, urology, DNA, CODIS, latent prints, forensic documents, digital evidence, and tools and firearms.

And we have a strength of approximately 834, as it shows on the slide, and we have 30 civilian sexual assault positions throughout the command, too.

They focus mostly on sexual assaults in their positions as civilians, but the other agents are also trained in those areas, too.

And after that is NCIS, Mike Defamio.

MR. DEFAMIO: Thank you.

Good morning. Mike Defamio at the NCIS.

I will quickly go through the organization of the Naval Criminal Investigative Service. First, am I coming through okay? Okay.

CHAIR BASHFORD: A little louder.

MR. DEFAMIO: A little louder? Okay.
All right. NCIS -- we report directly to the Secretary of the Navy -- through the Under Secretary of the Navy.

A difference between NCIS and the other MCIOs is we are a 100 percent civilian special agent force. There are no active duty military in the NCIS chain of command, so our civilian director is a special assistant to the Secretary of the Navy.

Similar to the other MCIOs, NCIS may initiate any investigation. That is within our charter, which is basically felony-level investigations -- of which sexual assaults are all considered a felony-level investigation -- without the concurrence or request of the command.

So we can initiate. Only the Secretary of the Navy can shut them down.

Briefly about our structure, NCIS is divided into two regions: the Atlantic region and the Pacific region, roughly divided at the Mississippi on the CONUS. But we also have four
overseas field offices, one in Yokosuka, Japan, Singapore, Bahrain, and Naples, Italy.

So the rest of the CONUS are divided pretty much around the Mississippi into east and west.

That's a total of 14 field offices, so 10 in the States, four overseas. Our current agent strength, we have 164 special agents that are dedicated to our family and sexual violence, or F&SV, investigations. That is out of a total of 461 criminal investigating agents.

NCIS has a dual mission in addition to investigating criminal allegations. We also have another half that investigates counterintelligence matters.

So 461 of those agents are what we call general crimes investigators. 164 of them are assigned specifically to F&SV cases.

We also have a U.S. Navy and a United States Marine Corps active duty program in which active duty Members of those forces are assigned to NCIS offices, and they participate in
investigations also. So a lot of those in our
different field offices support F&SV
investigations.

With that, I'll turn it over to Ms.
Beverly Vogel from the Coast Guard Investigative
Service.

MS. VOGEL: Good morning. I am Bev
Vogel with Coast Guard Investigative Service or
CGIS. CGIS is organized as an independent and
centralized investigative agency reporting
directly to the Vice Commandant of the Coast
Guard.

It's led and managed by an OPM Series
1811 Senior Executive Service Director. All CGIS
personnel report through the CGIS chain of
command to the Director of CGIS.

Special agents are credentialed by the
Director of CGIS to exercise law enforcement
authorities derived under and contained in United
States Code Title 14 and Title 10.

There are 35 resident agent offices,
so CONUS and OCONUS, that report to their
respective region offices. There are eight CGIS region offices that report to the Assistant Directors of Operations. The Assistant Directors of Operations report to the Deputy Director of Operations and the director of CGIS respectively.

Regarding agent strength, CGIS has 381 special agent billets. 340 of those billets are filled. That includes 102 civilian, 89 active duty, and 149 Reserve CGIS special agents.

There are 35 special agents designated as family and sexual violence investigators. They are also CONUS and OCONUS including Alaska, Puerto Rico, Hawaii, Guam and Bahrain.

And on that note, I'll turn it over to Mr. Kevin Poorman.

MR. POORMAN: The OSI commander reports directly to the Inspector General of the Air Force and, in turn, the Secretary of the Air Force, and we, like the other agencies, we have statutory authority for the Commander of OSI to initiate an investigation.

Only the Secretary of the Air Force
may delay, suspend, or terminate an OSI investigation once it's been initiated by --
under authority of the Commander of OSI.

    We have a broad mission spectrum as does, I think, NCIS and CID in that we have
counterintelligence, cyber, special security. So when we get to the agent strengths of 1,800 down
at the bottom, only about half of those are funded along funding lines to specifically work
criminal -- traditional criminal investigations.

    The other half are funded through intelligence lines and have to do with -- they are specifically designated to work in
counterintelligence and special security operations.

    Our headquarters, like NCIS and CID, were all housed at the Russell-Knox Building on
Quantico since 2011, a BRAC decision, base relocation decision, and as a result, we collaborate quite often, and it's been very helpful to kind of drive some synergy and discussions in policy and training.
We have eight regions headed by O-6s, colonels in the Air Force, five in the United States, one in the Pacific, one in Europe. And then we have one global operation center that oversees all major operations that are occurring throughout the Air Force, and it also has some specialty support skills in it that we can use throughout the United States and throughout the world. Like we have two clinical psychologists that are investigators that assist in any case where there are issues where their expertise may be helpful, which oftentimes, in sexual assault cases, is something our agents draw on.

75 main offices that we have -- we have over 200 locations where we have investigators, some one-deep in task forces and things around the world, but 75 where we have significant Air Force populations that result in sexual assault kinds of cases that our folks are very busy working in.

1,800 agents authorized. Again, we are a mixed force of officers, enlisted, and
civilian investigators. As you can see on the
slide there are 290 officers and enlisted there
are 1,053, which comprise most of our front line
investigators, our enlisted investigators, and
special agents. Civilians number 475 throughout
the command.

24 of our investigators are
specifically designated full-time and fully
trained to oversee and assist in sexual assault
investigations. We also have 23 security force
investigators that have been detailed to OSI to
help us work some of the sexual assault contact,
the nonpenetration investigations, that our
office has worked. We still supervise those
investigations. They just work under our
direction.

So with that, we would like to turn to
an overview of training, with our basic and our
advanced training, and staying in line with the
process we have established, Ms. Williams.

MS. WILLIAMS: All CID agents,
military and civilian, attend a 15-week training
course on felony-level investigations on violent crimes.

Our training is several weeks less than what you'll see on the other slides because we don't have the counterintelligence mission. So it looks like we have less weeks trained. But ours are all on felony-level investigation.

All CID agents receive 15 hours of classroom sexual assault investigation, which includes practical exercises, scenario-based exercises, and in-classroom interviews and interrogation-type processes, and they are also taught by the same instructors that our advanced training is taught by.

CID has a two-tier approach to our investigations -- or training. We have established a basic sexual assault investigator and a senior level sexual assault investigator.

So the basic-level sexual assault investigator will be a person who has been a fully accredited special agent and has attended the sexual assault -- advanced sexual assault
training, which is the 80-hour training at the U.S. Army Military Police school.

Then we have the senior-level sexual assault training who receives the advanced sexual assault training, domestic violence training, child abuse training, and then they also receive -- we send them to training at the Violence Against Women International, Conference on Crimes Against Children, and Conference on Crimes Against Women.

From that, all of them receive what is an additional skill identifier so we will be able to track them throughout their career. So it makes it -- and we can keep track of how many we have at each level and where we have them. And that's given to us on a monthly basis on how the turnover is so we can keep up on that.

We are also trying to work on a pilot program, and it's in August at the last -- the last week in August, we are having the civilian sexual assault investigators that I said on the other slide, that we are having the CONUS ones
come into -- come into our Headquarters, and they are going to be trained along with the sexual assault prosecutors.

And so they can collaborate together, and they can talk about best practices, lessons learned, and understand one another's roles better.

So we are bringing them in together to do that training. We are hoping from that we can develop that into a yearly basis.

Of course, our agents will be the civilian agents who've been on site longer, but they will have new sexual assault prosecutors come in to them all the time. So it'll be a constant rotation, so we will need to do the training often. So we are hoping that works out well.

And to that, it will be Mike Defamio.

MR. DEFAMIO: Okay. Overview on the NCIS training. All of our agents upon coming aboard with NCIS attend the Criminal Investigator Training Program. That's at the Federal Law
Enforcement Training Center in Glynco, Georgia.

It's the same course that's attended by most other federal investigative agencies minus the FBI and DEA.

At that course, they learn the basics of criminal investigation. After that, it's immediately followed by a 12-week NCIS special agent basic training program.

It's during this course that our agents are first introduced to basic sexual assault investigations, as that'll be one of the scenarios that they handle during those courses. After that, they are required to complete a 15-week field training program. After that, they will be certified as a full special agent able to take cases on their own.

We offer several organic advanced training courses that were developed specifically for investigating family and sexual violence type offenses. The first one is our advanced adult sexual assault training program. We run approximately nine to ten of those a year.
The goal is to get our entire agent corps through that course by the end of fiscal year '19 so that all of our agents, including the ones who are primarily assigned to counterintelligence matters, will be able to respond to and effectively handle a duty call for a sexual assault offense.

Right now, we have approximately 650 of our 1,028 agents who have been trained in the course. So we are well on track to complete that goal.

We also have the advanced family and sexual violence training program. That one expands upon the advanced adult program in that it also incorporates crimes against children and other domestic nonssexual type offenses that occur within the family, and that is a requirement for all. There are 164 agents who are in those F&SV-specific billets.

Recently, in the last couple years, we started to have all our agents go through an advanced interrogation training, and we run that
usually in the summer of every year. And then we also sponsor agents to attend the professional conferences similar to what the Army CID is also attending.

MS. VOGEL: Thank you.

Similar to the other Services, CGIS agents attend basic agent training at FLETC Glynco for 12 weeks, a total of 464 hours and an additional 22 after hours training, 82 hours of law, 34 hours of interviewing.

The training also includes a continuing case that extends the length of the training and includes a sexual assault scenario as well.

As far as advanced training, that includes but is not limited to advanced crime scene, also at FLETC. Advanced interviewing at FLETC. Advanced family and sexual violence training, that's the NCIS course. Child abuse training, which is Army. As well as, since July 2012, CGIS agents began attending the Special Victims Capabilities course. At the time, it was
called Special Victims Unit Investigations

Course.

Currently, we have had 222 CGIS agents
and 70 Coast Guard attorneys go through the
Special Victims Capabilities course.

With regard to annual refresher and
professional development training, the family and
sexual violence agents also attend the End
Violence Against Women, Conference on Crimes
Against Women, and Conference on Crimes Against
Children.

We also have -- we created the
embedded agent program where all CGIS agents have
the opportunity to shadow sex crimes or family
violence investigators with five different police
departments that participate with us right now.

It's Austin, Boston, Philadelphia,
Phoenix, and Los Angeles Police Department. And
that's generally a two-week period that the
agents shadow those sex crimes investigators.

And on that note, I'll turn it over to
Kevin Poorman.
MR. POORMAN: So we also, OSI, go to
the Federal Law Enforcement Training Center, and
in addition we have -- after 11 to 12 weeks of
the FLETC training, we have a basic follow-on
course for OSI agents of about six to seven
weeks.

You might ask why do you need a
follow-on course, and it's because not everything
that's required to be a new agent in the military
is provided at CITP.

The CITP course was designed by the
partner agencies that participate in FLETC, and
many of those agencies don't even investigate
violent crimes.

Some are IG 1811s, that's a job series
for criminal investigators within the Department,
and actually it's kind of unique for the Military
in that we run cases. By and large, violent
crime in America is handled by state and local
police agencies for the most part.

But we have violent crime cases in our
communities, and we have to train to that -- to
that standard and to those requirements.

In addition, we have to introduce the Uniform Code of Military Justice in the CITP course. It's federal law. It's Title 18, largely, discussions that go on with those investigators.

So we have additional information specific to our investigators that has to be covered in the basic training.

Advanced sexual training. Like the other Services, we have an advanced course in sexual assaults, started it up in 2012, trained almost 600 investigators.

589 investigators have flowed through that training. And that's a very -- it's a good course in that our investigators get a lot of additional insights into memory with trauma, how that works, counterintuitive behaviors that victims may have under sexual assault.

We have a specific block on cognitive biases for investigators, which some of these biases can get in the way of how investigators
think about cases, and we have to walk through that with them and help them understand how that could negatively, in most instances, affect a case.

We have cognitive interviewing, a different interviewing style that's more open-ended, designed to elicit -- and research shows does elicit -- more information and more accurate information.

And so we have introduced that. We work through actual training scenarios with investigators where they get to practice and are scored on their ability to use that.

Advanced crimes course is mostly for supervisory level, supervising cases. It's one thing to be able to run a case. It's another to be able to organize and supervise a complex investigation. And we have a course for that.

And like the other Services' crime scene training and professional development, it includes crimes against women, attendance in those courses and that training, those
conferences to round them out on an annual basis.

Turning from training then to some
case data, that is, we are organized and we are
trained. What kind of case numbers and trends do
we see? We will work through each of the MCIOs
to discuss that, starting with CID.

MS. WILLIAMS: CID has, as you can see
from the slide, CID had over 11,000 felony crimes
for FY '16 and over 2,500 sexual assault
investigations for 2016.

Right now, our average length for an
investigation is 154 days, and the mean is 120
days. It may seem like that's a long period of
time, but with the transient nature of Soldiers,
deploying, redeploying, moving from different
stations, leaving the Military, we have to send
leads out to several different areas around the
world to get the victim's witnesses and subjects,
in most cases, interviewed.

So we have to send that out, and it
does take some time from those cases. And it
usually is the cases that the reporting happened
later, maybe after the person left Basic Training and went into another unit is when they reported the case. So then we have to go back and do a lot of work on those.

So it may seem like a long period of time, but from the times when I first was an agent, this is way better than what it was.

BG SCHWENK: Is that for all investigations or just sexual assault?

MS. WILLIAMS: This is sexual assault data, only sexual assault data right now, sir.

BG SCHWENK: Thank you.

MS. WILLIAMS: Yes, sir.

And with the laboratory, as you can see from the slide, we have -- the days have gone up in FY16. FY16 was a combination of events that happened at the lab. They ended up having their five-year reaccreditation that happened during that time.

They changed over their systems for processing and tracking evidence throughout the lab. They had several individuals on extended
leaves so there was a lot of personnel -- a
shortage during that time.

But as of yesterday, they are at 62
days and for FY17, they are at 74 days. So they
are going down with it, and they think they
should be under 60 days here by the -- in the
next few quarters.

And Mike Defamio.

MR. DEFAMIO: Thank you.

All right. I'll review the NCIS stats
for fiscal year '16. Overall as an agency, we
initiated just over 6,000 total criminal
investigations at the felony level, not including
our CI investigations.

Roughly 1,940 of those were sexual
assaults investigations. Now, of course, NCIS is
responsible for both the U.S. Navy and the U.S.
Marine Corps, so I've divided the chart into
those two separate Services. They are roughly
around the same rate. Marine Corps maybe a
little bit higher in overall population rate of
sexual assaults reported.
But since the active duty Navy is just a little under twice the size of the Marine Corps, they are pretty close.

Also, the percentages that I am going to go through are roughly the same for the Navy and Marine Corps. Navy had 893 total cases and ran about 129 days on average for completion of that investigation to where we turn it over to the prosecuting attorney, and the Marine Corps ran about 453 cases and just a few days higher: 132 days for the average investigation.

As you can see from the chart, there are also -- over half of our cases are reported one month or more after the incident, and just over, roughly, 78 percent on each Service are one year or more after the incident.

That, of course, contributes significantly to our turnaround time of completing an investigation, as Ms. Williams was saying.

When that much time has gone by, most of our active duty personnel have moved. They've
PCS'd. They've left the Navy, and then we have
to track them down, send leads around the world
to try to wrap up. So that does contribute a lot
to our turnaround time.

Most of our cases occurred off base.

Again, that affects jurisdiction. We still, if
it's an active duty subject, we still have
jurisdiction over the subject. But when it
occurs off base, we have to coordinate with the
local authorities, whether it's foreign or
domestic, to arrange for that investigation. And
most of our reports, well, exactly 10 percent of
each Service, most of our reports are active duty
subjects.

Ten percent were civilian subjects that
we took the lead on investigating for a variety
of reasons, that we would have been the head
agency on that.

MS. VOGEL: Thank you.

You'll notice that the Coast Guard's
numbers are a bit lower than the other Services.

We had, in fiscal year '16, 1,962 total
investigations initiated.

Of those, 122 were adult sexual assault investigations, which was 20 less than fiscal year '15.

On average, as far as the investigation length, and when I say investigation length, I refer to case predication to the adjudication. So cradle to grave is 133 days. Again, of those 122 cases, 57 percent of the cases were reported one month up to a year after the incident, and 24 percent were a year or more after the incident. And again, of those 122 cases, 40 percent occurred off military installation and 10 percent involved civilian subjects or suspects.

And I'll turn it over to Kevin Poorman.

MR. POORMAN: So OSI, a total of -- we run between 2,300 and 2,600 total investigations per year, about a thousand sexual assault investigations. About 40 percent of our caseload is sexual assault investigations. 105 days is an
average case for sexual assault turnaround time,
with a 75-day median on those cases.

Again, very similar numbers when you
compare across the MCIOs in terms of cases where
the report is more than a month, more than a
year.

Similarly, 69 percent of our cases,
when you combine one month, one year, 69 percent
are dated in terms of reporting, and 48 percent
of our cases occur off installations, which
affects -- jurisdiction plays a role then, and
I'll talk about that in a moment. And 20 percent
of our cases involve civilians as suspects. We
have civilian defendants. Civilian contractors,
civilian employees on our installations, we have
visitors on installations. And that's who the 20
percent would involve.

So we have talked about some of the
differences in terms of how we are structured,
how we train, and then some of our case trends,
some of the issues in common that we have with
regard to issues that can impact our
investigations.

   And turning to jurisdiction, as we
presented, many of the cases we investigate take
place off installations, and because active duty
Military Members are subject to the Uniform Code
of Military Justice regardless of where the
offense occurs, which is a little different than
what many state and local investigators --
because it's usually geographical confines of a
county or a state where the penal code would
apply.

We have violations and we can pursue
those violations against active duty Members
anywhere in the world. And because of that, we
oftentimes run into situations where jurisdiction
enters the picture very early in an investigation
where we are trying to work with local police who
may have taken lead on an investigation because
the offense occurred in the community and we have
that law enforcement agency involved as lead
agency, but we have an active duty Member who we
also could -- to prepare a care for presentation
in a military courtroom should that be the option.

And so we oftentimes find ourselves trying to resolve jurisdiction in cases, and it gets even more complicated in overseas environments.

Just in the States, we end up with exclusive federal. We end up with concurrent proprietary jurisdictions, and then when we get overseas, and we have many installations overseas, we are now working in a foreign country where the status of forces agreement is going to affect our relationship with how a case is handled with the host law enforcement organization.

So while we may have active duty suspects in some cases, we don't always control the full investigative plan and progress of an investigation because we are not the ones that are deciding which activities will be done in which order.

And that's a fairly complicated issue
for all of us. We work through it well, but it is a complexity that many law enforcement agencies do not have to work through in handling investigations.

From an investigations process standpoint, our policies and our processes are very similar.

Many of those similarities extend to when we take evidence, how we handle evidence, which laboratories we use to process evidence. What our reports of investigations look like are very similar in content and structure.

Our processes, I think we collaborate rather regularly. Again, one of the benefits of us all being in the building is we can -- and then with Coast Guard sometimes coming down and otherwise working through it with emails -- collaborate on best methods and processes for working investigations. It has worked very well for us there.

We have some challenges that we share in common. We have all experienced an increase
in sexual assault investigations, just the number of investigations, over the last few years.

We accommodated many changes as a result of NDAA actions and, I know, the Committee's recommendations. We have worked through and are working on our third version of Article 120, rape, sexual assaults since 2007.

We have developed a stand-up of residents and resident courses to help train our investigators.

We all opened on all adult victim sexual assault investigations as -- from January 2013 and DoD 5505.18, which you have, came about that required the MCIOs.

Before, security forces, for example, in the Air Force could run nonpenetration cases. Those came to us. And so much of our caseload, not necessarily because the Service had experienced a significant increase in the reporting to law enforcement, it's just we are now the investigative agency that is handling all of those numbers.
So if you see data that would suggest a spike in 2012, it's because we took on cases that otherwise had been worked by the security forces or Military Police or others out there.

Although we have had an increase in numbers, it's just that the -- we now investigate all.

We have a mandate to retain evidence for five years in all sexual assault cases, which has impacted the storage of evidence in our evidence rooms.

We get frequent requests, many requests, almost regular requests for data, for case file reviews and we have accommodated all of them.

For the development of policies and protocols, we have worked through the arrival of special victim investigations and prosecution requirements, the collaboration with attorneys early and often through an investigation. And, more recently, we have worked the process and protocols for accommodating the special victims'
counsel or the victims' legal counsel within the
Services, which is extended to include allowing
those legal supports to be present during
interviews with victims that are being
interviewed with certain conditions on the
interview.

But being available to have an actual
discussion with their client and be present
during a law enforcement interview, and there are
many other accommodations that we made as a
result of recommendations through the years.

We have had a significant increase in
the oversight of all aspects of how we handle
sexual assault investigations.

Since 2012, DoD IG has conducted three
major assessments of the DoD MCIO sexual assault
investigations for policy compliance and for
investigation sufficiency.

They conducted another assessment of
how we train agents to conduct sexual assault
investigations. A fifth assessment focused on
MCIO policies related to adult victim sexual
assault investigators.

And we had a sixth assessment evaluating how we, the MCIOs, handle violent crimes investigations from a Headquarters level in terms of compliance oversight, quality control, and inspection process.

We have integrated these findings from these assessments to revise our processes, our protocols and, again, summaries of some of these assessments are in the read-ahead materials that you have been provided.

In closing, we realize this presentation provides an introductory kind of macro-level overview of our agencies.

We look forward to working with the Committee and the professional staff over the next years to further assess ways we can continue to improve and evolve how we work with victims, how we service our Services and how we service the Department of Defense.

And we want to thank you for your time and attention and wanted to leave some room at
the end of our presentation for questions and
discussion. And we do that now.

CHAIR BASHFORD: Thank you all for
appearing. I've got a few questions that I'd
like to start off with, and I am sure the rest of
the Committee members do, too.

Mr. Poorman, at the very beginning,
when you were talking about agent strength, it
seems to me about 15 percent, roughly -- you have
834 authorized positions but only 706 filled.

Is that because you don't have people,
you don't have funding, or you don't have the
need?

MS. WILLIAMS: Is that me?

Actually, the Army keeps us about at
85 percent, and so it's how the Army is keeping
everybody, at the same level, at about 85
percent. So we -- I don't know if that's funding
or just how the Army is at this point.

We are actually increasing our sexual
assault investigators, the civilian side, by 15
in FY18. But funding is always something that we
can use.

CHAIR BASHFORD: And my other question, I think, is for all of you. Considering you're only dealing with adult cases, what we are talking about -- not children victims -- you're either close to 50 percent or over 50 percent of your cases being reported more than a month later.

That seems extraordinarily high. Do you have any thoughts on why that would be? Is there -- I don't know what -- why that would be so high? Is there a barrier to reporting sooner?

MS. WILLIAMS: We have had some that have been reported to us later just because they had a restricted report before they became unrestricted.

So then, of course, that's reported to us, like, a month later. Some talk to people. They just don't feel -- you know, they make their decision to report later.

It may be, like I said earlier, that the soldier was at Basic Training and then
decided to report it once they ended up at their next duty station instead of while they were at their Basic Training.

I don't have the stats to tell you exactly what those reasons are, and it would take an extensive review to determine that but -- because we don't have that readily available.

CHAIR BASHFORD: It just seems very high, in particular since you don't have children victims included in that which, of course, are often very, very delayed.

MS. VOGEL: It's also, generally speaking -- and you know this, I know -- it's a very confusing time for a victim, especially if you introduce alcohol into the situation.

They may not know what happened, so they may be trying to figure it out themselves. So it's very -- it's many reasons why victims don't initially report: am I going to be judged? Am I going to be viewed as the trouble maker?

So, I mean, there are so many reasons why victims don't immediately come forward, and
oftentimes the victim is acquainted with -- I
won't say knows -- but is acquainted with that
person who reportedly sexually assaulted them.
So I'll offer that.

MR. POORMAN: Yes. I think that may,
to some extent -- I don't know that the
relationship between victim and subject
influences, necessarily, the reporting time
period.

But RAND at -- the Air Force just had
the RAND Corporation look at our cases, and they
concluded 85 percent of our cases, the victim and
the subject know each other, work with each
other.

There is a relationship that exists,
and I don't know to what extent that influences a
decision to come forward or not. Of course, they
are a military model which many times these
incidents are occurring between co-workers within
a shop.

We know that most of our reports that
occur as a result of incidents that happened in
deployed locations, they wait to make the report
when they come back to their home units.

Very good question. I don't know that
we have specific answers to that. But it would
be interesting to sort that out.

MR. DEFAMIO: And on the NCIS side --
and I apologize up front, I don't have exact
numbers that I could offer you right now -- but
we have seen an increase in the number of our
reports that have gone from initially being
restricted reports of sexual assault to going
unrestricted, which reflects upon that the
victims are feeling comfortable coming forward to
going the services and maybe using that time period
to kind of sort out what happened and learn about
well, you know, I if do report this to law
enforcement, what will be the process? What will
be the result of that? We have seen more victims
changing those reports in the recent year or two.

MR. POORMAN: And I do think, and this
was '16 data, there was quite a push within the
Department in that period of time to report
regardless of when it happened. And we did see a
spike in the number of reports that came in, and
many of those were reports from 10 years ago or
as a result of individuals no longer even in the
Military Service that were coming forward to
report during that period.

So a cross-check to that number might
be looking at years before and after to see the
extent to which that may represent an emphasis
issue in that '16 data.

CHAIR BASHFORD: I'm sure many of the
Committee members have questions.

MR. KRAMER: I have several questions.
I am sorry. I'll try to -- I've never been
accused of speaking softly, I guess, so I hope
you can hear me. If you can't, let me know.

The first question is, maybe, to ask
about that. So if a case is restricted, it never
gets to these investigative agencies? It's kept
where?

I know we talked about it last time,
at the last meeting. Where is it kept if it's
Restricted?

MR. DEFAMIO: Restricted reports, they would go through the sexual assault response coordinator, and that would be the victim advocate seaside. They would keep the report there, and then they would have access, of course, to a victims' legal counsel or a special victims' counsel that they could talk to about it.

Also chaplains. There are several medical personnel who could take the restricted report without it being reported to law enforcement which would, of course, include all the MCIOs.

MR. KRAMER: And I --

MR. POORMAN: Oh, sorry. Just if there is evidence in these cases, which can get kind of complicated, that we retain that. Now, the way that works is we will be told, OSI -- each Service does it a little different -- but OSI will be called and told that they are restricted -- there is a restricted kit -- sexual
assault kit to pick up. It has a number on it. We don't open it. SARC has the real name behind the number.

We retain it under processes and procedures and then if it does go unrestricted then we convert it to an unrestricted. Otherwise, there is disposition instructions of the kit if the individual decides never to go --

MR. DEFAMIO: And on that note, too, NCIS -- the SARC will send the kit directly to our evidence facility in Norfolk. So the local office won't know about it. But it's a similar process. It will just be a number. We retain it and then if the victim unrestricts they give us the number and we go get it out of evidence.

MS. WILLIAMS: And the MPs keep our kits -- the restricted kits. They go from the SARC to the MPs and we just -- it would just be too much for us to handle in our evidence rooms.

MR. KRAMER: So I guess this is a question maybe for Ms. Williams or all of you. Does only the Army have a forensics laboratory?
MS. WILLIAMS: We are the executive agency for it, but they all --

MR. KRAMER: That was my next --

everybody uses --

MS. WILLIAMS: Yes. Everybody uses it, even the Coast Guard. We have other agencies -- federal agencies that use it also. But yeah, it's just we are the executive agency for it.

MR. KRAMER: And is it right -- the same area as the FBI lab?

MS. WILLIAMS: No, it's at a Fort Gillem Enclave --

MR. KRAMER: Oh, okay.

MS. WILLIAMS: -- in Atlanta, Georgia.

MR. KRAMER: So it's not at Quantico?

MS. WILLIAMS: No, sir.

MR. KRAMER: And if a case like -- I am sorry, Defamio?

MR. DEFAMIO: Yes, that's correct.

MR. KRAMER: I'm sorry. Mr. Defamio -- I apologize. If -- you talk about, like, happening overseas. So, say, if something
happens in Japan, is that shipped over to -- I am sorry, what --

  MS. WILLIAMS: Fort Gillem.

  MR. KRAMER: For Gillem. Sorry.

  MR. DEFAMIO: Correct. If it's unrestricted, NCIS will send it to the lab. If it's restricted it -- the SARC will send it to our Norfolk evidence facility.

  MR. KRAMER: I'm sorry. I was talking about unrestricted.


  MR. KRAMER: They all -- everybody -- all four -- all the Services send it all to the Army lab?

  MR. DEFAMIO: Correct.

  MS. WILLIAMS: Yes, sir.

  MR. KRAMER: Okay. And so when the -- when the National Academy of Sciences' forensic science report came out a few years ago, did that affect the lab at all?

  MS. WILLIAMS: Well, the lab started getting -- there used to be we did only ones
where consent was not an issue. But now we are
doing work whether there is consent or not
consent has been sent to the lab -- is allowed to
be sent to the lab.

Now, whether the -- everybody is --
you know, I don't have the numbers on all that.
But so it did increase it a little bit but there
-- and that probably some of the increase in FY
'16 they were sending some of the backlogs into
there. So that could be also one of the -

JUDGE GRIMM: Just to follow up on
that question, maybe the -- you were talking more
about forensic analysis methodology rather than
numbers.

Maybe another way to get at that is
who accredits your lab? Where is the
accreditation of procedures used for lab
analysis?

MR. POORMAN: So the American Society
of Crime Lab Directors, the ASCLD, does their
certifications and I think last year that's what
they periodically go through and they had ASCLD
accreditation I think well past 18 years. It's been around for some time.

So I don't know the extent to which it impacted not Army but I think they had in place accreditation standards and processes that met the requirements leading up to that. They've been kind of a leader. I am Air Force, complimenting the Army. But for some time and very impressive, the ASCLD -- American Society of Crime Labs.

MR. KRAMER: So I think this is my last question. It may again be for Ms. Williams. Everybody else trains at Glynco but -- except for the Army. Is that because just the Army is large enough to have its own training program or -

MS. WILLIAMS: Well, yes. For the most part, yes, and plus we have had that training for a long time and it doesn't require us to go to another training to get specific training for the Army.

So we are able to do all the training across from -- you know, to start getting right
at the U.S. Army Military Police school.

JUDGE BRISBOIS: Madam Chair, just a follow-up on the numbers in a different way.

There are restricted forensic kits that are collected and forwarded for anonymous retention pending an unrestricted change in status potentially at some point. Do you have those numbers? Do you know how many unrestricted kits you're holding right now?

MS. WILLIAMS: Restricted.

JUDGE BRISBOIS: I am sorry. The restricted kits that you're holding. Yeah.

MR. DEFAMIO: I don't have the numbers here.

JUDGE BRISBOIS: I mean, is that collected? Do you --

MR. DEFAMIO: We have -- yeah, that we logged in when they come to the evidence facility so we know how many. We just don't know who they belong to.

JUDGE BRISBOIS: Well, no. I know that but --
BG SCHWENK: He wants to know how many.

JUDGE BRISBOIS: Yeah. We were just -- I am wondering about volume, not identity.

MR. DEFAMIO: I can get that number for you. I don't have it right now.

MR. POORMAN: We can -- we can get that too for you. We have -- we track. There is a number within our management system that identifies it being a restricted kit in our inventory and we can certainly get you those numbers.

JUDGE BRISBOIS: I mean, that plus the cases that have been opened for unrestricted reports kind of provides a bigger -- bigger picture than just the cases that are being investigated. So -

DR. SPOHN: So I am interested in the protocol for conducting the forensic medical exams.

With 50 percent or more of your reports occurring a month or more after the
1 event, I am assuming you don't do a forensic
2 medical exam with those victims.
3
4 So the forensic medical -- is there
5 some -- I've worked with Los Angeles and theirs
6 was within 72 hours. I don't know. What -- what
7 is your standard for when you would conduct a
8 forensic medical exam?
9
10 MR. POORMAN: Well, it varies. If we
11 had our choice, it would be out probably about 10
12 days out. So we get into what is an exam and
13 what could it yield.
14
15 A lot of -- a lot of folks realize
16 it's, of course, swabs and how long sperm can be
17 found in the -- in the vaginal wall certainly
18 impacts that data. But so do physical injuries.
19 And so it depends on the circumstances but you
20 can end up with bruising and other scratches and
21 things that are well outside of the 72-hour
22 window.
23
24 So we would like to go to the 10 --
25 this brings us into it varies who does our
26 examinations. And so while we don't have the
same nurses at every location, we don't -- and
some of our medical facilities were, in many
places, more robust in their abilities to handle
sexual assault cases. And where they aren't,
then the guidance in the DoD and within the Air
Force, for example, there is guidance that says
you'll establish a medical facilities, treatment
facilities. You will establish capabilities with
the local community, contract as needed. And, of
course, those services vary by how robust those
services are in the local community. And they
have their standards for when they will conduct
and how long they would -- when they will conduct
out to a certain --

So it varies for us. Our forensic
consults with forensic folks for that training.
And for the most part, we try to go for 10 days.
Seventy-two hours is very preferable if we can
work those, but it depends on circumstances.

But to your question, yes, when you
get beyond that, it starts to diminish in terms
of return on the amount of information that we
would typically see.

But others have helped us develop those protocols for -- like Dr. Markowitz -- in the development of the protocol.

DR. MARKOWITZ: So just to add to that, the training that's done that is tri-
Service at the AMEDD Center and School, seven days is the time frame that is taught for -- within the DoD and medical facilities.

But Mr. Poorman's right that a lot of the sexual assault medical forensic exams are going to the civilian component. So right now, the average nationally is 96 to 120 hours for that.

MR. DEFAMIO: At NCIS we mandate our -- the agents have to do the exam or request the exam if it's under seven days with the victim's consent, of course. But we had that as a firm -- they have to try to collect the exam if it's within a week.

DEAN HARRISON: Madam Chair.

CHAIR BASHFORD: Yes.
DEAN HARRISON: This is for all of you. Since you essentially have worldwide jurisdiction for -- under the UCMJ and the statistics you get are basically worldwide, I am wondering if there is any requirement in the military that statistics be kept by military installation, like crime reports for civilian police departments or campus crime reports for educational institutions.

Do you know, for example, either informally or formally, that Fort X or Air Force Base Y has a higher rate of sexual assault than the next one down the road?

MR. DEFAMIO: NCIS has conducted -- we conduct an annual crime report that we put out for both the -

DEAN HARRISON: By installation?

MR. DEFAMIO: -- and we can break it down by installation. The report we put out will be overall for Navy and Marine Corps but we do keep those stats for our investigations per installation.
DEAN HARRISON: That's your initiative or does the DoD require that or --

MR. DEFAMIO: That's -- they require the annual crime report but we do the -- we keep those stats ourselves.

MR. POORMAN: And we do, too. We all collect crime data. We call it DIBRS, Defense Incident-Based Reporting. That feeds into NIBRS, the National Incident-Base Reporting. That feeds the Uniform Crime Reporting. So we all maintain that.

In fact, our case file numbers start with a number that's a DIBRS number that collates with a NIBRS number that then ensures we can capture cases by type, and then we have it by location.

So we can provide that for our investigations, which are the felony-level cases.

DEAN HARRISON: Is -- oh, I am sorry.

MS. VOGEL: The Coast Guard also captures that data but you need to remember that it's wherever they are stationed that may not be
where it occurred. So we capture that data as well.

MS. WILLIAMS: We do also but we try not to compare installations to installations in reports because it tends to not -- well, you could have a commander say, my installation is better than yours kind of thing. Yeah. Okay, so you don't want to do that.

DEAN HARRISON: It seems to me that when there is a change of command the incoming commanding officer will be told you need to improve readiness or you need to improve this or that.

Are they told that there's a crime problem on your base?

MS. WILLIAMS: Well, our agents -- the special agent in charge at the installation level they will give a report to that commander.

Now, they won't compare it to another installation but they will give it to that commander what's happening on his installation, what's going on now, where -- you know, if there
is a trend here or not a trend there, you know --
you know, they explained all that to him and they
usually give it to the commander.

They can monthly, depending on what
the commander wants because they can pull all
that data out of our Army Law Enforcement
Reporting and Tracking System, ALERTS, and they
can get all that data from them -- from that.

DEAN HARRISON: Is this data available
generally to the public or to Members of the
military?

MS. WILLIAMS: Once it's published in
the crime report.

DEAN HARRISON: And so if I am trying
to choose my next duty station, and I've got a
bunch of dependents with me, will I know that I
might be choosing a duty station that has a crime
problem?

MR. POORMAN: I don't know of a -- of
a product out there that speaks to that issue,
and it's -- there is some complexities to that,
and it's the demographics largely of populations.
Our bases aren't equal. We have --

DEAN HARRISON: I ask because I have
to annually submit a report to the Department of
Education about crime on my campus even though I
don't have a police department.

And prospective students and their
families use them to judge whether or not they
want to attend my school.

And civilian police departments do it,
and I choose whether or not I want to buy a home
in a neighborhood. Now, granted, military people
don't have total choice, but it seems to me that,
you know, when they are choosing what's on the
list for their next duty station, that might
become an issue.

MR. POORMAN: Yeah, I need to -- so a
training installation where we have a very young
population is very different than some of our
installations that have a very high percentage of
married population.

So it'll vary by base. But we can
make available -- the data available to the
Service. It would be up to the Services to

decide how they -- how they handle it.

CMSAF MCKINLEY: I appreciate you all

being here and you have great organizations,

personnel. We respect you all very much.

Our military is continuing to evolve.

We are more joint than ever. We have joint

basing.

We deploy together to joint locations,

live together in joint locations. You know, our

family housing, joint -- in local communities,

joint.

But, you know, I know you do a lot of

collaboration and that's a great thing but, you

know, you all have different training on sexual

assault -- different levels, different links and

different schools.

You know, and Mr. Poorman, as you

said, you all do things in different -- a little

bit differently. As we are more joint and we

have cases that go forward in court with Army

versus Air Force or whatever, and we have our
agents that go out and investigate, you know, all
these cases, is there anything collaboration wise
that would move them forward to make sure that we
all receive the same type of training and get
that done so we can be more efficient and not
have the big differences between the branches and
Services.

MR. POORMAN: Well, if you look at our
training, and then more importantly perhaps you
look at the product, you look at the
investigative sufficiency associated with that, I
think it's probably the best major to the extent
to which our training and our policies.

DoD IG has looked at that. And so I
would defer to perhaps that assessment that was
done with regard to what our differences and
similarities are and then what the outcomes are
in terms of sufficiency of what we're producing.

There are different numbers in terms
of amount of time spent on courses, perhaps even
slight differences in context. But I would
suspect, and subject to you all taking a look at
that, is that a lot of what we do is very, very similar and equally sufficient to handle these kinds of cases.

As far as joint base and the assets, it's created opportunities to actually collaborate and work together. In fact, we have an MOU between our agencies on how we handle cases in joint base environments because the potential conflicts and complexities of that.

And generally, it boils down to, the Service for the individual who's accused takes lead agency under those circumstances. The other providing support is necessary sometimes on a joint base with NCIS. They may get the call and respond and handle the initial crime scene, and sort out the initial.

And then once it becomes evident that it's an Air Force person who's being identified as responsible, they'll contact us. We'll assume lead and they'll provide a supporting role for that.

And I think that's another example of
where I've not heard, and in fact I've heard
quite the opposite, that our folks work
seamlessly largely in the response and handling
of those cases, which would reflect to some
extent on the similarities of our processes and
our policies.

MS. CANNON: Good morning. I wanted
to follow up on Dean Harrison's questions. Is
there a comparative analysis of the numbers or
percentage of cases that come out of different
locales regarding each of your agencies? Do you
understand my question?

Okay, there was a question about
whether you know what locations, what
installations have what percentage of your cases.
And it seems like you do have that information
and it's forwarded to higher up. Forgive me, I'm
a civilian, though I'm an Army brat.

So my question is has anybody analyzed
that for each of your different organizations as
to where the percentages come from and what that
might mean?
MR. DEFAMIO: I don't know of us putting out any product where we analyze, you know, comparing bases or locales. But of course, like, our manpower will be based off of which offices have a higher percentage of cases across the board.

So we use it for tracking it for those purposes. I can't recall any product that came out and said, like, you know, Naval Station Norfolk has X amount of violent crimes compared to Naval Station Jacksonville or anything along those lines.

But theoretically, the data is there to do that because we do have each case tracked what office was handling the investigation.

MS. VOGEL: And as you mentioned earlier, the information that is passed or exchanged, we do that, Coast Guard does that as well. We have a SAPRO crime analyst that, for about a year and a half now she's been with us. And she actually has compared some of that information for us and it has been reported up
the chain.

CHAIR BASHFORD: Judge Walton, did you have a question?

JUDGE WALTON: Yes, in regard to your investigator staffs, how diverse are they based both upon gender and race?

MR. DEFAMIO: I do have that.

MS. WILLIAMS: I have that. Somewhere around here.

MR. DEFAMIO: The numbers are very small. Yes, for NCIS we're broken down for our special agents only investigation, 815 male and 214 female. And for, did you ask by race, too?

JUDGE WALTON: Yes.

MR. DEFAMIO: Race we have females one Native American, 14 Asian/Pacific Islander, 29 African American, 20 Hispanic, and 150 Caucasian. And for male agents, 3 Native American, 32 Asian/Pacific Islander, 64 African American, 71 Hispanic, 3 Hawaiian, 640 Caucasian.

JUDGE WALTON: Let me just ask this question also. Once somebody is actually accused
as charged, do they have access to investigators
to do a defense investigation on their part, on
their behalf?

MR. DEFAMIO: Currently we do not have
assigned defense investigators, but that is in
the process. I don't know exactly when that will
be set to come online, but as of right now, no.

MS. VOGEL: Coast Guard has a process
by which defense can request, and I think you've
got a copy of the Commandant Instruction 5520.5
series instruction, and it's actually denoted in
there.

MS. WILLIAMS: And if the defense
requests something from us, we will actually do
that portion of the investigation for them.

CHAIR BASHFORD: I know Mr. Kramer
had, Judge Grimm, did you have a --

JUDGE GRIMM: No, I think it has been
responded to by one of the other members of the
committee's question.

CHAIR BASHFORD: Well, I had one more
question which is we heard from the JPP, and I
think we've seen, but it's anecdotal data that
some MCIOs felt that their initial access to a
complainant was delayed substantially by the
appointment of counsel, or the introduction of
counsel for a victim.

Do you have data on that, or what have
your various experiences been?

MS. WILLIAMS: That is definitely
anecdotal data, ma'am. We don't have exact data
on that. But we have been working directly with
the special victim counsel and working with our
agents. We had joint training recently with the
special victim counsel program manager with our
sexual assault investigators to try to, you know,
get the understanding of each side's job.

CHAIR BASHFORD: There's, nobody keeps
data between date unrestricted report filed --

MS. WILLIAMS: No.

CHAIR BASHFORD: -- and data first
interview of the victim?

MS. WILLIAMS: Not easily pulled by
our database. I mean, it would have to be
probably looked at each case to pull that out on its own. I mean, we would be able to get when was initiated, but the interview would be actually have to by hand go over the case to figure that one out. Yes, ma'am.

MR. DEFAMIO: That's true for us as well, but we do keep track of, our analyst actually will read the case when it comes out and mark if it's restricted to unrestricted, the dates. But correct, our database, we can't just query that to pull it. We actually have to have it tracked.

CHAIR BASHFORD: But anecdotally, do you then feel that the introduction of the counsel for the victim has delayed that initial interview?

MR. DEFAMIO: Well, anecdotally I'll say when it first came out about for years ago, we did have some significant issues with cases with delays. A lot of that in the counsel's defense was they were trying to get their program set up.
But we did have some cases where the counsel wasn't available for up to two weeks before they could talk to their client and we were able to actually do an interview.

We've engaged that in many ways, especially at the headquarters level. We hold regular meetings with the VLC program. And overall, we've seen it, we've actually put out to our agency too when there is a significant delay to annotate that in their open report.

And I haven't seen that come across significantly in well over a year. And I think a lot of that is just engagement, the VLC program maturing and getting online and just more engagement at both the headquarters and field levels with the VLCs. But it's really turned into a very positive relationship that I think has been very beneficial to the victim.

MR. POORMAN: Yes, we would agree at the Air Force. We've had it the longest. And at first it was like any new program you roll out. You've got some significant hurdles to work with.
It has significantly matured to the better.

At the beginning, folks that were assigned, now all volunteers, all want to do the job. The relationships with investigators and the special victims' counsels is, I would characterize, very good.

Some of it's normalizing for investigators, appreciating this is a new entity in play and that there are protocols and processes and working through that and normalizing those relationships.

I think it's very positive. There are occasions -- and the ones where you would run into circumstances where there could be a little friction would be a fresh report. Happened last night. We had concerns for getting to the evidence, getting to the suspect, getting to the crime scene, getting the examinations done.

But there's a provision within the legislation that drove -- within DoD policy -- for exigent circumstances in which we may need to get access. And now that all of the special
victims' counsel here have cell phones,
understand the sense of urgency necessary under
some circumstances, they've largely resolved
themselves.

And we're fans of the special victims'
counsel. We've heard victims, when they do
decide to come forward, and many are delayed
reports, they come with greater confidence, and
they feel comfortable in sitting down with
investigators. And we have an understanding of
each other's roles and expectations. And it
seems to have worked itself out quite well.

MS. VOGEL: Very similar to the other
Services, the SVC program is new for us since
2013. So we had some growing pains. And there
are still some very few instances where we'll
hear that, hey, I was delayed getting access to
speak with a victim.

But like the other Services, I think
for us, the SVC -- I'm pointing to Ms. Christa
Specht, who is over at the SVC program. The SVCs
come to our trainings, you know, for our special
agents in charge, our assistant special agents in charge.

They reach out to the CGIS units to speak with the agent. So I think while there are some hiccups, I think we're working through it fairly well.

JUDGE BRISBOIS: I have a follow up question about resources for defense investigations. For CID, trial defense counsel comes and asks for some investigative work. Is that done confidentially? Is the agent that's assigned to it the case agent? I mean, you know, or is there part of the prosecution team generally?

MS. WILLIAMS: Well, we're an independent investigation agency. So we do, we investigate the case to the truth, not necessarily for the prosecution and not necessarily, you know, we investigate the leads as they come across.

JUDGE BRISBOIS: But the results of that support aren't confidential just to the
trial defense service?

MS. WILLIAMS: No, it's for all of them, yes, sir.

MR. POORMAN: For Air Force when we, and so I will say up front we don't approve many where we provide defense services in terms of investigations. But we do on occasion. They're generally homicides or fairly major cases.

We have very specific guidance, investigators are not working for either side at the time. They don't have law enforcement authorities to exercise warrants and do searches.

They do, depending on the convening authority's appointment, they can get confidentiality and they can work for the defense under that confidentiality in which they are effectively working as a defense investigator.

We don't get any information back from them.

But during that period, they're effectively detailed outside of our organization with some specific guidance on what they can and can't do.
MG ANDERSON: I have a question as related to career progression. So when you gave us the overview of your organizations, you mentioned the number of investigators you have. And I think for the Army they get an individual skill identifier.

But is that a, are they handling a variety of cases or are they focused on sexual assault investigations? I'm just trying to get a sense of whether or not there's a career path or if someone might specialize in handling these kinds of investigations, or is it an additional duty that's assigned based on the training that they receive?

MS. WILLIAMS: It actually depends on the size of the office. It depends on the size of the office. If I'm at Hunter Army Airfield where we hardly have any sexual assaults, or if I'm at Fort Bragg, we would have at Fort Bragg which has more agents, more sexual assaults, we have a team there.

And that person may work that team at
Fort Bragg, but then they may go to Hunter Army Airfield where they wouldn't have a team but they would be a person who has had more experience and may take that one or two cases that comes in at Hunter Army Airfield.

And so we don't have a specific track for sexual assaults except for the civilians that we have because that's all they do. But the agent is all trained up so that no matter which office they go to, they're ready to go as they go through their career. It doesn't hinder or, I mean, it could help their career.

MG ANDERSON: I was just trying to think in terms of people who may be more proficient than others. And so you may have some variety across the installations.

MS. WILLIAMS: Yes. And we discuss the ones that aren't as proficient and get them proficient, or find another place for them.

MR. POORMAN: With 40 percent of our caseload being sexual assaults, many of our agents get some proficiency just because they get
a lot of cases that come in.

I think this all though is a good question in that I think there's a perception sometimes that you have to be a specialized sexual assault investigator to handle a sexual assault case.

It's a violent crime. We train all of our investigators to handle responses to violent crime. As I mentioned, responding to a crime scene and the collection of evidence, we can have this in a robbery, we can have this in a burglary.

There's some specific evidence issues associated with sex offenses. There's some specific concerns with counterintuitive behavior involving victims of sex offenses. There's some concerns with how memory gets laid down with victims of violence and how that gets -- those are additional areas where we have to talk to investigators.

But we provide a lot of basic investigative skills to handle violent crime
cases to include sexual assaults in our basic course. The advances just kind of allow for additional cognitive interviewing, practical exercises that hone those skills to do that.

But we, like the others, it varies by location. A deployed location and have an investigator who happened by luck of the draw to end up being a deployed individual, and have counterintelligence background and I have to lean on that, basic skills.

But the reach back, it's always there at any of our locations for those individuals to get specialty support, sometimes flying in to assist in those cases if they don't have that capability. So triaging is a big part of what they need to do and then reach back is a solution in many instances.

JUDGE WALTON: During the investigation, is there any coordination between investigators and the prosecutor? At what point does that coordination take place?

MS. VOGEL: I'm not going to speak for
the rest of the Service, although I think I could. That's early and often. You know, we're not asking permission, can we do this with the investigation. But we are coordinating with them early and often.

MR. POORMAN: DoD instruction 5505.19 which requires within 24 hour notification of the team which includes the attorneys and the victim advocates, SARCs, and investigators, notification and within 48 hours of collaboration.

And so because of these requirements, so we had these I think in many instances before the requirement came in because it's an essential part of developing a case is having the prosecutor involved and trying to help scope what violations are we even looking at and then to what extent do we, what elements are we trying to pursue in all to go with it.

So it is mandated, we have some specific guidance.

JUDGE WALTON: And as far as defense counsel is concerned, what percentage of
individuals charged are represented by members of
the military as compared to the --

    MR. POORMAN: We don't have those
numbers. My experience is that the majority of
active duty members are represented by military
defense attorneys. It's fairly rare to have a
civilian defense attorney in my experience.

    We occasionally will, it's up to the
client to decide. But in most instances we see
military defense attorneys associated with active
duty suspects in our cases.

    JUDGE WALTON: Do you have statistics
regarding the conviction rate in sexual assault
cases?

    MR. POORMAN: We don't. I think for
Air Force at least we would defer to our JAG
Corps to provide those kind of numbers.

    MR. DEFAMIO: NCIS does track the
conviction rates. I don't have them on me, but
we do track that.

    MS. WILLIAMS: And Army CID does too.

    MR. KRAMER: I'm sorry, can I ask, I
appreciate your answering all our questions, it's very helpful. Can I ask you a couple of questions about the statistics? It seems like the Air Force and the Army, 20 percent of the cases involved with civilian suspects whereas the Navy, Marine Corps, and Coast Guard it's only 10 percent. Does anybody have any idea why there's that huge difference?

MS. WILLIAMS: They're in the water.

MR. DEFAMIO: We don't have many on the ships with us. But I can't really speak to what the difference. I do know when we have a civilian subject, it's usually because it occurred on base or some other exclusive federal property, like for example Camp Pendleton is exclusive federal, so there's no local jurisdiction to take it.

Otherwise, usually if it's a civilian we will have a civilian agency take the lead and we'll provide whatever assistance as the case may be.

MR. KRAMER: So kind of connected to
that, it doesn't say how many of the victims were

civilians or uniformed. Do you have the stats on

that too?

MR. DEFAMIO: I do have those stats.

I don't know if I got them in here.

MR. POORMAL: We can certainly get

them, we have to track it.

MR. KRAMER: And connected to that I
guess is one more question I have about the

stats. Is there a record how many of them the

victim and the suspect are known to each other as

opposed to strangers?

MR. POORMAL: Well, as I think I

mentioned, RAND Corporation in a contract with

the Air Force looked at that recently. And the

number they came up with was 85 percent was --

MR. KRAMER: Known to each other?

MR. POORMAL: -- known to each other

of our cases. That's just Air Force cases they

looked at, 85 percent were acquaintances.

MR. DEFAMIO: I do have those numbers

right here. If you would like, I can give you a
copy. But it breaks down for the different types of sex offenses and then the different relationships, spouse, acquaintance, coworker.

MR. KRAMER: And then I just have one last question back to investigations. So do I understand that the Air Force is the only one that if a suspect wanted their own investigator so to speak, independent, whatever you want to call it, the Air Force is the only one that currently provides something akin to that?

MR. POORMAN: No, we don't, it might have been Army that mentioned. You're talking a defense investigator?

MR. KRAMER: Defense, somebody for the suspect, right.

MR. POORMAN: They may request one of the convening authority. And then if the convening authority comes to us and asks, the commander will most likely make a decision whether to provide one or not. But the only cases that I can remember recently where we've done that have been murder investigations.
MR. KRAMER: So only the convening authority can authorize that?

MR. POORMAN: I believe so, but I would have to defer to one of our attorneys on that. It's worked through that side of the house, and then we get a request. And I think in all instances I recall it's come to us from the convening authority asking us to provide the assistance.

I think the request is for a defense investigator and then they sort through what the options are in providing that. And sometimes it comes to us, and other times it may go elsewhere.

JUDGE WALTON: So you wouldn't know what percentage of individuals who are accused have defense investigators?

MR. POORMAN: That's correct, I would not know.

CAPT TIDESWELL: I'm sorry, maybe this can help. The Judicial Proceedings Panel identified this as an issue. And right now, imbedded in Navy legal offices in the defense
shops there are defense investigators.

We could argue whether or not there's enough of them, but the Navy actually has a pilot program, and is the first and only Service that provides ostensibly investigators for clients, for defense clients.

The JPP has a report and has made a recommendation that that program should be adopted by all the Services and that the Services should look into having defense investigators assigned through the defense shops.

MR. KRAMER: Thank you.

MS. VOGEL: I'll refer you again to the Commandant Instruction 5525 series where on Page 18 we specifically address investigative assistance to defense counsel.

MR. KRAMER: Thank you.

CHAIR BASHFORD: Now, I know until at least recently you only had subpoena power once charges were preferred. Has that changed?

MR. DEFAMIO: We can use the DoD IG subpoena for certain violent crimes that we can
apply for that through the Department of Defense
to get that subpoena. Otherwise --

MR. POORMAN: Yes and that's, we still
use it frequently. It's a subpoena that we use
only in the investigate phase so we are able to
get that done. The DoD IG subpoenas during the
investigations.

CHAIR BASHFORD: What's the
turnaround? Like, if you have to get video at an
off-site bar, what's the turnaround time on
getting a subpoena?

MR. POORMAN: I don't have the
numbers. It's not been an issue --

CHAIR BASHFORD: Twenty four hours,
two weeks?

MR. DEFAMIO: Again, I don't have
specific. I can give an anecdotal.

MR. REDMOND: Chris Redmond,
Department of Defense Office of Inspector
General. I am not in the subpoena branch, but I
have been there during recent briefings where
they talked about the IG subpoena program. It
has increased over the last several years.

Every year, the IG subpoena program
has received more and more requests. I believe
the latest turnaround is 72 hours. But it also
depends on the complexity of the case. Each case
is different on its own merits. But the standard
that they're shooting for is either 48 or 72
hours.

MR. SULLIVAN: Ms. Bashford, so
Congress and the Military Justice Act of 2016
authorized investigative subpoenas issued by the
military judiciary. The effective date of that,
it hasn't yet taken effect.

The effective date is going to be on
a date to be prescribed by the President no later
than January 1st, 2019. There is a proposed EO
out for public notice and comment right now that
proposes a January 1st, 2019 implementation date.

So if the President were to go that
route on that date, a new form of investigative
subpoena would take effect within the military
justice system.
CHAIR BASHFORD: Thank you.

JUDGE GRIMM: Mr. Sullivan, what's the enforcement mechanism of that if our Chair has asked the question, it might come up frequently in these cases, it's at a location, a bar for example.

There's a question that there's a need to get a videotape before the loop tapes over it again and it may be lost. You have a subpoena, administrative subpoena issued by a military magistrate or a judge, and then it's not complied with.

In federal court we all the time get agencies come into our court to ask us to issue show causes on contempt as to what it's not been enforced. What's the enforcement mechanism if you do have someone who wants to quash the subpoena?

MR. SULLIVAN: So there's two different tracks there. So one of the other provisions of the Military Justice Act of 2016 is authorizing military judges to take certain pre-
referral actions for which they currently do not have authority.

One of those actions is for an entity that wants to challenge the subpoena being issued. So if the recipient of the subpoena authoritatively challenges it, there's an avenue there.

If on the other hand the recipient of the subpoena simply doesn't comply, then the remedy is you, Your Honor. Congress has authorized the United States to go into US District Court to try to enforce that subpoena against a civilian.

JUDGE GRIMM: Where it's challenged, does the challenge initially get heard by the issuing authority?

MR. SULLIVAN: So that will be in the implementing regulations that are out for public comment. So there's no definitive answer to that yet. But the recommendation will be exactly that, that --

JUDGE GRIMM: And then if that results
in a denial of the motion to quash, the
enforcement of that if resisted would go to
Federal District Court?

MR. SULLIVAN: Exactly, Your Honor.

BG SCHWENK: I have a couple of
questions, if you don't mind. On the restricted
reporting program, when that was first bandied
about, there was concern through the DoD IG from
the MCIO community about the downside of that,
which is somebody that has committed a sexual
assault is not being arrested and being held
accountable, and there were some concerns. Where
does that stand in the MCIO world now? What's
the attitude towards restricted reporting now
that we've had it for a number of years?

MS. VOGEL: I'll speak -- I'll start
by speaking to that. In 2007 was when the Coast
Guard implemented restricted reporting. And my
first thought, as a law enforcement officer was,
I'm not going to find out about this?

And I was reminded by my director at
the time that, hey, we're not finding out about
these. So if we can at least get these victims in so they can speak to someone, those individuals can hopefully help them understand what the process is and get them services. Then maybe they can move forward.

So initially I think -- and there was concern about victim advocates, you know, being entered into the -- they'll being in the room with the investigator and potentially -- if the victim chooses that. So there was concern about that.

I think again, like the SVC program, there were some growing pains when that was first implemented. I see it as a positive thing now, and I think generally speaking, it's seen as a positive thing because we're actually getting those people in so they can understand what services are available to them.

And even if they're not ready to move forward with the criminal investigation, which we would want, the investigators would want, but we need to get them in so they can at least get
help.

MR. POORMAN: Anybody else? So I remember that it was very controversial. And I think we all as law enforcement officers felt that we should get it, and we should be able to act on it.

I still think it's great when we get information and we can act on it. I think to Bev's point is before we had victims that just didn't come forward at all. And so we don't know what we didn't get before that we are now getting at least as restricted cases.

What we want is victims that want to participate. I mean, we need victims that want to participate in the military, in the criminal justice system. So without that, not much happens.

So we have victims that come forward and they're unrestricted and they decide they don't want to participate. The consequences are almost the same in that there's very little we can do outside of trying to package a case around
them, and that doesn't work so well.

So now that the SVC's I think are onboard and our confidence is improving that not only they can go restricted or they can do it with some legal advice and assistance to make informed decisions if and when to come forward.

Are they accumulating? Yes, the numbers are accumulating and certainly there could be cases in there that are solvable, workable. But we can work with what we get.

BG SCHWENK: Thank you. Anybody else?

MR. DEFAMIO: Yes, pretty much along the same lines.

BG SCHWENK: The expedited transfer program as I understand it, you know, the victim has a right to ask the commander to be transferred to some other place so they're away from the alleged perpetrator.

And the question is what effect does that have on the investigations if, you know, one minute the person is here and the next minute they're 500 miles away or 1,000 miles away or
wherever they are. Are there any views on that?

MR. DEFAMIO: Anecdotally on there, I think it can extend our timeline as far as getting to witnesses, especially the victim. I think the bigger impact I've seen is on the back end as far as providing the victim services and updates because the case, our case will stay with the subject.

If it happened in San Diego that's where our case will remain. And if the victim moves to Norfolk, the victim services will shift over there. And of course, our requirement to keep the victim updated on the case progress.

So some challenges on that end. But as far as the actual investigation, I don't think it's had a major impact on our timelines or getting the investigation complete.

MS. WILLIAMS: And with the re-interviews of the victims, you know, the initial person may have built some type of rapport with them and so that, you know, they have to go through the whole thing over again if they need
to get some more information from a different agent down the road.

BG SCHWENK: Thank you. Could you, I know you talked about the relationship with the trial counsel, and I think the Army said that you're going to have a joint class for training or something with investigators and trial counsel together in August.

And we talked about the beginning and, you know, early and often for the relationship. How about at the end? You know, one of the anecdotal things that came out of talking to agents was those trial counsel will never stop asking for more information.

We just want them to make a decision and move on with the case. And you know, it's not beyond a reasonable doubt, it's beyond a shadow of a doubt. What about the end of the investigator phase and the relationship with the trial counsel, how does that work?

MR. POORMAN: We have a requirement, it's in Air Force instruction pertaining to sort
of our attorney friends and then from us that
they meet early and often, and then there's a
closure session.

There's a discussion at the end,
what's allowed. What haven't we anticipated,
what defenses haven't we anticipated, what
closures we need on it. And we do the best we
can to then at that meeting decide that the case
is sufficient, prepare it for closure, and we
move forward.

It is inevitable that after closure
things arise. And we attend to them the best we
can depending on how probative they are, how
serious they are, how much they would change an
outcome to the case. And that's kind of how we
work that.

MR. DEFAMIO: NCIS is required to keep
our cases open until final adjudication. We do a
thing we call active investigation complete
pending adjudication. But after that the case is
still open.

The agent is still of course
corresponding with the trial counsel, and if trial counsel has specific requests, the agent will, you know, handle them through the open case. So we would continue that all the way until we get our results at trial.

MS. WILLIAMS: Yes, and our cases are considered in a final report state so the prosecutor has something to go on with. But if they ask for more investigative activity, we do the more investigative activity if it's reasonable. Sometimes, you know, we have to make some judgement calls on that too.

MS. VOGEL: Very similar for us. Ours, once the investigation is completed, it's closed, referred. And then again same. If there are leads that they're asking to be followed up, then they'll look at those.

BG SCHWENK: On timelines, so as I understand it, the rule when we first reacted we went way over one way and said only an MCIO agent can interview the victim. And not only that, only the MCIO agent can work the case, even the
contact case.

And then that policy is now changed I guess. And so a number of you indicated that you have some of the non-MCIO criminal investigators now working with your installation MCIO offices.

Is that going to help on timeliness do you think that now there's extra resources, and if I'm an MCIO person, you know, agent, I can take the contact cases and call in my buddies from wherever, Marine-CID or, you know, whoever they are and give those to start working and I can focus on the felony cases or --

MS. VOGEL: Just for clarification sake, CGIS works all those cases. We don't turn them over to non-CGIS personnel.

BG SCHWENK: Well I think everybody's got to keep working them. It's just a matter of who you can use for it.

MS. VOGEL: Right.

MS. WILLIAMS: We have the MPs that assist us in the office, so it's kind of taken out of hide. They're not assigned to us
necessarily. They may be either ADCON or, you
know, some type of support to us.

We had some, we had DST team members
that were assigned to the offices and we were
able to then transfer them to sexual assault
investigators depending on where they were at
and, you know, what they needed.

But it's more of a taken out of hide
from the MPs to come over and help us. But they
all work with CID. It's not like they're over at
the MP station working it. They're at the office
working with somebody.

BG SCHWENK: Do you think that will
have a helpful effect on getting things done in a
more timely manner?

MS. WILLIAMS: Well most, a lot of the
cases are contact cases and it does assist. The
more people we have to help with the
investigations of course the better, and the
least amount of time we'll have on those
investigations.

MR. DEFAMIO: I think it will get us
improvement on timeliness on the front end, I
mean, within the first 72 hours knocking
interviews, crime scene, figuring stuff out.

I don't know if we'll see it reflected
in the overall timelines because a lot of those
are extended by, you know, sending leads and lab
time and things like that. But it will
definitely have a front end effect to the
investigation.

JUDGE WALTON: Do you know what
percentage of your cases are male on male sexual
assaults?

MR. DEFAMIO: I do have that data,
whether it's in here at my fingertips right now.
I don't have it on me right now, but I can get
that.

MS. WILLIAMS: Yes, we can get it.

MR. POORMAN: In 2016 out of our
almost 1,000 cases, 128 I believe were male
victims. I can't tell you how many were male on
male and how many were female on male, but it was
about a ten percent or so.
CMSAF MCKINLEY: I think along these cases I saw some recently that those cases were mostly on duty, and they were associated with hazing, am I right?

MR. POORMAN: There's a strong correlate to that, yes.

MS. WILLIAMS: Yes.

MR. POORMAN: They were sexual assaults, but they were, the context was hazing.

MS. WILLIAMS: Yes, exactly.

BG SCHWENK: If you guys were the Secretary of Defense and you had the authority that Secretary Rumsfeld always wished he had, which meant no law was in your way, no regulation, you can do whatever you wanted --

MS. WILLIAMS: No Constitution?

BG SCHWENK: -- what things would you do to try to make the system better, however you define better. Do you have any ideas of the things you would like to see happen? More people, less something, I don't know. Change policy, add a new policy, get rid of a policy.
MS. WILLIAMS: More people, more

money.

MR. DEFAMIO: I think a simple more
surveillance cameras on our bases. I've run into
that repeatedly in investigations where we didn't
have a camera in the barracks hallway which could
have been key to, you know, was that person in
the room or were they not.

DEAN HARRISON: Ms. Vogel, I have a
question for you. You say that 49 of your agents
are Reservists. Are most of them in law
enforcement in their civilian lives?

MS. VOGEL: They are all law
enforcement. That's actually how I started with
the Coast Guard Investigative Service. I was
with Saint Tammany Parish Sheriff's Office in
Louisiana full time. And I was in Reserve with
the Coast Guard, and I became a Reserve agent
with CGIS.

DEAN HARRISON: So are those agents
required to go to through the same training as
the other agents, or is anything waived for them?
MS. VOGEL: They do not go, typically they do not go to CITP. We actually do have a few Reserve agents who are full time with other federal agencies. We actually have an NCIS agent full time and he's Reserve with us.

They go to state, you know, post academies. But a fair bit of the training that we have is open to them. Some of the trainings that I mentioned are open to Reserve agents as well.

DEAN HARRISON: And is the Reserve obligation the same as a typical Reservists?

MS. VOGEL: It is. It is, you know, the two days although it's not on the weekend. I mean, they can typically drill during the week and whenever needed.

BG SCHWENK: Okay. And you had retrained that NCIS agent --

CMSAF MCKINLEY: There were some cases where a member will be allowed to have separation in lieu of court-martial or non-judicial punishment. And the records that you have on
those people, do you keep those records? And if
they are allowed to separate, is there any
communication with the community that they may be
going to?

MR. DEFAMIO: Yes, first part yes. We
will have those records of what the disposition
was. So if it was separation of duty, we'll have
that. If they are not required to register as a
sex offender, which would have to be through a
special or general court-martial, then no we
wouldn't communicate that with the local
community.

We will do regular sex offender
notifications though to those that are convicted.

MR. POORMAN: That's convicted sex
offenders. So a conviction would have to be a
military courts-martial.

MR. DEFAMIO: Non-judicial, we
couldn't report that.

MS. LONG: On that, I apologize, I
wasn't here. So if this were asked and answered,
please let me know. It's about how you know if
you're doing a good job, basically what your
performance.

Did anyone ask about do you keep --
when I say performance, I mean what, I don't
necessarily mean it in the research sense
although there's some research component but how
you know if you're doing a good job, how do you
try and keep track of it. How do you try to
know? How do you try to improve?

MR. POORMAN: Very good question. Do
we make a difference and is it positive. I think
up until 2012, so has it been painful having the
Department of Defense IG looking through our
work? Yes, it has.

I think it's been great. It's peer
review. So I would say starting in about '12
with the assessments is the first time we
probably had interagency and external peer review
of our products.

So we're kind of new to this, about
five years into this. It has been helpful, and I
would defer to the reports where they looked
three times at our cases for sufficiency using standards that they identified as to how we're doing on that.

And the last two assessments we had cases with no major investigational deficiencies in any of our cases. It's minor deficiencies in several cases that would not have affected the outcome of the investigation in the opinion of the assessor.

So external and internally for OSI probably for each we have a quality control process which senior investigators with a lot of experience, we randomly select, today they will be selecting a random number of cases closed, investigation closed last week. And they will go through and look for sufficiency.

There's a science side to this if you do the right interviews, and then there's the art side at how well were those interviews done. And that's very different kinds of measures, a qualitative and quantitative kind of a look.

We have that data and we do do that.
And so those are our processes externally and internally.

MS. LONG: I would love to hear from the others. I just that I want to know do you sit down as part of that then with the SARC's or the prosecutor, the trial counsel and perhaps others to say okay, let's talk about our data or your data and sort of a how are we doing moment? Do you do that, is that helpful?

MR. POORMAN: We don't do that. It might be helpful.

MS. VOGEL: I would say --

MR. POORMAN: Formally.

MS. VOGEL: For the Coast Guard, it is weekly if not daily that I am communicating with my counterparts if you will at headquarters, the SVC who have done inspections over the SVC program, the SARC program manager, legal.

We coordinate often. We just recently did an SVC, a review regarding SVC and offering SVC. And that review was CGIS director had us do this review to see how many times SVC was
offered. And that was done with Ms. Beck and I.

So it's often that we coordinate with each other. And of course, the SARCs and the SVCs, they oftentimes are the individuals who have information about what was good, what was perceived as bad, that kind of thing.

And I think it's very helpful for us to collaborate with the other worlds at work here.

JUDGE GRIMM: Could I follow up with Ms. Long's question just because she raises a good point. We learned at the last session that there's a roughly 25 percent acquittal rate when sex related offenses are tried or court-martialed.

And I think the comment was made then that in the federal criminal justice system, if you were prosecuted with a 25 percent acquittal rate, you would probably have some questions asked about that. That's a high number compared to conviction rates in the federal system.

Ms. Long asked how you all evaluate
whether or not you're doing the right things. Is there any coordination among the investigators and the legal and the command to try to get a handle on what is it that if you have an acquittal, why that happened.

Was that because the command made the decision to go forward against advice by JAG? Was it because a victim recanted? Was it because of some forensic flaw in the analysis of the evidence, much about whether or not the forensic science meets scientific criteria and whether or not it can withstand the scrutiny required by the legal system before it can be admitted.

Something to allow an overview of why is it that a number which, at least to the civilian population, seems like a high acquittal rate.

MS. VOGEL: We will do hotwashes with legal to specifically look at that. I think one thing that people need to understand is that each case is on its own merits. A rape is not a rape is not a rape.
So it's kind of unfair to say well, you've got 25 percent, you're blowing it somewhere. You know, each case is different. So you have to really look at each case on its own merits.

JUDGE GRIMM: But that's my question is it may be just that the victim had a change of heart and did not testify in a way that was found to be sufficient to convince the jury beyond a reasonable doubt.

The question is not well, each one is different so we can't draw any conclusions from that. It's what do you learn from that that might inform how you act and where, if there are lessons to be learned, what part of the process is best to address it.

MS. LONG: I feel like I just need to jump in. I understand what a federal conviction rate might be from the state and local perspective. The conviction rates when you're actually doing what you're supposed to be doing are unfortunately quite low based on the research
just given what the law and the appropriate
application is and trying to avoid the
speculation that can sometimes happen in the
downstream orientation.

I think from the state and local side,
and again it's very hard because there's 58
jurisdictions, and I know you're here to answer
questions. But just to put this in context, we
know that cases that should be going forward are
often weeded out for the very factors that are
common in all of these cases.

And so we are trying to look at
complexity because a jurisdiction is not the same
as another jurisdiction. So if you're going
forward on what would be a very straightforward
case, that should be compared at a much different
layer than if you're going for a case with a lot
of variables, as a lot of the adult sexual
assault cases have, and we try to come up with a
method with Urban Institute, with RAND evaluating
rates to look at maybe we can capture this.

I only say that because I do want to
put it in context because it could also be a flag in the state and local world if there's a high conviction rate that too many are being pulled out. And we just don't have the data right now to know. We would think, I think, that we should see a higher layer of cases being prosecuted. Perhaps not great outcomes, but then as these get tried more, we should then see a higher level of convictions which is not there yet. Obviously you are your own microcosm so it's easy for us to look at you because you have all the data that we don't have across the country.

But I wanted to put it in that perspective too because one of the follow up questions I was going to ask is do you see trends. Are you capturing the factors like the kind of cases that are going forward to try and see okay, there's continued negative outcome, maybe we need training or maybe there's something that we could try and close the gap on, that would be my follow up.
I didn't mean to interject, I just
wanted to put that other information with you.

MR. POORMAN: I don't think we do a
cradle to grave assessment of our investigations
and how they contribute to or detract from the
ability to work those.

We do it anecdotally, and to some
extent I think it's effective. We have for
example at our advanced training our senior Air
Force trial counsel comes in and who sees a lot
of cases at various military installations, and
in general gives us feedback as to processes and
procedures and techniques we're doing well and
areas where we could improve.

But it is at that level and it's in
that way that it's done. Specific correlations
between convictions and not and whether it was a
bad interview that contributed to that or a lack
of collection of evidence, no hard data.

MS. WILLIAMS: CID has an IG team that
goes out and they look at the cases. Now of
course they're not looking at every case. They
do a random pull. And they'll look from the
beginning to the prosecution to see if there's
anything that they can help the office with on
what they did.

Now like Kevin said, we don't have the
data, and it probably would be a great thing to
see what, you know, what the problems were with
the 25 percent that, you know, if we had each
individual case that we're talking about.

MR. POORMAN: Yes. For example, I was
at the last session, heard the data presented,
and talked to my counterparts in the JAG
community, to what extent are we contributing to,
if you will, in any way that rate.

And if it's right or wrong, to what
extent our case is sufficient or insufficient.
Is there a correlation to that. And other than
anecdotally, that's all we kind of, we talk
through specific cases where it happened, but in
general as a body, no.

MS. LONG: And still on a good path
and trying to talk through it.
CHAIR BASHFORD: Mr. Markey, did you have any questions?

SGT. MARKEY: Yes. First of all, thank you so much for being here and sharing this information of course, and with an investigative background I can appreciate your positions that you're in.

A couple of things, so in the context of this Committee where we're, and I think that the question about have we seen a cradle to grave assessment, perhaps that's something within the context of this Committee that we can, you know, consider and look at and identify an opportunity to improve gaps in response, accessibility to more resources. I think that would be awesome.

I also want to go back to a couple of comments that Mr. McKinley and Ms. Anderson had made. Kind of dabbled into the consistent effort across the different agencies in their response to sexual assault.

And I think part of what we're all trying to do, especially in the civilian world,
it would be so important that no matter where a
victim might present, to whatever organization
with the system, that they get the same response.

    And I think that's everybody's goal.
I think that's what we should be striving for and
I think that's what they deserve. And so I
started looking, or I started asking, and this is
some of the things we did within our own
organization, whether we were able to effect it
or not, but how effective, efficient, and
consistent are we in our response.

    And I think those are some of the
questions that we have to critically take a step
back and look. And hopefully that part of the
review process of what this Committee wants to
do.

    But there's a lot of variables, and
I've got a whole page of stuff. And I won't go
into it. If you want to do a sidebar, that would
be great. But some of the highlights though, you
know, investigator caseload.

    And I look at the numbers, and I won't
pick on you, I shouldn't say pick on. I'll
identify CID with when in a fiscal year you had
2,521 reported sexual assaults. And I'm just
curious how many investigators were there that
handled those 2,521 assaults.

I'm looking at the number of
investigators and you have 706. And I'm thinking
that comes out to about three cases per
investigator for sexual assault. I don't know if
that's accurate or not. Maybe I'll give you an
opportunity to explain.

MS. WILLIAMS: Okay.

SGT. MARKEY: If I could interject.
The second one is assignment length. And this
came up at the last meeting with the prosecutors
and JAG. And part of the response, part of the
effectiveness of the response is having a multi-
disciplinary team that works together and
understands each other.

Maybe they're not friends, but they're
this team that has the same mission and goal.
And I don't know if it can be effective, if
there's any way. But assignment length seemed to be an issue with turnover of personnel and getting somebody new or getting somebody that has maybe a different, I don't want to say agenda but a different goal.

That may be problematic, that may be something that I don't know how that can do. The other thing that really was important to me is the selection process of the investigator. And even more important, those first line supervisors who are overseeing those investigations and investigators and determining whether the quality and efficiency and effectiveness and consistency within their own command.

You know you have the circle of influence and the circle of concern. So that influence is so critical. And so I'm curious about the selection process and the oversight of the investigators as you're doing the transfer with those first line supervisors.

And then I had a question about the crime lab. And this was happening, this is
happening in the civilian world. But yes, all
sexual assault kits are being submitted to the
lab. Not all sexual assault kits are being
tested.

MS. WILLIAMS: They're all being
tested.

SGT. MARKEY: And that became
problematic for the civilian world because, you
know, with the backlog. So those are just some
things. And the only other --

Just thought process. How do you
process this information.

MR. POORMAN: Did you want to answer?

MS. WILLIAMS: Do you want to answer?

SGT. MARKEY: Whichever one you feel
like would be the most effective.

MS. WILLIAMS: Well, all sexual
assault kits that are sent to the lab are tested,
and probably tested more extensively than tested
by a local lab. They test everything in the kit.
They don't just test like the swab or anything.
They test everything. And if you have a chance
to go to the lab, you'll see that.

The case agent load, well taking that number and dividing it by that number, yes it sounds like three cases each. But it depends on what installation they're at.

If I'm at Fort Bragg, Fort Hood, Fort Lewis, Fort Campbell, I have a bigger caseload than I do at maybe Redstone Arsenal, which we do have -- you know, we have agents there. So the caseload differs for that.

Our supervisors that we have are warrant officer supervisors. And they have about -- the ones that are doing the first line have about six years' experience on for investigations, up to the special agent in charge could have 15-16 years which. And also, the sexual assault investigator, the civilian that we have in the office, they have about 15 years or maybe more, because they were usually agents before, or some other law enforcement before they came to CID so they have about 15 years.

For a sexual assault investigator,
they have about three years' experience before
they start investigating the sexual assaults.
And I can't remember what else you asked.

SGT. MARKEY: I'll follow up on the
lab. So if they do get a foreign profile, what
do they do with that? Is it uploaded into your
database, or is --

MS. WILLIAMS: CODIS.

SGT. MARKEY: -- it shared with the
civilian FBI database?

MS. WILLIAMS: Yes, it's CODIS.

MR. POORMAN: It goes to the
investigator side of CODIS. So it would be
loaded as an unknown. We're suggesting it's an
unknown. Or known.

MS. WILLIAMS: Well, it depends on
known, because I could have two samples, and it
could be husband and offender.

SGT. MARKEY: So that DNA profile is
shared with the FBI's CODIS?

MR. POORMAN: CODIS.

MS. WILLIAMS: Yes it is.
SGT. MARKEY: Okay.

MR. POORMAN: Yes. For cold cases later, hopefully that gets put in. To just answer your question on suitability of investigators, we have for OSI at least, we have a very, we have an entire instruction on the selection process.

So while all agents have to have top secret clearances, that's for trust in order to handle classified. Quite separate from that we have 20 suitability standards that we go through in assessing every investigator.

And it's quite varied to include flexibility, adaptability. Some of our agents are in remote locations. So we work through all that. It's a scoring and adjudicative standards that we use, I'm happy to share and discuss that with you.

MR. DEFAMIO: On the same lines with us. We have a security.

MS. LONG: Is there a, I think temperament is the wrong term but, like, some
sort of we know that there are personalities that
are better suited or perspectives. It's hard to
quantitatively capture that. But I understand it
needs to be, have some sort of consistent. Is
that part of your factors or how do you tease
that out so the right people to work with
victims.

MR. POORMAN: So the head of our
clinical psych, our behavioral psych shop, Dr.
Ray, looks at this regularly. And so we study
whether there are instruments, psychological
instruments that measure this well. There are
some that parallel what we want. Temperament is
a big part of investigation, certainly.

We've not broken the code, if you
will, on that particular. We think that it's not
one particular test. It's a combination of
factors and indicators that are in. But it would
take quite a bit to go in, but we have that
material.

We have folks that would be happy to
sit down and talk through that because I think
we, as in other law enforcement, struggle with
selection of the right people to do the job is
critical in this business. So we think we do
pretty well but trying to find a community
standard for that is elusive.

CHAIR BASHFORD: Well, I'm going to
thank you all for coming. I'll allow us to have
a ten minute break before we begin our
deliberations. Thank you so much, it's been very
informative.

(Whereupon, the above-entitled matter
went off the record at 10:35 a.m. and resumed at
10:52 a.m.)

CHAIR BASHFORD: So I asked for a
strategic planning if Captain Tideswell and Ms.
Carson sort of launch us by looking at some of
the same materials provided to us.

CAPT TIDESWELL: Yes, ma'am. If you
will look on the left hand side of your folder,
there are two documents that I would like to draw
your attention to. The first one begins with the
title legislative history.
There's been a lot of questions as to the purpose or how should the panel proceed. We were able to determine that in fact the original language in the bill that actually created the DAC-IPAD was originated from Senator Gillibrand's office.

And although the language that you see highlighted on the second page in yellow did not end up in the original bill, it may in fact provide you with some insight. And so that is the original language that was proposed.

And it talks about the Panel looking at things like the criminal investigation reports, looking into the Article 32s that are conducted which are preliminary hearings in the military justice system, looking at recommendations of the staff judge advocates in the initial disposition authorities, sort of what the convening authority decides to do, the findings and sentences of the court-martial, and also any legal reviews that recommends that cases not be referred for prosecution.
So although this language did not make it into the bill, I thought you all might find it informative that that was what was original put in. Yes, sir?

MR. KRAMER: I'm sorry, do you know why it didn't make it in to the --

CAPT TIDESWELL: Yes, sir. We've looked back at the language and we believe Congress wanted to give you as much room to do the task as possible, as opposed to defining how you all should do it. Is what people --

MR. KRAMER: Because the concern of course is if it was taken out, maybe there was a reason that they didn't want us to do that. But you're saying maybe the opposite, they didn't want to constrain us?

CAPT TIDESWELL: Yes, sir. As you read through this, they say they took it out to help clarify it for you, which in an odd twist almost made it less clear.

CHAIR BASHFORD: Thank you.

CAPT TIDESWELL: Yes, sir, I mean
ma'am. And then the second item I wanted to draw
your attention to because I think a lot of the
discussion we've been, that I at least have been
hearing, revolves around the collection of data
and percentages and, you know, what data do we
have, what data should we collect.

I just wanted to draw your attention
to the Military Justice Act, although this talks
in terms of summary of a proposal, it's this
Article 140a. The language that you read here
has actually been enacted, and it has advised the
Services to basically develop and implement a
case management system that involves the
collection of data and making that data
accessible. You know, what's going on in the
military justice process.

Right now this Act was just passed.
The Department of Defense has been tasked through
the SECDEF to implement it, and they have until
December of 2020 to set the standards and
criteria of what will be collected.

I would just comment to you all that
one of the things you may want to consider is helping the Secretary of Defense in providing recommendations with expertise on perhaps what those standards and what those criteria for this particular program might be. And again, it would merely be recommendations, but I think they would be informative.

CHAIR BASHFORD: I think that gives us a big opportunity to help shape going forward what should across all Services be collected and what we think is important data for them to collect. So thank you for pointing that out to us.

So we have a strategic plan discussion for the rest of our meeting today that I hope will launch us forward, going forward. And the first one is really the scope of misconduct that we want to look at, the kinds of cases.

And Staff sent out some requests for information, some of which came back. And what tab are they at, Captain?

CAPT TIDESWELL: The results are
actually in your same day folder.

CHAIR BASHFORD: Same day folder?

CAPT TIDESWELL: Yes, ma'am.

CHAIR BASHFORD: Okay.

CAPT TIDESWELL: So the request came out when we did the read-aheads, but we actually now have the answers to the questions which are in your same day folder.

CHAIR BASHFORD: One that we got back, and I just wanted to highlight this, is the JPP looked at their analysis of cases where charges had been brought, charges preferred. And that's the data that they collected. And our staff has been collecting that data going forward as well, building on what the JPP did.

But I would suggest to this Committee that we are losing a lot of information if we restrict ourselves to charges preferred because on some of the data that we got back from the Navy, when they talked about adult sexual offenses case data for fiscal year '16, by the time you get down to military subjects in which
at least one sex offense was preferred, we're going down to about, for the Navy about 20 percent of the reports, for the Army about 15 percent of the reports, and for the Coast Guard about 15 percent of the reports.

The Air Force was not able to give us that data because they're -- the MCIOs version doesn't track that. So I think if we were to continue to track only what the JPP had done, charges preferred, we are artificially limiting ourselves.

And I think one of the things this Committee needs to find out is why, what is happening to these charges. Is the right thing happening, is the wrong thing happening. But these strike me as we're leaving if we only look at preferred, 80 to 85 percent of our cases we're leaving behind. And I think we should really look at it in a more wide ranging view.

The other thing I think we need to decide is the scope of misconduct of Section 3 of our planning session outline. They've listed
rape, sexual assault, forcible sodomy, and other misconduct. I think there's a big distinction between the penetrative assaults and the contact assaults.

Now some of them we might want to look at, aggravated sexual conduct, abusive sexual contact, but there is a big distinction between I think contact and penetrative assault because contact can run a whole gamut from, I don't mean to be dismissive in any way, but we would call the difference between felonies and misdemeanors between a clap on somebody's clothed buttocks versus, you know, choking and penetrative assault.

So if there is a way to winnow out from our looking in depth at some of the more less egregious contact, I don't know if there is. But I think that it would be good to know the numbers.

They're sort of all put in as sexual assaults and I don't think that that's probably the best way of looking at it. Does anybody have
any thoughts on that? Dr. Spohn, do you --

DR. SPOHN: No, I agree that we should
be looking at the penetrative offenses. The
contact offenses are very different. And my data
analysis showed that the outcomes are very
different as well. And so we would really be
comparing apples and oranges I think if we
focused on those contact offenses.

CHAIR BASHFORD: And could you
clarify, because I think something got misspoken
in our earlier discussion with the panelists who
were here. There was reference to a 75 percent
conviction rate. My recollection is that it's
different.

DR. SPOHN: Of the cases that were
referred to trial, referred to court-martial, I
believe for the penetrative offenses the
acquittal rate was 21 percent.

CHAIR BASHFORD: Total acquittal rate.
And then we have the charges where a penetrative
offense was convicted was much lower, wasn't it?

DR. SPOHN: Yes. So of those who were
convicted, a relatively small proportion of those who were charged with penetrative offenses were convicted of penetrative offenses.

CHAIR BASHFORD: That was my recollection. Sorry to put you on the spot.

DR. SPOHN: No, that's okay.

MS. LONG: I have a question. Do we have reason to think that the penetrative, the charges going forward on non-penetrative crimes are mischaracterizing things.

For example, sometimes we see in the civilian world that still for example a tongue contact with the penis. That can be considered penetrative in many jurisdictions because you're breaking the lips but it may not be charged as such.

Is there any utility or do we have any sense of the things going forward or being charged inappropriately?

I feel like that's less of an off chance here because we have so many eyes on these, or downgrade charges because you feel like
you can't prove the penetrative crimes, and do we want to look at that category because I feel like there's a grey area, not a grey, there's a massive area between the obviously contact crimes and those penetrative crimes that might be charged as contact crimes. That still may be worth looking at.

CAPT TIDESWELL: I don't really have that.

MS. LONG: I just know it comes up as a challenge to establishing penetration and/or recognizing it for the reports sometimes.

CHAIR BASHFORD: And I think we're using that as a little bit of shorthand because I think they say rape, sexual assault, forcible sodomy.

MS. LONG: Right.

CHAIR BASHFORD: So I think that example you gave would probably, if there was force involved would be sodomy?

MS. LONG: If it would, right, if they would charge it. Okay.
CHAIR BASHFORD: Right.

(Simultaneous speaking.)

CHAIR BASHFORD: But I definitely, because we don't have data --

MS. LONG: Exactly, okay.

CHAIR BASHFORD: We should see certainly how you charge things can lead to a different end.

MS. LONG: Exactly.

CHAIR BASHFORD: But do we have a sense of the Committee that we would want to look beyond just those cases where charges were preferred to try to capture some of this 80 to 85 percent of reports?

DR. SPOHN: Absolutely.

CHAIR BASHFORD: Okay, good. So that kind of takes us through case review options. I think we want to look at, then, option one and option two as opposed to just the charges preferred. And I want to thank our staff for getting out those RFIs and getting that information to us for this.
Four B, category of cases to be reviewed, we have a lot of different options here. I think one of the things is if we are going to review acquittals or dismissals, we need to put out an RFI for various Service branches to keep some information that they might not normally do.

But given what we've heard about the conviction rate on penetrative, and again I'm using that shorthand, when a penetrative charge is preferred and the conviction rate for that, I think we would want to look at the cases where that doesn't hold up. So that would be acquittals and dismissals.

DR. SPOHN: Well, and if we're going to step back and begin the process with cases in which an investigation was opened, wouldn't we also want to look at whether the case was unfounded? And then whether charges were preferred in addition to acquittals and dismissals because those would be, I guess dismissals can occur both before and after
referral, correct?

JUDGE GRIMM: I have a question. This area where we're looking at in terms of categories of cases that were reviewed, in our materials here, I don't know if anybody had a chance to read it, if it was part of the advanced screening then I must have missed it.

But there's a Subcommittee on Judicial Proceedings Panel, and I understand this is just a subcommittee and that this is not final, but it's in our materials and I looked at it. And it may be that one of our members is General Schwenk who is on that might be able to sort of give us -

But if you look at Page, well the pages aren't numbered. But it has a list of identified problems with how the military justice system treats sexual assault offenses. It's about two or three pages in.

And there's a list of things that tie right into this notion of the scope of what we want to investigate and number of
recommendations. It may not be the final recommendations of the Committee itself, but certainly were important enough to the Subcommittee that was tasked with coming up with those recommendations to tie into recommendations of what this Committee should look at.

But they've got a number of identified, seven perceived problems with how the military justice system treats sexual assault offenses to include pressures on what the convening authority may feel is necessary to charge that may not be a sustainable charge because the decision not to charge has to be reviewed by such a high command, observations about restraints that may be imposed on the Judge Advocate giving candid advice about the possibility of success of proving a charge because that recommendation goes to the defense attorney as well, notions about training that may go to individuals who will sit as members on courts-martial in terms of what the proper legal standard is to consent, and a number of things
that tie into this larger issue about the number of cases that may be charged as the most serious cases but are not being resulting in convictions. And they may be charged as a serious offense but with a lesser offense and they're convicting on the lesser offense.

But it gets into this entire dynamic about how the system operates. If you look at these line items of things that they're talking about, perceived problems, it gets into the notion not just of what was charged, but what was investigated because the decision as to what is or is not going forward at trial takes into consideration matters in which cases were open.

So when I look at these, this seems to be to be something that causes me to have a desire to discuss among ourselves where these recommendations by this Subcommittee which has already started looking at this fit into how we should be looking at what we want to take a look at.

JUDGE WALTON: Excuse my ignorance,
but is there plea bargaining in the military?
And if there is plea bargaining, are there
standards that have been created in assessing
what type of plea offer would be made in certain
types of cases?

CHAIR BASHFORD: I believe we've heard
a presentation where, I may have this wrong but a
member can agree to take a certain sentence, and
that's kept in a sealed envelope. And then if
there's something that --

CAPT TIDESWELL: So we have process
and it's a pre-trial agreement. And it's an
agreement between the accused and the convening
authority. And they reach a level of terms. But
I think where our system sort of differs is the
accused almost gets the benefit of one of two.

So the pretrial agreement controls,
but then the military judge, or usually the
military judge will hand down a sentence, and
then the accused gets the better of the two.
That's where our system sort of deviates I think
from the civilian sector.
MR. SULLIVAN: And Your Honor, that's another area where the Military Justice Act of 2016 is going to change things. So at the moment, what Captain Tideswell just referred to, there's this concept known as beating the deal.

So let's say I'm a defense counsel and my client is being tried for an unlawful entry to a barracks room. So I enter a deal with the convening authority that says my client will plead guilty, and in exchange you'll approve no sentence greater than 18 months confined.

So he goes to court-martial. If the court-martial sentence is greater than 18 months confined, then the convening authority has to knock that sentence down to the pre-defined level.

On the other hand, if the sentence of the court-martial is six months, the accused gets the six months. So again, it's known as beating the deal. As Captain Tideswell said, the accused gets the better of the two.

The Military Justice Act of 2016 is
going to change the entire plea bargaining
structure of the military which by the way grew
organically. The plea bargaining system is not
provided for under the Uniform Code of Military
Justice.

It grew up organically, and so it was
sort of fit into the existing structure which led
to that beat the deal concept. Under the new
provision, the accused and the convening
authority would reach a sentencing range. So
under the new deal it would be, you know, you'll
be sentenced to somewhere between 16 months and
20 months.

And then the sentencing authority
must, a judge's sentence within that range. So
that, the whole plea bargaining is going to
change effective probably January 1st, 2019.

JUDGE WALTON: They're going to be
subject to Constitutional challenge where you've
got mandatory guidelines? I mean, in the
civilian world that's been ruled
unconstitutional.
MR. SULLIVAN: Well right, but it's going to be just by agreement. So in other words, it would be open to negotiation, you know, what that range would be.

And then if the accused doesn't want to be governed by whatever range the Government's offering, then their remedy is either to plead guilty without a deal in which case it would be unconstrained sentencing except for the very few mandatory minimums in military law, very few of them. Or alternatively, obviously they could contest it.

But so the range will be defined not by the equivalent of sentencing guidelines or Sentencing Guideline Commission. It's going to be a case by case, ad hoc negotiated range.

CHAIR BASHFORD: In addition to that though, there's also all of the cases that are diverted with separation from service, what type of discharge, non-judicial punishment. We have the NJPs. Administrative punishment. Some of those need approvals at higher levels. But I
think I would characterize that as plea bargaining.

MR. KRAMER: And another part of plea bargaining seems to be -- that was about the sentence. But if somebody's charged with say rape, can they plead to an assault? That's a much bigger question. So that's similar to civilian.

CAPT TIDESWELL: And the requirement to register as a sex offender has sort of changed the landscape as to what the defendant is trying to now plead to.

JUDGE WALTON: And who's approving those agreements? Commanding office?

MR. SULLIVAN: It's the convening authority who is, in the case of a penetrative sexual assault allegation, it must be a general court-martial convening authority. So it's a commanding general or an admiral who is making that deal.

If it's a special court-martial case, so for less serious offenses, in the Marine Corps
it might be a battalion commander. But once again, it's the commanding officer, not a lawyer that's making the decision.

The commanding officer is advised by lawyers, but it's the commanding officer or commanding general that makes that decision.

CHAIR BASHFORD: So I think one of the things that comes up then is, and I believe the JPP did some of this work, is there any disparity based on rank, based on race, Service, which Service of how these are handled?

And I believe there was some, Dr. Spohn's work has addressed that. Again, I don't mean to put you on the spot.

DR. SPOHN: No, when we're able to look at Service and rank of the accused, and the relationship between the victim and the accused, but not any demographic information other than sex of the accused and the victim.

CHAIR BASHFORD: And I believe there were no huge disparities there. But I think we can look at further demographic information. And
also, since they were only looking at once
charges were preferred, one of the concerns might
be that rank might be taking into account before
charges are preferred because they never get to
that point.

So once charges were preferred, I
believe they found it was fairly even playing
field on the demographics they were looking at.
But that's a very much later stage. The JPP was
very busy giving us recommendations.

CMSAF MCKINLEY: They were.
CHAIR BASHFORD: It's not just here.
It's been throughout a lot of different, some of
their actual reports, not just Subcommittee
reports and things that would be a useful thing
for us to be looking at as well.

CMSAF MCKINLEY: Generous with their
suggestions.

CAPT TIDESWELL: So Judge Grimm, you
were kind enough to point out that this is merely
a Subcommittee report. Right now the JPP will
hold its last two meetings next week on Wednesday
and Thursday. They will have a final opinion on these recommendations.

And we are gathering up everything they're recommending we refer to the DAC-IPAD for you all to review at the next, well I guess we could send it out once it happens by email.

JUDGE GRIMM: That would be nice to have before our next meeting.

CAPT TIDESWELL: Yes, sir.

JUDGE GRIMM: Because I would be interested in knowing, for example, on the seven areas that they perceived as problem areas what the final report was in terms of where that may have changed because if you look at the list just descriptively, it cuts across a number of the specific areas that our Chair has correctly raised as topics that we might want to be interested in focusing our attention on.

CHAIR BASHFORD: It seems to me that one of our primary goals has to be why once we get down to that area, why is the conviction rate where penetrative offenses are charged and a
penetrative offense is substantiated by the
verdict, why is that so low?

And there could be all sorts of
reasons. I mean, it could be that there's too
much pressure being put on authorities to bring
these cases. It could be that the member juries
don't like these cases. It could be that the,
you know, we just don't know.

JUDGE GRIMM: Right.

CHAIR BASHFORD: We don't know.

There's clearly something going wrong, but we
don't know what the answer is because that's just
very low. That's just not in, I don't think it's
near what the civilian rate is.

I'm also, was very interested to see
the almost half or more than half of the cases
are reported after a year, that has not been my
experience in the civilian world if you take out
children who reported years later, something that
happened when they were young.

CMSAF MCKINLEY: Could we also look
at, you know, since the pressure has been on the
military on sexual assault, rightfully so for well over a decade now, that command feel a responsibility that if there's an allegation that comes forward, that they will go to court versus in the civilian community, they probably would not take a case to court that military will take to court today.

CHAIR BASHFORD: Well, except for the information we got back from these RFIs, the actual -- where a sex offense charge was preferred is in the 15 to 20 percent range, which could be right but would seem to cut against the feeling that they feel compelled to bring these because there's certainly a big winnowing out process.

MS. LONG: And you really can't generalize in this data at all. It's individual prosecutor, individual office, individuals elected, and it then changes. And we were doing the best we can to try and get a hold of that data, but there's no comprehensive data. So we just don't know.
I would also say, Chairwoman Bashford, that we were trying to get numbers on a number of delayed reports. If you think that two thirds of victims don't report, adult in civilian world, the delays, I don't know if we know enough to know if it's a week or a month. But it is a substantial number that's delayed as well.

DR. MARKOWITZ: Well, what I was saying, I mean I think we heard from our speakers this morning. And I think it's really important to keep this in mind, the difference between our patients in the military and our patients in the civilian world, the military provides a tremendous number of resources to patients who come forward, or I'm sorry, victims who come forward with a restricted report that the civilian world does not.

And so I do think that if we, that there is an enormous, that that's really one of the reasons why we're seeing such a disparity in terms of the delayed reports with adults. So it may be worth looking at specifically a number of
cases that go from restricted to unrestricted to
take a look at that and pin that down.

But when you think about what is
offered to a sexual assault victim who comes
forward with a restricted report, I mean,
jurisdictions would be hard pressed to be able to
offer those same kinds of immediate resources
that sort of gather around the victim with very
little effort compared to what a civilian victim
would have to do.

JUDGE GRIMM: That's right.

JUDGE WALTON: And I wonder if that 25
percent acquittal rate is really an indication of
a low conviction rate if you compare it to a
similar environment like a college campus. I
mean, because you have people who are being, you
know, put in contact with each other under
similar circumstances.

I would suspect you probably have a
lower conviction rate when you're talking about
young people on a college campus as compared to
other environments where sexual assaults take
place. And so I don't know if that 25 percent is really a significant indication of something different than an analogous situation in the civilian world.

CHAIR BASHFORD: Well, I think that's, and I do believe we have data on the number of unrestricted, excuse me, I'm saying it wrong, on the restricted reports that turn into unrestricted reports.

DR. MARKOWITZ: Right. So then the question is do we need to do sort of the deep dive to find out, you know, is that why we're seeing a delay, because victims feel like they're being given the space and the resources to make an informed decision to report, or is there something else at play.

But I do think that the services that are provided to restricted report victims in the military does have a substantial impact on how quickly people are coming forward.

CHAIR BASHFORD: So on categories of cases to be reviewed, I mean, I do think we need
to look at acquittals and dismissals. And then the question is how best to do that. We had some other options, whether installations, regions, Service, Service branches.

I mean, I think we have some data on disparities within Service branches, there are some. I don't think we have the ability to review all of the acquittals and dismissals.

But we should have, be able to devise, and we don't have to do it here but we should be able to devise a statistically significant way of doing it to get a cross section of these which I believe we talked about forming a data subcommittee or a data working group. And I think that they would be best suited to decide how best to capture some of that information.

And that again would also follow into the number of cases to be reviewed. I don't know what a statistically significant sample is, but there are people here who do.

My understanding, though, the difficulties in reviewing dismissals and
acquittals is the record keeping is very different. There are transcripts that can be gotten, but, or they can be provided I guess. But there's really just audio recordings.

CAPT TIDESWELL: If the conviction results, the record of trial is a verbatim transcript. If there's an acquittal, it's usually let on tapes, and it's a very abbreviated record.

And so we would do the RFI or request of the Services once we decide what you all would like to review, basically erase the tapes and we could have them transcribed if so desired.

JUDGE GRIMM: Captain, do you have a sense of how quickly after the JPP has its final meetings next week their final recommendation will come out?

CAPT TIDESWELL: Yes, sir. I suspect the report will be final and I can forward it to you sometime in the middle of August toward the end of the month, to the end of August.

JUDGE GRIMM: Which is really a pretty
fast turnaround because to the extent that
they're identifying what they perceive to be
barriers or problems or impediments, or however
they come out phrasing it at the end, it seems to
me that that's a good starting place for us so
that we don't duplicate what they've already
done, but it might help us get our arms around
how big a sample we need to look at, where we
should start to do our focus.

A lot of the things that they list
deal with factors that don't look at the outcome
of specific cases but talk about systemic
pressures on convening authorities, on advising
Judge Advocate General officers on the scope, on
the training, and the perceptions of the members
who may be sitting on these court-martial panels.

All of them are interrelated. And if
their recommendation, their final recommendations
based upon the process that they went through,
are finalized and given to us as we are forming
what we think we need to do to go forward, I
think that would be very helpful.
CHAIR BASHFORD: And they have made a number of the final reports that are there. And this is the Subcommittee report, I believe they have made a number of recommendations to us already, is that correct?

CAPT TIDESWELL: Yes. You mean, like, directly to the DAC-IPAD?

CHAIR BASHFORD: On some of, this is the Subcommittee report. But they had issued actual reports where they have made suggestions, right, that the DAC-IPAD continue, or to continue to look at the various things already.

CAPT TIDESWELL: I would have to look. I think most of them are --

MS. CARSON: Most of them are going to be --

CAPT TIDESWELL: -- in this report.

MS. CARSON: -- in this report.

CHAIR BASHFORD: This one?

CAPT TIDESWELL: Yes, ma'am.

MS. CARSON: There's one. I think data has one and --
MS. PETERS: Right, the data report, well that's a JPP --

MS. CARSON: This is something --

(Simultaneous speaking.)

MS. PETERS: That JPP report has a recommendation. And as it pertains to the topic of military criminal investigative organizations, the Subcommittee I believe issued one recommendation that the DAC-IPAD monitor the resourcing issue where they now have non-MCIO assistance in sexual assault cases. At least that's permitted.

I mean, there's going to be Service differences, but I think they recommended that the DAC-IPAD continue to monitor the implementation of that policy.

MS. PETERS: The data recommendation was that the DAC-IPAD continue to do the data analysis that pertained to either one.

CAPT TIDESWELL: And Chair Bashford was kind enough to sign off on a request for information and we're already in the process of
collecting that data and following the process that Dr. Spohn was kind enough to get into place for us.

(Simultaneous speaking.)

CHAIR BASHFORD: And again, that was once charges were preferred.

MS. CARSON: Yes.

CHAIR BASHFORD: So they did that for fiscal year 2016, and we're doing it for 2017.

MS. PETERS: No, we're doing it for 2016. We just completed the 2015 and that report will be coming out in August as well.

CHAIR BASHFORD: So we'll have the next year's worth of data.

CAPT TIDESWELL: But Judge, we'll do a chart for you all so you can literally see. And I believe in of the chapters, the JPP is also doing a final report, and one of the chapters in their final report is going to outline what they're referring others to do. And really the same for you all, for the DAC-IPAD.

JUDGE GRIMM: Thanks, Captain. That's
really helpful.

CAPT TIDESWELL: Thank you.

DR. SPOHN: It seems to me that one initial sort of conversation that we need to have is what do we mean by case review. I mean, we're tasked statutorily with doing case review, but what does that really mean.

Does that mean that we physically collect the investigative files and the disposition files, we create a database and enter data, is it more of a qualitative kind of review of these files?

What exactly are we as a Committee going to be doing? Are we going to be going to different installations and looking at case files? Are we going to request files?

MS. CARSON: I think in your strategic planning, if you don't mind my interrupting, in the strategic planning document, if you look at letter E under the Section 4, it talks about the case review process options which is actually the looking at cases.
And then if you look at number,
Section 5 is the statistical data collection
option. So it's kind of breaking that into two
different pieces.

DR. SPOHN: Right, right. It just
seemed to me that those were conversations we
needed to have before we had conversations about
the kinds of data we're going to collect.

Do we have the ability to hire
graduate students at criminology programs or
other sociology programs to collect the data, or
are we going to be collecting the data? Is the
data subcommittee going to be doing that? I
mean, if we're going to be doing a comprehensive
case review, that's going to take manpower.

CAPT TIDESWELL: So like all things in
DoD, we have a budget. It's a limited budget,
and we do have the ability to hire and contract
out on a limited basis. So that is --

MS. CARSON: If you're doing it the
way it's sort of laid out here after the
decision's made to start with the unrestricted
reports or investigations, to narrow it down to
cases with acquittals and dismissals, and then to
take a random sampling subset of those cases.

Then the next question is for the case
review process, will you break into a
Subcommittee of the group to do that, will you
have a Subcommittee of outside people do that,
will you have contractors to do that.

So I think that's kind of the
progression of these decisions. So I think
you've gotten through to the random sampling of
acquittals and dismissals and the types of
records to be reviewed which I think you've
already discussed a little bit.

DR. MARKOWITZ: And if it was
discussed at the last meeting, I apologize I
couldn't be here. But I do want to bring up the
issue that I think I brought up at the first
meeting which is I do have some concerns about
what are in those investigative files.

There is sensitive, confidential
medical information that patients did not agree
to release for this purpose. And so I just want
to make sure that we are aware of the fact that
there are these medical records, not just the DD-
2911s that go with the medical forensic exam, but
a lot of other health records including mental
health records that may have never been sealed
because it was dismissed and what have you.

I want to make sure that as we think
about what records we're reviewing, we're
building in a process by which we can also
protect that kind of confidential information
that patients never agreed to have discussed in
this kind of a forum.

MR. KRAMER: Can I ask a basic
question about a case file? First of all, do you
know of most of them in hard copy paper or are
they electronic, many of them, or do you have a
sense of that?

CAPT TIDESWELL: I would say the
majority of them are hard copy paper.

MR. KRAMER: And then, and I know
there's a big difference between a case that is
dismissed and a case that is referred and went
through the court-martial. Do you have a sense,
are we talking a banker's box, are we talking
multiple boxes for each file? Do you have a, of
an average file?

CAPT TIDESWELL: I think it can range, sir. You know, the dismissals and acquittals are
probably much smaller than I think the convictions. But I've seen records of trial that
are literally, because they're verbatim transcripts from cases that go for days.

MR. KRAMER: Right.

MS. PETERS: So, sir, most of the files that Stacy and I collected are reviewed in
the data collection process were fitting in the banker's box, maybe half of it to a third. But
you're talking two to three volumes per case, and each volume is about three inches thick.

CAPT TIDESWELL: But that probably does not include an investigative file.

MS. PETERS: Not the complete investigative --
CAPT TIDESWELL: Right, or the Article 32 piece.

MS. PETERS: It will include pre-trial papers include a portion of the investigative file that seemed relevant, any exhibits marked, motions filed, and the Article 32 record is in there, plus the transcribed trial.

CHAIR BASHFORD: One thing, and I think this goes back to some of the JPP recommendations are these prosecution memos filed for types of records to be reviewed, that certainly the perception is as those are given to the defense, there is less and less candor from the prosecution in those, and that is being replaced by a one on one conversation sometimes with the preferring authority.

But I still think it would be useful to see what is being provided in those. I think the cases that are going to have the largest records are the court-martials where everything has been transcribed because there has been a conviction.
And I don't mean to say that every conviction, the right thing has happened, but certainly it seems like the process has gone forward. I'm more concerned where the process hasn't gone forward.

I don't know that we're going to be looking at so much at exonerations because there's so few of the cases that seem to be going forward. I would think our focus would be more on the ones that are going to have the smaller records because really not that much has happened.

And again, I don't mean to say that there can't be exonerations, but I think in an ideal world, your court-martial rate should be 100 percent because then only truly guilty people are being prosecuted, right?

But we're far from that. So what is going wrong? Again, just because so many cases aren't even making it there, it doesn't seem as though the pressure is on to bring cases that shouldn't be. But I suppose that's one of the
things we'll be able to find out.

MS. CANNON: But maybe the exoneration cases would give us insights as well because we would see what's lacking and that maybe cases shouldn't have gone to courts-martial if they had been handled correctly. And so you may see some of that evident in those files.

CHAIR BASHFORD: So that would be looking at cases that were reversed then maybe by the CAAF? Or acquittals.

MS. LONG: An acquittal isn't an exoneration, right. It just means that we haven't met our burden. They are good to look at though because they do give you an idea of what's in there.

For example, if we were sending forward cases on innocent people, which again like you mentioned not enough of these are going forward. It doesn't seem like that's the issue, but you would see that there.

You would also see if a certain type of case kept getting acquitted. But I think it's
important to just keep in mind the difference between an exoneration and a not guilty. Well, from the prosecution standpoint.

CHAIR BASHFORD: Legally there's no difference because somebody has been deemed not guilty by law.

MS. LONG: Right, but from a practical standpoint versus knowing the wrong person was, a wrongful conviction I guess I would say versus a not guilty.

CHAIR BASHFORD: But again, going back to what are we looking at. I think it depends on what type of case we're looking at. So a record of trial where there was an acquittal is going to be more substantial in some ways, but needing more work to be done before it's ready to be looked at. We can't sit around and listen to audio tapes.

And I think the actual case review should not be in this group but in a group that could do it and report, a subcommittee or a working group that could report back. And a
working group cannot make recommendations but
they can report back, is that correct, Captain?

    CAPT TIDESWELL: Yes, ma'am.

    CHAIR BASHFORD: And we do have
members who have volunteered to be part of a
working group or a subcommittee for different
things. Do you have that list, Captain?

    CAPT TIDESWELL: Put everybody on the
spot.

    MS. CANNON: Is this volunteer in the
military sense?

    CHAIR BASHFORD: No so fast, Chair.

    (Laughter.)

    CAPT TIDESWELL: It might be over at
my desk there.

    For case reviews, I believe what we
talked about, Ms. Bashford, was yourself, Mr.
Markey, Ms. Long, General Schwenk and potentially
Mr. Kramer if they were willing and available.

    MR. KRAMER: But which one --

    CAPT TIDESWELL: And Ms. Cannon.

    MR. KRAMER: Which subcommittee was
that on?

CAPT TIDESWELL: The non-data one,
sir.

CHAIR BASHFORD: The case review.

CAPT TIDESWELL: The case review one.

Not a data --

MS. CARSON: And I think the idea was
to have someone with prosecution experience,
investigation, and defense.

CHAIR BASHFORD: So I would suggest if
the Committee is agreeable then that we start
with a working group that can look at some of
these cases early, August, September, to have an
idea that could then when we have the
subcommittees formed, they could say these are
the challenges, these are the best ways of doing
it.

And I think the people that you named
would be for the case review working group,
ideally to be supplanted by a subcommittee but
that's still a work in progress. I think the
people who need to approve it aren't necessarily
appointed yet.

CAPT TIDESWELL: No, ma'am. What we need to do is develop what subcommittees you all would like to have --

CHAIR BASHFORD: Okay.

CAPT TIDESWELL: -- who would like to be on what subcommittee, and then we have to seek permission from the Department of Defense for those subcommittees to be established.

JUDGE GRIMM: So some things that may be useful in terms of deciding this, we don't have a good idea what these files actually look like, so what we're talking about looking at.

So we don't know whether they'll be at five or six pages, or five or six hundred pages. And the notion that if you do a statistically significant sampling, you're going to have at least several hundred if you're looking across the military.

And the notion of having this Committee level have a subcommittee of five people look at 300 files that may involve 50,000
pages of paper seems to me to be, and report back
in a short period of time seems to me to be a
recipe for disaster.

But that subcommittee would have the
ability to look at representative samples of the
type of files that are available and be able to
come back here and say whether a working group
that would be staff or people who are hired or
graduate students or someone else could come back
and do the initial cut through these data and
package it in a way to where the people with the
experience level here can then make some
intelligent decisions and then look at the
individual files that may be representative of
others, that's the kind of information.

We don't have a sense of what the data
pile is. We don't have a sense of whether it's
digitized and so it can be searched for in some
sort of a useful fashion. And you know, the
notion of asking a subcommittee to go into a
warehouse, you know, with an MRE pack and a
bottle of water and come out, you know, four
months later and give us a report seems unrealistic.

SGT. MARKEY: Thank you. I was just going to ask the IG folks, in that experience --

MR. REDMOND: Some insight as to the population we're talking about. The last evaluation we did, we did a two year look, '14 and '15, calendar years '14 and '15. And the population we evaluated, nearly 400 cases of the three Services, the three MCIOs. It took us approximately eight to ten weeks.

And we're looking just at the criminal case files. And we look at hard copy, OSI maintains hard copy. The other Services have a combination of electronic and hard. And we spend weeks at each location, well each location meaning Russell-Knox facility down at Quantico because we're all co-located.

But we take up a conference room in one organization, do theirs, move to another organization, do theirs until we're done. Depending on the case, each case is different.
There's been cases where it's only
ten, twenty pages. But there have been cases
where it's been two boxes.

MR. KRAMER: And how many people are
you talking about that did that?

MR. REDMOND: We had six people,
mainly. On average, probably four to six people
per day. And it took us eight to ten weeks.

MR. KRAMER: To do 400 cases?

MR. REDMOND: Yes.

CHAIR BASHFORD: Full time?

MR. REDMOND: Full time.

SGT. MARKEY: Can I ask a follow up on
that? You look at the investigative files, so
you really weren't looking at outcomes of those
investigations, but whether they were in
compliance or followed best practices. Is that
correct, or did you look at the adjudication of
cases as well?

MR. REDMOND: We looked at all cases.

SGT. MARKEY: Well, I mean the file,
what was in the files?
MR. REDMOND: It was the MCIO files from cradle to grave, the investigative file. And each organization, they don't close a file until adjudication is complete. And we don't look at a case until adjudication is complete, whether that adjudication was no action taken or court-martial action.

It was irrelevant to us as to what the action was in the case, and we did not consider the action as part of the quality of the case. We looked at the case from victim initiation, whether it was a fresh complaint or a three year old complaint, we looked at that case and evaluated its efficiency and compliance with the established DoD, Service, and Agency policy, and provided our feedback based upon that criteria.

SGT. MARKEY: And you also created a set of data metrics and case characteristics, that you evaluated those cases based on a set of criteria that you were looking for certain things to make it consistent on your case review, which is something we'll have to consider what are we
going to look at when we do a case review, what are we evaluating and what standards can we support that evaluation. This is a national, this is a standard of response in these cases.

MR. REDMOND: Yes, our evaluation was I would refer to CID and we can look at CDS but we strive very much so to be a very objective evaluation based upon established requirements. Now when you get into victim interviews, some interviews where it's very difficult to have an objective criteria as to how it's done, there is some subjective evaluation going on.

The people that we have doing these evaluations are all prior MCIOs with ten, twenty, thirty, forty years' worth of experience running criminal cases. They're the ones conducting the evaluation.

And we run the evaluation, a quick analysis or a quick breakdown. When we go in to do an evaluation, we pick one case and we all look at it. Everyone on the team looks at that one case to establish a norm.
So we all have the same perspective as to what we're looking for in that particular case. We do that for a number of cases until we are confident, each individual's that we're all on the same page, we all understand what we're looking for.

Then we all start evaluating cases individually. And part of the process, the team leader and the project manager then does a quality assurance review and goes over cases randomly that have already been evaluated to ensure that consistent standards are being applied across the population.

That's our process, and we've done that the last two times we did quality assurance process. And it's been very successful from our perspective, and the MCIOs have done a phenomenal job taking our feedback and taking our recommendations and approving the processes.

And if you look at the three reports we've published on the particular subject, you'll see that the first evaluation, there were some
issues we identified, but the second and the
final evaluation they had come leaps and bounds
in their investigative process.

But that's, you know, I just wanted to
give you a perspective as to just how long, if
you're just, I'm just talking the criminal case.
I'm not talking about records of trial, I'm not
talking many transcripts. I'm just talking about
the criminal case itself which could be 20 pages,
could be 500 to 1,000 pages depending on the case
because we randomly selected, we don't know which
one's getting picked. It took us eight weeks to
do from all three Services.

SGT. MARKEY: And did you, I'm sorry.
Did you review audio or videotape interviews of
some of the victims or witnesses or --

(Simultaneous speaking.)

MR. REDMOND: If the material is
available in the case file, yes we will do that.

SGT. MARKEY: And so all of the
discipline that was in that room is basically
investigative background?
MR. REDMOND: Correct.

SGT. MARKEY: So I think, what I think is I guess an advantage of this team is we have multi disciplines here that say somebody who's never investigated a sexual assault case but has the perspective from a prosecutor or from the bench view looking at a case and saying hey, from my set of glasses I'm seeing this in the investigative case, which I think is important to get that other perspective, as well as anybody else that might do a case review that hasn't actually been an investigator doing investigative work on a case from front to back, but to have that perspective.

So I don't know if we're looking at a multidisciplinary team that would come in and look at these cases from those different viewpoints, or whether it would be more advantageous to have just investigative experts do it.

MR. REDMOND: But there's benefits both ways. Having someone who has not conducted
a criminal investigation in their life looking at a criminal case, as Mr. Poorman had mentioned, there's science to it, but there's art to it. There's a lot of art put into how do you conduct a witness interview or conduct a victim interview that you're not going to get from someone who's not had that experience or that training.

So yes, a multidisciplinary team would be beneficial, but you've got to put it in context because that could skew the analysis, the outcome, of what you're looking at if you don't have the right mix of people doing those evaluations.

MS. CANNON: Did you ever create any guidelines after the first or second time that you went through this investigation of cases? Did you develop something that you could follow, some kind of guidelines or principles?

MR. REDMOND: We follow -- yes, we have a normal process, the OIG process. We developed the project planners, project guides. And those, we grew from each one. The first
evaluation was the first of its kind.

     Inspector General Heddell recognized
the issue after a JRR report that, you know, we
weren't doing, the IG wasn't doing its due
diligence in evaluating these cases. Created the
Violent Crime Division, which I'm one of the team
members for.

     Our first evaluation, we learned from
that. The second evaluation, we improved upon
our processes. And the last evaluation we just
did, we improved even more. So we've been
evolving our process from the very beginning.

     And each thing we do, every project we
have, we have a very robust documentation process
where our working papers are documents that
guides us for the next one.

     So we haven't published anything for
the MCIOs because that's published in our DoD
Instructions and DoD Directives as to what
they're required to do, DoD instruction 5505.19
which Mr. Poorman talked about, the 5505.19 he
talked about.
That's the guidelines for the NCOs to follow, and that's what we hold them accountable to when we perform our oversight mission.

MS. CANNON: Thank you.

DR. SPOHN: So I think this raises again the question about what we mean by case review because what they're talking about is sort of the quality of the investigation. And I mean, that's one road we could take. But it seems to me that what we're really looking at is what explains why cases move from one place to the next.

And are there certain kinds of cases that are unfounded, and if so are there ways that those cases could be improved so that they could move forward.

And so we're not going to be evaluating the quality of the investigation that's done so much as collecting data that can tell us, you know, what explains why cases result in an acquittal or in a dismissal, or what explains why cases are unfounded or charges are
never preferred so that we can reach some conclusions about where the process is working effectively and where it's not working effectively.

CHAIR BASHFORD: And I think --

DR. SPOHN: And those are two very different kinds of questions.

CHAIR BASHFORD: One of the things we might find that's implicated a lot is alcohol, is an incapacity to consent because of alcohol or drug. Is that the, like, what's the basis for the lack of consent. Is it visible force or is it incapacity? I suspect, but I think that's one of the things that we will --

DR. SPOHN: Or delayed reporting, you know --

(Simultaneous speaking.)

CHAIR BASHFORD: One of the things we'll find, like, what are the common threads. Is it incapacity to consent as opposed to physical force, is that a common thread. Is the delayed reporting, is there a difference in
outcome when the report is after such amount of
time or if it's prompt.

Is it because of what the medical, you
know, what was the corroboration, was there
external evidence. I think these are kind of the
things we will see broad patterns of if we look
at the cases, particularly ones that don't go
forward.

MR. KRAMER: Can I ask you, I'm sorry,
why do you think that quality of the
investigation is not connected to the --

DR. SPOHN: Well, I'm just saying you
collect different kinds of data to answer those
two kinds of questions.

MR. KRAMER: Oh, sure. But I mean,
one of the reasons a case might not be preferred
is because evidence was mishandled by the
investigators. So that's many times intertwined
--

DR. SPOHN: So we could collect data
on whether there was physical evidence, whether
there was corroborative evidence. We can collect
data on evidence and then look at whether the presence or absence of evidence influences the case.

JUDGE GRIMM: I mean, as long as we're talking about what we have to look at, the Subcommittee of the JPP that came out with its identification in seven areas of concern, they had, that was based upon information they got. They --

CAPT TIDESWELL: Anecdotal.

JUDGE GRIMM: Right.

CAPT TIDESWELL: And site visits.

JUDGE GRIMM: That's right. So what would be helpful if we're trying to get away from anecdotal evidence and trying to actually look at whether we want to look at an investigative file to talk about whether the investigation was incomplete and therefore you couldn't prove, you couldn't establish if you're making the recommendation to the convening authority but the essential elements of this offense can be sustained, then that suggests that there's
different types along the chronology of what has
to happen from the time that you have an
unrestricted report to the time that the case is
over what you might want to look at to get some
big picture ideas about what is or is not working
in the system.

But it wouldn't hurt to know sort of
what it was that was the data input to the JPP
Subcommittee that caused them to say, hey, we
have these questions that some of which we think
the DAC-IPAD should go ahead and take a look at.

Even if it's just some general
information, that would be helpful too because we
don't want to repeat work that someone else has
done. But if their methods were based upon
something. Anecdotal information is very
different than, you know, the hard files that
compose the individual cases that might lead to
the experiences that cause people to have
opinions that they express anecdotally.

MS. CANNON: Are there questionnaires
given to jurors after a verdict? No?
CAPT TIDESWELL: Now I know a lot of trial counsel or defense counsel will approach them and see if they're willing to talk. And it's typically about stylistic things and how they did in court. But there's no formal polling of them.

DR. MARKOWITZ: I would say that because there is so much training that is done of trial counsel in successfully being able to move forward with these cases and prosecute these cases, I would hate for us to not take a look at sort of the spectrum of cases.

I would hate for us to not also look at what successful convictions also have in common. I mean, the amount of education that is happening for trial counsel across the Services is significant.

And so I think that being able to look not just at the acquittal piece but also are there some themes related to successful conviction. And it may have nothing, I mean it may have more to do with things like victims
feeling supported and continuing to go forward at trial and being willing to testify and all of those kinds of things.

But I think that there are these pieces in convictions that we also should take a look at. And I would hate for us to stop at the acquittal cases. So maybe I misunderstood and we were planning to do that all along.

CHAIR BASHFORD: I think we should see common themes. We should see if those types of charges that are more often sustained and other types of charges that aren't.

DR. MARKOWITZ: Sure.

CHAIR BASHFORD: Numbers of witnesses, I think there are data points that can be collected. I think though that there is still an advantage of having a working group look at a handful of cases before the next meeting and just sort of coming back with what's available to look at, how hard is this to look at a couple cases from each Service.

What are the real challenges at
looking at a case, what data is collected, what
data isn't collected while we're setting up a
subcommittee, a data subcommittee and a review
subcommittee. And the review subcommittee can be
supplemented by external people.

And we have a Staff, too. We don't
want to forget that we have a Staff.

SGT. MARKEY: Just, and I've done
civilian case review and evaluation of the
investigative process. And I think we can look
at hard data like they didn't follow up, they
didn't interview these witnesses, they didn't
collect this evidence when they had the
potential.

I think the key to especially the
sexual assault investigations is that interaction
between the system and the victim, and that first
contact with first responders, that interview
with the detective.

And the language, the non-verbal how
that victim was, for lack of a better term
treated, the questions they may have been asked
that we know they drop out of the system shortly,
a lot of times shortly after they first report
because of the non-support within the system.

And so if an investigator as you
review these interviews, and I had investigators
do it, they're asking inappropriate questions
that are placing the blame perhaps in some way
back on the victim or questioning the victim's
actions or those subtle things that you don't
have a hard qualitative piece of information that
you can judge, but it's that nuance within that
contact.

And is it something we're doing in our
process of that contact with the victim when they
come to the system that's creating that fallout.
And so how do we measure that and look at is that
something we're creating within the victim's
response.

DR. MARKOWITZ: The one thing that I
would just, I guess, remind all of us is that
it's not a complete one to one comparison when it
comes to obviously the military process versus
the civilian process.

So for instance the thing that comes to mind for me is the potential for a case to become unintentionally unrestricted. Right? And so that may impact a victim's desire to participate in the process.

And it has nothing necessarily to do with how anybody reacted. It was simply the information was provided to somebody who could not maintain a restricted report.

And so there are going to be I think some of these nuanced components that we also need to keep in mind that it won't be an exact, you know, what works in the civilian world is how we should be evaluating these cases and that these are the only data points we should be looking at.

SGT. MARKEY: Yes, I agree.

DR. SPOHN: Can I just, in response to your comment about conviction, from a data analysis point, if we want to know why certain cases result in acquittals, we have to collect
data on convictions because we have to have
something to compare it to.

And same with cases that are
unfounded, we have to look at the cases that were
founded to be able to identify what predicts one
outcome as opposed to the other. So we have to
look at the convictions as well as the
acquittals.

CHAIR BASHFORD: Is unfounded an
actual military category? Will there be a
category of cases that say, where charges were
not preferred where they say unfounded? It's
like a loaded word in the civilian world, so I
don't know if that's used.

DR. SPOHN: They talk about founding.

SGT. MARKEY: So there must be
unfounding, right?

MR. REDMOND: The MCIOs no longer have
the latitude to found or unfound a case. That
founding happens at adjudication when the person
was taken to court-martial and convicted, then
it's a founded case. Or non-judicial punishment
or some type of adjudication for it.

    If there's no action taken, that's
where it gets a little more sticky because you've
got, you know, the MCIOs brought a case developed
what they believe to be evidence sufficient for
action to be taken. But the commander decides
not to take action for whatever reason the
commander decides.

    So the MCIOs have a case where they
closed with sufficient evidence based upon
probable cause established and discussed with the
prosecuting attorney. But the prosecuting
attorney discussions with the convening authority
determines not to take the case to court.

    CHAIR BASHFORD: But there surely must
be some cases where the MCIOs have decided there
isn't sufficient evidence to go forward.

    DR. SPOHN: What if they think it's
false or baseless?

    MR. REDMOND: The MCIO's report, the
facts are in the report and then it's up to the
convening authority, the commander to make a
determination as to what that means. The MCIOs don't have that latitude.

BG SCHWENK: Can an MCIO on its own say this is a bunch of garbage and close it up on sexual assault case?

BG SCHWENK: They have to --

MR. REDMOND: They have to, if a victim reports a sexual assault, they are mandated by DoDI and 5505.18 to run a sexual, well 5505.3 is the initiation, 5505.18 requires an initiating, an active open investigation of all sexual assaults. And they have to follow them through the investigative route.

BG SCHWENK: Regardless of --

(Simultaneous speaking.)

MR. REDMOND: Regardless of their opinion.

BG SCHWENK: -- what they think.

MR. REDMOND: They do interviews and establish the facts.

JUDGE BRISBOIS: So let me just ask for a real thumbnail comparison now to, I hate to
say it, 30 years ago when I was a trial counsel. CID, MPI would come with their investigation and there was a meeting with trial counsel, is there probable cause or not.

And if there was no probable cause based on their completed investigation, at least pre-trial investigation, they called it an unfounded case and the case was closed.

I mean, it's a very simple explanation of the process. That was historical process. Compare that now to what you're talking about now. Is there no longer any prosecutorial discretion as to whether a case is closed or not if it involves an Article 120 offense? Or does it have to go to --

(Simultaneous speaking.)

MR. REDMOND: All three MCIOs are independent investigative organizations and they get advice from the prosecution. But they are still required to --

JUDGE BRISBOIS: And so, but if they give it to the trial counsel and they get advice
and they say that, you know, you've talked to
every witness, you've done this, there's no
probable cause, is that still an endpoint, or
because it's Article 120 now since 2012 it has to
go to the convening authority?

MR. REDMOND: We're talking two
different areas of expertise here because I can
speak to the MCIO process, the investigator
process. They have to run the case, present the
case to the commander.

JUDGE BRISBOIS: Which is the same --

(Simultaneous speaking.)

MR. REDMOND: Which it's then the
commander's purview what to do next, whether he
takes it to Article 32 or takes it to the general
court-martial convening authority and asks for a
verdict. I would say that it's not changed much
since before. The JA is still in the loop. The
JA still makes that --

(Simultaneous speaking.)

JUDGE BRISBOIS: But the difference is
that there's no prosecutorial discretion. You
I know, 30 years ago if I had found a lack of probable cause based on a completed investigation by CID, that was the end of it.

MR. REDMOND: I can't speak to --

JUDGE BRISBOIS: That's not the case anymore.

MR. REDMOND: I think now the policy is -- I think that the policy now is it has to go to the general officer in the chain to decide whether or not it's actually going to be --- sorry, first O-6 in the chain.

BG SCHWENK: To some extent, they're preferring charges.

JUDGE BRISBOIS: So that's why we used to use the word, it's unfounded, when it would come to me and stop at my desk. That's why I didn't understand why we're labeling -- it's not a term of art anymore. So there wouldn't be data points to collect on that.

DR. MARKOWITZ: There's no category of cases that are labeled unfounded.

LTC VERGONA: Sir, this is Lieutenant
Colonel Mary Catherine Vergona. I'm with the Army. And what you're referring to I think is in the past a trial counsel could kill a case. So it would come from, for us, CID.

We would, trial counsel would look at the case and say there's not enough to go forward. They would talk to the victim of course. But the trial counsel could make that decision.

That is not the case any longer. Now, at least -- now, the case must go forward to at least an O-6. So for us, a colonel is the one that is in a position to not go forward.

CAPT TIDESWELL: And that's a non-lawyer.

JUDGE BRISBOIS: I mean, in the vernacular of the time, whether it was formal or informal, we would say it was unfounded when we talked to our Chief of Justice or something.

BG SCHWENK: Yes. But in the CID report --

CHAIR BASHFORD: Again, since about 80
to 85 percent of reports are not going forward with the charge preferred, is the O-6 -- if the complainant says, I do not want to go forward anymore, does it get to the O-6 still?

CAPT TIDESWELL: Yes, ma'am.

CHAIR BASHFORD: Okay, does the O-6 issue a finding as to why something's not going forward or simply says it's not going forward? I'm not preferring this.

MS. CARSON: From what we've heard in testimony before, in that final, with convening authority action, they could give you that information, but they often don't. They give you their decision. They could give you the information as to why, but they don't necessarily, so there wouldn't be a consistent place to get it.

SGT. MARKEY: Do we have time to talk about the O-6 because that seems like a pretty critical position and I'm just curious about their knowledge skills and experience in making those decisions. And I don't know if that's for
lunchtime or -- and I don't know if that's
something --

CHAIR BASHFORD:  We're set to go until
12:45 for lunch.

SGT. MARKEY:  Oh.  I don't know if
that's within the scope of what this Committee,
you know, task is because that seems like it just
came up and I'm realizing that's a huge position
to be in to make that decision.  And so where are
they in --

BG SCHWENK:  It used to be a more
junior person.  The O-6 is now, that's one of the
changes, was to raise the level to make the
initial disposition.

SGT. MARKEY:  Did that make it better?

BG SCHWENK:  It was perceived that the
people less junior had less experience --

SGT. MARKEY:  Okay.

BG SCHWENK:  -- so raised it up to O-
6.

JUDGE GRIMM:  So a question that I
have is in the Subcommittee recommendations from
the JPP about things that need to be looked at, it makes reference to a change to Article 33 of the Uniform Code of Military Justice that will result in Service-wide uniform recommendations regarding when convening authorities and staff judge advocates make determinations not to go forward.

So we are, my question is are we working at cross purposes. We're looking at cases that are out there before this guidance was in affect trying to look at what happened and what didn't happen.

This policy is being made, these policy determinations which will in the future affect what that O-6 does and what that staff judge advocate does and whether a copy goes to the defense counsel and whether there's candid assessment, whether the juries are, whether the people who make the jury pools are being overtrained.

There's a number of interrelated factors that the JPP Subcommittee identified.
And some organization, ultimately approved by the Secretary of Defense, is going to come up with this new guidance. And that process is going to happen.

Are we, is our task to provide information that will assist them in making those determinations? Or are they going on an independent track, and we're off taking a look at a series of things that cause us to make recommendations that are irrelevant because the policy decision has already been made? Because once that policy decision's been made, that's where all of the people in the military are going to salute the flag and walk forward.

CAPT TIDESWELL: Dwight, should I defer to you on the executive order? I'll defer to you on that.

MR. SULLIVAN: I do have some information on that. So as Judge Grimm points out, the Military Justice Act of 2016, among the many other things it did, it amended Article 33 of the Uniform Code of Military Justice to call
for non-binding disposition authority.

And it may be helpful just to let you all know what the language of 33 is as amended. And once again, this will probably take effect January 1st of '19.

The President shall direct the Secretary of Defense in the issue in consultation with the Secretary of Homeland Security, that's not what it actually says but it's saying the Secretary of Homeland security because the Coast Guard is of course in the Department of Homeland Security.

So the President shall direct the Secretary of Defense, in consultation with the Secretary of Homeland Security to issue non-binding guidance regarding factors that commanders, convening authorities, staff judge advocates, and judge advocates should take into account when exercising their duties with respect to disposition of charges and specifications in the interest of justice and discipline under Sections 830 and 834 of this Title, in other
words, Articles 30 and 34 of the UCMJ.

Such guidance shall take into account
when appropriate consideration of military
requirements and principles contained in official
guidance of the Attorney General to attorneys for
the Government with respect to disposition of
federal criminal cases in accordance with the
principle of fair and even handed administration
of federal criminal law, in other words, consider
the U.S. Attorney's manual.

And so just one thing for those of you
familiar with the system, you would no doubt
recognize the reference to Article 34 which is
the advice that the staff judge advocate provides
to the general court-martial to the convening
authority.

There is also a new requirement for a
special court-martial convening authority before
making a formal decision to get advice from a
judge advocate. So that's the language that you
and I discussed on the break, Your Honor.

And so the Joint Service Committee,
which would have some of the people lined up behind you, has proposed at issue for public notice and comment proposed non-binding guidance to be issued under that authorization.

So a federal register notice on that went out on July 11th, and then it has, because the proposed changes are so voluminous, the changes themselves aren't reported in the federal register, there's a link to them. I'm sure the Staff can provide that to all the members of the Committee.

And the closing date, Your Honor, for public comment is September 11th. And then by statute, the President, so this doesn't affect what I just read because that's the SECDEF requirement.

The President has to issue implementing regulations no later than December 23rd of this year. Now those implementing regulations need not take effect until our familiar date of January 1st, 2019. But the President will act by December 23rd. And then at
some point between then and January 1st, 2019,
SECDEF will issue that guidance that's required
by Article 33.

CAPT TIDESWELL: Well, what's
interesting, sir, the JPP Subcommittee deviates
from what you read in the Executive Order. When
you look at what the Subcommittee was
recommending, they use language like probable
cause, reasonable likelihood of proving the
elements of the offense beyond a reasonable doubt
using only admissible evidence at trial.

And I believe the way the Executive
Order is currently out for comment, it's really
tied to probable cause with the convening
authority still allowed to consider evidence that
may or may not ever make it into a trial.

So I would call the JPP Subcommittee's
sort of probable cause plus, where the Executive
Order I don't think really quite goes that far.

JUDGE GRIMM: That may be true, but it
sounds to me like the JPP Subcommittee was
looking to add, you know, you can always
recommend the case go to trial with evidence that
will be suppressed.

And then that puts the, that makes the
villain out of the military judge that says the
evidence doesn't come in, there's an acquittal.
I mean, I think that doesn't sound to me like
sound policy to allow a decision to be made, or a
wise policy anyway, based upon evidence that's
not going to be admissible.

Now if there's a debate about whether
it could be admissible or not, and that's a
different thing.

CAPT TIDESWELL: I think that was the
issue the Subcommittee was trying to address.

CHAIR BASHFORD: I'm just going back.
So the non-binding guidance will be coming.

JUDGE GRIMM: So conceivably we could
ask them what those might be.

CHAIR BASHFORD: And I think we'll,
yes. But I think probably the 140a which is one
of the problems I think we've been seeing as a
Committee is the data collection that exists uses
different criteria.

They're measuring different things.

Different Services do it differently. You've got the RAND studies, you've got SAPR, you've got the SAPRO. Everything seems to be somewhat ad hoc.

I think one of our opportunities to really make a lasting effect is on the 140a which is to try to as a Committee put on that of what should they be measuring across all Services. And I think that, what is that, two year out.

MS. CARSON: For the standards and criteria. And then for it to actually implement it in four years.

CHAIR BASHFORD: Four years? So it's almost kind of coterminous with us at this point. But I think that's one thing we want to keep in mind, that that's a place we can have a lot of input is on what should they be measuring.

MS. CANNON: I was thinking that I would be interested in seeing the investigative report they did, even though it was broader than perhaps the cases we want to look at. But it
might give us some insight if that's available.

Apparently it is.

MS. CARSON: In your read-ahead materials at Tab 4, there's a link to that report in the digital version. Or you can take it from here.

JUDGE GRIMM: Which item is that?

MS. CARSON: Pardon?

JUDGE GRIMM: Which item --

MS. CARSON: If you look at Section B, reports, you'll see the relevant DoD IG reports. And the February 14, 2017, number 1 is the DoD IG evaluation of the MCIOs that was done in -- well, is that the right one? Let's see. I think it's number 2. That's your 2014 report that you referenced.

MR. REDMOND: There's one early this year as well.

MS. CARSON: Is that this February 2017?

MR. REDMOND: Yes.

MS. CARSON: Okay, so the most recent
one is number one.

MR. REDMOND: That must mean previous is number two.

MS. CARSON: So we didn't provide you the whole document, but the link so you can go and read it.

CAPT TIDESWELL: We have been working closely with the DoD IG's office, and they were very kind in that they've handed us their protocols and the screenshots of the data that they're collecting. We have it, we did a request for information.

We just received it recently. You know, it's an internal document to them so we're sort of riddling through, you know, I think it would be best served by handing it to a subcommittee or a working group to sort of look and see if we wanted to adopt the approach or how we could extend it out to the legal field. But we do have some go-bys for either the working group or the subcommittee.

CMSAF MCKINLEY: I would like to
really to piggyback on what Sergeant Markey said
a little bit and something I think is really
important for us to consider in this whole thing
that really has an effect on everything, that's
training.

And that's training of our leaders at
the squadron level. When we have someone that,
you know, becomes a squadron commander, now has
UCMJ authority to make decisions, you send
someone to squadron commander's course and that
squadron commander's course is a week long.

And how much UCMJ training do they get
on how to make these decisions on what goes
forward, what does not go forward? I know for
instance in that one week's training they may get
one hour of sexual assault training, you know,
and that's it.

So if you have a sexual assault that
goes on in your squadron, you know, how much
training has that leader in that squadron been
given to be able to make the right decision
somehow to take care of that member, you know, so
forth and move forward.

And I would be very interested to see for each branch of Service what type of training do we provide the people in the leadership positions how to deal with a sexual assault, how to make the proper recommendations going forward and what should be referred and what shouldn't be referred and so forth.

But is one branch of Service doing it better than the other? You know, and I think right now that's a big question mark.

CHAIR BASHFORD: Perhaps, Captain, you can remind me, everything has to go to the O-6. And if the O-6 says no, I don't want to prefer these charges, isn't that reviewed at a higher level, then?

CAPT TIDESWELL: Yes.

CHAIR BASHFORD: Or only referred at a higher level --

CAPT TIDESWELL: Well, not for some cases.

MR. SULLIVAN: So I think what you're
thinking of is, if a general court-martial convening authority declines to refer a charge alleging a penetrative sexual assault, that's a penetrative sexual assault under the rule.

If the staff judge advocate in the 34 advice had recommended that the convening authority refer it, and the convening authority declines, that must be reviewed by the Secretary of the Military Department. Since that obligation was put into effect, zero cases.

On the other hand, if the SJA said don't go, and the CA doesn't go, that goes up to the next superior in command who exercises general court-martial convening authority.

That has happened. Interestingly in the instances where that review has happened, there have been no referrals by that superior. And then if it's a situation where the SJA says don't go but the convening authority goes, no further review necessary.

LTC VERGONA: Mr. Sullivan, I do just have to make one correction. In the Army, we
have had one that went into, when it went to a superior commander, that commander did refer that case to a court-martial. We had one.

CAPT TIDESWELL: What was the result?

LTC VERGONA: It was an acquittal on the sexual offenses.

DEAN HARRISON: The communications between the staff judge advocate and the convening authority, whether it's the O-6 or a rank officer, it's not always in writing, is it? I mean, there are some oral communications I would assume --

CAPT TIDESWELL: Yes, sir.

DEAN HARRISON: -- that individuals who have been referenced in the room might remember in terms of whether or not a case should be referred.

CAPT TIDESWELL: Yes, sir, that's true.

DEAN HARRISON: Would it be, in addition to all of the paper data review, is it feasible to speak to a select group of staff
judge advocates and convening authorities who
have been through this process?

    CAPT TIDESWELL: We can always ask the
Services, yes, sir.

    CHAIR BASHFORD: And I think one of
the issues has been that those written
recommendations are getting less and less candid
because of discovery obligations. And that's one
of the things I know that the JPP, I think the
JPP, maybe it's just the Subcommittee wanted us
to take a look at it if anything other than
reading material existed which obviously would
have to be turned over.

    But it's sort of the would you get a
more candid assessment of weaknesses of a case if
it didn't have to be revealed. Now I think
that's being done orally, at least anecdotally.

    DEAN HARRISON: And we have to follow
up with Dr. Markowitz' comments earlier. Is
there a way to review investigative files without
invading the privacy of the individuals involved?

    CAPT TIDESWELL: I would say yes. You
all would redact out. They would pull the
documents.

      SGT. MARKEY: Could you do that
electronically at all through AMRAC or something
like that?

      MR. REDMOND: Even redacting
electronically still takes a good amount of
effort.

      MR. KRAMER: DO you have a sense how
often the documents, the doctors are talking
about are in the file?

      MR. REDMOND: During our reviews, we
came across a number of documents that had
medical files. Not a lot of mental health files
anymore due to the strict changes in the
instructions. But you will find copies of
medical information in the file, yes.

      MS. LONG: Captain, can you remind me
again when is the action that we take that
happens that makes things public? Is it any time
we look at something that it then has to become a
public document? So with respect to the files,
what is the implication of this Committee touching the document?

CAPT TIDESWELL: Yes, ma'am. When a majority of you all are present in one room, it's a public hearing. There's a transcript, it's posted on the website, everything is very transparent.

When you have subcommittees, they're allowed to meet outside of the public purview, but their function is to merely recommend to the parent committee. So I know we had great success, I thought, with the JPP Subcommittee in doing site visits because we had promised those folks anonymity.

And there are reports, if you look on the JPP website we have redacted the reports. We can't tell what base, but you can clearly pick up the generalities and the anecdotes that the JPP Subcommittee sort of latched on to and resulted in their report.

But that's really the distinction.

And I guess its result is the DFO. There's sort
of even a level below that is known as a working group that is even --

MR. SULLIVAN: Preparatory session.

CAPT TIDESWELL: Preparatory session which is even less formal. And so there's ways of conducting your business.

MS. CARSON: If I could add to that. I think also if it's information, personally identifiable information or it's internal DoD or Service document that is not released, that has a FOIA exemption for the Service, then we can't release it either.

BG SCHWENK: So it has to be marked by the Service.

MS. CARSON: Yes, they have to mark it.

BG SCHWENK: They give it to us and then it officially comes to the Committee.

MS. CARSON: I suppose so, yes.

BG SCHWENK: So they've got to do their job before they give it to us. If you don't have any authority to mark anything, just
handle it the way it's marked.

CHAIR BASHFORD: I know we're not
scheduled for lunch until 12:45. Has lunch
arrived? It seems like people are, there's a
certain little bit of a natural pause.

CAPT TIDESWELL: Yes, ma'am. I think
we're good to go. We're going to have lunch
downstairs in the staff spaces on the first
floor.

CHAIR BASHFORD: Okay.

CAPT TIDESWELL: Yes, ma'am.

CHAIR BASHFORD: And so we have a,
what, 45 minute break coming up?

CAPT TIDESWELL: Yes, ma'am, 45.

CHAIR BASHFORD: So five after.

(Whereupon, the above-entitled matter
went off the record at 12:24 a.m. and resumed at
1:59 p.m.)

CHAIR BASHFORD: I'd like to resume on
outline with Number 5, the statistical data
collection options. And I know Option 1 is
continue to build on the methodology initiated by
the JPP, some of which I believe is already under control, but, Dr. Spohn, not to put you on the spot again, can you tell us what the methodology was at the JPP?

It says build upon the data collection methodology and analysis initiated by JPP. I wonder if you could just walk us through that a little bit.

DR. SPOHN: Jennifer's not here.

CHAIR BASHFORD: Do you want to wait until she's back?

DR. SPOHN: No, no. So the data that were collected by the JPP were, again, cases that were preferred. And they went through the documents and created a database. Which was then downloaded into an Excel spreadsheet and sent to me. And that's pretty much --

CHAIR BASHFORD: And what were the data points that you were looking at?

DR. SPOHN: So, all of the charges that were preferred were listed, as well as all of the dispositions of each charge. There was
also information about the sentence. And there was limited demographic information about the victim, the suspect and the place where the crime took place.

CHAIR BASHFORD: And do you recall, was it limited because the underlying data simply wasn't there or because it just wasn't collected?

DR. SPOHN: My understanding, and maybe Stayce can elaborate on this, my understanding is that the data on things, such as whether the victim agreed to cooperate or there was drinking involved, alcohol involved, and some of the other factors that we normally would take into account in deciding how -- in determining how these cases are decided, wasn't consistently available in the files. That's my understanding.

MS. Rozell: I then put over 2,000 cases in our system right now. So we went out and collected a number of documents.

The most important documents within the case such as the, sorry, such as the charge sheet, if there was an Article 32 involved, if
there were any pre-trial agreements and what those conditions were. We also collected documents such as the report of results of trial and also what actions taken after the fact. By the convening authority.

So we gathered all those and designed a database to collect those data points throughout the case. And we also had some information to document what the alternate disposition on whether the case was dismissed.

And I don't know if you want to also give your perspective on it, then we sent all that information out to Cassia.

We also added fields that capture appellate review and what those outcomes were as well. And we were able to take each of these documents and uploaded them up to the document, or up to the database. So therefore, you have accurate information gained from the specific documents, throughout the case file.

And like Cassia mentioned, sometimes there was, the information was not available
because of the specific court-martial process. Maybe they went to a special that didn't require an Article 32, maybe they went to a summary court-martial court, again, that doesn't require an Article 32.

And sometimes, or in most all cases, if there is an acquittal or a sentence below a certain amount, there is not the full record of trial. So you get this abbreviated transcript and abbreviated documents in some cases.

CHAIR BASHFORD: And can you just tell us who is the we? You said we went out and got the data, then you sent it to --

MS. ROZELL: Well, it's myself, Matt Osborne was initially the project manager, and then now it's me and Meghan Peters, who are on the team.

CHAIR BASHFORD: So staff members who did a lot of the data collection.

MS. ROZELL: Yes, ma'am.

CHAIR BASHFORD: And I think some other members of the Committee were envisioning.
CAPT TIDESWELL: Yes. So this is a tasking --

(Simultaneous speaking.)

CHAIR BASHFORD: -- warehouse of the GPS, right?

CAPT TIDESWELL: Yes, ma'am. So this was a tasking given to us by the Judicial Proceedings Panel that has literally been run with the help of Dr. Spohn. All internal through our staff, with the exception of Dr. Spohn.

I think what's really great about it, if I could brag a little is, they took testimony from the U.S. Sentencing Commission, and it was very, very important that whatever data was used in the system, could be backed up by the actual documents from the case.

So if you came to us today and said, in Case X you said this, why, we could literally open up a file and show you all the documents, what our input was based on. And so I think that makes us different than a lot of the other systems being run by DoD right now.
MS. ROZELL: The Services were very helpful in that. If the documents were located in, within the NCR region, then we physically went over to those locations and went through the files ourselves, pulled out those certain documents that we wanted, and then we actually scanned them. So we didn't actually bring back any papers to the office, it was all digital.

And so, yes, there may have been large paper files in the records of trial, but we, at the JPP, don't necessarily have a lot of paper files to have to worry about.

CHAIR BASHFORD: Thank you. And since they do have the 140a process about to start, Dr. Spohn, are there data points that you weren't able to collect, that for across Services, you think would be valuable?

You don't have to answer right now, but --

DR. SPOHN: No, I think in the report file that I provided, I indicated at the end of that report what data elements were not included
in the, that would have been helpful.

MS. CARSON: And that's included in your document, at Item 6. The demographic data.

DR. SPOHN: Oh, there we go. Yes.

MS. CARSON: So that captures all of the information that Dr. Spohn had in the JPP report.

CHAIR BASHFORD: So in Number 6, that is what you were able to capture?

DR. SPOHN: No, that's what's not.

MS. CARSON: No, that's the suggested --

CHAIR BASHFORD: That's what --

MS. CARSON: -- information that should be looked at.

MS. ROZELL: The database that we currently have, on this staff, is flexible and therefore fields can be added, fields can be deleted. So additional information, such as what Cassia recommends, could be added to those files as well in the future.

CHAIR BASHFORD: And that's on an
Excel spreadsheet?

MS. ROZELL: No, it's actually through SharePoint. And you can extract the data that's within the SharePoint site out to an Excel spreadsheet.

CHAIR BASHFORD: Are there more flexible computer programs that SharePoint or --

MS. ROZELL: There's probably some out there. Yes, ma'am.

DR. SPOHN: Probably. Yes, ma'am.

CAPT TIDESWELL: Microsoft Access is a potential.

CHAIR BASHFORD: -- that would you be able to transpose the data to a more flexible program? Lift, it out --

CAPT TIDESWELL: The IT guys would have to help, ma'am, to be honest.

CHAIR BASHFORD: Okay.

MS. CARSON: I'm sure there is a methodology to do that. And it's something that the DAC-IPAD may want to look at, is what the next generation -- this was kind of the first way
to do it and it was internally through the DoD organization that this was setup.

   So something that, and this is also part of 140a, which is to set up the system and the standards and criteria for it, is something you may want to look at what the next generational will be.

   It's not the expertise of the Panel, but it's certainly something that you could have a data subcommittee that looked at it or other experts to advise the Secretary of Defense. On the best way to do that.

   The recommendation you've seen from the JPP has been, it's really important to have a document based system. And so I think if the DAC-IPAD wants to continue to look at that and work from that and how to take that even further, that would be beneficial information.

   CHAIR BASHFORD: And when you say document based, that means if you say something you can back it up with the pulling up the document, right?
MS. CARSON: The other --

CAPT TIDESWELL: Right. We have the results of trial, we have the charge sheet.

MS. CARSON: The other problem information is, it would be self-reported from the Services, numbers based on people in the field entering data, when that's not their primary function. And so there's lots of room for error and lack of quality control in the information that's getting keyed in. Just as a number. It doesn't tie to anything.

If you actually can say, this ties to a document that we can go back and find it. That was the best practice. That was expressed by the U.S. Sentencing Commission and what they use in the data collection that they do.

And they have their own group of people. It's the same group that looks at the document, so they're interpreted the same way, with the same processes, and so they know what they're looking at is all uniform.

DR. SPOHN: But there are some clunky
features about the SharePoint data system. For purposes of analysis, in particular. Because I took the Excel spreadsheet and imported into a statistical analysis package.

But all of the charges, and there could be up to 25, 30 charges, are all listed in the same field. And then all of the dispositions of those charges are all listed in the same field.

And so it's not possible, in an analytical framework, to separate those things out. And so I had to go through, actually, they did it for the last iteration.

CAPT TIDESWELL: Right.

DR. SPOHN: You indicated whether it was penetrative or contact offense. But the first time I had to go through and actually look at every single case and decide what the most serious charge was. And then go to the disposition field and match the cases with the dispositions. And so that's kind of clunky.

CAPT TIDESWELL: And I believe the DoD
IG uses Microsoft Access, right?

MR. REDMOND: Yes.

CAPT TIDESWELL: Quite successfully.

MR. REDMOND: Yes.

CAPT TIDESWELL: That would be something to look at.

MR. REDMOND: Correct. We have our database, has thousands of data points. We've collected a lot of information.

And as you'll see, the demographics in the back of those reports. We added them to the package. Gender, relationships, everything.

SGT. MARKEY: So one of the things that I learned in a civilian world is limitation. If you don't manage your information, you're going to fail whatever your goal is.

So I actually contracted with an outside vendor, they actually developed, it's FMR, it's forensic medical record, for SANE exams. So they do it in the Cloud, it's web-based.

So I actually contract with them. I
gave them the data points and elements that I wanted to collect. They created an electronic system that, as I do a case review, I put the data into my system, anywhere that I'm at in the world, and that system has all the security features.

It meets all the federal requirements for secured data. Whether it's stand-alone, in-flight, at another location. And then I just go in and run reports, as opposed to having to write stuff down.

And I know collecting data has always been a problem for law enforcement, and so this is what we ended up doing. And I had to access database, this would have worked before, but this was a web-enabled system that -- so they're out there, I'm just saying that's an option. Once we determine how we're going to collect, what we're going to collect.

I just went to them and said, these are the data elements, these are the categories I'm collecting things in, and then I broke those
down into -- that way it's a standardized collection. So everybody that goes into that system, they know what to collect so they're not collecting different things.

And we use drop down to know we're using the same language. We got same information across the board, no matter who's doing the review, you know they're capturing the same information that the person next to them is doing.

So it's worked really good. We're going to use it on a couple other projects that we have going for assessments, for civilian law enforcement in the next three or four months.

So it's just something that we can demo or look at or, if anybody cares, they can get a hold of me and I can give them access to the system, that they can actually look at it.

CHAIR BASHFORD: So at our last meeting we talked about setting up a data subcommittee or a data working group. Dr. Spohn offered to be on that. I believe Rod offered to
be on that. Right?

CMSAF MCKINLEY: Yes.

CHAIR BASHFORD: But at least at the last meeting, those were the only two takers. Are there other people who would like --

SGT. MARKEY: Sure.

CHAIR BASHFORD: -- like might be too strong.

SGT. MARKEY: Sure.

CHAIR BASHFORD: Okay.

SGT. MARKEY: Even though my expertise isn't in that, but obviously the case file review, I'd like to be involved in that. But I think --

MS. CARSON: I think they're linked.

SGT. MARKEY: Yes, they're going to be linked, absolutely. So I have no problem.

CHAIR BASHFORD: I mean, there's a huge linkage back and forth --

SGT. MARKEY: I will require more money though.

(Laughter.)
MS. CARSON:  A raise.

SGT. MARKEY:  I'm going to require a raise.

(Laughter.)

CHAIR BASHFORD:  How about we'll give you a dime.

SGT. MARKEY:  How about two oatmeal chocolate chip cookies?

CHAIR BASHFORD:  There we go.

BG SCHWENK:  You've done it now.  He's signed up.

(Laughter.)

CHAIR BASHFORD:  That's right, offer and acceptance, right?  Okay, great.

Do we have authorization from the Committee to setup that subcommittee with these three wonderful people?  Is that the consensus?

DR. SPOHN:  Yes.

CHAIR BASHFORD:  Okay, great.  And I believe you can start as a working group and transfer to a subcommittee --

CAPT TIDESWELL:  Yes, ma'am.
CHAIR BASHFORD: -- when the approvals come back?

CAPT TIDESWELL: Yes, ma'am.

CHAIR BASHFORD: Okay. And if we do setup the working group to look at a few cases of advance of our next thing, I think it would be interesting to see the data suggested, both in our original conversations, JPP recommendation and Judge Brisbois' proposal.

It would be interesting to see, in just looking at a few cases, are all of these things in, listed in 6, being captured or is it easy to capture them from looking at a few case files. And if it is, that's great, if it's not, then we would have to dig further.

MS. PETERS: Right. If it was easy we would have probably had it.

CHAIR BASHFORD: Slackers.

MS. PETERS: Right. Yes. Because we were dealing with public documents and some of the information in there is limited in what we had available publicly.
JUDGE BRISBOIS: Just to be clear, the proposal, I was trying to brainstorm the session as one, which is sometimes the problem. Because your audience already believes what you're saying.

CHAIR BASHFORD: It's always unanimous, isn't it?

JUDGE BRISBOIS: Yes. But looking at out, and so some of these points that I had raised, we're assuming that they weren't being captured now, but should be. In which goes more in line with 140a.

It should be going forward because it allows some of the discussion to take place that we're presently not able to have.

CHAIR BASHFORD: Exactly.

JUDGE BRISBOIS: So to the extent it exists, great. To the extent it doesn't, it was looking forward, these are things we might want to be looking forward and suggest that they get captured.

CHAIR BASHFORD: My boss has a saying
he likes to use a lot, which is the plural of
anecdote is not data. And so I believe the more
actual data we can capture, I think it's hard to
make recommendations based on anecdote.

On seven, I think a lot of this has
been captured, if I'm correct. By data that's
been made, and it's continuing to be made
available to us, is that correct?

MS. CARSON: That's correct. The
unique point that Judge Brisbois made is looking
at it by combat arms convening authorities and
combat support convening authorities. So that's
a way that it's not looked at currently.

JUDGE BRISBOIS: I mean, hearkening
back 30 years, it was a different world, but
Seventh Armored in Stuttgart was a completely
different environment than the 21st Support
Command in Kaiserslautern.

And so different troops, different
missions and different mixes, in terms of the
troop strength. You know, who's in the troop,
you know what I mean.
So that is something that's unique to this setting as opposed to any civilian criminal analysis where society is society.

CHAIR BASHFORD: Is that the equivalent of deployed, non-deployed?

JUDGE BRISBOIS: No, that's a different category.

MS. CARSON: That may be another category.

CHAIR BASHFORD: So what was, just so I understand what we're talking about, what did you say, at arms?

JUDGE BRISBOIS: Well, combat arms are the fighting force.

CHAIR BASHFORD: Okay.

JUDGE BRISBOIS: The armor, the artillery, the infantry, the Military Police, combat support, our water purification, medical.

CHAIR BASHFORD: Okay, got it.

JUDGE BRISBOIS: Those are just gross examples, but I'm sure Master Sergeant can be much more specific.
CHAIR BASHFORD: And that has not been captured that way yet?

MS. CARSON: Right. Correct.

CHAIR BASHFORD: So that would be useful.

JUDGE BRISBOIS: And, General, I mean, you understand what I'm trying to get at?

BG SCHWENK: Yes. That's why we also tried to have computer guys whatever on the courts when we were defense counsel. Didn't want infantry officers on the courts.

(Laughter.)

BG SCHWENK: It's not a defense bar.

JUDGE BRISBOIS: No.

CHAIR BASHFORD: And it hasn't been broken down by deployed or non-deployed yet, is that correct? It has not?

MS. PETERS: No.

CHAIR BASHFORD: And would there be a way to capture that?

MS. PETERS: Each charge will specify the location of the offense. So we would have to
go by and do a by-specification analysis.

Right now, we look at, where was the court-martial held, what unit did it. Which doesn't correspond to where the offense occurred. Which could be buried within a particular case.

But we can --

CHAIR BASHFORD: Where the offense occurred should be in every file.

MS. PETERS: Right. It's easy to access, we would just have to develop the system to track it appropriately. It's easy enough.

MS. CARSON: And that's kind of the list that would be beneficial for you, as an Advisory Committee, to come up with an actual list of exactly what data and why. And there's data on the demographics, there's data on the process, the Military justice process that you may be interested in, in the investigation specifically.

So maybe even have topical categories of data that you recommend being collected. That can inform what you do in your case reviews and
it can also be a recommendation to DoD on when
the system is made, what it should collect.

CHAIR BASHFORD: I know we've also
talked in the meetings about the aftermath of a
report, both in terms of either separation from
the Service for the victim, retention career
paths. I think that's one thing we should look
at. And retaliation as well.

I know that's, in our presentation
last time we heard two different viewpoints, that
might be too strong, but that sometimes what is
being perceived as retaliation might be somebody
saying, don't sit for this exam because you've
got too much on your mind at the moment. And
that might be what's well intentioned, but
actually winds up still hindering somebody's
ability to move forward.

CMSAF MCKINLEY: Yes, I spoke about
that last time. Is, you have a person that
they're in a promotion cycle and they're having
to deal with this court situation and everything
else and so they're supposed to be studying and
preparing for a promotion, but they're mind is not there. So they miss out on the promotion. And so therefore that goes to another year.

So you have a victim that may be a victim of rape or sexual assault, whatever, but they're also still in the promotion cycle. And they missed out on the promotion.

So in a sense, they're a victim again. Not only a victim of the sexual assault, but they're also a victim of not being in that promotion cycle and being able to test the way everybody else does.

And so I think that is something that we should, the Military, should consider. A person of a sexual assault, what effect does that have on their next promotion, their performance report, et cetera. Whether they're an officer enlisted, male/female, it doesn't matter.

Does that make sense, ma'am?

CHAIR BASHFORD: Yes. And one thing, several people had mentioned retention rates. I think you have as well.
I'm just not sure what our control group would be. If we see people who've reported being sexually assaulted cycle out of the Military, at X number of years post-report, what's our control group?

Like I don't know how you would pick somebody who wasn't sexually assaulted or didn't report being sexually assaulted, say in September, how long they stay?

I'm not a data person, but I think I know enough that you have to have a control. So it would be good to measure, I just don't know how we would do it.

CAPT TIDESWELL: And the Services manual will have overall retention rates. They track them all the time.

CHAIR BASHFORD: So you would look to see if this particular subset had a different retention rate?

CAPT TIDESWELL: Eventually.

CMSAF MCKINLEY: I know in our first meeting there was a stat that was put out there
that one third of sexual assault victims separate from the Military within seven months. That was someone, I think the current Air Force Colonel that came in and spoke to us, the lawyer, he provided that stat. One third separates within seven months.

DR. MARKOWITZ: I bet it would be interesting to look at, enlisted versus officer, in terms of career trajectory and retention and that sort of thing. So I would encourage us breaking that out and taking a look at this.

CHAIR BASHFORD: Which I think also brings up to another point that we've certainly heard raised, which is the expedited transfer. What is the impact of that.

Again, I think we've seen it anecdotally that there is the perception that the transfer actually hurts people at the trial level, because the members think, well, you got a cushy transfer. I think it would be good to see how often are the transfers being done, where are they being done to.
And what I heard at the JPP, the perception is that they're all going to San Diego or Hawaii. That can't be true.

But it would be good to actually have data on that. How often are they used and where are they going from and where are they going to.

We have something similar where people who are, don't have papers in the country and they're the victim of a crime and cooperate and get a U visa. And that has become, at least in my experience, being used as a sword at trial.

That the only reason you said you were a victim of a crime was in order to regularize your immigration status. So it just seems there are civilian analogues to this.

But I think that would be looking at the idea that somehow making this claim puts you in an advantageous situation. We should just take a look at it.

MS. LONG: We had a student from the Coast Guard, in our Georgetown law class actually, write a paper on this, and trial piece,
on how to analyze. And I'm happy to share to
that. He was actually the top student in our
class.

CHAIR BASHFORD: Great.

MS. LONG: It's very short, it's not
a long paper. But I'd be happy to send that out,
it would be useful.

CHAIR BASHFORD: Yes, that would be
great. I mean, we should be able to get that
data.

The practitioner training and
experience and resources, and these are like
proposed policy topics, we've certainly heard
quite a bit about that. I think we should
continue to see how that tracks.

I think it would be interesting to see
is, how is it different across the Services. It
seems like it's fairly standard, from what we've
heard today. But we haven't actually heard,
unless I -- have we heard from the, sort of
defense bar?

I know people in the JAGs can switch
back and forth, but we heard really the
prosecution training. Have we heard a piece on
the defense training yet?

Is there a specific defense --

CAPT TIDESWELL: The JPP.

MS. CARSON: Right.

CHAIR BASHFORD: So that might be
something we would like to hear from them, down
the road.

MS. CARSON: Definitely.

CHAIR BASHFORD: And I don't think
we've heard from the SVCs or the VLCs, have we?

CMSAF MCKINLEY: No, ma'am.

CHAIR BASHFORD: Again, a piece down
the road will be good to hear their training.

Yes?

DEAN HARRISON: For the defense bar
and for the victims' advocates, would that be
something that you'd want in a public hearing
before the whole Committee or is that better done
with a subcommittee or working group meeting or
so?
CHAIR BASHFORD: I think some of both.

DEAN HARRISON: Okay.

CHAIR BASHFORD: I think sort of the training they're provided --

DEAN HARRISON: Okay.

CHAIR BASHFORD: -- is kind of a public committee. If there are gripes --

DEAN HARRISON: That's what I'm thinking about.

CHAIR BASHFORD: -- or the things that --

DEAN HARRISON: They might have critiques.

CHAIR BASHFORD: Or things that they think could be improved. But in a more positive thing, that might be better done in a subcommittee setting.

BG SCHWENK: The defense bar tends to be more candid at the public hearings than the trial counsel.

(Laughter.)

BG SCHWENK: One thing I was thinking,
as we get down to this Page 5 of Tab 8 in Paragraph 8, the proposed policy topics, I mean, it seems to me we should be, rather than talking generally, maybe we should be talking specifically.

We have between now and March for our next report, what specific topics, out of this list or the ones that you all have in your minds, do we want to grapple with first?

Because if we could today, in the afternoon, identify two, four, whatever we come up with, that would give us a focus, if we got a subcommittee to look at defense, was one of them, that would give them a focus to do something between now and, maybe they start as a working group but they turn into a subcommittee, between now and October, and then we'd have something in October to really grapple with on a specific issue.

One that we mentioned a lot here is the 140a issue. Article 140a.

That might be one we say, let's try to
get at the early end of what DoD's doing on that, by putting that down as one of our topics that we want to address first and get started on that. And maybe not, but maybe we would.

So it seems to me, if we just go through this and say, this is a good idea, they're all good ideas. I mean, I think all these ideas are good, but we can't do them all at once.

And so I think it would help if we tried to decide which ones are we most interested in short term, and which ones can be in reserve for your next year or the year after or whatever.

CHAIR BASHFORD: I think it's, when you're dealing with something as massive as DoD, getting in at the ground floor is a lot better than coming in like a month before everything is final. So I think working, having 140a and what we should recommend as an early topic, would be a good one.

I know the guidance, I've already forgotten the number. What was the one, Dwight,
the guidance that's coming out? It's out for public comment now.

MR. SULLIVAN: The Article 33 Non-binding Disposition Guidance?

CHAIR BASHFORD: Yes, that ship has sailed. That's, you know, the one that's up for public comment, it's probably not changing much.

BG SCHWENK: Yes, but if Dwight was doing it, it's probably screwed up. To make a comment on it.

CHAIR BASHFORD: That was a friendy comment.

BG SCHWENK: That was.

CHAIR BASHFORD: But I think getting in on the ground floor on something like that is important. So I would like, my personal view would be --

MS. CANNON: What is 140a?

CHAIR BASHFORD: -- 140a is the data collection across all Services, and coming up with a uniform way of tracking these. Everybody tracks slightly different and they collect
different information.

If we could make some recommendations as to what we think, as a Committee, would be important things. I think that would be a good thing for a working group subcommittee to focus on early.

BG SCHWENK: And the working group on data would be providing information to us and to that subcommittee, the 140a, on what's missing, what we need and issues that have arisen that there is no data to support. Which would then go funnel into the 140a. People can say, oh, how we would design that.

DEAN HARRISON: I think that it's something that needs, clearly meet the need of the resources and training for the defense counsel. We've heard about the need, I think, or at least we need to look into whether or not there should be dedicated, or a quasi-dedicated to investigative systems, that's helpful.

And I suspect that the training may not be as uniform across Services as we might
think. And I don't know. But I think it's something that a staff committee should look into and make recommendations for our next data report. Write the recommendations back to us for the next staff report.

MS. CANNON: And I think connected with that is, once you get your feet in the door and you start learning what you're doing, how quickly are you moved on to something else to know the continuity of representation that's lost. And that has an impact.

CHAIR BASHFORD: I think the resources seem to be not as equally distributed as might be desired.

MR. KRAMER: I know that we've not done training for Military defense lawyers, that is their primary complaint, their resources, and who they have to ask for.

CHAIR BASHFORD: Right.

MR. KRAMER: I think we heard today they have to go to, the convening authority has to authorize it. Even, I think somebody said
through the prosecution. And so I know that's their probably primary complaint.

MS. CANNON: Experts, discovery, investigation.

MR. KRAMER: Right.

DR. MARKOWITZ: All of that goes through the government.

MR. KRAMER: Right. Right.

DR. MARKOWITZ: All of it.

MR. KRAMER: And I know that's their primary complaint, yes.

DR. MARKOWITZ: Right. Yes, control of the resources.

MR. KRAMER: Yes.

CAPT TIDESWELL: So the JPP had two recommendations that are pending, on whether congress kicks it on in the next end of year, who knows. But one was to give the, each Service has embedded defense investigators, then the second was is that they actually have their own budget or pot of money to draw from, from expert witnesses, without having to go to the
prosecution and the convening authority to get
the money for the experts.

DR. MARKOWITZ: That's a JPP report?
CAPT TIDESWELL: That's a JPP report
that's final. And that's --
MR. KRAMER: That's the way federal
public defender offices operate. We have our --
CAPT TIDESWELL: Yes, sir.
MR. KRAMER: -- money for experts.

Now, CJA lawyers have to go to the judge, which
is now controversial. But there's a report
coming out on that soon.

But at least they don't have to go
through the prosecution, they can do that ex
parte. But there are some complaints about that
too I know.

But federal public defenders, that's
what Military defense counsel say, we wish we had
our own budget for that like you do.

MS. CANNON: So are you saying that
these two recommendations are already in the
work, so it would be redundant, if not
unnecessary, for us to pursue the areas?

    CAPT TIDESWELL: Well I think right
now I would probably go into a hold position.
Because right now the report is final, so the JPP
has sent it to the Hill, it's there for their
consideration. What they do with it, or what the
Services or Secretary of Defense, if anybody
picks up on it to make those changes, that's
entirely up to them. We're just not going to
know right away.

    MS. CANNON: Would it matter if we
weighed in also?

    CAPT TIDESWELL: I think if it doesn't
happen this round, it would definitely matter in
the long-term if you all weighed in. Absolutely.

    CHAIR BASHFORD: So perhaps we table
that to see if they take any action. If they
don't, we redo it.

    MS. CANNON: The only thing not in
there is training.

    DR. MARKOWITZ: Right.

    CHAIR BASHFORD: Does the JPP report
CAPT TIDESWELL: Ma'am, why don't you speak to that.

MS. SAUNDERS: Yes. It does include someone on training, but also on experience. It makes the recommendation that the experience levels of defense counsel be commensurate with the trial counsel. Provide some guidance on that.

And there's also one on resources as well to ensure that defense counsel have similar, or similarly resourced as their trial counsel counterparts.

CAPT TIDESWELL: To include general support.

DEAN HARRISON: What's the longevity of someone who's doing defense work? Are they there for an extended period of time, or it's a short stint?

MS. SAUNDERS: It varies. I think what the JPP learned, and put into their report, is that it varies by Service.
From, I think in the Marine Corps, and
I'm sure that the Marine representative will
correct me if I'm wrong, but I think it was about
18 months to up to about three years, as the
transition --

DEAN HARRISON: You're only doing it
for 18 months?

MS. SAUNDERS: Serving as a defense
counsel.

MS. LONG: Is it true that it sort of
goes against, that it is held against a Military
member if they stay somewhere long?

I mean is that part of the attention
with keeping people in these positions for a long
enough time, to get the requisite expertise that
they would need?

Is there that attention going on that
has been addressed?

MS. PETERS: We have received
testimony on that issue in that it's an ongoing
issue, but it's one of those things that's been
developing. We're going to address various areas
in the Services.

So are you not going to hear those two anymore, no, but you're going to hear that one Service is toying with Military justice litigation tracks and then another uses skill identifiers to incentivize people to stay in the Military justice track. Whether they you do prosecution and defense. And they encourage both sides in that regard.

But those skill identifiers are favorable, are looked upon favorably for promotion and what not and for being groomed for senior positions. So there is more incentive.

I think you're still always going to hear that because if the goal is to have a broadly skilled individual, that necessarily involves moving around. And we heard testimony from senior leaders about the rationale for doing that. So there's attention for the recognition on the development of expertise.

DEAN HARRISON: Along --

MS. PETERS: In various ways.
DEAN HARRISON: Along those same lines, are Coast Guard and Marine Corps lawyers still line officers who are expected to rotate in and out of law specialty?

CAPT TIDESWELL: Yes.

MS. CARSON: Yes, I believe.

CAPT TIDESWELL: They both are.

DEAN HARRISON: And so if a Coast Guard or a Marine lawyer was only a lawyer, they would not fare well in the promotion area?

MS. CARSON: Can I add one update?

Congress has actually enacted legislation on this, requiring a pilot program in each Service, or a legislative track, and allowing them to have, I believe, 0-6 --

DEAN HARRISON: Litigation.

CAPT TIDESWELL: Litigation.

MS. CARSON: I don't know what I said.

CAPT TIDESWELL: Litigation.

MS. CARSON: Litigation track.

There's been some push for this to happen, so I think the first step is the pilot program.
The Navy already has this program in place. And it also makes accommodation for trying to assist that not to be a problem in this promotion.

MR. KRAMER: Sorry, can I ask --

MS. CARSON: So it's something you can monitor. Sorry.

MR. KRAMER: It's 18 to 30 months for defense counsel, or whatever, 18 months to three years. What about trial counsels, is that similar or is that different?

MS. SAUNDERS: Maybe I can ask the Service reps if they have a good wag on that, for trial counsels?

LTC VERGONA: So in the Army, trial counsel, defense counsels serve, it's a tour, so it's typically the same. It's usually two years, depending on your location. Sometimes it can be 12 months. Korea is of a location for a 12 month tour.

But the length of a tour for a trial counsel and a defense counsel is supposed to be
the same. I don't know to --

CAPT AHLERS: Good afternoon, I'm Joe Ahlers from the United States Air Force. All of our counsel start in the legal office as prosecutors.

And that can be for typically about two years, then they move over to be either a defense counsel, special victim's counsel, if they so choose. And those assignments also go for approximately two years.

But then some of them also move on then to be senior defense counsel, senior trial counsel. Again, standard assignment is two years.

LTC VERGONA: And if I could make one correction, also there is a special victims' prosecutor. So Army has -- that's a trial counsel who what they do is they prosecute sexual assaults. That's a three year, typically a three-year tour.

CHAIR BASHFORD: Well, one data point I haven't heard mentioned, but I think it would
be useful to try to get, is during the pendency of a case, how often is there a change in prosecutor and how often is there a change in defense attorney.

Because somebody has cycled out of that program or, I don't know, been deployed or something, but on a specific case, how many prosecutors and how many defenders do you cycle through? That's not good for a case.

SGT. MARKEY: I was just going to ask the same question for the investigator side. Is there a transient, if an investigator starts a case, is there the possibility that that investigator may not continue that case because of reassignment or transfer?

MR. REDMOND: Oh yes, there's always that possibility. Depending on how complicated the case is.

You've heard the MCIOs talk about their typical case length, anywhere between 130 days down to 75 days. And people in uniform are always transitioning.
There's always these -- MCIO units are not large units, with the exception of Bragg and some of the others, but traditionally the Air Force units are smaller. So the transition is always somewhat moving every year. On the likelihood side.

SGT. MARKEY: What happens to those cases when that person leaves? What happens to his case load?

MR. REDMOND: It gets transitioned to another agent in the office. But typically, in a smaller unit, it's not just the agent working the case, that entire office is working the case in some form or fashion. It's not a lone ranger doing it, but it's a team effort mostly.

So a lead agent transitioning will just routinely transition that role of lead to the support agent, who then becomes the lead agent. And is fully versed and experienced in the complexity of that particular case.

MS. LONG: What's a typical case load for a prosecutor or defense attorney on the tour?
How many cases do they handle in their lifetime?

Not at one time, but how many cases do they handle? And then the same for investigators.

CAPT TIDESWELL: Service reps, do you have a swag?

LTC VERGONA: So, ma'am, for the Army, it just depends on your location. If I'm stationed at Fort Hood or Fort Bragg as a trial counsel, or a defense counsel, I'm going to have a heavier load than at another location.

MS. LONG: What is the typical heavier --

LTC VERGONA: Heavier --

MS. LONG: -- sexual violence?

LTC VERGONA: Of sexual assault cases?

MS. LONG: Of sexual assault cases, not regular cases. Of sexual assault cases.

LTC VERGONA: For defense counsel, sexual assault, I would say 80 percent of our cases. And they may carry 15 cases, 20 cases.
JUDGE GRIMM: But when I was in the Army, you started off as a defense attorney or a prosecutor and then you might be switched over to do admin law or something else. Is that still there?

LTC VERGONA: Yes, sir.

JUDGE GRIMM: Because you're not having someone who is going to be a trial counsel, is what we used to call a prosecutor or a defense attorney, who in a course of a 20 year career is going to spend 18 years doing that, except for time in school.

You may have someone who is at Fort Bragg, who has a heavy sexual assault case docket, and then never tries another case again, goes on and does admin law and is an advisor to a commander in a deployed unit and then comes back as a deputy staff judge advocate and then goes off to the advance course or something else. So you don't have that continuity of prosecution that goes forward.

It tended to be, and I don't know if
it's still the same thing, the newer junior
officers come in and, except if you're in one of
the more, in a command that deals like area
defense counsel, where you'll have senior people
who are supervising another defense counsel, it's
not, you're not going to stay as a prosecutor or
defense counsel typically. At least that was my
understanding. Is that still the case?

LTC VERGONA: Yes, sir. And so for
the Army it's our, we want broadly skilled judge
advocates.

JUDGE GRIMM: Yes.

LTC VERGONA: And so you might do
criminal work, you go to administrative work --

JUDGE GRIMM: Right.

LTC VERGONA: -- do environment law --

JUDGE GRIMM: Right.

LTC VERGONA: -- go back to criminal
law. But typically, it will be a couple years
in-between. Go do defense work after being in
environmental law.

So that you're broadly skilled, so
that when you're the senior leader and you're
advising the commanding general, you have
experience in a variety of types of law.

JUDGE GRIMM: All right.

LT NICA: I'm sorry to jump in.

Alexandra Nica from the Navy.

We have the established Military
justice litigation career track. So the
experiences with the Army may not exactly what we
have.

But I am in the career litigation
track myself. I've spent the last five years in
the courtroom as a defense attorney at two
different locations.

Our litigators typically will switch
between defense and prosecution, but what we see
with our senior leaders, our senior defense
counsel, assistant senior defense counsel, senior
trial counsel, assistant senior trial counsel, is
that they have been in, pretty much back-to-back,
litigation tours.

We identify those, well, people tend
to self-identify, as either interested in
litigation in their first tour, as they're going
through the various areas that the Navy
practices.

We have a board that selects people
for inclusion in the Military justice career
track based on experience. Usually after the
four-year mark. So one first tour plus time in
the courtroom, as either prosecution and defense,
and then you go on in jobs that are coded for
Military justice.

Now, this may include disassociated
tours, so you can go be an SJA so you get that
experience or you can go to a carrier and get
that experience, or even be an instructor. Those
are things that add to that diversity of
background as you get into the higher ranks.

But we have a very well-established
group of, right now it's 77, Military justice
career track practitioners at various levels of
experience, in order to make those senior defense
counsel, trial counsel and leaders, very well
skilled in the Military justice.

MS. LONG: Are they specialized in litigation or in sexual assault litigation?

LT NICA: So I would say both. Because our case load is so heavily sexual assault oriented, the cases we will see most often are sexual assault cases. Whether that's child sexual assault or adult sexual assault, it constitutes a big portion of our portfolio.

There are -- on the trial counsel side we have special victims' prosecution capabilities that are SVIP capabilities that are, like, the criteria have been established, we're doing this by instruction.

For senior trial counsels and assistant senior trial counsels, to make sure that they meet those wickets for having dealt with adult victims, child victims, experts. All the things they need to know to deal with sexual assault cases. So they are SVIP qualified attorneys as well.

MS. LONG: I mean, I guess the thing
is, it's true that there are areas of expertise. Like I think, and I'd love to make it a defense, but the more of these cases you try to see, because they are so variable you start to learn things that compound them, whereas if you're more of a generalist of litigation, you miss something of it.

I mean, I think that's why some of us stay in the sexual violence track and specialize in civilian offices. Because you start learning things by the trial of a similar case even or a similar expert, it's so nuance.

So it sounds like maybe the Navy is moving in that way, but I couldn't tell from your description of the trial counsel, if they are specialized or if they're just sort of have a case, and so checks of the box.

LT NICA: In order to be SVIP qualified, you have to have a certain number of cases, and I don't have that number off the top of my head --

MS. LONG: Okay.
LT NICA: -- that you tried in the
prosecution of sexual assault cases. There are
training requirements and courses you must take
to be SVIP qualified.

MS. LONG: Okay.

LT NICA: Each trial office is
required to have a certain ratio of SVIP
qualified senior attorneys to every, I guess line
trial counsel --

MS. LONG: Okay.

LT NICA: -- to assist in the training
and development. These are things done. And if
done informally -- it was a draft instruction
that we were all working off, but it's being
formalized as we speak to ensure the rigor of the
criteria.

MS. LONG: Okay.

LT NICA: So if you're talking about
SVIP qualified trial counsel, there is a list of
criteria that they need in order to be that kind
of qualified.

MR. KRAMER: So is the Navy the only
one with this litigation program that --

LT NICA: Yes, sir.

MR. KRAMER: -- track?

LT NICA: For performance. It's still identified in some of the other Services, but when we talk about track in a true sense of the word, the Navy is the only one that has this.

CHAIR BASHFORD: Ms. Carson, did you say that they have established or are establishing pilot?

MS. CARSON: The NDAA for Fiscal Year '17.

CHAIR BASHFORD: Okay.

MS. CARSON: So it's new legislation that's requiring the pilot program in each Service. I don't know if skill identifiers are the method --

LTC VERGONA: So skill identifiers, the Army has skill identifiers in the litigation as well. Our systems are a little different, but the NDAA required a pilot program.

But just so that you know, there has
been proposals to either change that litigation track that's going through the wickets right now, to even change the pilot program that was just given to the Services last year.

So the pilot programs, they're trying to, Congress is trying to make adjustments to what they end up establish --

MR. KRAMER: Like change it how? To make it better or worse?

LTC VERGONA: Well, it depends on --

(Laughter.)

LTC VERGONA: -- what your viewpoint is.

MR. KRAMER: No, I mean to change it in what way?

LTC VERGONA: So to be more directive on what they want to see in the pilot programs.

CHAIR BASHFORD: Who is influencing the changes?

LTC VERGONA: Well, Congress is the one that is proposing the changes. So Congress, either a Representative from the House or the
Senate side will make a recommended change. Then it goes to the NDAA, and then we're required to follow it.

CHAIR BASHFORD: So that might be a long-term thing we look at, not now, but down the road, is sort of see how these pilot programs, if they get launched, how well they're performing.

DEAN HARRISON: Is there some provision in the UCMJ where an accused can request a Military lawyer by name in the local Service?

LT NICA: Yes, sir. Individual Military Counsel, IMC.

DEAN HARRISON: So is there anything in the law processes of having the highly qualified sexual assault defense attorneys put into a directory and letting an accused ask for one of them by name?

LT NICA: We do not -- I mean, that has not been proposed or dealt with in anyway. What I will say is that our four defense attorneys are now generally more experienced
It used to be that, at least in the Navy, my first tour was a defense attorney a few years ago. That is not the same experience that someone coming into the navy as a JAG now will have, and will rotate through.

And they won't touch a defense court, a true like court-martial defense case, until their second or third tour, so they typically have some polish on them.

But four defense counsels have had a tendency to be more experienced. Certainly, senior defense counsels and officers in charge are some of those highly qualified defense attorneys.

So within every office, you someone there whose generally sitting second chair, or at least as a supervisory attorney, who is one of those qualified experts.

And our JAG instructions deal with how you can request an individual Military counsel.

We place, I think it's like a limit of 500 miles,
like in that same area. But again, all the
staff, our offices, there is an eye towards
ensuring that there is someone there who is super
qualified at doing what they're doing.

And our levels --- and this may answer
some of your questions as well, sir. There are
three levels in our Military justice litigation
track.

Specialist 1 is the lowest level,
Specialist 2 is the intermediate, and then
experts are at the top level. Having seen in
most cases, generally, judges are in the expert
level. Or at least Spec 2.

So they're looking to staff those
offices, the heads of those offices, the DSOs in
particular.

Certainly trial shop as well, but
making sure that the remote offices have someone
who is on that spectrum, and one or more senior
people who are either Spec 2 or an expert.

DEAN HARRISON: I was just thinking,
if I'm not in the Navy and I've been accused and
I believe that the Navy has better trained
defense counsel, can I request one of your
officers to represent me?

LT NICA: Well, I know that, for the
Sea Services, the Navy provides defense for the
Coast Guard as well, so that happens a lot. We
have a coastie embedded, a coastie attorney
embedded with our offices, many of our offices,
as a DSO, so we do cross-training as well.

And then I know I have practiced with
the Marines on several occasions, defended their
folks, practiced in their courts. So there is,
at least on this side, fairly fluid communication
between our defense services, to be honest with
you.

There is no formal database, though,
sir.

CMSAF MCKINLEY: Having been an Air
Force First Sergeant for ten years and working
directly with the JAG office all the time in
Military discipline -- and I'm outdated so it may
have changed since then, but Captain, you can
help me out -- but I never saw a JAG Office that was understaffed.

I mean, we always had prosecutors in there. But when one of my airmen got in trouble, sometimes we had a difficult time get an area defense counsel. And a lot of times, the availability of an area defense counsel was just a phone call, but maybe that area defense counsel was in another state.

Has that improved so that we can assure that when someone needs an area defense counsel, that maybe we can get them face-to-face and start that process up a little bit better? For any branch of Service.

CAPT AHLERS: Well, Chief, since you're specifically talking about the Air Force --

CMSAF MCKINLEY: I'm looking at you, Captain.

CAPT AHLERS: -- I'll accept that. We're set up a little bit different in that we have generally one defense counsel at the Air
Force Base. We also have a lot more Air Force installations than some of the others that are organized by region for defense counsel.

However, the improvements in the technology have somewhat addressed that as well. Everybody generally has a government issued iPhone and we have a paralegal at each location as well.

So I don't know that the staffing has necessarily changed since you were the Chief Master Sergeant of the Air Force, or the First Sergeant, but certainly we've made advances in improvement in ensuring that any neighboring installation can assist.

If for instance, somebody is conflicted out or caught on a PCS cycle, or they're aware trying a case, our defense counsel does not necessarily only try cases at their installation. In fact, that's probably, they're going to be at various installations with the region trying cases, so they're just not always going to be there.
CMSAF MCKINLEY: That was my point.

Is I've seen a lot of times when and Airman needs to speak to a defense counsel and they're not available.

CAPT AHLERS: Yes, sir. And then it certainly has become a lot easier, and we can access people pretty much 24 hours a day.

And having the defense paralegal at every installation with the attorney has also helped, as they don't travel quite so frequently.

CHAIR BASHFORD: I know that JPP, when they were at site installations, heard, has maybe two strong complaints about the length of time it took for face-to-face meeting with the defense attorney. But that might be another thing we can look at when we view cases, if that's a data point that should be collected.

How long after an accusation is made, does it take before somebody is assigned or actually gets, perhaps not assigned, but is in contact with the defense attorney?

JUDGE BRISBOIS: The general history
that everybody is talking about right here is the imbalance of government resources versus defender resources. And those are issues that are city and state level, federal level and Military justice level. I mean, that's always been, and continues to be, an issue.

The government seems to have virtually unlimited resources and then always much limited personnel and cash to support defense services. So I think that's an issue that's broader than just this Committee and this Military Service.

I mean, that's what CJA panel is about and federal defender budgets. I mean, if you ask federal defender, do you have an equal budget to the U.S. Attorney's Office.

And state systems, some states public defenders are suing their states' now for lack of resources, out of the constitutional violation.

So this is an issue all the way throughout the justice system. Local to federal.

MS. CANNON: They're all different because --
JUDGE BRISBOIS: Article 3, Article 1.

CHAIR BASHFORD: I'm sorry.

JUDGE BRISBOIS: So I mean the debate is going on everywhere, not just here in this community.

CHAIR BASHFORD: But in the Military, it's all the government, right?

MS. CANNON: Yes. But the Military budget is the Military budget, it's not the court's budget, prosecution budget, the city.

JUDGE BRISBOIS: But those resources --

MS. CANNON: It is one budget being delineated or disseminated according to someone else.

So I think it's much more easy to argue that that's not fair. They can't hide behind, well, that's my budget.

JUDGE BRISBOIS: Yes, but the point is that the debate, the where do you allocate resources debate, is not unique to Military justice.
MS. CANNON: No, that's true. I have a concern that isn't really on this list, and I don't know how it fits.

And that is, victims' counsel, victim representative or counselor. By calling the person a victim, you are in essence making a finding as opposed to a complainant. And that or petitioner. And that's a concern to me.

Because right there, before you even begun, it kind of tilts things. And it's something we've challenged in the state, in my experience.

As, you can't call them that in the courtroom. That's what we're talking about, are they the victim.

And that's a real concern. I don't know how that figures into this, but it's kind of coloring it.

CHAIR BASHFORD: Well, it all depends, right? In the civilian thing, if the defense has mistaken ID, nobody is really challenging whether somebody was victimized. If it's a known
individual, I take your point.

MS. CANNON: But as a general label, in a particular case you concede, yes, this person is a victim. But as a general label where you're going to have general labels for attorneys and resources and things like that, you've already created the culture of the victim.

MS. LONG: I guess the only reason I would push back is, you have a situation where there are thousands of, I shouldn't say thousands, let's say 1,900 cases and how many actually get referred. I mean, that's less than, I'm not a math person right now today, but we're trained on a tiny portion and this is --

CAPT TIDESWELL: Fifteen percent.

MS. LONG: How many?

CAPT TIDESWELL: Fifteen percent.

MS. LONG: Fifteen percent. So I don't think we have that. I mean, and that is not to minimize.

And I know I'm a prosecution, a prosecution voice, so I want to be clear, we take
very seriously any wrongful conviction that is hideous.

But I want to push back on this narrative because it's the victims whose cases aren't going forward. And this is not just a Military issue it's a civilian too.

So I just want to be careful. But I agree, you want to have a balance. You don't want to have a team of 50 on one side and one on another side. But it's just hard to think we have a culture that's only focused on the victim if none of these cases are going forward.

And we hear this sometimes out in the civilian world too. And on the resources, I feel very strongly.

I mean, I was very lucky in Philadelphia. We had an extremely strong defense, public defender bar and they were competent and probably every source issue sorted away.

But we do have prosecutors having resource issues out there as well, and they are
ultimately not serving the community. And that's just a piece.

So I wanted to make that point because I don't want it to be lost.

CHAIR BASHFORD: Certainly one of JPP's recommendations is that going forward we continue to take a look at whatever it's called. And it's probably, I take your point, but it's probably tilting at a windmill to say let's rename this.

But certainly, I think we want to look at it going forward. How is it affecting victim cases.

We hear great things about it. We hear anecdotally that it creates delays.

One thing that's always concerned me, because you have attorney client privilege, is if somebody were to divulge to their attorney, appointed attorney, that something they said wasn't true, whether it's small or large, I don't think they can share that. So maybe that never comes up, I don't know.
But it's certainly something I think we want to continue to look at going forward. It doesn't have to be our very first thing, because JPP has looked at it. But it's still reasonably new, five years, something like that. But it's worth --

MS. CARSON: 2013 it was required that Services, no, it was November of 2014.

CHAIR BASHFORD: But I just don't think, Kathleen, they're going to rename it for you.

MS. CANNON: Well, it's not for me --

CHAIR BASHFORD: I know. I know.

MS. CANNON: It's more just kind of putting that out there. I've also done some work in the colleges where --

CHAIR BASHFORD: Yes.

MS. CANNON: -- similar things are going on. Where you're trying to correct a legitimate problem of not recognizing that these women, by and large, are being victimized and they don't have the power to come forward. And
we're creating that possibility, and we're
correcting a lot that's been wrong.

I just don't want to overcorrect. And
that's what I think some of this is, but.

BG SCHWENK: In the JPP Subcommittee
we talked about that very issue. And the issue
of calling somebody a victim before there's been
an investigation to determine whether they're
really a victim or not.

And we finally decided, what the Chair
said that we were tilting with windmills to try
to come up with a different term, after we tried
at least 40 different terms sitting around the
table. And somebody reminded us that, well, we
used to always say victim of larceny, victim of
this, victim of that.

And we didn't even if there was a
larceny, but it was an allegation and that person
got labeled victim right away. And we
investigated with a victim. And so we declared
defeat.

(Laughter.)
MS. CANNON: I won't be defeated.

BG SCHWENK: Well, maybe you can convince everybody here then you can declare victim. But we declared defeat, and I think all the JPP Subcommittee reports say victim.

CHAIR BASHFORD: Well, I think I'm going to do the Chair's prerogative and let's have a ten-minute break and then we'll resume till 2:30.

(Whereupon, the above-entitled matter went off the record at 2:16 p.m. and resumed at 2:31 p.m.)

CHAIR BASHFORD: So I just want to go back to the data points for collection. In addition to the demographic factors in Number 6, I forget what the letter is, I think it's on Page 4.

Yes. And one of the things we mentioned, or I mentioned, was the number of changes in counsel, prosecutors. But what other things do we think, when people are doing initial reviews of cases, what other things does anybody
think, from their own silos or skill sets would be, they think would be really important to gather? If it's there.

DR. SPOHN: I have a whole list of things that I've been writing down as we've been talking.

CHAIR BASHFORD: Okay, great.

DR. SPOHN: So one of the things we mentioned was whether the victim was granted an expedited transfer.

CHAIR BASHFORD: Okay.

DR. SPOHN: Which isn't now, whether the suspect was held in pre-trial detention. Was the case originally a restricted report and then became an unrestricted report.

A better measure of the relationship between the victim and the offender. Right now, it's just whether it was an intimate partner or not.

CHAIR BASHFORD: Really?

DR. SPOHN: There are obviously degrees of --
CHAIR BASHFORD: Just let me stop for just one second, Dr. Spohn. So is that like a drop down menu and those are your only two choices, intimate partner, not intimate partner? DR. SPOHN: Yes, ma'am. CHAIR BASHFORD: Wow. There's a lot of variety there. DR. SPOHN: Yes. CHAIR BASHFORD: Okay, thank you. DR. SPOHN: Case complexity, if we can figure out some way of measuring case complexity. And you've made a huge start on doing that, but-- MS. LONG: We've started to try and capture it, just to find out what, to try and measure more apples with apples, but it's a pilot program. And so it's in a publicly available document. I can get it to you. It should be adapted. Just to look at factors that may make cases complex so that-- DR. MARKOWITZ: Jen, could you give
some examples of what --

MS. LONG: Sure.

DR. MARKOWITZ: -- categories, just to
give everyone an idea?

MS. LONG: I mean, obviously if you
have a victim who is reluctant to participate, it
tries not to be blame worthy. In fact, I pulled
up the document before, if you have alcohol
involved, if you have a victim involved.

And this, I think, will have
relevance, even in your cases, victim involved in
prostitution or otherwise sexually exploited.

Let me, I'm just going to pull it up.

DR. SPOHN: You could include the
number of charges.

MS. LONG: It's a little out of focus.

BG SCHWENK: No corroborating
evidence.

DR. SPOHN: Number of charges, number
of victims.

MS. LONG: Well, and I always find it
interesting, with respect to corroboration,
because it's what are we talking about. It's sort of like this designation of weak evidence.

I mean certainly, a victim and prosecution would seem to be weak evidence until we look at all the data around the violence against these individuals.

So with respect to corroboration, our old colleague, Teresa Scalzo, I know many of you would know, would often say that, as prosecutors, sometimes you looked for a step in more traditional corroboration, but there is other factors I think corroborate.

So long that someone's picking that up, you know, things that might be outside of an eye witness to the incident itself, but do they corroborate other factors. We didn't go that far into the weeds. That was for a data collection piece.

And I apologize that I'm a little distracted today, but I can make this available to folks to look at.

CHAIR BASHFORD: Thank you.
JUDGE WALTON: First of all, it's a stranger case and the government relying upon forensic evidence. Because some of the things that we thought about forensic evidence is not necessarily the case. It may not be.

CHAIR BASHFORD: Can you help us out with other case complexity, Dr. Spohn?

DR. SPOHN: So, whether there was prior sexual contact between the victim and the suspect, what is the suspect's defense. Is it misidentification or consent or something else.

Delay in reporting, alcohol use.

MS. LONG: Prior relationship. I found it. Prior sexual relationship is another one.

DR. SPOHN: Yes. Victim willingness to cooperate as the case moves forward.

MS. LONG: Disability. Victim disability or complexity. I mean, I don't -- like I said, I can make that whole list available on how they prosecute.

MS. LONG: Different kinds of
evidence. Including evidence of bias or a motivate to lie on the part of the victim. If it's a case involving divorce or child custody or some other issue that might be noted in the file.

None of these are things that are captured in the current database, and they may not be included in the documents. But they're certainly things that I think we should be looking at. Things we should be looking for.

And I'm sure there's others, these are just some things I jotted down as we've been talking.

MR. GARST: Paul Garst from the Department of the Navy SAPRO Office. These are all good points.

We struggle with some of these issues, and so I just want to maybe mention some basic factors that you might want to think about in categorizing the cases that are in the databases in a general sense.

First, we're talking about a case with a Service member victim. For a case with a
civilian victim, presumably a Service member
offense, about ten percent of the cases that we
look at across the Navy and Marine Corps, don't
involve Service member victims.

Beyond that, within the subgroup of
cases with Service member victims, are we talking
about an alleged offense that occurred while the
member was on duty or are we talking about a
growing number of cases where people feel
comfortable enough to come in and report a sexual
assault that occurred before they ever entered
the Military. It's not that we don't care about
those, but you might predict a different course
of outcome for those kinds of cases.

We've already heard about distinctions
between cases that started as a restricted report
as opposed to an unrestricted report. There's an
obvious delay in the criminal investigators
getting them. That's a substantial proportion of
the cases that they know about.

And also, whether it was a contact
versus a penetration offense. In many locations,
a substantial majority of the cases being investigated are touching offenses. I don't want to discount those or say that they matter, but your average person probably understands why they might take a separate course.

Those would be some of the things that we found useful in even starting to organize, then some of the other more detailed things. Thank you.

CHAIR BASHFORD: Thank you. That brings up one thing, would the Military have jurisdiction if somebody came in and said, when I was in high school, five years earlier, I was sexually assaulted? I just don't think they would have jurisdiction.

MR. GARST: Probably not, but we encourage them to come in --

CHAIR BASHFORD: Right.

MR. GARST: -- to provide them with victim support, crisis intervention or counseling.

MR. KRAMER: But the investigative
agencies wouldn't investigate them, would they?
The Military.

MR. GARST: It would be entered into
the databases as an NCIS case. And yes, sir,
they do, do some effort. I mean, they usually
can't do a full-on investigation, but yes, they
do take it up as a case.

MR. POORMAN: We would take the
report, and if it sorts out that way, we would do
an official referral to the law enforcement
agency with the jurisdiction.

MR. KRAMER: Right, you wouldn't do
the investigation itself.

MR. POORMAN: Not beyond that.

DEAN HARRISON: Excuse me, with regard
to the categorization of victims as civilian or
Military, do you subdivide as civilian and
Military dependent and civilian with no
relationship with the Military?

MS. PETERS: Our database did not.

Because we don't always have --

JUDGE WALTON: I didn't hear the
question, could people speak up please?

DEAN HARRISON: Oh, I'm sorry. I was asking with regard to the categorization of victims as civilian or Military, if they're subdivided as civilians with no relationship to the Military or civilian dependents?

MS. CARSON: Another distinction is too, whether they're a civilian employee of DoD or Service, or contractor.

CMSAF MCKINLEY: Also, the foreign national.

MS. CARSON: Yes.

CHAIR BASHFORD: Foreign national in deployments or just general?

CMSAF MCKINLEY: In general. I mean, you can be stationed at Germany and the victim be a German female.

CHAIR BASHFORD: But I'm saying, if somebody was stationed in Alabama and the civilian victim happened to be a resident, you know, a citizen of Spain, would that be useful?

(Ms. Jennifer Long left the meeting.)
CMSAF MCKINLEY: I think for the most part, I would look at what falls under a suit for agreement. You see the problems we have in Okinawa, et cetera.

CHAIR BASHFORD: Yes.

CMSAF MCKINLEY: So those would be important categories, I think, that we look at of our people who are stationed in foreign countries and the assault happens to a foreign national in that country, that opens up doors, to me, other problems.

CHAIR BASHFORD: So it would be civilian employees, civilian dependent or civilian with a status of forces agreement?

DR. MARKOWITZ: Or a civilian unrelated.

CHAIR BASHFORD: Unrelated, yes.

DR. MARKOWITZ: Like from a town or something.

JUDGE WALTON: In that event that takes place in another country, is committed off base, where is that case processed?
CMSAF MCKINLEY: That --

JUDGE WALTON: The status of forces agreement.

CMSAF MCKINLEY: Yes, that would be determined by the forces agreement.

DR. MARKOWITZ: I didn't hear the answer.

CMSAF MCKINLEY: The status of forces agreement between the United States and that country thought about how it could be allocated.

JUDGE WALTON: If it's in Turkey it's no problem.

CHAIR BASHFORD: Where there any other --

MR. GARST: If it's in Alabama, it may be dependent on where the event occurred and who had jurisdiction. In some cases, the civilian entity may choose to retain their authority over the case.

CHAIR BASHFORD: Anybody have any other data points?

MS. TOKASH: It's Meghan Tokash
calling in from the U.S. Attorney's Office in Buffalo, can you hear me?

CHAIR BASHFORD: Yes, we can, Meghan.

MS. TOKASH: Okay, thank you. Just a point of clarification, I couldn't hear you all completely, but did we capture the rank and experience of the trial attorney and defense attorney and kind of subcategories of that, whether a special victim prosecutor or a prosecutor with sexual assault training was on the case?

CHAIR BASHFORD: Okay.

MS. TOKASH: And the only other suggestion I have is with regards to data point versus demographic factors, was the recommendation of the judge advocate to the commander. Specifically, the staff judge advocate to the convening authority.

CHAIR BASHFORD: Can you just flesh that out, what you mean?

MS. TOKASH: Yes. So the advice to the convening authority when referring --
CHAIR BASHFORD: Oh, okay.

MS. TOKASH: -- for the referral stage. So by way of example, if a staff judge advocate recommends that the case not be referred to trial but the commander refers the case anyway, what was the result of that case, how did that fair?

CHAIR BASHFORD: Okay, thank you.

MS. TOKASH: Thank you.

CHAIR BASHFORD: Well, that's certainly a lot of data points to try to collect.

CMSAF MCKINLEY: Yes.

CHAIR BASHFORD: So we can see what's available, what's not, what things we think would be ultimately worthwhile recommending to the Department of Defense for their 140a.

I think we should think of one more, I don't want to say hot topic, but something that we want to try to push forward a little bit more to make it into the March report.

MG ANDERSON: I think the --

BG SCHWENK: I -- no, go ahead.
MG ANDERSON: Sorry. I think the Chief has already mentioned this once. I saw you guys write it down, but I'm not sure if it was mentioned before. And it should be something that's fairly easy to capture, but the training that the convening authorities received as well as the colonels, the O-6s.

I mean, you've mentioned that, but I don't know if we actually -- we can capture that stuff pretty quickly, I think, from each of the Services and then provide that in the March report. That might not be such a heavy lift.

BG SCHWENK: Has anybody talked about that at any of the other -- RSP, JPP?

MS. PETERS: There is some JPP testimony on the courses offered to commanders, the senior leader officers --

BG SCHWENK: But there wasn't anything written in any --

MS. PETERS: -- general officers.

BG SCHWENK: -- of the reports about that issue though.
MS. PETERS: No, sir.

CHAIR BASHFORD: I don't think any --

MS. PETERS: I thought --

MS. CARSON: -- but we have testimony we can look up.

MS. SAUNDERS: The RSP did write on that in their report, but of course that was a couple of years ago.

CHAIR BASHFORD: '14.

MS. SAUNDERS: Or three years ago actually.

MR. KRAMER: I saw a reference to training fatigue.

MS. SAUNDERS: That was more of the SAPRO training.

MR. KRAMER: Oh, okay.

MS. SAUNDERS: Right.

MG ANDERSON: I think as a general officer, we receive a certain amount of training. And I know I did when I was a brigade commander, but that's all, again, very old, and it certainly has changed.
BG SCHWENK: That works for me.

DR. MARKOWITZ: Is it legal training or referring cases particularly?

BG SCHWENK: Yes. Yes.

CMSAF MCKINLEY: I'd also like to see --

BG SCHWENK: So a narrow issue.

CMSAF MCKINLEY: -- what training they received to take care of an issue down at the unit level.

MG ANDERSON: Sure. Yes. And then --

CMSAF MCKINLEY: When you have a sexual assault in the unit, a victim, possible perpetrator, how does the commander -- what training had they been given to deal with that situation?

MS. CARSON: That would be a SAPRO training. I mean, there are two kinds of training.

CMSAF MCKINLEY: But you know what, the SAPRO training does not cover that.

MS. CARSON: No. No.
CMSAF MCKINLEY: It does not cover that in anyway.

BG SCHWENK: I think we're talking about the Military justice training.

MS. CARSON: Yes.

CMSAF MCKINLEY: Yes.

BG SCHWENK: The commander --

MS. CARSON: Right.

BG SCHWENK: -- forces in combat.

MS. CARSON: Right.

CHAIR BASHFORD: Is that something the staff can do with RFIs, to the different Services?

And I did hear something about courses offered. Offered and taken are two different things.

MS. PETERS: And I didn't mean to commit one way or another --

CHAIR BASHFORD: No.

MS. PETERS: Is what the type of testimony is. So you can get detail on that.

CHAIR BASHFORD: Okay. I did want to
loop back around slightly, something like what
their OP has available to offer on the field,
because it just keeps coming up about these
expedited transfers.

Like, who makes that decision? I know
who makes the request, but who makes the -- like
what level of command?

MS. PETERS: We can readily obtain
that. Right.

CHAIR BASHFORD: Okay. I'm curious
who makes the decision. Are there, you know, is
it a checklist of Option A, Option B, are there
specific requests made or is it just sort of
like, I would like not to be here or is it, I
would really like to be at Place A or something
like that.

MR. GARST: Under current SAPRO
guidance, which is -- under current SAPRO
guidance, individuals make requests of their
commanding officer who is asked to decide, is
this a credible allegation. And they have 72
hours to make a decision without investigating
it.

And if they decide to reject the request, then it automatically goes up the chain of command for review. But so the decision about you get a transfer, is made by the immediate commanding officer. In 99 percent of the cases it's approved.

Then the commanding officer is required to provide to the order writing section for that Service. Some recommendations as to where the person should be transferred to.

But that's up to the manpower people.

That's all delineated in DoD SAPRO guidance.

SGT. MARKEY: And who provides that information to that decision maker, as to whether this is prevalent or not?

MR. GARST: The commanding officer --

SGT. MARKEY: Where does he or she get that information?

MR. GARST: He has to decide on his or her own within 72 hours.

(Simultaneous speaking.)
SGT. MARKEY: Somebody has to tell him something though, right?

MR. GARST: The victim/complainant initiates the request to their commanding officer. And --

BG SCHWENK: Maybe if we had a panel at the next meeting --

CHAIR BASHFORD: Yes.

BG SCHWENK: -- our October meeting of the program managers for each of the Services that run the expedited transfer program, and a DoD staffer wants to, because it's their guidance, it be in the dispositive guidance, maybe they can show up and that way we can talk to the people that actually run the program and see what data they have and decide what --

CHAIR BASHFORD: It keeps coming up, but it comes up anecdotally.

BG SCHWENK: Well, it's all right if we get the program managers in there.

CMSAF MCKINLEY: Once again, this comes back to my point on commander training. Do
we properly train the people in these positions to make these decisions, and they have to make these decisions in 72 hours.

And if we improve their training across all Services, maybe we have the victims, and we can talk about that, the victims decide they don't want to transfer, they want to stay there because they have a commander and a leadership team there that's going to take of everything else.

We have more reported sexual assaults. And at the end of the day, sexual assaults go down, maybe convictions go up.

But training, or people in the leadership position, is paramount. And right now, I guarantee they're not getting the training that goes down in the weeds to take care of these situations.

CHAIR BASHFORD: Well, if 99 percent are being granted within 72 hours, that's not really a decision-making process.

CMSAF MCKINLEY: And that's the easy
thing.

CHAIR BASHFORD: And I don't think it's just a --

CMSAF MCKINLEY: That's the easy thing.

CHAIR BASHFORD: -- push it through it sounds like.

CMSAF MCKINLEY: That's the easy safe thing you do, say, yes, you can go. Because you, for the most part right now, you've washed your hands of it. That person is gone.

MR. GARST: The existing guidance requires a decision within 72 hours from DoD. And specifies that the decision should be made, should not be delayed the outcome of any investigation.

SGT. MARKEY: How does that decision to transfer, affect the investigative process?

BG SCHWENK: I asked the panel that was here earlier, and general consensus, I think was, from them was, that it makes it a little bit harder because the person has to start over with
wherever they end up. With a new special
victims' counsel or victims' legal counsel there,
a new interviewer, if they have to do a re-
interview from the investigation.

So maybe the initial investigator
established rapport and now there's a new face
that has to do the re-interview and start over.
And the person is not geographically present so
you have to do with the geographic --

SGT. MARKEY: And ultimately
downstream that would affect whether a decision
we've made to file charges or not file charges.
So those factors are affecting what's happening
downstream as well.

BG SCHWENK: And factor the complicate
skill.

SGT. MARKEY: Right. Right. Okay.

CHAIR BASHFORD: I think it would be
interesting if we could pull out the data to see,
is there a correlation between transfer, distance
transfer and willingness to continue
participation.
SGT. MARKEY: And outcome. There's some more stuff for you. It keeps piling up.

BG SCHWENK: One of the things that was interesting on that issue, I thought was interesting in the JPP Subcommittee was, each place that different groups went, we talked to the SVCs, the VLCs and said, well, what about expedited transfer? And they had examples, and they talked about it and what have you.

And I did not go, but the group that went to Hawaii and got the SVCs and VLCs. They said, so tell us about the expedited transfers. And they all looked down and said, I've never had one. I've never had one. I've never had one.

SGT. MARKEY: Yes right.

(Simultaneous speaking.)

(Laughter.)

MR. KRAMER: I volunteer to be on the Committee to follow-up on that.

(Laughter.)

CHAIR BASHFORD: Well, I think that's time to loop back around. We sat up a working
group to be turned into as approvals come down
into a subcommittee on data that has Ms. Spohn,
Mr. McKinley and Mr. Markey, so far.

But I'd like to get a sense of, if we
have, which I think we would value added at
having before the October, looking at a handful
of cases to see, of these demographic factors and
data points, how many are readily available in
the case files, that are available. Or how much
will need a much deeper dive.

And the people who were, and I think
I might have left somebody out, the people who
were willing to work on that were Ms. Cannon, Mr.
Kramer, Mr. Markey, Ms. Long, Mr. Schwenk and me,
and I thought somebody else had said they were
willing to, Dr. Spohn, thank you.

Do we have a sense that that would be
useful to start a working group and then a
subcommittee on that part of the review?

Is there a consensus of the Committee
that that would be valuable and should be done?

Okay, that seems like that's a consensus
BG SCHWENK: So then we need to decide how are we going to handle the 140a and whether we're going to expedited transfer and a training for convening authorities between now and March. And if so, do we need another group or should we set up a panel for our next big meeting or what does everybody think?

I guess the first question is, do we try to grapple with those issues before March. I think the conversation was, for sure 140a we wanted to grapple with between now and March, so then that there is one.

Then the other two I think were the training for the convening authority and the expedited transfer. And whether we want to --

DR. MARKOWITZ: And I would just toss it on the table again that I think, also for the cases, there still needs to be a determination of how you're going to handle confidential health information. Even in a small work group, patients did not give consent to have that
information reviewed in this sort of a setting.

So ethically speaking, I think that we just need to be cognizant of the fact that some of those case files have some very sensitive health information. And that some people would be really upset it was being reviewed in a group setting.

MS. CANNON: What if we didn't review medical records, would --

DR. MARKOWITZ: That would be --

MS. CANNON: -- they still be -- would there be a problem in that they were cited in other places or is the citation okay? The reference.

DR. MARKOWITZ: I mean, I think it's sort of a case-by-case basis. But people's, even if things like mental health records aren't in there, people's medications that they're taking for mental health issues, pregnancy histories, including abortion, all that kind of stuff is going to be in general medical records.

Just for the sexual assault medical
forensic exam, doesn't include all the other
types of medical records that may also be
received as part of follow-up care or to
determine whether an issue was preexisting before
the assault.

CHAIR BASHFORD: I don't think anybody
would need to do that deep of dive. I think what
you would need to know is, was a kit taken, was a
forensic exam done. I mean, that's --

DR. MARKOWITZ: No, I think that's
fine. I just want to make sure, like --

CHAIR BASHFORD: Right.

DR. MARKOWITZ: -- we put some left
and right limits on this kind of sensitive
information because --

CHAIR BASHFORD: Yes. I just don't
think it's necessary to go down into that level --

DR. MARKOWITZ: Great.

CHAIR BASHFORD: -- it's just those
are the crucial points.

DR. MARKOWITZ: Yes. I think that's
great.

CHAIR BASHFORD: You know, were they treated, was an exam done, was a kit taken.

DR. MARKOWITZ: I think all of that is totally appropriate, I just want to make sure that everybody is on the same page about that.

CHAIR BASHFORD: Yes.

DR. MARKOWITZ: If you're going to do case review where that information exists in those files.

DEAN HARRISON: Can I follow-up with just another affirmation that, if a working group or a subcommittee touches these files, that doesn't become part of the public record for the Committee?

CHAIR BASHFORD: No.

MS. CARSON: Correct.

DEAN HARRISON: Okay.

SGT. MARKEY: And that would take the sexual assault kit, what you described capturing whatever data from that and walk it a little bit farther. And basically, what happened to that
sexual assault kit, was it taken, where was it
taken, when was it taken, the key to knowing
reference to when the incident may have occurred,
and then what was the disposition, was it
impounded, was it submitted to the lab, when was
it submitted to the lab. And then eventually,
where there any results from the laboratory
analysis of that sexual assault.

CHAIR BASHFORD: My understanding is,
if it wasn't submitted to the lab, it was a
restricted report and we won't even see those.

SGT. MARKEY: Right. Right. So I'm
speaking only unrestricted review.

DR. MARKOWITZ: Right.

CHAIR BASHFORD: But those are all
submitted to the lab.

SGT. MARKEY: Well, but --

DR. MARKOWITZ: I would also add,
suspect kits. I mean, if you're going to take a
look at whether there was a kit collected for a
victim in these cases, many of these cases also
have suspect kits, and so you might as well add
the --

SGT. MARKEY: Sure. Absolutely.

DR. MARKOWITZ: -- and suspect kits too.

SGT. MARKEY: And I would also argue that, not argue, maybe that's the wrong term, Counselor, that in my own experience, I've seen policies in place that said all kits will be submitted, and yet there wasn't a hundred percent submittal. So I think that's something to ensure, if there is a policy in place, is that policy being followed. You can do through the review of the case.

Or I saw where, yes, it was submitted but it was six, eight, 12 months after the kit was completed and taken into custody of that agency, before they submitted it.

So even though you're sending off kits, is there a timeline that you might look at as to how soon should that kit be transferred to the crime lab?

And so I don't know if that's relevant
information or something that if it's there, we can look at it.

And, Captain, I don't know if that's captured in like a pre-synopsis format of these reports, because I don't know how these reports were formatted, or is that something that comes out in the narrative and the body of the report, that somebody has to actually write into it.

And so documentation became a big issue. Some investigators document one way, other investigators don't document that same amount of information in a way.

But if that box is to check, that always is really good to be able to verify that everybody is checking these boxes. But if it had to be in the narrative, it was a crapshoot whether that information was designated in the narrative or not, because there was no consistency on how they were documenting their investigative files.

DR. MARKOWITZ: All right. So sorry, General, I didn't mean to waylay your point --
BG SCHWENK: No, that's fine.

DR. MARKOWITZ: -- I just wanted to make sure we just addressed that one thing before we moved on to your --

BG SCHWENK: No, that's fine. So back to my point, I was just saying, when we think about the March report, we clearly can talk about our initial procedures on the case review and where we're at and how, at that point, letting you go ahead.

We can talk about our initial assessment of the data that's currently available, which would then lead into the discussion of, and what the 140a implementation audit make available, in the future.

And then the question is, do we want to add, on the two issues that people have recommended we consider, are the training for convening authorities for commanders on Military justice, sexual assault, that kind of stuff, and also expedited transfer.

And I though at least on expedited
transfer, that could be handled maybe by just the
panel at our next big meeting --

CMSAF MCKINLEY: Right.

BG SCHWENK: -- where we get the
program managers and run it in the Services. And
maybe the SAPRO, whoever puts the big policy out,
and then have them come in and show us, provide
the staff ahead of time the data that they have,
and then answer questions and see where we go.

And maybe we can do the same thing --

CMSAF MCKINLEY: That's what I was
thinking.

BG SCHWENK: -- for convening
authorities.

CMSAF MCKINLEY: Right.

BG SCHWENK: Whoever is responsible
for Military justice training --

CHAIR BASHFORD: We could put out some
RFIs for the --

BG SCHWENK: Come in and do the same
thing.

CHAIR BASHFORD: -- training and --
CMSAF MCKINLEY: Training, yes.

BG SCHWENK: That way we start off with those panels in October and see where they lead us.

CMSAF MCKINLEY: Right.

CHAIR BASHFORD: It will just be interesting if you put in RFIs for expedited transfers, if that is something that's actually, is that a statistic that's being kept by different Services.

CMSAF MCKINLEY: I'm sure.

CHAIR BASHFORD: You're never sure.

CMSAF MCKINLEY: I'm sure.

BG SCHWENK: What are the criteria then used for, making the determinations in that period of time.

MR. KRAMER: Could we throw the defense counsel training in on that or is that thrown too much?

Because we haven't heard that, we've heard the prosecution. Along with the convening authority training.
BG SCHWENK: Yes, but --

CHAIR BASHFORD: Did the JPP -

CAPT TIDESWELL: We have --

BG SCHWENK: If we have a day, we can
do another panel.

CHAIR BASHFORD: And I know the JPP
did defense resources, did they address the
training available? I don't --

MS. PETERS: Training was the topic of
the JPP.

CHAIR BASHFORD: Of the report on
defense resources?

MS. SAUNDERS: More so experience. We
did have some information on training that had
been provided by the Services in a meeting. And
so we did include that in a chart.

It seemed to be the report itself was
more focused on the experience level, which is
where more of the disparity was.

CMSAF MCKINLEY: So as am Air Force
Captain, on the area of defense counsel for the
region, what training do they get before they
become that area defense counsel?

MS. SAUNDERS: Well, I think it varies a little bit by Service, and I'm sure they can answer it better than I, but I know they all have some additional defense counsel training they go to. And then there are other various other trainings that maybe the Services could provide a better answer than I on that.

But we do have the report that does kind of outline some of the basic training that both trial counsel and defense counsel get.

BG SCHWENK: But I don't think there was a real deep dive on defense counsel training.

MS. SAUNDERS: No.

BG SCHWENK: So if we wanted to have a panel, response to tell us exactly what they do.

CHAIR BASHFORD: We had that from the prosecution, right? Very well.

BG SCHWENK: From my perspective, that would be enough to get us through --

CMSAF MCKINLEY: I think that will
take care of --

CHAIR BASHFORD: I think so too. I think the crucial one that we've agreed to deal with early, is to get on the ground floor, is the upcoming guidance across, of what sort of data should be collected.

I also want to say that I think that the data that our predecessor panel, the JPP has collected and what you've put together, is just as comprehensive as it could be and it's very good and I'm glad we're going to continue to build on that and go further.

SGT. MARKEY: Can I just make one more comment?

Are we making a wish list of who we'd like more information from? Is that what we're kind of talking about? It sounds like.

So we've had presentations --

CHAIR BASHFORD: You can wish for anything.

SGT. MARKEY: That's true. We've had panels and representatives talk about the
individual disciplines and how they respond to sexual violence and sexual assault.

I'm curious about the coordination of those efforts, as a multi-disciplinary team and is there a model team out there in any of these jurisdictions or any of your bases, that combines like regular meetings, regular discussions, which would include the Corps team prosecution, investigation, advocacy, forensic medical, and we even include the crime lab in part of our MDT.

Generally, defense isn't part of these multi-disciplinary teams, but that's something to consider. So is there a panel that would be able to kind of explain, or show us, how the system responds together in these cases?

Because we've seen how they respond individual, within each discipline. And I think part of the success of being able to work these cases is being able to do it as more of a multi-disciplinary team. Better service for the survivors.

So I'm just curious if that's
something that's out there that we could see how
that coordination works.

CAPT TIDESWELL: No, I think those
teams do exist out in the field. Because I'll
refer to the Service regs.

BG SCHWENK: There's the SAPRO ones
that are for the non-intimate partner type, and
then there is the family advocacy ones. But the
intimate partner type, where the investigator and
whoever shows up, the command rep, the medical,
they all sit around once a month and get it,
evaluate.

MS. CARSON: Right.

BG SCHWENK: Or at least they go over
each case and what the status is and what any
problem was that they need to get resolved.

DR. MARKOWITZ: And a few --

BG SCHWENK: So we could probably find
some people to come in and talk about it.

DR. MARKOWITZ: Yes. A few of the
installations have a more SART looking model,
like what you're talking about, Jim. Joint Base
Lewis-McChord, I think Fort Lewis has one.

There are a couple others that have
more of what looks like a typical civilian SART.
So I think that there are a few different models
that are out there that we may want to --

BG SCHWENK: Right. And family advocacy.

SGT. MARKEY: You say there's two --

BG SCHWENK: Pardon me?

SGT. MARKEY: -- over the entire --

BG SCHWENK: No, no, no, each installation.

SGT. MARKEY: Okay.

BG SCHWENK: All the installations we visited on the JPP Subcommittee had them.

SGT. MARKEY: Oh.

BG SCHWENK: And they had one run by the family advocacy program and one by the sexual assault response board meeting. Depending on the relationship I guess --

SGT. MARKEY: Okay.

BG SCHWENK: -- and which program they
DR. CHAYT: If I may, if you go back to the report that was done by the Response Systems Panel, this was looked at in greater depth. The Army, for example, has what they call SHARP resource centers where they have co-located special victim investigators, special victim prosecutors.

SARCs, in some instances, at least the medical health coordinator, although they go to a different location of course, for their exams.

So there are some -- I do believe there's actually some that's looking at doing where it is all in one, similar to some civilians. Other agencies, they are co-locating certain aspects of this.

And of course you're all familiar, I think, with the SVIP, special victim investigation prosecution requirements. So a lot of people are co-locating. The RSP does make mention of some of these specific.

SGT. MARKEY: Again, is that something
we need to look at? Is that appropriate for this?

CHAIR BASHFORD: If the RSP looked at it, we might want to update it at some point, but it doesn't seem like it would be one of our first priorities.


CHAIR BASHFORD: Oh, we might be finishing up early.

(Laughter.)

CHAIR BASHFORD: You said there's nothing wrong with that?

DR. SPOHN: I do have a question as to those of us who are on the case review working group, we're expected to report at the October meeting about the case review process, so how is that going to work?

CHAIR BASHFORD: I would suggest --

DR. SPOHN: Mechanically.

CHAIR BASHFORD: -- that we, when the Committee meeting adjourns, I would suggest that
we take a few minutes --

DR. SPOHN: Perfect.

CHAIR BASHFORD: -- and we meet

privately afterwards.

CMSAF MCKINLEY: I would like to

commend the staff for getting the read-aheads out

eyearly.

CHAIR BASHFORD: Yes.

CMSAF MCKINLEY: Thank you very much,

it was very convenient to get it in the mail and

not be in a hurry to read it.

CHAIR BASHFORD: And regular mail, not

expensive mail either.

(Laughter.)

BG SCHWENK: The only problem is,

being Marine, I needed it so that I could listen

to it.

(Laughter.)

CHAIR BASHFORD: Unless there are any

other topics of conversation, anybody who hasn't

been heard from that has something burning to

speak, I would suggest we adjourn. And perhaps
the review subcommittee could have a brief
meeting to talk about going forward.

CMSAF MCKINLEY: Did we happen to have
public comment?

CHAIR BASHFORD: Oh. Nobody had asked
for public comments, but --

MR. SULLIVAN: All right, for the
record, the meeting is --

CHAIR BASHFORD: Thank you. Thank
you, Mr. Sullivan.

(Whereupon, the above-entitled matter
went off the record at 3:10 p.m.)
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Investigation of Sexual Assault

Before: US DOD

Date: 07-21-17

Place: Arlington, VA

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