UNITED STATES DEPARTMENT OF DEFENSE

DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES (DAC-IPAD)

PUBLIC MEETING

FRIDAY,
OCTOBER 20, 2017

The Advisory Committee met in Suite 1432, One Liberty Center, 875 North Randolph Street, Arlington, Virginia, at 8:47 a.m., Martha Bashford, Chair, presiding.

PRESENT:

Martha Bashford, Chair
Marcia M. Anderson
Leo I. Brisbois
Kathleen Cannon
Meg Garvin
Paul W. Grimm
Keith Harrison
A.J. Kramer
Jennifer Gentile Long
James Markey
Jennifer Markowitz
Rodney J. McKinley
James Schwenk
Cassia C. Spohn
Meghan Tokash
Reggie Walton

STAFF:

Captain Tammy P. Tideswell, JAGC, U.S. Navy - Staff Director
Dwight Sullivan - Designated Federal Official
Major Israel King - Alternate Designated Federal Official
Colonel Steven Weir - Deputy Staff Director
CONTENTS

Page

Call to Order, Welcome, and Introduction
  Dwight Sullivan. . . . . . . . . . . . . . . 5
  Designated Federal Official

  Martha Bashford. . . . . . . . . . . . . . .6, 8
  Chair

Introduction of Military Service . . . . . . . . 7
Representatives Assisting the Committee

Company/Squadron or Service Equivalent-Level
Commander and Senior Enlisted Advisor
Perspectives on Sexual Assault Military
Justice Training and Sexual Assault
Response Training
  Lieutenant Colonel Erin Miller . . . . . . 9
  Commander Chad Livingston. . . . . . . . .24
  Lieutenant Colonel Jennifer Nash . . . . . .31
  Sergeant Major Stennent Rey. . . . . . . . .39
  Major Christopher Seamans. . . . . . . . . .42
  Senior Master Sergeant Terry
  Zannella . . . . . . . . . . . . . . . . . .49
  Commander Jonathan Carter. . . . . . . . . .59

Questions and Comments . . . . . . . . . . . . . .73

Special Court-Martial Convening
Authority Perspectives on Sexual
Assault Military Justice Training
  Captain Brett Millican . . . . . . . . . . 161

  Master Chief Jeff Waters . . . . . . . . . . 165
MR. SULLIVAN: Good morning. I'm Dwight Sullivan, the Designated Federal Officer for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces. This meeting of the Committee is now open.

If any member of the audience would like to comment on an issue before the Committee, please see Captain Tammy Tideswell, the Staff Director of the Committee, who is seated to my right. And Captain Tideswell will collect all requests for public comments.

Public comments will be heard at the end of the meeting and at the discretion of the Chair. It would be inappropriate for a member of the public gathering to make a comment at any other time. However, written public comments may always be submitted to the Committee for consideration.

Ms. Bashford, the Chair is yours.
CHAIR BASHFORD: Well, thank you, Mr. Sullivan.

Good morning to everyone.

I would like to welcome members, participants, everyone in attendance, to the continuation of the fourth meeting of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, or DAC-IPAD.

The Secretary of Defense appointed 16 members to the Committee, and all of whom are here participating today. The DAC-IPAD was created by the Secretary of Defense in accordance with the National Defense Authorization Act for Fiscal Year 2015 as amended. 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. The complete written transcript will be posted on the DAC-IPAD.
The written materials provided to the Committee members in preparation for the meeting are also available on the DAC-IPAD website.

Before we get started, I would like to recognize and introduce our military service representatives who will assist the Committee with any policy questions that might arise during our discussions.

Could you please stand and identify yourselves for the benefit of our Committee and members of the public? Thank you.

LT. COLONEL VERGONA: Yes, ma'am. I'm Lieutenant Colonel Mary Catherine Vergona. I'm the Army's Service Representative.

MR. MARTINSON: I'M Jim Martinson, representing the Navy.

MAJOR SHEW: Good morning. Major Wayne Shew, and I'm the Marine Corps Representative.

MR. McCLEARY: Good morning. I'm Steve McCleary. I'm the Coast Guard Representative.
CAPT. AHLERS: Captain Joe Ahlers,
United States Air Force.

CHAIR BASHFORD: Thank you very much.
So, this is day two of our two-day public meeting. Yesterday we focused on the military's sexual-assault-related expedited transfer policy and heard individual perspectives from Service Special Victims' Counsel and Victims' Legal Counsel, as well as the testimony of a sexual assault survivor.

The subject of today's meeting is the legal and sexual assault response training received by commanders. We will hear from two panels of military commanders. The first is composed of officers in the 05 rank from each Service and their senior enlisted advisors. And the second panel will include commanders in the 06 rank who serve as special or general court martial convening authorities.

For the last session, the Committee will receive an update from the DAC-IPAD Case Review Working Group on its initial review of
individual sexual assault cases.

Each public meeting of the DAC-IPAD includes a period of time for public comment. We have received no requests so far.

I want to thank the panel very much for joining us today. We're ready to begin the meeting.

I would like you to introduce yourselves, tell us what you do before you begin your remarks.

And for those of us from the civilian world, please try, and try really, really hard, to limit your use of acronyms wherever possible.

(Laughter.)

CHAIR BASHFORD: Thank you, and we really look forward to hearing from you. You are the masters of your universe in which way you want to go.

LT. COLONEL MILLER: So, I'll go ahead and start.

CHAIR BASHFORD: Thank you.

LT. COLONEL MILLER: Good morning.
I'm Lieutenant Colonel Erin Miller, and I'm currently serving as the Assistant Chief of Staff, G4, Chief of Sustainment for the 101st Airborne Division Air Assault at Fort Campbell, Kentucky.

I would first like to thank you for the opportunity to address the panel today with regard to my experiences while serving as a battalion commander. These views are my personal views and should not be attributed or viewed as an official position of the United States Army.

Between 1 July 2015 and 2 August 2017, I served as a battalion commander for the 626 Brigade Support Battalion, 3rd Brigade Combat Team, 101st Airborne Division, again at Fort Campbell, Kentucky. The battalion is comprised of 10 companies, totaling about 850 soldiers. Six of these companies had the mission to support and were integrated into the Combat Armed Forces in maneuver units in the Brigade Combat Team.

Additionally, I was given the opportunity to serve as the battalion commander
for administrative and UCMJ purposes for the 
Headquarters and Headquarters Company of that 
Brigade Combat Team, which added about an 
additional 150 soldiers under my command. 

My role expanded, as in the second 
year of my command the Brigade Combat Team 
deployed for nine months and I assumed 
responsibility for about 1800 soldiers, the 10 
companies, the additional company, and then, five 
rear detachments from across the BCT, the Brigade 
Combat Team. Sorry for that. 

(Laughter.) 

LT. COLONEL MILLER: So, about 1,800 
soldiers. Of course, that large number of 
soldiers and the large number of units provided 
me a very large breadth of experience for both 
UCMJ, those offenses related to Article 120 and 
those not. These offenses for the 120 ranged 
anywhere from indecent exposure, indecent acts 
involving a child, abusive and wrongful sexual 
contact, and aggravated sexual assault and rape. 

So, to be able to deal with that, of
course, it was helpful to have some legal
training. My legal training started prior to
commission at West Point. I took a semester long
Constitutional Military Law Course and, then, I
received follow-on instruction in basic course
and, then, our Captain's Career Course. And
then, at our company commander and first sergeant
preparation course and, then, at both the Army --
and Army has a general and, then, each branch
specifically has a pre-command course prior to
going into a battalion-sized command.

That also was where I received
training related to sexual assault legal actions
in terms of how to deal with a sexual assault
that was reported inside of my formation and,
then, how to handle expedited transfers and
things of that nature. So, those were the two
key places prior to taking command where I
received those.

And then, in every unit that I've
served with there's always an annual requirement
to focus on both administrative law, UCMJ, as
well as law-of-land warfare. But, really, I would tell you in command the biggest thing that I had for me was my trial counsel and the relationship that I had formed with both my trial counsel and my bridge judge advocate. I could tell you that they were on speed dial. They had my work phone number, my cell phone number, as I had theirs as well, to be able to talk to them at any given time.

And I would tell you that they were probably the biggest influence I had in terms of making decisions when it related to any of the soldiers in my formation that were either victims or accused in any of the sexual assault cases. And I would say that, primarily, my involvement in any one of the cases would be recommendations to the summary court martial convening authority for 120 which was my 06-level commander, my brigade commander, but many times myself and the trial counsel worked the sexual assault crimes that occurred off-post, trying to get information and make sure that we handled those cases to
ensure that the accused, if they were inside of
our formation, was being dealt with, so that we
could weed that individual out of the Service,
whether that be through administrative process
after a civilian conviction or if it was to help
gain the ability to get the jurisdiction within
the military side of the house.

Many times the local law enforcement
is not equipped to deal with some of the sexual
assault cases that we have that occur off the
installation. Additionally, my role as the
commander also involved dealing with the trial
counsel in terms of us trying to get status on
the investigations that were occurring on the
installation, mostly so that we could provide
feedback to our soldiers that were victims. And
I would tell you, from my experience, CID, who is
the primary -- Criminal Investigation Division --
is really the one entity on our installation that
is handling those crimes. And I would tell you
that there are two investigators on Fort
Campbell, and that is not enough. They're
woefully underresourced to be able to in a timely manner be able to handle those investigations.

So, kind of moving to the other side of the house, which would be our Victim Advocates and our SHARP reps, that was probably the other person that was on speed dial. My Victim Advocate spent at least an hour or more with me once a week having conversations about atmosphere, what was going on in the unit, what was going on in the barracks, and then, really talking about the status of the victims inside the formation, to understand where they were in their process of healing or dealing with what had occurred; and then, talking to the Victim Advocate in reference to how we were going to facilitate an expedited transfer, if that was the wish and desire of the victim, and how we could make the victim feel safe in the environment that they were in until that transfer occurred or, if the soldier did not want to transfer, how we made that soldier -- how we were going to move forward making that soldier feel safe in the environment.
that they were in.

So, the Victim Advocate was probably
the other technical expert that I had at my
disposal to help make decisions about how we were
going to move forward, if we had a victim or an
accused, and in some cases, a victim and an
accused in the same formation. And that happened
at least twice while I was in command, both times
handled a little bit differently.

One, the soldier -- they worked in two
different locations. So, the victim felt safe
that she wasn't going to see this person every
day.

And then, the second, they worked in
the same section. And so, we were able to
administratively move the offender to a different
company to do the same function and job. So,
just a little bit different way to approach it,
but under the advisement of the Victim Advocate
and of the trial counsel, we were able to
facilitate both without impacting what
potentially was going to be the prosecution of
the accused and the safety of the victim.

And I would tell you, I had quite a few victims or folks that reported sexual assaults in my formation, but a lot of that had to do with the training and the trust that they had in their chain of command. The training that we give our soldiers, we did a monthly training. So, at least a minimum of one hour a month for training. And we did almost like a council with our Victim Advocates to focus training to ensure that we were meeting the requirements and we were also meeting the needs of how do we approach and prevent sexual assault inside of our formation and inside of our barracks.

The two things that we found most successful were reporting procedures, so that soldiers understood the reporting procedures between restricted and unrestricted reports, and made sure that they understood the services that were available either way they were to report.

The other thing that we focused on was bystander training, so that we could help fellow
soldiers prevent sexual assault if they saw something where there may be drinking involved; there may be a situation where they see a soldier who is vulnerable that is being taken advantage of, and they would step in and take over.

We found that the bystander training was most effective because it is also the most engaging and provides the most feedback from the soldiers and involvement in the training from the soldiers. And I would say that today's soldiers that we see, I think that the bystander training is incredibly important because some of them are coming from the environment where they are very focused on their phones. And so, anything that goes on around outside of that device they have in front of them doesn't matter and they don't really care to know, and they don't necessarily think it's their responsibility to stop something that shouldn't be happening outside of their little world of that phone. So, we found that to be the most effective.

The other thing was making sure that
leadership was present at training. I visited each one of my companies during training. During that time I also -- one of the things, I was afforded the opportunity by my commanding general, was to sit on a court martial panel. I actually sat on two court martials that were sexual assault cases. So, I was able to share my experiences on those court martial panels with my soldiers and explain to them what happens to sexual assault offenders in the Service and when they go to court martial. You know, bad things happen; people go to jail. And that, if they are reported -- if they report a sexual assault, that it will be taken seriously and that it would be dealt with.

So, really kind of build that trust between the soldiers and the chain of command. That's really how this program, I think, and the training, both the training on the military side of SHARP and, then, the military justice side, that trust with the soldiers is how this process is really effective or can be effective in an
organization. Because if you don't have the
trust between the soldier and the chain of
command, either they're not going to come forward
or, if they do, they're not going to ask for the
right resources or they are going to have a
really bad experience with the chain of command.

So, I commanded for about 25 months,
and in that 25 months, like I said, we had
multiple reports of sexual assault. And when I
say "multiple," you know, maybe a dozen, anywhere
from someone touching somebody on the back side
to a violent sexual assault. So, kind of a range
in between those.

With those, I would say that during
the processing of those there was only four
expedited transfers that were requested out of
those. And then, one of those, and only out of
that, one of them was an expedited transfer in a
report that was found not to be truthful or to be
less than truthful or not substantiated.

Basically, the soldier had made a report because
she didn't really like Fort Campbell, didn't
really like the unit, and was subsequently moved.

I would tell you the expedited transfer process, it is at the soldier's request. There was never an instance where I would have stood in the way of that because, immediately upon report, there is no reason not to believe the soldier. So, I trust in the soldier that they are telling the truth. And the same thing on the accused side; you know, they are innocent until proven guilty. So, it is just the balance of that, and being fair and impartial as a commander is one of our assigned tasks. At least in the Army Command Policy, that's one of our tasks.

So, even knowing that, the next expedited transfer I had, there was no issue with granting that soldier an expedited transfer because the bottom line is that is a resource for the soldier to be removed from a situation where they feel unsafe. It is also potentially to take them to a location where they have a larger support network, maybe closer to family and
things like that.

So, in terms of the expedited transfer, you know, I think it is a good tool. Unfortunately, there are folks that are capable of abusing that, but I would say by far it is a very small portion of those individuals. A large majority take advantage of that due to their circumstances.

And then, I would just kind of like to close with one little anecdotal story in my command. We actually, in the final months of my command, we had a soldier who was attacked by another soldier in the barracks. Her roommate was the one who initially came forward and said, "Hey, Chain of Command, we need to do something about this. This soldier attacked my roommate, but my roommate doesn't want to come forward."

We were able to dispatch the Victim Advocate to the soldier. They discussed it. Now understanding the soldier's background is what makes this story so powerful. So, this was a soldier, a brand-new soldier to the unit. She
was of Pakistani descent. In her hometown she
was a beauty queen and a role model. She had
some ridiculous amount of followers on Instagram
from her hometown.

So, it was really powerful when she
came forward and she made an unrestricted report,
because she didn't want this to happen to any
other soldier in the barracks, and she trusted
the chain of command that this soldier was going
to be prosecuted and would be removed from the
Service and would not be able to do this to
another soldier.

And she endured, I would tell you, a
very violent sexual assault. So, for her to have
the strength and the trust in the chain of
command, based off of the training and based off
of the systems that are in place, that, to me,
was incredibly powerful. And I would say that
this is an example of how the system is supposed
to work.

And so, with that, I will give you
thanks again for allowing me to talk to you
today, and I look forward to answering your questions. Thank you very much.

CHAIR BASHFORD: Thank you.

As yesterday, we will hold questions until everybody has had a chance to speak.

Commander Livingston?

COMMANDER LIVINGSTON: Yes, thank you.

My name is Chad Livingston. I'm currently serving as the Deputy Director for Financial Policy and Systems within the Office of the Assistant Secretary of the Navy, Financial Management Comptroller, here at the Pentagon.

I just came from command. I gave up command or turned over command in late April of this year. So, about four or five months removed from that.

So, first of all, allow me to thank you for the opportunity to share with you my fleet experience with regards to training I received with handling sexual assaults prior to command, and probably more importantly in my experience, the training, guidance, and support I
received after assuming command while handling sexual assault cases.

When I first reported onboard as Executive Officer of VP-46, an aviation squadron located at Whidbey Island, Washington, of approximately 350 sailors and officers, in April of 2015, there were already two sexual assault investigations ongoing, the first of which, the alleged victim had already transferred under the DoD Expedited Transfer Policy. However, the alleged offender remained in the squadron pending the results of investigation. The second case involved a female sailor in my command as the alleged victim and a male sailor from another command.

Due to those two cases, I was quickly introduced to the Base SARC. She called me and suggested that we meet for approximately an hour to knock out or discuss required training -- I’m sorry, I’m assuming everyone knows what the SARC is, correct? Yes? She called me and suggested we meet for approximately an hour in order to
complete required training and discuss the finer
points of the SAPRO program, to include what
would become my own Unit Victim Advocates as well
as her Victim Advocates.

I remember well my thoughts at the
time: what could we possibly talk about for an
hour? Well, upon our first of many discussions
with her, it quickly became apparent to me that I
had not received probably adequate training on
how to properly navigate through the list of
administrative and legal requirements when
dealing with sexual assault cases at the command
level.

She introduced me to monthly the
Sexual Assault Case Management Group, also known
as the SACMG, chaired by the Base CO. She
introduced me and let me know of monthly
situation unit reporting requirements, SITREP
requirements that I was not aware of, as well as
a host of other things, including victim care.
And that's where her Victim Advocates -- and,
then, I didn't even know at the time that I was
supposed to have Unit-level Victim Advocates, UVAs -- and a host of other things accomplished in a timely manner.

It was also the first time I was introduced and given the Commander's Guide to Sexual Assault Prevention and Response, a resource I used extensively and found very useful during my time in command.

Prior to assuming command, I did receive a basic legal course specifically designed for prospective commanding officers. It was completed over the course of a day or two.

And I'll be honest with you, I don't remember the exact specifics of it, but it was during the Naval Aviation Commanding Officer Training Curriculum held in Pensacola, Florida. What I do remember about the course was there was a general overview of situations one would most likely expect to see at the unit level while in command.

However, I don't remember any legal training at the time specific to sexual assaults. The training did cover, though, such topics as
Military Protective Orders, MPOs; search and seizures, you know, to gather evidence, and other topics tangential to handling a sexual assault case. And that training did provide helpful, you know, tangential to sexual assaults, other stuff going on in the peripheral, 31(b) rights, for instance, victim rights, that sort of thing.

I do remember having sexual-assault-specific training, though, while attending the Navy's Prospective Commanding Officer Course in Newport, Rhode Island, in early 2015. It was a group session consisting of a video or two, followed with discussion, and focusing on how sexual assault is a horrendous crime, bad morale, unit cohesion, and overall mission effectiveness.

I remember at the time thinking -- and I included it in my critique -- that instead of spending the time convincing senior officers that sexual assault is bad and detrimental to a command, the time could have been better used to discuss the legal and administrative requirements that go along with a sexual assault, a more of a
"how not to mess this thing up" type of training.

And my point there is I think everyone in the room, you know, the dozen or so, we all realized how bad sexual assault is at that level. We get that it's bad for unit cohesion, morale, and it's a horrendous crime. And I thought that the time would have been better spent making sure that I knew, as a prospective commanding officer, what to do and the steps I needed to take to get through that knothole, including victim care.

During my time as commanding officer, I would personally deal with three new sexual assault cases, a wide range, very, very similar to my peer, and would inherit an additional case due to permanent change of station. A PCS, a transfer into the command, brought one with her.

Each time I would leverage experience gained previously and lean on a team consisting of the Base SARC, NCIS, Base JAG, and my immediate superior in command, as well as my own command master chief who is not with me today, unfortunately.
I would not have been equipped to deal with the numerous requirements on my own. I consistently utilized the BASE SARC when any questions came up with regard to a wide range of topics from victim care to the finer points of releasing a SITREP.

NCIS, always busy and seemingly understaffed -- also I think a trend -- usually had time to update me or my command master chief on active investigations pertaining to my sailors. Before I took any action such as an MPO or ordering a search and seizure for evidence, JAG was always available for legal advice, also on speed dial.

On-the-job training would be how I would best describe my training with regard to sexual assaults. But, without question, support to aid me along the way was in place. So, I would say that is the good news.

That's all I have for preliminary remarks. I would be more than happy to discuss
the finer points of those sexual assault cases,
if you would like, during the questioning. Thank
you.

CHAIR BASHFORD: Lieutenant Colonel
Nash?

LT. COLONEL NASH: Good morning,
ladies and gentlemen.

I'm Jennifer Nash, the commanding
officer currently of 7th Engineer Support
Battalion. It is a part of 1st Marine
Expeditionary Force out in Camp Pendleton,
California.

CHAIR BASHFORD: Would you move the
microphone just a little bit closer?

LT. COLONEL NASH: Is that better?

Okay.

PARTICIPANT: You can use parade
command voice, Colonel.

(Laughter.)

LT. COLONEL NASH: I was told to use
my inside voice today, sir.

(Laughter.)
LT. COLONEL NASH: Again, Jennifer Nash. I'm the commanding officer of 7th Engineer Support Battalion, and it's in Camp Pendleton, California. I've been in command 16 months, since May of 2016. And I'm with Sergeant Major Wright today. He is the Command Sergeant Major.

I have been in the Marine Corps a little over 19 years. In those 19 years, I've served as a commanding officer, pretty much at every rank or in command leadership. As a major, I was the commanding officer of a recruiting station that covered the State of North Carolina, and I served four years as a company commander as a captain, and as a first lieutenant, served two years as a company commander as well. So, I have spent a lot of time in leadership positions.

Currently, the battalion has about 1350 marines and sailors in the command. Approximately 70 of those are female and the rest of them are male.

The training I received before I took command took three hours while I was at the
Commanding Officer Seminar; I'll call it training that we have. It's a two-week training, 10 days of training, and we spend three hours on the topic. And then, upon arrival to my station, within the first 30 days, I was required to do approximately one hour of training with the SARC on base as well.

I found both trainings very useful, even though I had had experiences throughout my career on this matter and topic. What I found was things had changed in a sense of policy and procedures and how we had moved forward in some cases.

The training, like I said, that covered reporting procedures mostly, a little bit of legal. It was scenario-based-driven-type exercises as well, which I found those to be helpful.

During my changeover, before the change of command, we had a sexual assault in the command. So, the commander that was there before me walked me through the entire process as well.
Unfortunately, it was an unfortunate situation, but having that training with someone there who had been doing it for two years was helpful for me as I moved it forward.

During this last 16 months, I've had approximately six sexual assaults. Two have requested expedited transfers and have transferred. I also inherited some cases -- I'll called it "inherited" -- about three cases when I took command as well.

The part I think I was probably not prepared for was the first case in my very first month in command, having to tell a victim that there was no legal action going to be taken in her case. And I was the first person to have to tell her that. I felt like I was not prepared personally for that, and as an officer and a marine as well. So, just not having that background and training with that victim.

I will also echo the need probably for more NCIS agents. They are doing a wonderful job and working very hard. However, they are
understaffed and overworked. There are benefits of moving the investigations from the command. They are duty experts and they are doing a fabulous job. However, the timelines now are much greater. I would expect no earlier than six to nine months to have an investigation close. Probably in the civilian world that probably doesn't seem like a long time, but in the military it is. When you're talking with marines rotating and four years of service, six to nine months is a long time. Command investigations are usually wrapped up within 30 days. Now I know there are circumstances with evidence that we're waiting on to close some of those out in some cases, but not in all cases.

As a command, we do continuing training. I think the marines do find that somewhat -- the ones that are interactive and engaged training are the ones that they're taking more from.

There are the standard requirements that the Services put out, and we conduct those
trainings. But units use funds and bring in
guest speakers and different venues to provide
education in a different way.

I think some of the standard, I will
call it classroom-type training is not conducive
for that age group. If I could push an applet on
their phone, they would probably get more from
that than sitting and getting annual training
requirements via classroom. It's just the way
they learn and they like to do multiple things at
the same time as well. But they are very good at
that.

What's unique about my command is I'm
an independent battalion. So, I do not have an
06 commander. So, for my cases, I have to have
an outside commander serve in that role for me,
because as an 05 commander, I can't. So, I work
specifically for a general as an independent
battalion.

I would say it has not really caused
a lot of issues, but going to outside of my
command to a commander outside my command, just
for my command team, you know, it is not the preferred course of action, obviously, but it has worked and it has served well.

In the expedited transfer cases, I mentioned that we have sent out two and we have received two. What I have noticed as well, especially the ones that I have received and sent out, those victims, they've had additional medical concerns prior to -- it's more like injury-related due to Service-type training type stuff and things like that. So, members will come in and they'll already have -- that are transferred in -- additional concerns that we're trying to deal with those victims as well.

Recently, I've had to separate two for medical conditions separate from their incidents, if that makes sense, as well. So, concurrent with other issues maybe going on with the victims that the commands are constantly working with and they're trying to help them with as well.

As a command, our command team, myself, the sergeant major, the XO, and then, our
UVAs, and then, our SARC's, and then, also, my trial counsel is on speed dial as well as with our SJA. And I think as a team, if I don't know the answer or what to move, we know who to call. And so, the training is important and it's good, but probably the best thing as the commander is knowing I know who to call and get the right answer from. And then, that has been very good in our scenario, in our situation, and we have had the right support. And so, I have been really lucky in the sense of being able to provide good leadership and good direction to our victims in our command, based on the great support that we do have for them.

The services as well, the services offered to our victims on base, whether in the unit, I have not had a victim come to me and tell me that they were not getting services or there was a service that wasn't available or being provided to them. So, from that perspective as well, I think we're doing an outstanding job with our care of our victims.
Just in closing, thank you again for allowing us to be here today and to provide our experiences that we've had in the Marine Corps regarding this topic. It's definitely a topic which, as a leader, you continually talk to your marines and sailors about reinforcing and caring for each other and treating people with dignity and respect. As a command, whatever tools and resources that this community can try to bring to us will continue to help that with the training and those marines and sailors.

So, thank you for having us today.

CHAIR BASHFORD: Sergeant Major Rey, do you have prepared remarks or are you just going to assist during questioning?

SERGEANT MAJOR REY: I'm just going to go over my experiences just a little bit, ma'am.

CHAIR BASHFORD: Please.

SERGEANT MAJOR REY: Good morning, ladies and gentlemen.

I'm Sergeant Major Stennent Rey. I am the Battalion Sergeant Major senior enlisted
advisor to Lieutenant Colonel Nash, the 7th Engine Support Battalion.

I'm just going to go over a little bit of some the training that I have received as a senior enlisted advisor. I've served as a senior enlisted advisor at the company level from 2008 to 2013 with the 3rd Marine Division and 1st Marine Logistics Group. I've served at the battalion level, the 05 level, from 2013 to the present. I'm now on my second 05-level command.

Some of the training that I have received prior to assuming roles in the company level, I went to the Navy Senior Enlisted Legal Course. In addition, I had my senior enlisted professional military education as a first sergeant. We went over guided discussions on sexual assault prevention and response. In addition, at the Sergeants Major Course, once I was selected, it is the same training that the commanders receive. We also received a three-hour period of sexual assault prevention and response. In addition to that, it was highly
recommended that I attend, and I did attend at my
previous command, a resource brief, command
resource brief, for sexual assault prevention and
response.

Obviously, one of the big things you
take out of a lot of those briefs and a lot of
the training that we receive is what to do in any
situation in your unit where you have a sexual
assault or you have a victim that's in your unit,
but also having the SARC, your SARC, especially
for us, the Marine Logistics Group, as a resource
and a subject matter expert. Anytime there is a
shift in policy, for them to come down and
provide for training for the leadership in order
for us to be able to engage the leaders at the
lower level, so that they know how to handle
sexual assaults when they occur in the unit.

And last, but not least, I'll echo
some of the comments that Lieutenant Colonel Nash
made just a few minutes ago. It is very
important for us to be able to know what's going
on with our marines and sailors in the command.
And all the best practices that are brought forward through the SARC to ensure that we treat each one of them with dignity and respect, and we take care of those marines and sailors to ensure that, No. 1, that doesn't happen to them again, but, No. 2, that they know that the command is standing behind them to ensure that they're taken care of.

Ladies and gentlemen, I thank you for the opportunity to be here. I look forward to answering your questions.

CHAIR BASHFORD: Major Seamans?

MAJOR SEAMANS: Hi. Good morning.

Major Christopher Seamans. I'm the squadron commander at Grand Forks Air Force Base, the 69th Maintenance Squadron.

Thank you for the invite to come out here to share our experiences. I've only been in command out there since May of last year. And in the short period of being in command, I've had the experience of dealing with one sexual assault which turned into a conviction and one sexual
assault which turned into an expedited transfer.

I am a commander of a Global Hawk Maintenance Squadron. We have 13 RQ-4 Global Hawks and 272 enlisted personnel in the squadron. And we deploy a lot. So, a one-to-one dwell ratio and those types of things, the OPSTEMPO is very busy in a high-demand, low-density aircraft like the RQ-4.

Again, like I said, I've been the commander for just over a year. I've been in the Air Force just over 28, actually 28 years today, and I went to basic training. It will be 14 years enlisted.

So, my background with sexual assault and prevention, I've kind of seen over the last 28 years how the sexual assault prevention program has evolved, because I don't think there was a sexual assault or prevention program when I first enlisted. So, to see it kind of evolve to where it is today, and now I sit here as a commander, trying to figure out how to best deal with it as a commander and, more importantly, as
an empathetic human being.

My sexual assault training began as a commander at the Air Combat Command Commanders' Course. It was a one-week course. We spent about four hours, much like my fellow commanders here. It was about a half-a-day. That afternoon consisted of a -- and I remember it distinctly. We actually had a victim that got up and spoke, and the victim shared her experiences of how the whole process went through up to the court martial and into the conviction.

And then, following her, we got to hear from the commander and first sergeant as to how they dealt with the case and kind of got firsthand information as to how they dealt with the agencies on base; who supported them; what went well; what didn't go well. So, you kind of feel like you have a good basis, a good ground for what you may expect if that were to happen.

Unfortunately, every scenario is different and every circumstance changes your reactions and the response to that scenario.
Because on my first day of command, basically, I was given a folder from OSI and Legal for me to make a recommendation for preferring charges for a sexual assault, and that was my very, very first day of command.

So, thinking back to the training that I received, I'm thinking, wow, I didn't know I was going to need this so quickly. But it became very clear that what that training gave me was -- probably the best way to describe it is it's a collective community response, where I knew who to call and who to talk to, and kind of like my fellow commanders, who I had on speed dial. It was the chaplain. It was the SARC. It was the Base Legal Office. It was all the agencies on base. They're now surrounding me, trying to give me the advice and the assistance and all the knowledge I need to make a well-educated decision in how to deal with the situation of sexual assault.

Again, it was cursory training to me at the beginning, but it did prepare me for at
least knowing who the players were on base that I
would need the support from. And we pressed
forward with it, and we did the best we could. I
did the best I could to try to be that -- since I
was dealing with the accused, how do you deal
with an accused person of sexual assault, because
people are innocent until proven guilty? And
that was kind of the thing I struggled with, how
do you move this person from one section to
another? The victim was not in my squadron, but
it was on the base within the group. So, trying
to do right by the process, right by the human
being as well.

And again, like I said, the initial
legal and sexual assault training was cursory at
best. It was more the inconsistencies of it;
from commander to commander, there will always be
a different response as to how to support that
victim or the accused.

I relied heavily on an open dialog
with the Base Legal Office from the start, and,
in addition, with the SARC and with the Special
Victim Advocate as well, and with all of the agencies, again, like I said. The Base Legal Office was there. They were very responsive and very supportive throughout the entire process.

At the end of the day, though, if the training were to be given -- again, every scenario is different, so I don't know, looking back, if I was be that commander to go sit at a commanders' course and give my experiences of lessons learned, it would have been very challenging for me to think, you know, give you the what went well and what didn't go well because it was just kind of a reaction to a moment in time. Throughout the process we took notes and tried to learn lessons learned from the whole procedure.

We did take some of those lessons learned and, then, did apply it most recently to an expedited transfer to a victim. And that process went very well. Again, it's a process, but you're dealing with a human being. So, how do you get training on how to deal with a victim?
I have a 22-year-old daughter. So, to see a woman of a similar age to my daughter go through something like this, to try to be that consistent, caring, empathetic person without making any kind of public humiliation or any type of -- I guess when you walk into the room, you don't want people to have the judgment of that person. So, you try not to give special treatment, but you try to take care of the person at the same time on an unrestricted-type report. And that was a big challenge. That was one of the things I struggled with the most.

But, at the end of the day, I mean, how do we get from where we're at now to improve the commander's ability to execute the sexual assault program as far as taking care of your airmen? It is a collective community response that begins and ends with the victim, and we're always looking for ways to improve.

So, whatever I can share and whatever questions and answers I can give that can potentially improve this process, I'm very glad
to be here and providing any assistance I can.

Again, I have Senior Master Sergeant Terry Zannella with me. He's my first sergeant that assisted me through the process with the expedited transfer. He wasn't with me when we did the initial part of the sexual assault prosecution, but he was there at the end when it did finally go to court martial. So, both he and I have had some pretty good experience on both expedited transfer and sexual assault conviction.

But, barring any questions, I look forward to providing any assistance I can to the panel. Thank you.

CHAIR BASHFORD: And, Senior Master Sergeant Zannella, do you have remarks or are you going to participate just in the questions?

SENIOR MASTER SERGEANT ZANNELLA: I would like to share just a few. I do have a little bit of remarks, just to give an enlisted perspective from the Air Force.

CHAIR BASHFORD: Please.

SENIOR MASTER SERGEANT ZANNELLA: So,
first, good morning and thank you for having us here. As has been noted, it is a good opportunity to be able to share, and, hopefully, it will benefit what we are looking to do here. So, I do appreciate that.

I'm Terry Zannella. I'm a first sergeant in the Air Force, as my commander said, at the 69th Maintenance Squadron.

A first sergeant, what we do, for those who may not know, things that we focus on are morale, welfare, and discipline. So, morale, we try to make sure in general -- this is what comes in quotes -- that people don't hate coming to work, right? I mean, I try to keep it short and, like I said, they have short attention time sometimes, right?

(Laughter.)

SENIOR MASTER SERGEANT ZANNELLA: The welfare is taking care of them. That's kind of what this focuses on. And the discipline piece, making sure -- that ties in a little bit as well to when people do things that they're not
supposed to do. You know, we're going to ensure
that that's dealt with appropriately. So, that
will also tie in to make sure that people know
that we are taking care of our people in
different ways.

So, the welfare piece covers a wide
variety. We're, obviously, here to talk about
sexual assault and different aspects of that,
what we do with that.

First, I would just like to talk a
little about the training. So, I started as a
first sergeant in May 2015, and it was covered in
a domestic-violence-type talk. That's where I
got my introduction to a senior leader's
perspective.

After that, we get wing leadership, a
senior leader, in-b Briefs at our bases. So, my
first base as a first sergeant was at Gideon Air
Base, Okinawa, Japan. I did it for about a year-
and-a-half there. And then, I've been here with
the 69th Maintenance Squadron in Grand Forks for
a year now.
So, those two different boards have
given me different perspectives. In my first
assignment, I did not have a direct experience
other than ensuring training was accomplished for
members and receiving training myself. And then,
as my commander said, here in our last year or so
I came in on the tail-end of a court martial and
learned how to deal with my accused member and
how to attempt to take care of that person as
well as the unit morale. And then, also, we went
through the expedited transfer process.

So, let's see, regarding training, the
biggest thing, similar to what my commander said,
is the support agencies, right? Who do we have
available? I don't feel like I've ever been
given a step-by-step here's what you do, because
I'm not sure that's possible with the different
variety of the situations, what you can do, but
we've always been told that you've got a few key
people you have to get involved right away.

So, what's been drilled into my head
through all of these different trainings, as I
look back at them, is, okay, I get an accusation or allegations. All right. So, other than making sure the boss knows what is going on, I need to get with the SARC or SAPRO office. I need to get OSI involved, right? And this is, typically, at a high level. It's going to be the non-restricted report, right? So, I'm not dealing with the restricted reporting, although I do make sure that the team makes sure that the folks know that it's not.

So, part of the unique training for sergeants is being keyed to understand when people may have things they want to talk about, that they have rights that we have to ensure that are kept intact.

For example, if somebody comes to me and they tell, they start to tell me, give me indicators that something bad may have happened, I am going to tell them, "Hold on a second. It sounds like you're about to tell me something where you may not have confidentiality, where you may lose your confidentiality. So, tell me if
I'm wrong here, but I am going to let you know that, if you want to keep that confidentiality intact, I'm going to recommend you talk to VA or SAPRO, or is that something you would like to do?"

So, that's something we're taught, to make sure that we're not taking rights away from people, because I let them know, if you tell me something, it's now unrestricted and there are certain actions that I have to take; whereas, there are other folks who can protect your privacy.

Let's see, regarding our expedited transfer process, that worked really smooth, as the commander said. The paperwork was routed within a day, and two weeks later our member had an assignment. So, I thought, overall, that part went extremely well.

One of the things in the email that we had received mentioned sort of questions about ostracism and whether or not there was any retaliation or things of that nature. So,
something we do in our unit when we have this situation come up is I bought into section leadership and I said, "Okay, guys, you've got to talk to me. Are there any rumors going around?"

Because, basically, what we did is, a person who is now not where they need to be, we just want them to know, okay, that people have questions about this. Are they concerned? Are they starting to come up with their own conclusions?

I think they had told me no, but, realistically, I wanted to know, so that we could attempt to nip anything in the bud, to make sure that people aren't talking about situations where they don't have all the facts. So, that was something that I was happy about, but that's something that we're trained to look for as well. How is that going to affect the rest of the unit?

There's a couple of more items I think that I would like to address, just the way the Air Force handles stuff. We talk in the Air Force a lot about -- and that's based on my experience having a course here -- you know, they
need respect, responsible drinking. And I think these things kind of play into each other because there's ways that we direct training, both directly and indirectly.

And so, what I mean by that is, we know that alcohol is somewhat related in a lot of instances to accusations. That's just information about it that we've been provided. And so, how do we address that? We don't say that's always a contributing factor, but it likely is.

So, part of what we have done as a unit is we have reached out to our ADAPT folks, our alcohol dependency treatment folks who are with the mental health services on base. And that's one of our commander's calls. We just talk to people about responsible drinking.

But we made it unique and interactive. Kind of like you said before, our folks, they don't like the "death by PowerPoint". That's kind of what we call it in the Air Force, right? So, how do we make them more interactive?
So, we had ADAPT that came out, and something unique that I see in the Air Force -- I don't know if the other Services do it -- but they usually have the beer goggles, is what they call it. They have a device that you can put over your head and, basically, look through as if you are intoxicated at a certain level. And we could do demonstrations.

And we brought them out and we had people put those on, you know, and try to do simple tasks, such as walking, turning. And they can realize now, you know, in an environment that can be very interactive with their peers, you know, how does this affect just in general? So, that's a little bit indirect.

Directly, the training that I've seen, it has been pretty unique. That goes back to when I was in Japan there were vignettes. So, what they did is they brought out a team who came to base theater, and they put on like a play, for lack of a better word. It was an interactive play for the members who were in the audience.
And they said, "Hey, we're going to go through a scenario. You let us know to stop when you feel like things are inappropriate."

So, that's something that I remember we got a lot of positive feedback from. So, the interactive things are definitely well -- so, those are two different ways I think, directly and indirectly, that we've kept an eye on things.

And one of the biggest things is through our Unit Climate Assessments we get feedback on whether people know or understand the restricted and unrestricted type of reports. And that's something, the commander and I, we looked at. You know, we looked at those things heavily. Obviously, all the different comments on what's happens within our unit, whether it is in that form or we get the out-briefs on an MPO. And whenever they talk about that, we always take a look and say, okay, do our folks at least understand the differences in the options? And that's something that we ensure we do. So, not just our training, but, you know, part of my job.
is to make sure my people understand what their options are.

CHAIR BASHFORD: Thank you very much. Commander Carter?

COMMANDER CARTER: Well, good morning, ladies and gentlemen.

I was just leaning over to Chief Matt Lee here, who is my command chief, and told him he has permission to elbow me if I use too many acronyms.

(Laughter.)

COMMANDER CARTER: So, I think it's fitting that the Coast Guard is going last, not only as the fifth member of the Armed Services, but also because I think I'm going to take a little bit different approach.

I think I will tell a story. And I think that's what I plan to do, is tell a story of the one sexual assault incident that I've been involved in in my career and how in isolated situations commanders have to deal with a lot of different things. And so, I'm going to tell that
Today I am the commanding officer of the Coast Guard Cutter Legare. It's a 270-foot medium endurance cutter. It's home-ported at Portsmouth, Virginia. We're considered a mixed-gender unit. We have 110 of what I think are the finest serving men and women in our Service.

I introduced Chief Lee beside me. He's my command chief. That's a position that I designate after I get to that unit. He is a silver badge; he is not a gold badge. There is no associated training with that position. So, I'll preface that. And I'll also say, too, that in the incident that I am going to talk about this morning Chief Lee was a member of our Chief Petty Officers' Mess. He was not my command chief at the time.

I know the discussion here is about training and expedited transfers. The case that I am going to talk to you about, our one case did involve an expedited transfer, and both the accused and the victim were both under my
command.

As far as the training piece of it, I'll touch on it briefly. I actually called up to the Prospective Commanding Officer Course, which is quite common for unit commanders to go to before they go to and assume command. I actually called up and got the curriculum. I have that here today.

But, essentially, it is a six-hour course and it is pretty extensive, to tell you the truth. I went back as a commander and sat down there and looked at my critiques. It was with an SJA. It was with a victim. It was with the SARC from the Coast Guard Academy. And I appreciated that training very much, and even was take-home case studies that we were required to do because the course was conducted over a two-day period.

And then, when I arrived at my unit, I had about a four-hour entry with my SARC that my XO attended as well.

Though the reason for our
participation here today is unfortunate, Chief
Lee and I are both honored to be here to share
our experience in managing a sexual assault case
at our unit. The incident that occurred was
tragic and it clearly demonstrated the need to
reinforce our culture of respect for all of our
shipmates and to shore up our foundation of
sexual assault prevention. But I consider the
response to this incident a positive testament to
the functionality of our Sexual Assault
Prevention and Response Program and the training
that we receive prior to taking command.

On the morning of August 18th, 2016,
approximately 36 days after I assumed command of
the Legare and less than one week into my first
planning as the commanding officer, my command
chief received an email from a male petty officer
indicating concern and trauma due to the actions
and behavior of another male petty officer.

At the time we were en route from our
home port in Portsmouth, Virginia, to the Panama
Canal, where we were to commence two months of
counter-narcotics operations in the eastern
Pacific, working for Joint Interagency Task Force
South and Coast Guard District 11.

The author of the email stopped short
of identifying himself as a victim and he did not
mention the words "sexual assault" or
"unrestricted report". One might have
interpreted the interactions between these two
male shipmates as boys being boys or, at worst,
hazing. However, reading the email and drawing
upon the sexual assault prevention and response
training I received just five months prior at the
Coast Guard's Prospective Commanding Officer
Course, I knew immediately that the alleged
actions of the accused appeared to be sexual
assault.

The victim's email described a series
of physical and verbal altercations that occurred
over a four-month period. Allegations included
restricting the victim's movements, hitting and
groping the victim's genitals while in uniform,
reaching inside the victim's pants, and making
degrading sexual comments.

The victim told the accused to stop and made it clear that the touching was unwanted. The victim told his shipmates of the incident. However, the common response he received was that the behavior was simply indicative of the accused's immature personality. The accused was referred to as the class clown by many.

The final incident that led to the victim notifying the command chief occurred in a single shower stall when the accused entered the shower, forcibly restrained the naked victim, and made inappropriate and sexually-charged comments.

Reading the email was devastating for me and it could not have come at a worst time. Legare was transiting the Florida Straits and scheduled to enter the Panama Canal four days later. Our helicopter suffered a casualty the night before which prevented us from completing airborne use-of-force workups that are required to conduct a counter-drug mission.

Specifically, we use that armed
helicopter for disabling fire to disable small
go-fast boats that carry multi-ton loads of
cocaine. Without that helicopter, our ability to
eexecute the counter-drug enforcement mission
would have been seriously hampered.

We were scheduled to complete the
airborne use-of-force workups the same day that
the victim sent his email to the command chief.
We were juggling multiple requirements of the
interoperational commitments. But, upon reading
the victim's email, it became clear that our two
most pressing priorities were ensuring the
victim's safety and facilitating a systematic
response to the incident.

Besides the training I received at the
Coast Guard's Prospective Commanding Officer
Course, I relied heavily on the unit commander's
checklist for unrestricted reports of sexual
assault. And I brought a copy of that today.
This trifold pamphlet includes reporting
requirements and other detailed actions to help
facilitate an effective response in accordance
with the Commandant's policy. It included actions for both the victims, the unit commander, and the unit commander of the accused, and in this case I was both.

After meeting with the command chief and my executive officer, we used one of our two Victim Advocates onboard to help assess the needs of the victim. I assigned the command chief to monitor the accused and to ensure that there was no contact with the victim.

Shortly after reading the email, I notified the first flag officer in my chain of command by releasing the first of three Commander's Critical Information Reports, or CCIRs. By the end of that day, I would release two other updates.

The executive officer notified the Sexual Assault Response Coordinator, our administrative commander, our tactical commander, the Coast Guard Investigation Service, or CGIS, and our servicing legal provider who is our SJA, Atlantic Area, our Staff Judge Advocate, who
immediately assigned a Special Victims' Counsel.

The executive officer also convened and participated in the first crisis intervention team meeting, held via conference call because we were underway, and that occurred five hours after we received the initial report of the unrestricted report. A total of five crisis intervention team meetings occurred for this.

While maintaining oversight of the command's response, my afternoon was spent developing courses of action to meet the victim's needs and initiate an investigation into the incident, while preserving options that would allow us to manage our operational commitments.

I made the decision to abort that afternoon's scheduled airborne use-of-force workups and, instead, I elected to fly both the victim and the accused to Coast Guard Sector Key West. The victim and the accused were transported to shore in separate flights. Prior to their departure, the victim elected to use the services of a Coast Guard chaplain, did so via
satellite phone, and I issued a Military
Protective Order to the accused ordering him to
avoid contact with the victim.

Once both members were safely ashore,
we recommenced our transit and we were able to
meet our operational requirements. Over the days
and months that followed, we relied heavily on
support from other Coast Guard units and from
members of the crisis intervention team to manage
both the needs of the victim and adhere to the
rights of the accused.

Both the victim and the accused were
interviewed by CGIS agents the day after they
arrived in Key West. Agents met the cutter on
pier in our first port call, which was Panama, to
interview members of the crew with knowledge of
the incident.

It was a difficult experience for
everyone onboard, as both the victim and the
accused were both well-liked members of the
command. Thankfully, we were able to immerse
ourselves in our mission and move forward
relatively quickly.

This incident included a request for an expedited transfer. Prior to the incident, the victim had already initiated plans to lateral from the active-duty force to the Coast Guard Reserves. His scheduled date of transition from the active-duty workforce to the inactive-duty Reserves was [redacted], which was about five months after this event occurred.

The victim expressed his desire for an expedited transfer to a Coast Guard unit near his hometown in [redacted], which was his planned place of residence following his lateral transition to the Reserves. This request occurred in a phone call between the victim and the XO while the victim was still in Key West. The executive officer arranged for the victim to meet with the Sexual Assault Response Coordinator to initiate the formal request for expedited transfer, and that occurred five days after the member provided the unrestricted report to the command chief.
I received the official request for expedited transfer the very next day that the victim filled it out with the SARC. And then, I endorsed it that day. I approved it that day. I released it that day to Coast Guard Enlisted Personnel Management. And within 10 days of receiving that positively-endorsed request, Enlisted Personnel Management authorized the victim's transfer from Legare to [redacted], which was near his hometown. And then, that allowed the victim to lateral to the Reserves and establish his place of residence, and he did all of that as planned. The victim's billet was gapped for 10 months, and I'll talk about that more.

The accused was administratively assigned to Coast Guard Atlantic Area and temporarily performed duties at Base Portsmouth. He never returned to Legare.

After completing its investigation, CGIS submitted its findings to the Commander at Coast Guard Atlantic Area for disposition. A
summary court martial was convened on 29 September of this year, where the accused pled guilty to five counts of abusive sexual contact and sentenced to 30 days' confinement, forfeiture of $700 pay for a period of one month, and reduced in rank from E4 to E2. The guilty party is currently confined, and when he is released, he will face an administrative separation from the Service.

As I mentioned in the beginning, my overall perspective of the Sexual Assault Prevention and Response Program is a positive one, and that includes the training that I received as a unit commander. For unit commanders, it provides guidance to create and sustain a culture of respect and prevention. When a sexual assault does occur, it provides unit commanders clear reporting and response requirements with an associated timeline for execution.

The case we experienced onboard Legare required us to compress that timeline to meet our
operational commitments, and the support network
for sexual assault response cases was flexible
enough to help us meet that demand.

As for the expedited transfer process,
I believe the process was employed in this case
to the maximum benefit of the victim, though I am
concerned about the amount of time it took for us
to receive a backfill. Again, the victim's
billet was gapped for 10 months. And by
comparison, the guilty party's billet was gapped
for only four months. So, this might be an
anomaly, but it's an issue that could be easily
resolved by placing some type of time requirement
on Service personnel managers to be able to
backfill the billets of victims who have approved
expedited transfers.

So, please don't misunderstand me;
transferring the victim was the absolute right
thing to do in this case. It was no hesitation
on my part to be able to approve that, especially
since I was in a deployed status. And I cared
most about helping that shipmate who was
experiencing trauma in his lift. But, from a commanding officer's perspective, a billet going gapped for that long is problematic. It is problematic.

I did write down one thing that I think Colonel Nash brought up. But I have high praise for the Coast Guard Investigation Service, or CGIS. I don't know if you could follow along with my timeline, but it was essentially over a year before we had a pre-trial negotiation take place and this be disposed of at the summary court martial. I think there is a case and a need for more agents with CGIS to be able to support these cases.

And that's the conclusion of my prepared remarks. I know Chief Lee does not have prepared remarks, but I know he is going to be of value to you in the question-and-answer session. We're happy to answer any questions that you have.

Thank you.

CHAIR BASHFORD: Member Grimm?
MEMBER GRIMM: Colonel, I would like to ask for some more input on the bystander training. We have been advised in the background briefings that we have received regarding the circumstances in which the environment where sexual assaults may take place often includes off-duty hours, off-base, and the involvement of alcohol.

We know that within military units there is a cohesiveness and the people in units tend, when they are off-duty, to have friends within the units that they go off and do things with. So, the environment may very well include the locations where there other Service members or members from their own command who are present.

Was this something that your unit developed as a way to try to train soldiers from the bottom-up in what their responsibilities were or was this something that is done Army-wide?

LT. COLONEL MILLER: So this is definitely something that is done Army-wide. In
fact, the brigade-level Victim Advocates and
SHARP representatives are actually trained on how
to facilitate that training down at the brigade
and battalion levels, so that they can have that
interaction.

There is also a series of -- and one
of the other panel members mentioned it -- in
terms of a group of individuals that come around
and kind of do this sort of -- it's almost like a
play, if you will. But it is kind of the first
step into the bystander training where they
involve the audience of that training. You know,
they set up a scenario where they're in a local
bar and they see something happen. And then,
they involve the audience inside of that. So, it
is definitely something that is probably not even
just Army-wide, but Service-wide that that
training is conducted.

I think at least in the Army and
across the Army we have noticed that what you
said is exactly right. These incidents occur
generally off-post or they start off-post and,
then, they migrate into places like the barracks or on-post housing, where there may be a gathering of multiple people. Or, you know, it's the after-party or the pre-party sometimes of the night's activities.

And so, it is just getting the soldiers involved in that. I would say that, at least on Fort Campbell, that has been a focus area. And I know on other installations as well across the Army, just based off of, if you can get people to recognize what those telltale signs of something's not right, hey, if it is in your gut and it doesn't feel right, if you see something wrong, step in and do something. If they can do that for a sexual assault, you know, they can do that for other things.

And we kind of flip the script on them a little bit. You know, "Hey, you take care of your buddy in battle when we're out fighting wars, but why can't you do this when we're at home station in a bar?" So, just using that mentality.
MEMBER GRIMM: Could the other panel members just comment as to whether there's training that they have encountered of this bystander training? So, we get a sense of whether there is a consistency?

COMMANDER LIVINGSTON: Yes. Yes, sir.

Navy-wide, there is, I think it was two fiscal years, there was a push, a big push, specifically for bystander intervention training. And it went through the Department of the Navy where we were required to do bystander intervention training, and it was good training at that demographic that we're talking about, you know, that 18-to-25-year-olds. I mean, that is a tough group, right? I mean, that's where many college campuses have the same age group.

Also, I can't remember the name of the training, but we keep talking about this play interaction, and we had that, too. It was very good. It was very well-received. And I always pushed as many sailors as I could to that. It was kind of like a roadshow, and I can't remember
the name of it. But it was very well-received.

LT. COLONEL NASH: The Marine Corps has similar training as has been briefed. We, as well, have had the roadshow of these plays. And the face value, a lot of times the marines will laugh about them because they're like this is so ridiculous; this wouldn't happen. But that's kind of the point; it is happening. And so, that's kind of eye-opening for them when they can pull themselves out of scenarios that they live day to day and kind of just watch it happening. I think it gives them a different perspective on maybe things they could do better to help the marine/sailor.

MAJOR SEAMANS: Yes, the Air Force is using the Green Dot training. It's very much peer-oriented with the 18-to-25-year-olds, where we identify within my sections -- and some of my sections are as small as 10 people, as big as 50 people -- the informal leaders, those airmen that their peers look up to as, "Hey, whatever Airman Jones is doing, I want to be like Airman Jones."
And those are the people we try to select as the proctors for this training.

So, they do the formal training en masse, and then, in the small section units we do the recurring training. But we do the same type of vignettes and discussions on, if you're in this scenario, what are the tactics you can use to diffuse the situation, where we can identify where, hey, this is going to go down the wrong road. So, hey, we need to pull this airman back, you know. This isn't going to end good for either one of these people. And we've trained them to recognize those things. And by using those informal leaders as the proctors, then it also fosters those peers to want to be supportive of those discussions and actions.

Because it's a new concept, I know that DoD, I think this was a college/university-type program that had shown much success. So, I know it's somewhat new in the Air Force, but definitely a robust program, more than I've seen.

MEMBER GRIMM: Thank you.
COMMANDER CARTER: The same with the Coast Guard, sir. There's a little bit of bystander training that is in our annual requirement to conduct GMT, which is General Mandated Training.

But, about two years ago, I think similar to as the commander mentioned, there was a push for sexual assault awareness and specifically for some bystander training. And there were road-trip shows, and it was an en masse event where you went as a unit, or the majority of the unit, in a classroom setting and covered scenarios. And as the other panelists mentioned, it did surround situations that involved alcohol because, obviously, there is a connection there. But I found it to be valuable.

MEMBER GRIMM: Thank you.

CHAIR BASHFORD: Ms. Long?

MEMBER LONG: I have a question for each of you. And thank you, first, very much for being here. I thought it was very informative, and thank you for the work you're doing.
I know that you have each spoken about you rely on your Staff Judge Advocates or the other Judge Advocates in your group. Have you ever felt that your lack of formal legal training or if the training that you do receive has hampered your ability to analyze the case? Is there any additional training that would help you in terms of when a case is presented to you? I'm thinking toxicology or any of the specialized competencies that can help maybe make sense of pieces that seem complex. Or do you feel like you have what you need with those that are advising you?

LT. COLONEL MILLER: So, I'll answer this first. I would say that I think if you were to advance any more -- if I were to receive any more legal training, I think it would almost impair my ability to make decisions that are, I guess you could say impartial, right?

So, one of the things as a commander is you can't get emotional about the decisions that you're making. I think that when you start
to dig into understanding more of what's happening in terms of the toxicology and those things, you start to become part of the case. And as the commander, you can't really become part of that case, and that's why you have those advisors.

And so, I would caution against additional legal training. I am just very fortunate where I have a great team. You know, I had a great team and command. I had a great relationship with my SARC.

But I could say that there might be some room for some specific training with regards to how you handle sexual assault cases or how you handle victims. You know, maybe just a little bit more touchpoints in the areas that we're already receiving training.

However, I think that if you increase the level of training, you know, don't turn commanders into lawyers because that's not our role. Our role is to be commanders and be impartial, and sort of not get tied to the facts
of the case or really focused-in on, you know,
I'm going to get that guy or that gal, or
whoever, because it is just that's the trial
counsel's job, is to take that to court, not the
commander's.

MEMBER LONG: But am I correct that
you all make a decision, though, as to whether or
not that case goes to court ultimately?

LT. COLONEL MILLER: So, in a sexual
assault, as an 05-level commander, I make a
recommendation to the 06 and I say, "Sir, based
off of this," and it's really myself and the
trial counsel and the Staff Judge Advocate that
are making that sort of advice to the colonel.
The lawyer, of course, on the legal side of the
house, and then, really, as a commander, I can
provide, hey, you know, soldier X will make a --
you know, she'll be a fantastic witness, or like
understanding the environment of the unit and of
the victim and the surrounding facts. So, I
think that if you put commanders in more legal
training, I think you run the risk of sort of
marring the legal aspect of it.

COMMANDER LIVINGSTON: Yes, I mean, I don't know. So, I never saw one go to court martial. I think I have a case that started when I was a CO, and I talked to the current CO, actually, the current XO, and it's heading that way, and it should, in my opinion, right, based on what I know of the case when I left command.

I don't think that I have the ability, though, to decide whether or not it goes to court martial at my level. I think that, and I very well could be wrong, but my understanding is that is a decision that NCIS and the lawyers make, Staff Judge Advocates make, that, hey, yes, we would like to take this to court martial or not. And they get to make that decision, right? And talking to, for me, Naval Criminal Investigation Service and the JAG, talking could make that.

Now I completely agree with the lieutenant colonel where it is up to me, if the victim is in my command, to encourage that victim to participate and provide reassurances that the
command is behind him or her. But, again, I
never saw one go to court martial while in
command, but that was my interpretation.

     I did have one, and it was a very
frustrating experience. It was one of those
cases that I inherited. When I came into the
command, it was ongoing. And it was a contact
case, so non-penetration. It took an excessively
long time, it seemed to me, for the investigation
to conclude, for NCIS and JAG to make a decision,
to come to a resolution of whether or not to go
to court or not go to court martial.

     When they finally made that decision
that it could, that they did have enough, it had
been over a year since the incident took place.
And my sailor was no longer interested in
participating in that trial, and it was all
dropped. And I could not blame her one bit,
either, for not wanting to participate in
something that she had moved on from, and it just
took too long. And it was very frustrating to
see that happen. But that was not my decision to
LT. COLONEL NASH: In my situation, it's between the 06 commander and you will be getting advice from the trial counselor and the SJA for my unit. So, usually I get told what is going to happen, and NCIS sometimes, depending on an agent, will keep me informed, but they don't have to. And sometimes unless I go digging and looking for it, I might not even see the investigation with some of the details that you're even referring to, unless I specifically go through it.

And then, the victims, they have their victim lawyers as well. So, when I talk with them, which is a requirement every month to talk with each of the victims and make sure that -- give them a current update and let them know, find out if they have any issues or concerns. There are victims' lawyers. And so, I for the most part try to stay disengaged from the legal process itself, for many of the reasons already stated, with undue command influence and things
like that. So, I just kind of stay away from it.

MAJOR SEAMANS: Yes, and in my case it was my very first day on command. It was the very first red folder I had. It took me several days to go through all the interviews and videos and testimonies that OSI had gathered. And then, Legal Office came in.

I think it is just kind of what you're saying as far as the legal training, I think the just-in-time training worked very well for me. So, of course, I am not a lawyer; I'm an aircraft mechanic. I'm looking at a lot of things here and a lot of details, but it just comes back to the basic foundation of a human being looking at the papers to make a decision as to whether or not I'm going to recommend a preferal of charges against this individual, based on the merits of what's in front of me.

And that is kind of the way Legal Office kind of steered me down. It was, do you think this should go in front of a jury? If so, then, you should prefer charges. And that was
kind of the essence of the discussions that I
had.

COMMANDER CARTER: Specifically to
answer your question, ma'am, no, I do not believe
any lack of legal training hampered my decision
in this case. However, it wasn't a decision, I
mean, this case immediately just for the first
flag officer and my chain of command, which was a
three-star. So, the disposition on whether or
not that case went to court martial was entirely
-- it's the important thing for us was, you know,
I like the notion that Jennifer said about
disengaging. That was why the crisis
intervention team was so important for us.

I didn't even participate in those
meetings, to maintain any level of objectivity,
in case the three-star said, "Aw, maybe it
doesn't meet the level," and pushes it back down
to me for non-judicial punishment. That wasn't
the case in this case. It went to court martial.

But that crisis intervention team, you
know, that's my SJA; that's the SARC; that's the
Coast Guard Investigation Service, and the
commander representing the command who do the
next step. So, I felt like the training that I
had was sufficient, given what I was required to
do in reporting sexual assaults and
administrative investigations.

MEMBER WALTON: All of you have
indicated that you believe there's insufficient
investigative services available to you. Is
there some ratio that should approve the number
that you have under your command, or the number
of investigators, or some other calculation in
deciding what investigative services are
sufficient?

COMMANDER LIVINGSTON: Sir, I don't
know the answer to that question. I can explain
that the NCIS agents onboard NAS Whidbey Island
were shared by the entire area, right, the entire
base. So, it wasn't just my command vying for
their resources. It was the other, holy cow,
however many, 20 other, you know, the Growler
squadrons, the other P-3 squadrons, the base,
they were all utilizing the same NCIS agents.

I'm not sure if there is ratio of how they figure out how many agents are assigned.

But, yes, I would concur that there was not enough, it would seem.

LT. COLONEL MILLER: So, I would say they are definitely underresourced. I did come armed with a little bit of statistics. So, just specifically at Fort Campbell, as of the 18th of October, there was 146 open investigations at CID. Out of those 146 investigations, 82 of them involved an allegation of an Article 120 offense. And so, that's over half the caseload. And I would tell you that the length and duration that it takes to get those cases closed is sometimes extremely long.

One, they need to be detailed enough to be able to take them to trial. What that results in, of course, is a potential accused who is really accused of a violent crime in some cases who doesn't necessarily meet the pre-trial confinement requirements because the person is
not a flight risk or we can't prove that they are
going to injure another individual. That person
stays inside of your formation for potentially up
to a year, until the person can be brought to
court martial, tried, and then, potentially
confined.

I assumed command and, within about 60
days, there was a court martial for an NCO who
was accused of sexual assault. He had been, his
court martial -- the investigation -- I'm sorry
-- had started over a year before that. And so,
when I assumed command, I was surprised that it
had taken that long to bring it to a court
martial.

And it really goes back to the number
of investigators, and I think what we need to
look at is skilled investigators because, at
least for the Army CID perspective, you see the
recruiting posters up and you may have an MP, a
Military Police soldier; you could have a
mechanic or an infantryman that becomes a CID
agent. And then, now that individual is, well,
we got the CID agent, but it's about that
experience and the training level of the CID
agents to become more proficient at conducting
those investigations. So, I think it is kind of
a two-part piece there.

COMMANDER CARTER: We share CGIS
services, too. They're assigned to Coast Guard,
Atlantic Area. I do not have stats, but it is,
given the variation of cases, not just for sexual
assault cases, but for all sexual assault cases
-- and I'm not the first one to say it -- we
don't have enough CGIS agents. They will have to
borrow agents from sub-commands to come out and
meet you to be able to do their investigation
and, then, send it back to the case agent. So,
the case agent doesn't even have time to focus
solely on that case.

So, again, they provide great work.
I appreciate it. They're underresourced.

MAJOR SEAMANS: Yes, the Air Force
Office of Special Investigations at my base,
Grand Forks, from the time that charges were
initiated, where the investigation began until it went to court martial and conviction, it was about 18 months, but there really wasn't a backlog. Grand Forks Air Force Base isn't a very large installation, and about 1100 active-duty members there, and there's three agents that work in that office.

So, when I have an action that goes up to OSI for investigation, I don't experience a big delay, although, still, it sounds like the timeline remains about the same, that when initial charge to conviction, it's 12 to 18 months where, like I said, no pre-trial confinement or you have those people that are still in your formation. You're trying to maintain some sort of normalcy to your unit and to that individual until it does get to court.

So, that is a challenge.

CHAIR BASHFORD: Do you have a follow-up?

MEMBER SCHWENK: Yes. So, talking about that, the investigative agencies realize...
that -- everybody realizes the process is slow
and that doesn't benefit anyone. So, the
question is, how do you speed it up? You look at
each part and you look at the investigative
piece.

In January of this year -- so, the
first thing we did is, since you're all in the
military, you know how the pendulum swings,
right? And when we decide to emphasize
something, depending on the swing, it's way off.
So, the answer was all 120 cases will be
investigated by a military criminal investigative
organization. The pat on the rear is going to
get the same thorough investigation as the
violent rape. And so, there we are.

So, then, years passed and the field
complained about slowness. And so, in January a
new policy came out and said, okay, now the MCIO
can go to -- I don't know all their names, but
eye can go to the MPs or they can go to the
Marine CID or the master-at-arms, or whatever you
have that's not OSI, that's is a law enforcement
connection. I don't know about the Coast Guard, but in the DoD. And you can ask them to provide support. So, the MP, OSI, Army CID, NCIS is still in charge, but they can now get a master-at-arms or a Marine CID to help them on the contact cases. They're all serious, but of the panoply, of the less serious of the serious.

And so, that is a step that has only been implemented this year that might -- it provides them more resources. So, the next step is, if that doesn't prove to be the right answer, would be to cut off some level of cases and let them go back to where they used to be done, which is at the non-Army-CID, you know, NCIS, OSI level and, then, done locally.

And so, my question is, having dealt with those cases, how comfortable would you be with that outcome? And I get the impression that maybe not all of you would be that comfortable with a less-experienced criminal investigator handling even a contact case like a pat on the rear-end or something. I realize it's your
personal opinion here, but I am just interested
in what your perspective is.

LT. COLONEL MILLER: So, I would love
to answer that question.

MEMBER SCHWENK: Well, go right ahead.

(Laughter.)

LT. COLONEL MILLER: So, when I was in
command we had an incident where a soldier
touched another soldier's genitals in what is
commonly-referred to is a "ball tap." It is a
celebratory "we just kicked the crap out of the 
enemy," and this is what they did.

This was done in front of multiple 
people. The company commander saw it. But the 
company commander was not allowed to take any
action other than reporting it to CID because it 
was an Article 120 offense.

So, in cases like this, this would be
a perfect example of where, to be able to 
maintain good order and discipline and to
reinforce that trust within the chain of command,
those are perfect examples of cases that the unit
can handle, and handle quickly, so that you don't inadvertently promote an environment where soldiers don't think you're doing anything about it, so it's an accepted behavior.

So, I would be more than happy, you know, I would have been more than happy, as a commander, to be able to take that on, even if you made the disposition authority the 05-level commander, so that there is still some oversight to those junior company commanders. So that you could potentially use that as a teaching point for those younger commanders, because, as an older commander, I learn from my older commander and I teach my younger commanders. So, that is kind of how we're raised in the Army at least.

MEMBER SCHWENK: That is sort of the second part, the investigative part, and then, the withholding authority to 06 and whether we've now gone along far enough that we should reconsider, I think the Army should reconsider that 06 level. But let's stick with the investigations.
LT. COLONEL NASH: Sir, I was actually going to mention that when she finished. Because I've got almost the exact story with an incident currently. And it happened for a deployed, and the marine had to be sent back for this. And now, we're bouncing between NCIS in different countries trying to wrap up this investigation for a very similar story, and there's no end in sight.

So, as an 05 commander, for a story like she told, the authority to handle this matter I believe should be at the 05-level commander. I don't see this as something an 06-level commander can have.

But I know the Committee's concern would be, what's the cut line and who makes that decision? And so, I understand we're really good at, you know, we're all in. It's like you said, sir, we shift the pendulum. So, I understand what has brought us here today. However, I think maybe the pendulum could swing back into the middle and there could be some type of process to
determine how and where we can investigate these things, and then, handle them for disposition as well.

For good order and discipline and morale, there is something to be said about quick, swift justice in cases. When cases linger for nine months for a scenario like that, it's bad for morale; it's not good for the unit itself. And so, there's something to be said with swift justice as well, sir.

MAJOR SEAMANS: In my experience, both of my cases were someone on the severe end. So, I believe that the OSI was the correct agency to do the investigation. Having dealt with any of these, maybe if you were to consider it a lesser-type occurrence, then maybe a lower-level investigator in order to impose that brevity of the investigation and eliminate some of the backlogs. Then, they can use those better resources for the more intricate cases that end up, would be a good way to diversify the workload for those investigators.
MEMBER SCHWENK: Any thoughts from the Coast Guard or the Navy?

COMMANDER CARTER: I agree. We think that there is some type of mechanisms to be able to ensure the needs of the victims are being met, and that if there is general concurrence between the SJA and all the personnel involved and the sexual assault prevention and response team program, that those cases can be kicked back down.

But, remember, there is a victim here. So, we have to be very conscious of, are they claiming themselves as a victim? I think you still need to go through all the process, but the mechanism, to kick it back down I think would be valuable and might help the lag in the investigative report.

COMMANDER LIVINGSTON: Personally, I concur wholeheartedly, sir. I mean, I think you would be hard-pressed to find an 05 commander who would not want to have that authority. And it is not just for the sake of the --
MEMBER SCHWENK: We found some last

year.

(Laughter.)

COMMANDER LIVINGSTON: Oh, yes, well, okay. Yes, sir. But maybe as the pendulum
shifts, it will become harder to find those 05
commanders.

And not only for the victim's sake,
but also for the accused, right? I mean, like
you said, they're all serious, but some are less
serious than others, and it's being held over the
accused head as well and could put their career
on hold unnecessarily. And I know that is a very
-- yes, you have to be very careful with that.
That's kind of what got us to where we are now,
right? And we need to make sure we remember, you
know, we didn't handle these always in the past
correctly, and we need to keep that in mind as we
do move forward, sir.

MEMBER SCHWENK: Okay. Thank you.

MEMBER WALTON: I have another

question. Does the military seek to establish a
working relationship with local law enforcement, civilian law enforcement, and prosecutors' offices in those areas? And assuming you have a law enforcement and prosecutorial capacity to handle the cases, and there's an event that takes place off-base, from a commander's perspective, where do you believe that case should be prosecuted, by the military or by civilian authority?

LT. COLONEL NASH: It depends, sir. My only off-base cases was when I was on recruiting. And so, in that scenario it made sense for the civilians, I think, to handle those cases.

And it could depend, too, on who the victim is. If we're talking both of whom are Service members, I would think that the military is probably the best avenue to do that. But, if the victim is a civilian, there may be some considerations to be looked at in the civilian courts.

LT. COLONEL MILLER: I would have to
say, from the perspective at least from Fort Campbell, that there is a very close relationship with both the local law enforcement agencies and the Oak Grove Police Department and the Clarksville, Tennessee, Police Department and their investigative services. In fact, there is a partnership when there is a child, even if it is a child on-post, that is a victim of a sexual assault or they think that they are a victim of a sexual assault. They actually have a partnership with the Montgomery County Sheriff's Department that has folks that are trained to interview those children to kind of determine what is going on.

One of the things that we have done in the past as an installation, and my brigade combat team spearheaded an effort during the Sexual Assault Prevention Month, was having a forum for local law enforcement as well as CID agents and commanders from the installation, basically, to spend about a half-of-day with each other, have coffee and some snacks, and things,
and have a guest speaker come and talk about how to treat victims and understanding that not every victim is the same.

And then, we all kind of sat at different tables, so that we could have that interaction with the local law enforcement, their perspectives. Then, with many of our soldiers that live off-post, really getting the local law enforcement to have that interaction with the commanders on-post to facilitate that relationship. So, in many cases I think a lot of installations that have quite a few soldiers living off-post probably try to do that same kind of outreach, because it helps balance those cases as well.

But I would agree with Lieutenant Colonel Nash on, if it's a soldier-on-soldier incident that occurs off-post, I think a lot of times, and even our local law enforcement in the Fort Campbell area realize that, there is a better chance for prosecution of that accused if it is moved into the military justice system.
CHAIR BASHFORD: I just wanted to hear from the other Services on Judge Walton's question first.

COMMANDER LIVINGSTON: Yes, my experience, sir, with that is that, yes, there is a relationship with the civilian police force, sheriff's department, and more so, though, geared towards the base. So, I think the base CO would probably establish that relationship more at that level, at the 06 level more so than at my level, the 05 command level.

I concur with -- they would often, if it was what we call blue-on-blue, sailor-on-sailor, hold and detain and, then, often allow the Navy to come pick them up, and then, let us hold them accountable for a simple assault, public drunkenness, something like that.

When it gets to the arena of sexual assault, though, I think my experience was the civilian investigative services had first go at it if it happened out in town. And they would investigate and they would do so in coordination
with NCIS. I would contact NCIS to see how that relationship was going, and I would do that directly as the 05 commander.

And then, once the civilian sector decided to prosecute or not prosecute -- and typically, in my experience it was not prosecute -- then, NCIS, the Navy Criminal Investigation Service, would take it from there, and, then, further prolong the timeline for them to make a decision whether or not to go forward or not to prefer charges.

MAJOR SEAMANS: Air Force, from my experience, it happened off-base. It was an airman-on-airman downtown Grand Forks and jurisdiction was given back to the base. From a command perspective, I was not part of those discussions, nor was I part of the request as to whether or not I wanted jurisdiction. That was something that was done at the Staff Judge Advocate office, and it was a communication that they had between them and the prosecution office downtown.
It is kind of unique, though, in addition to not just sexual assault, but we have driving-under-the-influence cases as well. Those are the other ones that sometimes the city will give up jurisdiction; sometimes they won't. It's hit or miss, and I don't know what the driving force is behind why they do or why don't give up jurisdiction. But, for the case of sexual assault, in my experience, it was given back to the base, and court martial was the venue for prosecution.

COMMANDER CARTER: There is a professional working relationship between CGIS agents and local law enforcement in all areas of responsibility. I think entry point matters, no matter what the case is. So, whether it starts on the civilian side or on the military side, as the commander mentioned, typically, cases that start at the civilian side will remain on the civilian side until there is some kind of final disposition, at which point CGIS, who was probably monitoring that process through the
entire time, takes it into the military justice
system once the civilian authorities are through.

CHAIR BASHFORD: So, at the Chair's
discretion, I'm going to take a 10-minute break.

I know some of our members have been using
facilities, and I want to make sure that the
panel has an opportunity, if necessary. So,
we'll back in 10.

(Whereupon, the above-entitled matter
went off the record at 10:29 a.m. and resumed at
10:43 a.m.)

CHAIR BASHFORD: Okay, Ms. Tokash, I
think you had a question?

MEMBER TOKASH: I did. I first have
a question for Commander Carter, and then I have
a question for each of the services, if that's
okay?

Thank you for your time today. I know
how busy you are as commanders and high-ranking
NCOs.

My question is with regard to the case
that you detailed to us. Were you privy to the
reasons why that particular case was referred
Summary versus Special or General?

COMMANDER CARTER: My understanding, ma'am, was that that was determined during pre-trial negotiations.

MEMBER TOKASH: Okay, so there was some form of back and forth --

COMMANDER CARTER: Yes, ma'am.

MEMBER TOKASH: -- between the trial counsel?

COMMANDER CARTER: Whether we were going to plead guilty to the five counts at a summary by suspension.

MEMBER TOKASH: Okay, then my question for the services going down the line, we heard yesterday from civilians from the Pentagon about the expedited transfer policy, and a credibility determination that is made between the commander, the investigating officer, and the staff judge advocate.

I know the Coast Guard said that credibility determination is put in a formal
memorandum, that decision.

Could each of the services talk about that, and whether you actually were part of any credibility determination that was made prior to an expedited transfer?

LT. COLONEL MILLER: So, in terms of the expedited transfers that I dealt with, it was, first, the soldier would go and make the formal statement at CID.

CID would say, hey, there is validity to this person's accusations.

There is a named accused or they somewhat know who that person was, and then, the Victim Advocate would then contact me and say, hey, ma'am, specialist, so-and-so, or soldier, so-and-so, is requesting an expedited transfer.

Her case meets the requirements for that based off of that current level of investigation.

I think that when we talk about the expedited transfer, it's expedited so that you remove that person from the situation quickly,
correct?

    And so, we try to do it as quickly as possible to be able to make sure that that transfer takes time.

    So, to be able to ensure that soldier was moved in a timely manner, the urgency to get that paperwork to the resources, Human Resources Command for the Army, it's a pretty tight timeline to be able to make that happen.

    So, in terms of credibility, I'm not really sure how you can really determine credibility for certain without a full investigation.

    So, essentially, you're almost believing the soldier at face that there has been an Article 120 offense that has occurred.

    I did have a soldier that requested an expedited transfer as part of a case that didn't necessarily meet the Article 120 level in terms of the offense.

    And so, it had to do with cell phones and two soldiers stealing images of them off of
their cell phones.

   So, soldiers would go in, borrow cell
phones, call my wife, and then he'd send a text
message of pictures that the soldier may have of
themselves that is, you know, maybe not clothed
all the way.

   And so, because that didn't meet the
level of the 120 offense, then that transfer was
not granted.

   So, the credibility is in relation to
120 offense, not necessarily the truthfulness of
that statement to CID, if that makes sense.

   MEMBER TOKASH: It does.

   And so what you're saying is from your
perspective in the Army, there's no written
decision that's made?

   It's really just kind of made more
orally, if you will?

   LT. COLONEL MILLER: Well, there's a
memo that goes along with the expedited transfer
that's sent forward from the command.

   So, basically, myself and my brigade
commander would sign the -- it's a form that the
Army has. It's a DA-4187 Personnel Action
Request, accompanied by a memorandum that is
generated, basically, from I think it's the
Victim Advocate that certifies this individual
has filed a complaint, a sexual assault
complaint, and that it meets the Article 120,
which is backed up by the CID.

So, that's really the certification.
The credibility is not necessarily whether or not
it's truthful or not, it's whether or not it
meets the 120 level of -- that level.

COMMANDER LIVINGSTON: Yes, ma'am, I'm
of little service to you. I never dealt with an
expedited transfer while in command.

LT. COLONEL NASH: Ma'am, for my
experience, so, when a victim is getting briefed
by the UVA or the SARC, they go over the
expedited transfers.

So, the command, essentially, of MMEA
is the commander. So, the UVA will offer the
services, which is an expedited transfer.
The individuals that are interested in expedited transfer, our UVA usually takes it to our SARC, who then sits down with that individual and explains kind of the whole process.

There's a form to fill out. I'm not an approval authority for that.

And then it's worked out between what we call MMEA, it's our administrators here to get that individual orders.

So, again, they tend to get removed from the command very quickly.

So, no, I'm not involved with NCIS or anyone, to make this decision.

MAJOR SEAMANS: And I can tell you, specifically on my experience with expedited transfer, that there is a significant line -- I actually used this when I did this two months ago my commander's handbook.

I referenced excerpts out of Air Force Instruction 90-6001, which is dated 21 May, 2015. It gives a template that I had to fill out with the details, and at the bottom of the template,
the template includes the individual's name
that's requesting the expedited transfer, their
grade, social security number, Air Force
Specialty Code, if there's any assignment waivers
or limitations or medical conditions that can
preclude this Airman from being assigned anywhere
in the world, time and date of the request, if
they're married or single, and any other factors
that could potentially disqualify this Member
from requesting.

It further goes on to have a paragraph
that I'll read verbatim, that says as Wing
Commander, I've considered the circumstances
regarding the incident and current circumstances
driving the request, and how the reassignment
provides the support that the victim is seeking.

And then it goes on to say I
recommend, and that's either approval or
disapproval of this request.

Then there's a signature block, I
either approve or disapprove, I sign it, and then
it goes to first coordination to the Wing
Commander, which I actually hand-carry. Because I signed and approved, and then I hand-carried it over to the Wing Commander's office.

He signed and approved, and then this memorandum was sent back to the SARC Office, who then forwards that memorandum down to the Air Force Personnel Center.

Now it generates another requirement for the victim to then get on to the virtual military personnel flight of the MPF online, and they request an expedited transfer via humanitarian assignment.

So, this letter is the catalyst for the Air Force Personnel Center to see that there is a request that is supported by both the Squadron and Wing Commander.

As Squadron Commander, I'm recommending approval. Ultimately, it's the Wing Commander that gives final approval, and then that document sits at the Personnel Center for when the Member
does submit the request.

And in my experience, it was almost 24 hours we signed the letter, the Member got in online and requested it. It was then approved within 14 days, as required by AFI.

PCS Permit of Change of Station

Orders were in hand and the Member did return back to a base close to home, to mom and dad, within a couple hours of home.

So, as far as the process from a command perspective, my recommendation and data that I submitted was pretty simply put in the AFI and the check books.

MEMBER TOKASH: Thank you.

COMMANDER CARTER: Yes, ma'am, like I said, it was a memo that the sergeant helped the victim construct in our case.

Remember, the victim was separated from the unit because we were in a deployed status, and we did not utilize the Victim advocate. And it is within their authority to help a victim do that.
We utilize the SARC because that's where the victim was at the time. And we notified the crisis intervention team.

There were not many concerns on whether or not this was legitimate request.

It was obvious it was in the best case of the victim, and the correspondence was really between me and the office of personnel management.

And once I endorsed the victim's request, that Member went straight to them, threw out any other links in my chain of command. And as I said, it took about ten days after the request was received.

MEMBER McKinley: Thank you for your service and your leadership.

Having been a First Sergeant for over ten years myself, I understand your daily challenges that you go through.

It's pretty evident to me that there was a lot of differences in the training between the different services.
We deployed as joint, we have joint basing, we live and work together.

Do you feel that it would be beneficial if we had some type of unified training across those services so we all speak the same language, do the same thing?

Also, what is the specific training that you have received, from each of you, if you have a victim in your unit, the alleged perpetrator in your unit, on how do you deal with that?

Tell me about the training there.

The bystander training, the roadshow that you talk about, that's great training I believe, but as you said, not every person gets to go there.

What is the annual requirement for every Member of your service on sexual assault training?

I know in the Air Force, it's sexual assault training by computer-based training once a year, and we kind of speed through that to get
it done.

So, tell me about the quality of the annual training, exactly what it is?

LT. COLONEL MILLER: Okay, so I'll start with the annual training just because that's kind of what you left off with so it's the first thing in my mind.

So, the Army has it broken up a little bit differently. So, there is an annual requirement for a computer-based program, however, that's not the only requirement.

And so, there is a monthly requirement, which gets you to a accumulated 12 hours of training.

So, you have a monthly one-hour requirement to touch SHARP training through the year. And then depending on the installation or the commander, you could potentially have additional requirements on top of those.

Those 12 hours of training are set out to cover every aspect of the SHARP program. And whether it be prevention, reporting, et cetera,
all those topics are covered, and it's really up
to the commander how and in what order you
execute that training.

So, that kind of covers the annual
training requirement.

In terms of training as a commander,
if you have an accused and a victim inside of
your formation, you talk about it. It ends out
of those pre-command courses.

It's about, I think, two half-day-
schedule classes, and I got two of them, so I got
about, I think it's 12 hours of training for
SHARP and legal sort of melded together in there.

And you talk about what you're going
to do, and you talk about that you treat both of
them with dignity and respect.

But every situation is different and
I think when you get the baseline of, hey, these
are the things you have to assume, that the
accused is innocent.

But at the same time, you still have
to provide the victim with all the resources and
everything that you need to.

It sounds pretty simple when you go through a class, but when you get out there, it's a lot harder. And there's a personal dynamic that goes on there.

But that's why I was selected to be a commander, is to help kind of work through those issues and then to kind of help that junior-level commander, let's say, if you're in the same company or in the same platoon or section, navigate through that territory.

And that's why you also have your VA and your trial counsel and Staff Judge Advocate to help you make those decisions on what to do, so that you don't potentially walk yourself into an area where you could potentially impact the ability to prosecute that individual or affect the safety of the individual who is the victim.

And I feel like there was one more question too?

MEMBER McKINLEY: The joint piece?

LT. COLONEL MILLER: Oh, the joint?
So, I think that the joint community's come a long way in terms of at least leveling the playing field with Victim Advocates and the SARC's, I think that we still have a SHARP program in the Army, and we have SAPR and the other services.

But I think we all generally understand what those things are, and I think our training is probably pretty level across the board.

I think we just approach it in different means because our services are different in many aspects.

And so where the Army is very much a human-based organization because everything that we do involves a human being, our training may be a little bit different, and differently-focused in some of the services that are more technology or equipment-based, so to speak.

So, yes.

COMMANDER LIVINGSTON: So, I guess I'll go the opposite direction.
I think we generally do speak the same language when it comes to sexual assault across the Forces, across the Departments of Defense.

Very seldom do we have MPs, I'm not for sure what the Army have for military police -

LT. COLONEL MILLER: MPs.

COMMANDER LIVINGSTON: MPs, okay. We do have a SAPR program.

They have SHARP; I didn't know what that was until just now, so thank you for clarifying that. We have a computer-based training for us.

So, other than those couple things, we understand UVAs, we understand VAs, we still have the same reporting requirements.

I say SARC, they say SARC, so I think, generally speaking, we speak the same language, anyway, at my level, from my perspective, when it comes to the SAPR program, right, for sexual assaults.

Maybe not at your level, I can't
answer that, but at my level, I think it's pretty consistent across the services.

So, two sailors in the same command involved in the same case, this happened to me. The victim, the alleged victim, did not request immediate transfer, and honestly, I supported that decision.

I thought the best place for her was in the command where I could personally make sure that she received care and feeding, right, with close coordination with the Victim Advocates and the base SARC.

However, the two other individuals involved in the Article 120-type case, and I do believe it's going to court-martial here soon, what do I do with them?

Because they don't get the choice to expedite transfer, and nor should they.

But this is where close coordination with your base resources really come into play for me, and those relationships that you've established.
So, you get guidance from the SARC.

Hey, what should I do? You get guidance from JAG, what can I do? And probably more importantly, you lean on my command or my ISIC. Sir, this is what I'm thinking, do you agree? And that's where, immediately, MPOs go in place. Nobody talked to anybody about anything.

You stay within 200 yards from her at all times, no questions asked. You break this, I got you. Right? Now I can nail you to the wall if you break this order from me. And you make that very clear to the alleged offenders.

And then you work with, again, the ISIC and the base CO. You get them out of my command, you get those individuals out, and you can do that through TDY orders, right, in the Navy.

So, temporarily assign them to the base or to the wing, and those commands were always very supportive of the units, in my opinion, to do that and to help us to get alleged offenders -- and it wasn't just around sexual
assaults either, other, you know, problem sailors -- out of the command, in the interests of good order and discipline, right?

Because the bottom line is we're in operational command and we need to move out and execute condition, right?

And that's why all this exists, to enable us to do that, to help us do that. So, that's what I would do, and that's what I did, and it worked well.

But specific training I had to lead me to that, I suppose it was covered in legal courses, you know, when they talk about MPOs, why you would issue an MPO, and then the resources to send sailors to UI also.

You know, you learn that your Department Head had previous tours, you would see some other things happen, and sailor X would all the sudden be at the base, right, and not in the command anymore because of the incident.

So, I would say probably on-the-job training mostly, but they know where to execute
is really supporting services you have to enable
a safety commission.

LT. COLONEL NASH: Sir, a
clarification, when you say training, do you mean
commander's training or do you mean all-hands
training, when we talked about the
standardization?

MEMBER McKinley: Well, specifically,
the commander training and senior NCO training
wouldn't have to deal with the situation.

But then, on the other hand, what does
the individual troop requirement for annual
training have to take place?

LT. COLONEL NASH: Thank you, sir.
So, I would be opposed to any type of really kind
of standardized training.

Because the problem with standardized
training is then it becomes a check in the box
too often.

And we've seen it with other type of
training as well as when you standardize
something, there's the potential for it just to
be a check in a box, just to complete it.

    We've already talked about the
interactive training, and some of these
alternative-type trainings, where, really, the
training I think is impacting the bystander
training, the Marines and sailors in the
commands.

    And I would just be cautious and
considered that standardizing would just maybe
kind of prevent some of that creativity from
happening as well. And finding more effective
ways to relate and to get to the Marines.

    So, that would be only my concern
about standardizing it.

    And then with commander stuff,
standardizing it, I think some of that probably
could be standardized because the processes
sound like they're all pretty much the same.
They're might be some slight differences.

    With the joint world, I've not dealt
with a sexual assault in the joint world
recently, but I've done a sexual harassment
before I deployed, and it was with the Air Force.

And I found that we do speak the same
language at least on that topic, for the most
part.

And I was the Investigating Officer
for it and worked with the Air Force, and had no
issues or concerns.

So, I think in the joint world, we're
all pretty similar, and we might have different
acronyms for something, but we all kind of
somewhat speak at least the same dialect.

And then for the question in reference
to when you have the alleged and the victim in
command, that's a great question because that
one's one which sometimes can be difficult.

I have 1,350 Marines; it's a big
command. However, what happens, I have many
different job skills between -- so, they're all
different. And so if they have the same job
skill, they usually work in the same-type
section, right?

And I can't just move an electrician
and put him in another company, right? I can, but he's really not improving his, her, skills, and that's what happens, really.

When the expedited transfers is not wanted by the victim, and I have both of them, they can't be really in the same platoon in the same office space working every day.

So, now I have to pull someone out of the job, and I'm not going to pull the victim out of their job, I'm going to pull the alleged.

And what we found just recently is I had an alleged, and within two days, he had a suicidal ideation.

And we found, really, there's no service because the SAPR program's sexual assault and prevention is not for the alleged.

Now, there's services on base because there's mental-health services and other services, but it's not specifically for sexual assault cases.

And so, we had to pull him from his unit and his peers, and put him in a different
company and formation doing something else outside of his work.

So, that's a tough one too, because the alleged, in this case, he's still a Marine in our command, which we care about.

And so that was kind of concerning and kind of enlightening that moving those individuals, yes, it has repercussions on those alleged as well.

So, hopefully, that answers some of your questions.

SERGEANT MAJOR REY: I'll touch a little bit on the annual training.

So, annual training for us, it's not just the computer-based anymore so it's broken down into different training, rank-specific.

So, our E-3s and below get a different bystander intervention, kind of take-a-stand training. Same thing for our NCOs, our Corporals, and our Sergeants.

And then the leadership, the E-6s and above include the officers who received a
different type of training.

And the training that's conducted annually, it's required for our Uniformed Victim Advocates in the unit to actually do, to perform that training for the Marines.

And it's based off of guided discussions in trying to get to the heart of, hey, what do you do in certain situations?

When it comes to training for victims and offenders in the same unit, it's like the CO said already, there's no specific training for us. It's situation-dependent.

You're trying to take care of Marines in your unit, and also trying to ensure that we do the right thing by the process.

So, there's no specific training, you just have to kind of call other commanders, and within a command team, have enough experience or humility to be able to go and ask someone, hey, what do we do in a certain situation?

Or even involve your SARC and the SJA in certain situations that may be very sensitive
in the unit.

And the last thing I'll just touch on, the joint program. I really do think we all speak the same language.

We may go about it a little bit differently, but I know that if I go to an Air Force Installation, I know what the Victim Advocate is and the posters are up all over the place.

So, if something were to happen to me, I know I could call that number and receive the same services as I would on a Marine Corps Installation.

MAJOR SEAMANS: Yes, Chief, two good questions.

I think starting off with the training first, the command leadership training on how do you deal with situations, I read the checklist.

So, we're really good at reading checklists but when it comes to dealing with human nature and the emotional side of things, I don't know what kind of training we as commanders
and supervisors can receive. It's just
everybody deals with scenarios differently.

So, like I said before, I have a
daughter this age, so I look at my Airmen, I have
275 in my squadron, they're 275 of my kids.
Most of them are the same age as my kids, so it's
not a big stretch for me to look at them that
way.

And then you kind of just put the
human nature into that decision, as how do you
take care of this Airman that's going through
this life-changing, this horrible experience?
How do you take care of your Airmen, both on the
victim and on the accused side of it?

Because both of them -- I dealt with
the accused side of it in my experience, and it's
equally as challenging to figure out, like my
peers said earlier, that you have to find a place
for these people to work.

You can't keep them in the same job.

My scenario was a classification of a
security clearance, and I couldn't keep an
accused person working a job with a security clearance, because obviously, their mind's not going to be on what's going on at their work center.

Their mind is on, I'm about to get sent to a court-martial and I'm being convicted of something absolutely that's going to change my life. I can't put that person in a sensitive position.

And so you have to pull them out, and now you're a person down, I'm an Airman down, and already short a man in the career field. So, those are some of the challenges you deal with.

The training from a commander, I don't know, we can get the training on how we deal with the checklist. But I think it's just human nature, and commanders, and commanders relying on the chaplains and on the SARC, and those agencies to make sure you're treating your people properly.

As far as training for my airmen, we have, like I said, the Green Dot training program
that we use.

There's an initial phase of training, and then there's a refresher every year that we all go through, 100 percent every year. It's tracked, it's monitored, it's verified.

It's about six hours' worth of training in an interactive environment.

It's not PowerPoint, it's not CBTs; it's proctors and Airmen working through discussions, and actually getting up and getting on the dry-erase board and writing down the scenarios in a direct or an indirect way.

How do you diffuse this scenario?

And there's four different groups that are going. There's about 50 people in the class, so it's a small group dynamic, where people brainstorm the solutions as, hey, if this situation happens, this is a direct way or an indirect way I can diffuse it.

I can pull a fire alarm as an indirect way of diffusing a potential sexual assault in a bar when you see something going wrong.
And I know that's a stretch, but I mean, those are the kind of discussions we have. Or directly, where you actually go up to the person and say, hey, knock it off, what your doing isn't appropriate. And that's where we're getting our Airmen to that level of understanding of you can go direct or indirect, but there's some action you need to take. And that's what the training is basically, in essence, trying to teach our Airmen. As far as the joint nature of our operations, obviously, I concur. I've spent some time deployed as well, Camp Leatherneck in Afghanistan, Bagram Air Field, Afghanistan, working with both Army and the Marines. And as far as the discussions, yes, we have a different acronym, but, ultimately, I think at the end of the day we all look at things the same way, as far as the process.
And the process, in essence,
definitely I think goes down the same track.

It may have a little different nuance
as to instruction or checklist, but at the end of
the day, I think it's fairly effective.

SENIOR MASTER SERGEANT ZANNELLA: And
I'd like to add a little bit from the Air Force
perspective, that the Marine Corps Lieutenant
Colonel Robley made the point that kind of struck
me when she mentioned that you also want to look
at the accused and their state of being as well.

It's not just the victim, right?

Because they are out-of-service members, and, you
know, in our case, our Airmen.

So, when I came into our situation
that was getting ready to go to the court-
martial, it brought back memories of our
individual.

We were concerned about our
individual's mental health, the individual's
taking it rough.

You know, obviously, it's a horrible
thing, but he had a family as well, a very young
family. We had mental-health concerns for him.

And he also had weapons in his house,
so that was something that our Air Force had a
great turnover with me.

And the Air Force evidently had great
discussions, at least on the First Level about
how are you looking out for that person to make
sure that we don't make assumptions that you're
done, you're guilty right now.

This is all a pretrial and we don't
know how that would have come out.

We want to make sure that we don't
isolate that individual to where they do
something else and now they have something else
going wrong.

So, we at least had a good discussion.
What do you have at home? You know, we talked to
him within legal constraints, what can we do to
try make sure the individuals have immediate
access?

And they voluntarily let us keep
dangerous firearms out of the house, but we just
want to make sure that we keep an eye on it until
everything gets handled.

And then throughout the court-martial
process, even after our individual was convicted,
one of the first things I did is we talked about
what are we going to do?

Let me talk to your family. How are
we going to find out how this is going to affect
them? And we made a plan for dealing with that.

So, I think that's something important
that we have to remember here.

COMMANDER CARTER: I think parity
across all the services in terms of response
procedures, titles of support personnel, that's a
great thing.

And to Colonel Nash's point, this is
not a topic for computer-based training.

It's just not effective, and my
experience is that when you have the SARC in
front of you and SJA in front of you, when you
have a victim in front of you, people telling
their experience, that's what makes a lasting impact.

So, we can put some people up here that are smarter than me, probably, about human performance technology and retention.

I'm a ship guy, I'm going to talk to you about connectivity, okay? I'm going to talk to you about that I have 110 men and women on board, and 18 computers.

Okay, so that's my perspective coming into this, and why I think you're going to see in the Coast Guard that's already doing it, and I'm pretty sure that the Navy Surface Forces Fleet is already doing moving away from computer-based, general, mandated training.

So, it's got to be in that classroom setting, it's got to be with people telling those experiences so it lasts.

So, if you're talking about parity across the services, I agree in terms of job titles, support services we receive, and the reporting procedures.
But there needs to be that flexibility in how we train our soldiers, our sailors, our Airmen, our Marines, our Coast Guards, to be able to keep that training effective.

I've gone to the Pentagon and sat there and had to do a computer-based training, and then I've had to go do the exact same thing for the Coast Guard and get the check box twice, or they're going to shut down my computer account. That's what it becomes if we take that too far.

As far as the annual training, there is an annual refresher training for the Coast Guard. We do like to do that in a classroom environment with the Victim Advocate, with the SARC.

It usually corresponds with Sexual Assault Awareness Month, and then, if there's any specific topics, like I gave the example of bystander training, because those get pushed out to the service from Headquarters.

As far as both the victim and the
accused being at the same unit, this was
something that was definitely covered at PCO
school.

You don't go into that much detail;
it's hard. We just talked about it. It's hard.
I had to rely on what we call my command
philosophy, where I highlighted that we are not
going to tolerate disrespect at our unit.

Then we talked about that we were
going to eliminate sexual assaults from our
ranks. So, that was kind of a rallying cry for
us to all rally around, but it's those little
leadership techniques that we all developed over
time.

This is my third float command that
will be stressed to the max in those types of
situations, okay? And how do you teach that? I
think it's much harder.

I think that's why everybody that is
at the O5 level has had junior commands before
that that involved an armament to be able to deal
with that.
CHIEF PETTY OFFICER LEE: Just touching a little bit on what goes on around here, as far as my training goes, there's no required training program on my position that I have seen.

But I did get some good training when I went to Chief Petty Officer Academy. It was a five-week course, and towards the end, you've got an eight-hour day of training. But I do have resources and I can either walk down here, or I can walk over there.

So, if there's something I could see improving for a position like mine, it would be to have more of that training for the command on how to deal with those situations.

Because you get that training at your senior leadership course, but you don't get it every time you go to a new position, like you would as a command officer or a tech officer.

COMMANDER CARTER: And just a question on that, you know, there's a difference between Chiefs wearing a silver badge; there's a
difference between a silver badge and a gold badge.

So, again, no training requirements for his position.

He's somebody who I saw do well our first year, both made the crew, a go-to Chief Officer for the crew, and so I hand selected him to do that job because I thought he would do a good job.

He gets that training at the Chief's Petty Officer Academy, but there's no requirements specifically for him as my command advisor.

CHAIR BASHFORD: I had one follow up question on that and I think Commander Carter touched on it when he was talking about it becomes a checklist.

I want to the enlisted to also deal with this, are you starting to encounter training fatigue in your command?

LT. COLONEL MILLER: I would say with the amount of things that are required, because
it's not just the sexual assault prevention, it's also equal opportunity, it's also master resiliency training.

And so it's about, one, management of time and finding creative ways to do that training, because it's like, oh, it's SHARP time again, oh, great.

So, that's why, you know, a lot of those interactive training sessions are very good.

And one of the things that our brigade SARC did was there's an Army program that is like a senior leader program.

So, the senior leaders got one type of training and then the enlisted got another type of training one month, one of which -- so, it was like the seniors dealt with, hey, what do you do when this happens in your formation?

And a lot of it had to do with sexual harassment and about stopping that environment, which then leads to, of course, sexual assault.

But I think that you hit the nail on
the head. There's a little bit of fatigue in
terms of the amount of requirements. So, how do
you do that creatively?

And it's about inspiring your junior
leaders to be able to come up with creative ways
to get after that training, which is what
Lieutenant Colonel Nash did talk about as well.

So, I mean, that's really the only way
you're going to be able to keep them interested
in what you have to train.

COMMANDER LIVINGSTON: Yes, ma'am, I
would agree that we need to experience some level
of training fatigue, right?

However, it's tricky because cyber-
awareness, we're all probably pretty familiar
with that after, you know, 18, 19, 17 years in
the service.
And do I really need to take cyber-awareness
again? I would argue, no, I don't.

But does my E-3, 21-year-old sailor,
does he or she need to take cyber-awareness?
Yes, probably, and they probably need to take it
once or twice or three times before it actually sticks.

But, you know, for me, after 18 years, I think I got it, you know? So, that's the hard thing about it.

And then we make annual requirements that everybody's got to do PII, everybody's got to do cyber-awareness, and all these I would say lesser -- yes, it's tough.

I mean, it's all important at some level and it's all important to somebody. But, yes, there's a lot, and how you manage that becomes a challenge in command.

And we are going away from all the computer-based training, which is a good thing, and it's shifting more to an interactive, peer-led training, which is good.

Also, honestly, that's more work, right? Because now you've got to get someone -- instead of just sitting in front of the computer for 30 minutes and going like this, you've got to have someone trained up, spend time to care about
it, get engaged, and then give the training to everybody else.

So, it actually may take more time but it will be more worthwhile in the end. But I think that's just a challenge that I don't see going away anytime soon because there's a lot of things out there that we need to get done and support.

Yes, ma'am, there's definitely some training fatigue. If you look at the requirements for training, probably standard across each service, and you look at that.

And as command, you try to put that into what we call our training schedule, and then we also have to train them to do their jobs.

And then also, the Marine skills when we report to deploy, and then you start filling up those days, and there's not enough days in the year to do that. And so, when we look at training, it just has to be -- we have to maximize our time.

So, when you're out at the range and
you're done firing for the day, you bring your
people in and you can give them the sexual
assault course there. And then that's more
effective, typically, than the computer system,
but it also maximizes your time.

And so if the classes are not long,
drawn-out classes, and they're classes that you
can get to the points and junior leaders can
reinforce it with their Marines, those are the
type of trainings that I think is beneficial and
we can actually put in and it's not so much
fatigue on the services.

I mean, for 19 years I've taken
tobacco-cessation class, so I've never smoked or
dipped in my life. So, again, it's the pendulum,
where it works --

(Laughter.)

(Simultaneous speaking.)

COMMANDER LIVINGSTON: Yes, sir, yes,
sir. But, yes, I would say probably, at least
from my perspective, we are training-fatigued.

And we have to prioritize as a
commander too, in the sense of what we're going
to do and we're going to look at first.

      CHAIR BASHFORD: Sergeant Major Rey?
      SERGEANT MAJOR REY: Yes, ma'am,
definitely.

      I think that powering down the
training -- so, there's been for quite a few
years, along with the computer-based training,
there's been a requirement for higher levels, and
that's outside the command, to perform, to come
in and give classes to your Marines.

      And I think that we're on the road now
where we're starting to power that back down and
provide an opportunity for the young leaders to
get in front of their Marines and their sailors
to do some of these classes.

      And so I think, specifically for our
sexual assault prevention and response, having
our Uniformed Victim Advocates really conduct
that training, and we do it in small groups.

      So, taking that model and stretching
that across all of the requirements would
definitely be a benefit for us and the service, because there's just never enough time in a day. You can sit behind a computer and click through the majority of those courses, and then really not take anything from that course. So, you want to be able to have that interaction between the young service members and the leaders so they can have that dialog, and really get to the root of some of the issues that we're seeing specifically in this training.

But across the board, smaller groups and allowing young leaders to perform those classes would be best for us.

MAJOR SEAMANS: Yes, I think the adage of if everything's important, nothing's important -- in my squadron, I have -- I'm trying to do the math in my head here -- it's probably in the ballpark of about 10,000 training events annually, for 275 Airmen. And that includes everything from the mobility and readiness training to ancillary training, to job training, to job qualification
and upgrade training.

    And then, all of the other airmanship training that goes along with it.

    And the standard is no more than five percent of my Airmen can be overdue on any training. So, it's a full-time job to manage it.

    So, yes, I think if we focus in on the training, it's what's most important, how most effectively that training is accomplished.

    And I think we've come a long way with getting rid of the CBTs; I think that's a good driving force.

    And then the requirements, I think we stated earlier, it's how many years do you have to do the same CBT before you don't need to do it anymore?

    Those types of decisions I think would definitely help ease the burden, and then to be able to focus that on what's important to make it important?

    I think the Green Dot training is an effective training tool.
At least in Air Force, from my experience of two years of going and seeing the Airmen talking, I think it's definitely a benefit throwing away the CBT.

SENIOR MASTER SERGEANT ZANNELLA: And from the Air Force enlisted side, I'll echo some of the remarks here.

The Green Dot has worked very well and I say that because a couple years ago, when there was a big push, I know with the servicing, it wasn't just CBTs.

But it felt like a lot of our folks were saying, hey, we're getting SAPR training constantly, four times a year, five times a year. It was a bit out of control, in my personal opinion and from the feedback I've heard from some of the folks.

When we went to the Green Dot training, actually, one of the big selling points on that was telling them we're going to do this once a year, okay?

And that actually got some buy-in,
right? Because there was a point where people --
I mean, there was a joke, right? Somebody
brought it up and it went viral.

And we asked this young E-5, have you
received your training? And they said, yes, I've
been SAPR'd.

I mean, they said they basically had
so much of it thrown at them that they were
overwhelmed.

So, we don't hear that over the last
few years. To me, it's a good selling point
specifically on this.

It's once a year, it's important, you
need to take advantage of the opportunity while
it's there, and we're not overwhelming with that.

And that seemed to get a good buy-in
at that point.

COMMANDER CARTER: Yes, ma'am, I'll
just say, yes, overall, there's fatigue in terms
of all the training requirements that are imposed
on these men and women.

I'm not sure we're at that point with
SAPR, and I think all the more reason why the training curriculum needs to not be computer-based.

One of the things that we do is we drill our watch qualification on their watch qualification boards, and it almost runs scenarios almost like a drill or an exercise, where you have somebody who's training and they have to go through the checklist.

So, I think in terms of overall, the training requirement process, yes, there is fatigue.

It's something we have to manage with the commanders, but I don't think we're there yet, specifically with just the SAPR training.

CHIEF PETTY OFFICER LEE: I agree with the Captain. Definitely not there with SAPR training.

Training fatigue, absolutely; there's just not enough time in the day. We're training while we're conducting missions.

CHAIR BASHFORD: We have time for one
last question.

MEMBER HARRISON: Commander Carter,

considering the impact of that on your
operational readiness, would you have done the
same thing again today that you did when you made
the decision to make the transfer and have two
billets for several months?

COMMANDER CARTER: 100 percent, 100
percent. And I didn't hesitate when I made that
decision and I didn't hesitate when I answered
the question right here.

I was new on board, I was on board 35
days. I had met the victim through my check-in
process and he was a victim.

He was devastated, and we were in a
very vulnerable position trying to make
operational deadlines shift underway.

Had I waited a day, I would have not
had an option to fly him anywhere so we had to
work fast.

MEMBER HARRISON: I'm assuming from
what you've said that situation had been going on
from before you took command?

COMMANDER CARTER: The allegations
were over a period of four months.

MEMBER HARRISON: Do you have any idea
why your predecessor, or anyone in the command
structure, had not taken action or been notified?

COMMANDER CARTER: Well, they had not
been notified, and when I say command, I think of
the command chief, the XO, and the commanding
officer.

They were not notified and the only
indications of notification outside from the
victim or to his shipmates that were always in an
informal setting about he's doing this to me.

And again, I made the comments about
the class clown, it was almost dismissive.

When I read them, I was clearly
outraged and knew exactly what it was, but those
men and women are in the fight.

They're in the bilges together,
they're in the engine room together, they're on
the bridge together, and I can imagine how that
might have been hard for somebody to say he's always like that, you know? He's a jerk.

We've got to move past that, we've got to move past that.

And when she walked in with that e-mail that morning, we got past it really quickly.

CHAIR BASHFORD: I want to thank you all for coming and appearing before us. I know you're very busy. I want to particularly commend you on your lack of acronyms. Although, a DISIG did slip in there once or twice.

(Laughter.)

CHAIR BASHFORD: But thank you very much for coming, and we will break for lunch.

(Whereupon, the above-entitled matter went off the record at 11:30 a.m. and resumed at 12:29 p.m.)

CHAIR BASHFORD: Thank you all for coming and being on this Convening Authority Panel. The procedure I'd like to do is have you in whatever order you would like to. Make your remarks. We'll hold questions until you're all
done. And if you could possibly not use
acronyms, to an extent. We had ISIC thrown in
this morning. The other day I had a DoDI. We
are pretty good on some of the general ones but
you are the masters of your fate, whichever way
you want to start.

    CAPT. MILICAN: I'll begin.
    CHAIR BASHFORD: Okay, thank you.
    CAPT. MILICAN: I'm Captain Brett Millican, United States Coast Guard, currently
stationed based in Boston. On behalf of Admiral Paul Zuka, our Commandant, thank you for allowing
the Coast Guard, one of our nation's five Armed Forces to speak today.

    I am joined today by my Command Master Chief Jeff Waters and we're glad to take the five
to seven minutes we've been allowed to talk about sexual assault and how we are managing the
program up in New England.

    I know you want to find out about command training. What are we doing that's
separate from all-hands training? I can tell you
the Coast Guard has formalized pre-arrival training for senior leaders a course called Command Ashore Preparation Training. And during that course, our legal community and our Sexual Assault Response Coordinator train command cadre on what they need to know to handle reports of sexual assault.

In addition to that, when I showed up to the unit, the staff, the sexual assault response coordinator, the legal staff provided me with the latest what you really need to know as a CO when handling a report of sexual assault. So, in my view, that's going well.

I know you want to talk about expedited transfer policy. I could tell you I've had one specific instance where I had a member ask to be transferred to a different unit. We followed the policy. Per our policy, the Sexual Assault Response Coordinator advises me that it's in the best interest of both the Coast Guard and the Member to do this. In that case, we were able to successfully make that happen and then he
was able to transfer out.

I also know you want to talk about my personal experiences, observations of how the program is going. And what I'll tell you is it is quite different from a few years ago when this became a prominent issue for our nation's Armed Forces.

So specifically what we do now, and every CO, every officer in charge in the Coast Guard, it is very clear to us what our responsibilities are. When we are made aware of an unrestricted report, we have 24 hours to stand up a Crisis Intervention Team, CIT. And there are key people on that CIT, the legal community, Coast Guard Investigative Service, Sexual Assault Response Coordinator. And a Victim Advocate is offered to the victim. And that's the person's sole job is to provide services to be a comfort to that victim and provide answers.

So the CIT stands up within 24 hours and then, I, myself as the commanding officer, I have 72 hours from the time of the initial report
to submit a report to my immediate superior in command, my first flag officer, which is Admiral Jim Hines in Norfolk, Virginia.

So in my view, it works very well because back a few years ago, a report could come to a CO and that CO could pretty much sweep it under the rug, if they wanted to. This isn't that big a deal. This is a very minor allegation. This isn't that severe. We've got this great performer. We don't really want to injure this person's career so let's just not make too big a deal out of this.

I would submit to you that with today's process, and policy, and the visibility on sexual assault, and that report that is required within 72 hours, next to zero percent chance that that's going to happen in today's Coast Guard.

I also want to talk about what happens with our accused, our subjects. I have asked Master Chief Waters to comment from his own personal experience what he was involved in,
provided his oversight to a Coast Guard Crew
Member who was going through the court-martial
process, having been accused of sexual assault.

MASTER CHIEF WATERS: Thank you,
Captain. Good afternoon, ladies and gentlemen.

So, we had a Member who was assigned
to our command in one of our detachments and he
was asked to serve on temporary assigned duty to
one of our Coast Guard cutters out under the
command of Pacific area out of Alameda,
California. And there was an event that occurred
while he was attached to that ship and during the
patrol break.

And as a result of his assignment to
that cutter, when the event occurred, Pacific
Area had preferred that the court-martial occur
in Alameda, California. So, my command asked me
to travel out there when the time came for the
court-martial to convene, primarily, as just kind
of a supportive role, make sure that the Member
understood that he was not completely alone, that
we were there to make sure that everything was
going according to policy and the Articles of the
UCMJ.

It ended up being a plea bargain deal.
The Member was confined to a Navy brig for, I
believe it was, two months before being processed
out and reduced in rank, I believe, to E-1, if I
remember correctly.

So really, I was just there to observe
and, again, just make sure the Member had a
certain amount of support, while also ensuring
that the process was carried out properly and
that he was held accountable for his actions.

And I tried to give him a vision of
the way forward for him and how to conduct his
life, even though he was no longer going to be a
Coast Guard Member.

I should say there was some alcohol
involved and that should not excuse the behavior
but understanding that this Member made some poor
decisions as a result of the alcohol consumption,
I wanted to try and give him some hope that he
can still move forward and be a productive member
of society and not let it affect him to the point where he then simply becomes a burden on society because he has no belief in himself.

You know it was unfortunate. I believe we did the right thing by holding him accountable but I also wanted to make sure that he tried to move forward doing the right things and making the right decisions, including staying away from alcohol, if that's what gets him in trouble so that he could still find a way to be productive and not be a burden.

CAPT. MILLICAN: And if I may, in conclusion, I did forget to add so my Staff Judge Advocate is Legal Services Command, which is in Norfolk, Virginia.

They are highly responsive, email, phone call, text, whatever it is. As soon as I have an unrestricted report, they know to take it seriously. They respond to me immediately and they are walking me through the process to make sure I fully understand what the law requires.

And with that, I will conclude my
comments and be happy to answer any questions.

    CHAIR BASHFORD: We're going to hold
questions until the end.

    CAPT. MILLCAN: Okay.

    COLONEL NEUMAN: Okay, well I guess
I'll go next. Do we need the mic on or can you
hear me all right?

    CHAIR BASHFORD: We can hear you fine.

    COLONEL NEUMAN: Okay, great. Well,
good afternoon, everybody. Colonel Ty Neuman on
behalf of the Air Force. It is an honor for me
to be here to represent our Service and our
command as well.

    You know this is a very distinguished
panel. So I appreciate you guys' time and effort
on handling such a sensitive subject and a very
serious subject in our Department of Defense
survey here in the Air Force.

    Unfortunately, sexual assaults
continue to happen and I think it is in the best
interest of all to stay engaged with it and find
better ways of moving forward with that.
So I know many of you are attorneys in the room here. So my attorneys have spent a lot of time working on some script here. I'm going to read from little iPad here. Otherwise, I think they would probably shoot me for not sticking with the script. But I will be glad to open up for questions here at the end.

All right, so again, Colonel Ty Neuman. I'm the 2nd Bomb Wing Commander. And I have two really large responsibilities as a wing commander. First is to take care of over 11,000 Military and our civilian Airmen assigned to Barksdale Air Force Base and to provide them a full spectrum of expeditionary global strike air power. I'm in charge of the training and execution of nuclear mission of Barksdale, which involves to prepare and to deploy the most lethal weapons in the world.

These warfighting responsibilities demand critical thinking and careful judgment. I employ that same judgment and critical thinking when it comes to the Special Court-Martial
Convening Authority in order to preserve good order and discipline across my organization.

Prior to assuming this command, my current position, I attended a senior officer legal orientation course, which is sponsored by the Air Force Judge Advocate General School at Maxwell Air Force Base. This multi-day course focused on preparing me to deal with the legal issues I would face as a wing commander with a particular emphasis on my role as a Court-Martial Convening Authority.

I received training on legal issues related to sexual assault prevention and response by roles of senior leaders in investigations and on different military justice process and protections.

Once I had assumed command, I received training from my SARC on the roles and responsibilities of the entire program and the current status of the program at Barksdale.

I also received training for my Staff Judge Advocate on the UCMJ matters on my
quarterly status discipline meetings, along with
my fellow commanders that I oversee.

The most invaluable training, however,
comes directly from routine interactions I have
with my SJA in all matters regarding these
issues. As a Court-martial Convening Authority,
I review all adult and child sexual assault cases
arising at Barksdale, to include all the cases
that involve Airmen belonging to my tenant units
that are not part of my wing specifically. Some
of those cases involve complex cases issues of
jurisdiction, among other and unique military
issues.

For example, when dealing with a
sexual assault case committed by a Reserve
Airman, Air Force Reserve Command Airman, with a
Reserve Airman victim, we had to navigate the
regulatory requirements which guide and recall
that Member back to active duty during the court-
martial process.

My understanding of the Military
Service and the installation where we serve gives
me context for resolving these complex issues. Each time I consider disposing of a sexual assault allegation, I meet one on one with my SJA to review the facts and circumstances and discuss the range of disciplinary actions at my disposal.

Unlike a district attorney, I do not focus on the resources required to try a case or the litigation risks if the case were to go to court-martial. Instead, my primary focus is on impact of good order and discipline of pursuing the case, as it is a discipline that allows me to execute the wing's mission of providing devastating global combat air power to our enemies.

If sending the case to court-martial sends the correct deterrent message, meets the appropriate legal standard, and is done in the pursuit of justice, I will make that decision every time, even if the chance of conviction is very low.

Because the SJA meets with me privately, I have complete freedom to ask any
questions about any points of law or evidentiary evidence that I am unfamiliar with. So, it is a very interactive process.

As the Initial Disposition Authority for sexual assault allegations, I have forwarded numerous cases to the General Court-martial Convening Authority for referral to courts-martial and I have also made the decision that cases should be disposed of without judicial action. The process of disposing of a case without prosecuting it takes into account the recommendation of the subject's squadron commander, the subject's group commander, my SJA, and most importantly, the victim. Those recommendations routed to me, allowing for the report of investigation from our Office of Special Investigation or OSI.

The OSI is an independent agency that does not directly report to me, however, they do provide outstanding investigation support to my wing and every allegation of sexual assault is investigated by our OSI. I formally meet with
the OSI on a monthly basis, if not more frequently, as they have an open door policy to my office and to me.

Also I make the decision on whether there is sufficient admissible evidence to move forward in a case towards trial. After making my decision that a case should not go to trial, I also inform in writing the General Court-Martial Convening Authority, which is my direct supervisor, Major Tom Bussiere, Eighth Air Force Commander, providing the rationale for my disposition of the decision.

In every case where the victim has expressed a desire for the case not to proceed to trial, I have supported that wish with my initial I disposition decision.

After referral of a charge to a court-martial, I have also sought the preference of the victim when reviewing a proposal for alternative dispositions. While not the sole consideration, support of the victim for an administrative discharge in lieu of court-martial or for a
sentence limitation pursuant to a pre-trial agreement is an extremely important consideration for me. I have never had to contradict the desires of a victim to maintain good order and discipline.

I have acted on several requests for expedited transfers. I have approved each request that came to me because I believe it would assist in the healing process of the Airmen who had filed a report of sexual assault. The importance of providing the space for healing to the victim, I truly mean it, is worth the cost.

The Military has the unique need to maintain a disciplined force. As a commander responsible for the ability of the 2nd Bomb Wing to execute their mission, I must have the authority to address the issues that affect the good order and discipline of my wing.

Having the authority to hold Airmen criminally accountable for misconduct is crucial to maintaining a combat-ready disciplined unit. I believe that my experience and training have
provided me sufficient baseline knowledge to exercise that authority carefully and judiciously in close consultation with my legal advisors.

I also assure my wing commits the maximum resources and attention as possible to preventing sexual assaults and supporting victims. At Barksdale, we use a Sexual Assault Theater Group to providing interactive training, employing real life scenarios concerning sexual assault, domestic violence, substance abuse, and coercion. We host semiannual trauma workshops that educate on trauma and offer positive restoration tools.

We have a Teals and Tails Therapy Program that visits work centers, dorms, and victims to boost morale and help reduce stress. Once a week, our Volunteer Victim Advocates wear teal shirts so they can easily be identified within their organizations.

These are some of the many initiatives showing the focus and energy we dedicate to prevention and support. My role as the Court-
Martial Convening Authority complements my ability to support the wing staff program. These roles synchronize my focus, my sense of responsibility, and my credibility when it comes to comprehensively preventing sexual assaults through training and education, investigation of sexual assaults, supporting the sexual assault victim, and deterring sexual assaults under the Uniform Code of Military Justice.

Again, with that, I will conclude my opening statements and I will be looking forward to hearing your questions after the fact. Thank you.

COLONEL STEWART: Well, thank you for the opportunity to share my personal views with this esteemed body and panel. Just a quick introduction. Colonel Kevin Stewart. I currently serve as the Executive Assistant to Lieutenant General Dana at Headquarters Marine Corps. Twenty-six years in the Marine Corps, a company commander in Iraq, a battalion commander in Afghanistan, and was also the Commanding
Officer of Combat Logistics Regiment 25 from 2014
to 2016 at Camp Lejeune. So the majority of my
comments will be based on experience in that
capacity as an 06 Commander and the Initial
Disposition Authority.

Just for background, that unit,
approximately 3,000 Marines, two subordinate
lieutenant colonel level commands, and then two
geographically-separated companies that were not
in our immediate location.

I'll make three key points right off
the bat. First and most important, sexual
assault is a crime and it is unacceptable, and it
is incompatible with the Marine Corps values of
honor, courage, and commitment.

The second key point, I felt I was
ready when I assumed command to address the
issues of sexual assault and that is based on the
following. One, the experience in previous
command positions. I was also the executive
officer of another regiment. I attended the
Senior Legal Officer Course. And then
information presented at our Cornerstone Course, which is for every commander to attend, and I attended that course both as a lieutenant colonel commander and then also again as a colonel commander.

I also knew the resources available. The SJA integral to the entire process, the SARC, the entire command team, and everything to collectively work it to make the best decision. So, confident I could properly address.

I also would highlight that we executed drills in our unit to deal with different incidents that took place to ensure the command team and everyone was prepared to respond and execute and that we could run after-action reports to determine how we could do it better.

I would also talk real quick about sexual assault, the initial response. Most importantly for me, really, was about ensuring the safety of the alleged victim. The Uniform Victim Advocate engagement was vital to that process, the use of military protective orders to
ensure separation, the role of NCIS, and then separating alleged offender, potentially, if they work together.

And then also the expedited transfer.

You know for me, my simple approach was if the Marine thinks it is in his or her best interest, then it's the right thing to do. And we did it. And I approved every one that a Marine specifically asked.

The NCIS investigation, professional investigators who conducted thorough investigations. However, due to the time involved to complete, important to monitor closely -- important to monitor those investigations closely and communicate directly with the NCIS investigators to try to ensure the exact status of that process.

The NCIS investigation played a critical role in the decisionmaking process, provided clarity to what happened to the best extent possible but there was uncertainty in many cases.
Following the NCIS, the next step in the majority of the cases was refer to an Article 32. I felt it was important to have that next level of review to really go through that crucible of due process to ensure the right decision was made.

So to summarize, based on my experiences, I felt I was ready to address. No concerns with the training or preparation. The NCIS investigations were professional and thorough but important to monitor, due to the length of time involved, ensure due process, the safety of the victim, and make the best decision based on available evidence.

Thank you.

CAPT. BUSHEY: All right, good afternoon.

I'm Captain John Bushey. I left major command approximately six weeks ago. I had command of NAF Atsugi, which is a small military airfield on the outskirts of Tokyo, Japan. We had about 8,000 Americans and Japanese, both
spouses and employees on the base.

And before that, my previous command
was HSL-43, which is a helicopter squadron in San
Diego, where I was in command of 12 helicopters
and approximately 285 personnel.

CHAIR BASHFORD: Captain, would you
just keep your voice up just a little bit more?

CAPT. BUSHEY: Yes, ma'am. I'm sorry.
I'm a little raspy today but if you can't hear
me, just raise your hand or ask me to speak up.

But thank you for the opportunity to
participate in today's discussions regarding
sexual assault. I should begin by noting that my
comments and thoughts today are my own and they
are not official policy of the United States
Navy.

Measure to increase awareness and
prevention of sexual assaults are important tools
for every Servicemember to understand. Sexual
Assault Prevention Response or SAPR is what we
call it in the Navy. Training is conducted
frequently with every Navy unit and at all levels
of the chain of command.

As the title of the program states, training focuses on prevention and awareness. Navy programs address sexual assault, including large and small group training sessions, mentoring and interactive role playing.

In addition, commanding officers, executive officers, and command master chiefs, the three key leaders in any of the Navy units, they're known as the Triad, attend focused command-level training prior to assuming their command positions. During execution of permanent change of station duty orders, commander level or 05 level commanding officers are detailed to legal training provided by the Legal School in Newport, Rhode Island. This school broadly covers the UCMJ, however, it focuses intently on nonjudicial punishment, as well as courts-martial. Additionally, a good amount of the syllabus time is committed to sexual assault.

Captain level commanding officers are sent through an abbreviated refresher course to
build upon what they had as their 05 training in
Newport and this training also focuses on
nonjudicial punishment, court-martial, sexual
assault, and updates and upgrades to UCMJ.

In addition to the legal school
training, commanding officers receive en route to
their new positions, they also receive a SAPR
program training and indoctrination once they
arrive at their new unit and that indoctrination
is provided by the Sexual Assault Response
Coordinator or SARC. The training focuses on
programmatic details, as well as responsibilities
and reporting requirements.

Should legal assistance be required,
legal services are available to commanding
officers through the Region Legal Service Office
or through an assigned Judge Advocate General
Officer that is assigned to the staff or their
own personal staff. Captains get a little bit
different treatment. They actually have JAGs
assigned directly to their staff.

While serving as an installation
commander, I met with my JAG almost daily. I think he charged me for lunch a couple of times because of that. A little lawyer joke. I'm sorry. And we discussed a myriad of concerns, involving NJP, court-martial and other issues.

My experience with the JAG community has been extremely positive. If a difficult case surfaced, my JAG would collaborate with other JAGs in the region to make sure that we were all saying the same thing and that they utilized all the resources to give me the best information possible.

Many factors are considered when dealing with a disciplinary case, such as NJP or courts-martial, as no two cases are exactly alike.

The commander takes into consideration the command investigation, the investigation from NCIS, and reviews recommendations made by the legal officers, and recommendations made by the executive officer, and command master chief.

Considering the written instructions
as to how to proceed with an NJP case or a court-martial case involving sexual assault, I feel like there are just too many complicating factors to allow creation of a decision matrix that could take all of the elements into the case into consideration.

During my time in command, I did not directly experience a request for expedited transfer. That said, I did observe other commands act on such requests while serving as the chairman of the Sexual Assault Case Management Group. In my opinion, requests for expedited transfers were handled appropriately and expeditiously by all tenant commands. Additionally, I did not observe any cases where the transfer was seen in a questionable vision. It seemed like it was always the right thing to do for the member.

While serving as an installation commander, I found it important to not only provide the required SAPR training to my personnel, but I also promoted additional grass
roots SAPR tailored to fit our overseas-based community. These events included increased SAPR distribution of materials, posting of SAPR information throughout the installation, networking socials for SAPR Victim Advocates, as well as SAPR points of contacts, and the Commanders' SAPR Summit, lieutenant command leadership and SAPR personnel to brainstorm solutions to reduce the number of sexual assaults within our community. The outcome of those events was a decrease of unrestricted sexual assault cases and improved trust within the -- excuse me -- improved trust of the SAPR program, as well as the chain of command.

This concludes my comments. Please be reminded that my comments and thoughts today are my own. They are not policy of the U.S. Navy. And I thank you for letting me come today.

COLONEL GILBERT: Distinguished Panel Members, good afternoon. I am Colonel Erik Gilbert and about four months ago, I left command
of the 82nd Combat Aviation Brigade at Fort Bragg.

I appreciate the opportunity to discuss my experiences with sexual assault issues with you today and provide my insights from my perspective as the Army Brigade Commander in the 82nd Airborne Division over the last two years.

My opinions are mine alone, as my peers as well, do not necessarily reflect the official position of the U.S. Army and should not be attributed to the Army in that manner.

With respect to training that I received, part of both my battalion command of 540 soldiers at an isolated garrison in Korea and brigade command of 2,800 soldiers in the 82nd Airborne Division in North Carolina received training from both the Army and Aviation Branch at separate pre-command courses prior to assuming command.

Prior to assuming my battalion command, I also attended the Army's week-long senior officer legal course training that was
required to be completed prior to taking brigade command.

At the Army's pre-command course at Fort Leavenworth, we received training from the Army's legal team on the latest guidance with respect to Sexual Harassment/Assault and Rapid Response Policy, also known as SHARP. And I also received similar training from the Army Aviation Branch pre-command course at Fort Rucker, Alabama. The training included discussions on practical application of the law and policy, the process of soldiers and leaders for reporting and receiving reports of sexual assault and harassment and sources of legal and procedural counsel for both.

During my time as a brigade commander, the division held monthly Sexual Assault Review Boards with brigade and division senior leaders to discuss types of cases, trends, training, and success stories. My brigade conducted quarterly training for our soldiers to highlight the program and train our soldiers and leaders on
intervention to prevent incidents, and on the process for reporting allegations of sexual assault and harassment.

Within our division, every brigade had a civilian Sexual Assault Response Coordinator and an enlisted non-commissioned officer appointed as a SHARP leader to assist the command team and the larger organization with training and handling of cases.

When we received an unrestricted allegation or incident, we would seek advice from my brigade Staff Judge Advocate on the processing and subject of the allegation. Such assault cases in the Army are automatically referred to the Army's criminal investigation division for investigation. Once it was established that an allegation arose to a sexual assault level, CID would be contacted and handed the case. Unfortunately, CID at Fort Bragg is quite backlogged and it typically took a long time to investigate most cases and to get a determination on whether enough evidence existed to charge a
subject. This often froze subjects in place for months and longer, while investigations wore on.

On the positive side of that policy, we refer all sexual assault allegations to CID, those cases were investigated by trained and experienced investigators that provided consistency in a way that would have been hard to achieve using unit officers as investigators.

While I don't have any precise numbers, it seemed that a fair amount of the allegations were unable to be substantiated and were not further charged.

However, despite the length of time for the investigation, those with clear evidence of sexual assault typically provided a clear path to court-martial. Determination of that process occurred primarily between the CID investigator to the brigade prosecution lawyer, and subsequent recommendation to the brigade commander and myself. I believe that the process for that is clear and that commanders have all the tools that they need for that determination.
In my experience, the biggest challenge is how to deal with the marginal cases where sexual assault cannot clearly be established. These cases often included allegations of one person brushing up against another in situations where the contact could have been either deliberate or incidental. Determining the true intent of the subject was difficult, if not impossible to establish and thus, commanders had to weigh many other factors to assess those type of allegations. This created what, in my mind, is a gray area that, at times, was exploited by both alleged victims and perpetrators.

Lastly, I was asked to comment on the expedited transfer policy. During my brigade command, we had 16 unrestricted sexual assault allegations and two restricted allegations. Of those 16, we had nine out-going expedited transfers and an additional seven incoming transfers. These transfers included both within the installation and those off of it, including
moves across the country. Parts of the location
determination, when moving a soldier to another
installation was driven by the need to find that
soldier another unit where their skill set could
be used. Since I commanded an aviation brigade,
we had unique aviation specialties that required
another similar brigade for assignment. Also
considered were support networks for those
victims at the requested location.

Even though I didn't fully agree to
all requests, I always felt at risk if I didn't
honor them. In my experience, situations where
expedited transfers were most effective was when
the soldiers were transferred to another unit on
the installation. This provided consistent
access to caregivers with history and knowledge
of the case, in addition to the ability to query
them as needed for additional information as the
investigation progressed. It also provides a
disincentive to abuse the system by soldiers just
seeking an out of cycle move to a more favorable
location by simply claiming hard to disprove
allegations of sexual assault. While I don't think that's common, I suspected that was the case in a few of the allegations that I experienced.

In summary, I felt that I had adequate training and good access to the required expertise and the resources to deal with the uniqueness of all sexual assault and harassment cases I handled as a commander. We handled each soldier and each situation uniquely with concern for both parties in those cases where it was difficult to prove allegations were challenges for commanders, trying to make the best decisions for both the victim and accused.

Thank you again for the opportunity to share my experiences and perspective at this meeting.

CHAIR BASHFORD: Okay, we can now open it up for questions from the committee.

Well, then I'm going to start off.

MEMBER CANNON: I have one.

CHAIR BASHFORD: Go ahead.
MEMBER CANNON: Good afternoon. Thank you for coming and sharing with us what you're doing.

From the panel from before it became very clear that as commanders you have a lot on your plate. And one description was just given about having to deal with nuclear weapons and other things. And so this is another thing that you have to deal with.

My question is about whether you feel comfortable with having the choice of making the decision to go forward in a case that's presented to you, you having the decisionmaking power, as the commander.

My understanding, from what little I know, is that you are presented with a case and the investigation, and a proposal is made to you by either the trial lawyer or a Judge Advocate, saying we recommend that this case be filed or not be filed and the ultimate decision to move it is yours.

Am I generally in the right direction
here? Okay.

So my question is these are all lawyers and investigators in criminal work, investigation of sexual assault. That is, I think, a lot of what they do. You do a lot more of that and have command over so many things. The question is: Is that something that you, as commanders, should have to deal with or is that a decision that is more capably made at the level of the people who are in the system of the legal stuff, if you will, and not so busy with all the other things that are going on in your world?

And I'm just curious about it. It's just like there are so much important things.

COLONEL GILBERT: I'll just -- obviously, we're all speaking for ourselves, I believe, but I felt certainly that that was one of my very important responsibilities. We dealt with this, all of us I think, not just with sexual assault, we deal with it across a range of legal issues. I put a lot of my time into adjudicating legal issues. And when you first
take brigade command, it is a much greater volume
than you do at the O5 level, at least in my
experience. And it is a weight that you feel
when you initially take that command.

But I felt very well prepared for it
and I thought a commander is best suited,
particularly in some of the harder to define
cases, where you had to look at other factors
that were going on that my feeling is the court
system would not be able to look at properly.
Only a commander, understanding the challenges of
some of the unique situations that we command our
soldiers to be in, either training or real world
scenarios and understand the stresses of the
situation that are ongoing because they are, my
feeling, very unique to the military. So, I felt
very comfortable doing it.

I don't think I felt comfortable with
dealing with sexual assault, just as a person.
But as a commander, I felt it was well within A)
my responsibilities; and 2) part of my charge to
look out for my soldiers, both the accused and
the subjects. You know I think most of us
probably could tell you that we would post
results of judgments that were achieved, either
through courts-marital or other non-court-martial
type offenses that we would post that so people
understood that if you brought something forward,
it was going to be handled. And if you did
something wrong and you're caught, then you are
going to be -- there is a price to pay. You know
in a military organization, that is an important
component of good order and discipline, from my
perspective.

CAPT. BUSHEY: I thought it was
important for the commander to have that
responsibility because you have a responsibility
for the entire command, whether it is a material
inghing or the people that are working underneath
you.

And I think it is important for those
Sailors or Marines, Soldiers, Airmen to see that
their command is taking the correct action or
taking action that is appropriate, per the
instructions, to take care of the alleged victim
and the alleged offender.

But I very much saw it as a very heavy
responsibility but a commander’s prerogative,
just as it is look at other UCMJ type of
articles.

COLONEL STEWART: And I would say I
felt completely comfortable and confident to
address the issues. That is, 1) based on the
training and the experiences prior to being
placed in that position, the resources available
to help you make the best decision and other
enough sufficient oversight review that you could
take. For instance, you could send it to an
Article 32 to get another level of review to
assure a complete due process.

So I think procedurally there is
enough in place that you could, at least in every
instance that I dealt with, I felt that it was --
I’m confident in the decision based on all
information presented, making that decision,
pulling in all different resources, advice, and
information was completely comfortable and
confident to address that issue, to echo kind of
along with every other issue that was presented
to you from a legal aspect that you had to deal
with. And if you were comfortable with it, then
you could refer it to others and you had senior
legal officers you could discuss and talk to to
help make that decision as well.

COLONEL NEUMAN: Well, ma'am, I will
tell you, really in one word, unequivocally, I am
comfortable making that decision. Every day --
well not every day but my Airmen are on the line
working with some of the most lethal weapons on
the universe. And I ask them, as their
commander, to sacrifice their lives, in some
cases, to defend our country.

One thing that we can't do in this
area is go black and white with it and say all we
do is the mission. There has to be compassion.
There has to be human engagement from a command
level to earn the trust of your Airmen, Soldier,
anybody that is serving the United States
Military.

This is exactly one of those areas where commanders have to have the ability to see the compassion, give compassion, take this stuff into account, and I will carve out time any day of the week to look at a case like this and rule on it in the best judgment that I can based on legal advice and the information and stuff that I have available.

There is no more important mission than taking care of someone who has volunteered to serve in that situation.

CAPT. MILLICAN: Ms. Cannon, I'd like to describe what I would consider a best practice for the Coast Guard. It's not required, necessarily by policy.

I would seek legal advice, and counsel, and recommendations from my Staff Judge Advocate. We also have in practice now where I actually verbally brief my immediate superior command, a flag officer, could be an admiral, general in other services.
As the Initial Disposition Authority, I make my final intent, declare my intent, what I intend to do. I can dispose of that. That flag officer will essentially say I concur with your plan of how to dispose of this matter or I'm going to take this matter up to my level. Thank you very much Captain Millican, for your efforts, I've got it from here.

What the admiral isn't going to say is here's what I want you to do, Captain Millican; I want you to do this. That's clearly not going to happen.

When you started to ask your question, as you were leading up to what you thought might happen, you said should it be taken from field commanders and put into the legal community's hands to decide. I thought you were going to ask should it be put in the hands of admirals and generals, our bosses.

So what I would say is, to echo statements from my four peers, the Article 120 is one of several articles in the Uniform Code of
Military Justice and I see a danger in setting a precedent of saying well this one particular article is going to be handled over here but all these other articles are going to be handled over here and by the way, commanding officers, we don't think you're the best person to handle this matter, as everyone has stated.

These are our people. We have been screened, every one of us by a panel of people senior to us to say you are best qualified for that job. So we screen, we get assigned, and then we get trained. So, not that we're perfect, not that we are the best of the best but we know our people. We know how to seek legal advice. We know how to brief our superiors who are more experienced than us and I believe it works pretty well. And I would advise you against putting in the hands of the legal community to dispose of the matter.

CHAIR BASHFORD: I have a lot of different questions but I have a two-part one.

Who has the authority to dispose of
abusive sexual contact? We're not talking penetrative or attempts at the abuse of sexual contact. Because in a previous panel we heard a battalion-level commander saying something like a ball tap could best be -- yes, I've never heard the term but --

CAPT. MILLICAN: You educate me as well, ma'am.

CHAIR BASHFORD: -- could best be addressed more swiftly at the O5 level. So for these abusive sexual contacts, what is the process by which you think they go through to reach disposition?

COLONEL GILBERT: I think that falls under sexual assault, the broad definition. And so for us, that goes for the Army, it would automatically go to our criminal investigation division and they'll fully investigate it.

And that's one of the things that is maybe kind of in that gray area I was referring to, which is sometimes harder, you know what was the actual intent. You try to determine that.
And for all of ours, even though I am a Special Court-martial Convening Authority, all of ours go to a court-martial, which goes to a flag officer to determine. So those ultimately will wind up with the general officer's senior legal advisor opining on those events. So they get adjudicated at a very high level.

And of course, I think they need that scrutiny because there is experience that is acquired taking it from -- I think the experience required is at a higher level than certainly lieutenant colonel or O5.

CAPT. BUSHEY: So my take on that is that it is also a sexual assault. You have to take into account what does the person who was assaulted think. That comes into play a lot. If you think that you've been assaulted, that raises the case to does he or she wish to elevate that?

But also with that, my SARCs have been extremely frank with my sailors, telling them certain things like the conduct that you just described, that is worthy of going to sexual
assault, as well as other types of things that they might mention. So we tell the Sailors straight out that if you do some of these things, you are going down the path of a sexual assault. And we're just frank with them and make sure they understand it.

CHAIR BASHFORD: Colonel Stewart?

COLONEL STEWART: So, ma'am, currently those types of case that do come to the O6 level for action, the one thing that I would offer that I, personally, think is worthy of consideration, the one challenge is a significant amount of resources go towards investigating perhaps a minor case that was in the workplace that was just something that could be determined more quickly and yet a more severe case, based on NCIS investigation and the number of investigators they have, they are now forced to address those. So I don't know the answer but I do think that's worth evaluating can you perhaps separate, based on severity. That's a very subjective line to determine how you would do it
but I think from my experience with the cases and the NCIS resources, the length of an investigation, I always felt that it was fleshed -- I won't use the word fleshed but when they were pulled away to do something that you felt it could be -- you could determine what transpired in that much more quickly.

COLONEL NEUMAN: Yes, I think, as a Court-martial Convening Authority, I think that there's two things to kind of consider here. First, we have sexual assaults, sexual harassment type of things. What we can't do in our positions is try to make a ruling on a case.

If the victim feels that they were assaulted or harassed, that's all I really need. I am only going to turn over the fact-finding and the decisions to the court-martial. So if a victim comes through the reporting agencies and says they were assault, harassed, or whatever the case is, I'm going to put my investigators into it to find the facts, the details, provide me the best guidance and stuff that they have on the
case and I'm going to rule on it from that, as far as whether I just dismiss it or put it into a UCMJ type action.

This is a very individual type situation in all cases. If the victim -- you know sitting in the victim's shoes, I can't get inside their mind, I try to remove myself from ever contacting the victim so that I am not influenced at all by any emotion associated with it. If they come up through the chain and a report comes to my desk and my SJA briefs me up on it with the facts, then I'll take the ruling from there. I think that's an appropriate way of taking a look at it.

CHAIR BASHFORD: Captain Millican.

CAPT. MILLICAN: So my understanding of your question is is there any distinction between a sexual act versus sexual contact.

CHAIR BASHFORD: Yes.

CAPT. MILLICAN: My answer is there is no excuse. I don't keep a whole lot of binders on my desk up in Boston but this is one of them,
Command Cadres SAPR Handbook with Job Aids. And right here is my answer.

So it is just further evidence that the Coast Guard and all the Services have taken on this issue because the things that are important are right here in front of us.

Furthermore other sexual misconduct, Article 120(c), indecent viewing, visual recording, or broadcasting, forcible pandering, and indecent exposure.

So the training is right here. The materials are right here. It's put in a way that we can quickly reference in that moment of truth and we get down the right path.

CHAIR BASHFORD: Dr. Spohn, you haven't spoken yet today.

DR. SPOHN: Thank you. I think it was Colonel Neuman who discussed the role that the complainant's preferences play in the decisions you make regarding the appropriate disposition of a case. And I am wondering how often do complainants withdraw their cooperation when the
case reaches your level. And, if you could, speculate about the factors that motivate them to do so at that time.

COLONEL NEUMAN: Yes, ma'am, absolutely. So one of the things we find, particularly when we are talking about restricted versus unrestricted reporting going on our subject that this body understands the two terminologies there.

The reason we have two different ways of reporting is really on how public the victim is willing to take their particular case. In a restricted report, it stays very isolated between them and their counselor or their VA that is helping them out.

In an unrestricted report, it becomes slightly more public, if you will. Not headline type news public necessarily but it is going to be a broader range. And that actually drives a lot of victims from not going unrestricted because of maybe what that -- you know how the word gets out and so on and so forth.
I think the exact same thing happens when it starts getting to a court-martial. If they decide that they want to go from a restricted to an unrestricted report, they are briefed that hey, there's going to be a lot more people involved in this investigation now. OSI is going to get involved, maybe some other criminal investigators, the legal teams are going to get more involved with it. It just starts getting bigger. And they are going to start asking friends, family, coworkers, and other people specifics about the event, perhaps, if there was some stuff a little blurred or something like that.

As it gets closer to the time of a court-martial, a lot of times I have seen victims say stop; I don't want to go any farther because I do not want to sit on the stand and be cross-examined by defense attorney where I have to corroborate or basically relive this entire event again. It is very traumatic. In some of these cases, they are very,
very excruciating, you know graphic detail. And if you have been in a defense attorney type of situation, which probably many of you have, they drill down to try to really take the credit out of the witness that is on the stand.

Victims do not want to have to relive that. They do not want to have to be questioned. They don't want any gray areas out there and it scares the heck out of them.

And so if a victim comes to me or comes up through the channels to me and says they want to stop and not pursue this any farther, then I'll honor that and pursue maybe a different discharge mechanism against the subject, if the facts support such an action.

CHAIR BASHFORD: Can we see across the services what the answer is? Do you see victims withdrawing cooperation as the court-martial nears?

I'd just like to hear from everybody so we have a comparison.

COLONEL GILBERT: So I think I'll
start. So from the Army, in my experience, once it's gone unrestricted, the process continues even if they withdraw their support. You can't force them to testify but once it's out there, we have a duty to prosecute that individual.

My concern would be incentivizing people to intimidate witnesses. But I understand the mental anguish that the victims go through, which is why we have SARCs assigned to them. Kind of going back to my comments about the transfer policy, keeping them where there is a great support network that understands what happened is important. Because I have received people and they don't come with a report of what happened. So it's hard to provide care to people who are transferred to other installations, in my opinion.

So in answer to your question, when they do withdraw, which we did have a number of times, the process would continue to going court-martial and court-martial with or without assistance. But the prosecuting a subject is
very important to us as well to dissuade further
assault. So that was an important deterrent
factor for us.

CAPT. BUSHEY: What I've seen is when
a Sailor inadvertently discloses what happened to
them to the wrong person in the chain of command.
If the chain of command becomes aware of what
happens to the Sailor, they are obligated to
report that up the chain of command.

What I have suggested to the DON
SAPRO, Department of the Navy SAPRO Offices, that
we need to have some capability to have a
nondisclosure agreement signature, some type of
cleansing statement that says that if I
inadvertently tell Colonel Gilbert, who is a part
of my chain of command, that I was sexually
assaulted, he is obligated to pass it up the
chain of command.

But if I could say I want to stop
this; I didn't tell the right person, it seems
like that's where the victim ends up making a
decision on whether to continue or not.
Because a lot of times if they want to make an unrestricted report -- excuse me -- a restricted report, they want their privacy. They don't want the chain of command to be involved and they will be involved as they wish to be. But if it all of a sudden goes into the channel of unrestricted inadvertently, that's when I see most of the victims decide that they are going to desire to have an expedited transfer or desire to stop.

And then with the expedited transfers that I have seen, oftentimes when they get to the new station, suddenly they stop seeking assistance. They wish to -- I was going to say ignore it -- they turn off the radio. They decide not to communicate anymore because they want their privacy. And that's the last we see of them.

So it think that the programs needs to have some way to have a cleansing statement for an inadvertent disclosure and still have the victim be able to say yes or no, I wish to have
this as restricted or not restricted.

COLONEL STEWART: From my experience, 
the victims did, in some cases, no longer want to 
cooperate and participate. It wasn't necessarily 
right as the court-martial got close. That kind 
of started to happen as the investigation, 
initial investigation in full, you'd kind of get 
that report that they no longer wanted to answer 
questions and things like that. So you 
essentially, kind of quickly knew their level of 
participation.

But to echo the commander before, you 
then continue with whatever evidence was produced 
by the completed investigation, whatever, to 
refer it to Article 32. Then, you've made the 
best decision based on all the factors that you 
had and you continue to process the case, even if 
the victim did not want to participate based on 
whatever. And so obviously, that made it much 
more difficult, in some cases, in terms of moving 
forward with a court-martial and you might have 
to dispose of it but you still processed it and
worked through it exactly the same way.

CAPT. MILLICAN: So my comment, I'm going to add -- where the victim is an active duty Member, the four gentlemen have covered that pretty well.

I asked my team if you wanted me to recommend one thing, to ask this advisory committee one area they could help me to help you, the SARC, what would it be? And their response to me was we need something like this cleansing statement that Captain Bushey described. Because what often happens is, a victim, in their moment of shock, everything that they knew in training goes out of their head. They see their friend in civilian attire and they're at the club or whatever, or the college campus, whatever it might be, and they are in shock and they just tell their friends this is what just happened to me. I was assaulted. Well, guess what? Their friend is active duty military. Guess what? Their friends have a duty to report. Now, I know, when all she was doing
was telling her girlfriend that I was just assaulted.

So I know it is written into the law but I think your committee is empowered to make recommendations to very senior people to say whatever you can do, offer something where that Member can tell that Member and that friend can now go to the SARC and say hey, Susan was assaulted last night. She wants this to remain a restricted report.

The other thing I'll add is to those cases where the victim is not an active duty Military Member, which I have seen one of those significant cases in my time in Boston, the forensic evidence is pretty good nowadays, thanks to this.

So if people are texting, they're doing Facebook, they're emailing each other, so in many cases that victim doesn't necessarily have to go through that excruciating testimony on the stand because the evidence is so great that end up doing a plea bargain.
And then they'll come to me and they'll say can I please get a discharge for the convenience of the Government before you take me to court-martial. And my answer to them is no, you will go to court-martial.

So just another observation in the field.

CHAIR BASHFORD: Ms. Garvin.

MEMBER GARVIN: So several of you -- thank you for being here and sharing so much.

Several of you mentioned that the victims -- well, all of you mentioned that you consider the victim's position, rights. Some of you mentioned it more weightily than others.

I'm just curious where you see the Victim Legal Counsel, Special Victims' Counsel, where you see their role in this. And I know it's not normally a direct route to you but how that plays into your decisionmaking or if it doesn't.

COLONEL GILBERT: So victims, they have -- the SARC is there for the victim. In our
case, I had a civilian SARC who was very experienced and very out there, and people knew who she was. So she wasn't a legal counsel because there is no defense counsel or anything like that. So in my experience, there wasn't legal counsel but they had counsel that could get them whatever they needed, whether it was mental health or physical assistance that sort of thing.

So I assume you are referring to, as you go through the court-martial proceedings and get that advice. So that would be the prosecutorial team that would then work that victim. But again, a SARC would always be very involved with the entire process. And again, it goes back to that care. In the Army, we call it care and feeding; taking care of that Soldier through that process through a variety of means, where usually it was channeled through our SARC. They could get legal assistance but, again, the prosecutor, who is usually from my brigade, would work with her to get -- but again, it wasn't really defense from her. It was getting
evidence, that sort of stuff.

So if she sought individual legal, personal legal counsel. The prosecution team, I guess, would provide some of that. To be honest, I didn't have much experience with the victim getting legal counsel, other than the prosecution team asking for case-building type stuff.

MEMBER GARVIN: Okay, so the Special Victims' Counsel that can be assigned or the Victim Legal Counsel, I can't remember which it is in here -- I apologize -- that was not part of your process at all. You didn't see that interacting?

COLONEL GILBERT: No, I did not. It may have been there but I did not interact at that part. That would have been through her SARC to provide that legal assistance.

MEMBER GARVIN: Thank you.

CAPT. BUSHEY: So it was part of our process during the SAC MAG, the --

CHAIR BASHFORD: Captain Bushey, just keep your voice up.
CAPT. BUSHEY: Yes, ma'am. The SACMG would have NCIS, a lawyer, a chaplain, a counselor, and myself, plus the SARC would be there as well.

The legal advocate would dial in so that -- sometimes they would come in-person, depending on where it was at because we had -- I was in Japan so we had people calling from Korea, and Guam, and all over everywhere to try to -- even from ships to attend these.

But the Victims' Legal Advocate would oftentimes take the place of the other lawyer that was in the room to speak on behalf of the victim. So I think that that was something that was instrumental to our process.

But like Colonel Gilbert was saying, if it was on the SARC side, then the Victims' Advocate would attend instead of the lawyer.

COLONEL STEWART: I'll hopefully answer this correctly. So from my experience, it was our SJA was really the conduit to the Victim Legal Counsel. And then as we reviewed the case
and as I engaged with the SJA, he had those
communications with the Victim Legal Counsel and
then brought those forward to the discussions and
recommendations.

COLONEL NEUMAN: Pretty much the same
but in the 24-hour report that we get from our
SARC, one of the questions is has an SVC been
assigned or is the victim aware that they have an
SVC capability. And so that is one of the
initial questions that gets asked right up front.

I don't directly communicate or work
with the SVC. It's all done through the SARC and
/or the SJA and we are a pivotal part of the
support for the victims through the whole
process.

CAPT. MILLCAN: Nothing to add. I
have no interaction.

CHAIR BASHFORD: Dean Harrison.

MEMBER HARRISON: These are questions
for the Master Chief. Welcome.

MASTER CHIEF WATERS: Thank you, sir.

MEMBER HARRISON: You get to talk now.
As I understand your job, is you are to advise the captain of the morale and welfare issues affecting all of the enlisted population.

MASTER CHIEF WATERS: That's correct.

MEMBER HARRISON: What do you recommend in terms of making sure there's an environment where a seaman or seaman apprentice would feel comfortable coming to you, the XO or the captain to bring to someone's attention inappropriate activity on the part of a petty officer or a chief petty officer, basically overcoming the we try and train everyone to follow the orders of those above you but when those orders are inappropriate or an activity is inappropriate, we want time to cover and so on.

MASTER CHIEF WATERS: Yes.

MEMBER HARRISON: And how do you -- what would you recommend to the colonels and the captains here about creating an atmosphere where E3s, E2s, E1s, whatever you feel comfortable with them?

MASTER CHIEF WATERS: Well, sir, that
is indeed an ongoing challenge. It's something that we discuss on a regular basis. In the Navy and the Coast Guard, you know as enlisted leaders, what we call the Chief's Mess are our top three enlisted chiefs, senior chiefs and master chiefs. We talk a lot about taking care of our crew and yet we also understand that as the senior enlisted leaders, when you're wearing the anchor, that can still be very intimidating, no matter how much you say come to me if you have a problem; we want to give you that support.

A lot of times those E2, E3, you know even E4s, they're still petrified to come to the chief.

MEMBER HARRISON: I am.

MASTER CHIEF WATERS: Thank you, sir. And I think we've shifted the culture some over the years. I mean when I first entered, if you had to talk to the chief, you were in trouble. And I think we've at least shifted that some but I believe there is still that intimidation factor.
You know so we certainly try today, as chiefs, to do our best to be very approachable to try and reduce how intimidating we may appear. You know that we can't just be the comic strip version of the grouchy chief walking around with a coffee mug saying go away; kid, you bother me. You know we want to be engaged with our crew.

But that only gets us so far. We certainly try and encourage our first class petty officers, you know E6, directly below the chief petty officer, that they can also be -- you know they can be that buffer to say okay, you know your junior member may not be thrilled about coming straight to me but he might be more willing to talk to you. And if that helps open up that dialogue and get them to say what's really on their mind, what's making them hurt, we certainly encourage that.

We talk about in the Coast Guard that we have a no bystander policy. You see something, you get engaged. And certainly, if you are a peer, if you are a fellow E3 or E4, you
have an opportunity to be that support because
you're not as intimidating because you're a peer,
and that you can help that Member seek the
support.

I do want to say that I agree with
what was already mentioned about that cleansing
statement. I have heard that from other people,
not just our SARC in Boston, that there are other
folks in the enlisted workforce that wishes there
was a mechanism to say you know what, I feel
comfortable talking with a peer but I don't want
to trip that wire that says well now it has to go
unrestricted and now I'm sitting in the bright
lights of the process, where everybody on the
base knows my dirty laundry. And I agree that
certainly with the way we handle restricted
reports, the way things are the SARC will create
a file. It is a numbered file so that there is
no name associated but it still goes to
headquarters so that if they ever change their
mind, I want to go unrestricted, okay, we're
going to now identify that file. All the
information we have, it didn't get forgotten.
It's on file.

You could just as easily add necessary names to say okay, these military members heard what happened, did their due diligence but we were at a point where the Member, when they said I want to stop this, okay, we're going to stop it here but we know who we can reach out to as a witness or support who knew. You know you can have that kind of stuff on file to allow that sort of thing.

The other thing I did want to mention, we have the leadership and diversity counsel in the Coast Guard. Each command has one and we also try to use that as well as an avenue because it is made up of a combination. It is not senior leaders. There are some in there but there are also some very junior leaders and we try to advertise as much as possible who is on that committee. And if, you know, if you're looking for some type of support and you're intimidated by your chief, you can go talk to someone on that
committee that is your peer and help make change
or get support, whatever it may be.

    Plus, of course, we have our Work-Life
Staff who we try to do our best to point them in
that direction whenever we might look a little
too intimidating or grumpy.

    I hope that answers your question,
sir.

MEMBER HARRISON:  It does.  Thank you.

CHAIR BASHFORD:  Mr. Kramer.

MEMBER KRAMER:  Thank you.  Thank you
very much, it has been extremely informative and
impressive.

    And I want to say Colonel, Neuman, you
must have a very good legal Staff because they
heaped a lot of praise on themselves during your
talk.

    (Laughter.)

MEMBER KRAMER:  But I have two
questions; one probably much more simple, and one
much more fundamental and somewhat troubling.  So
I will start with the simple one.
Has anybody ever denied an expedited request for transfer? If so, why, or do you know of any?

And the second question is much more fundamental. I can see that the five of you take extremely seriously the whole -- any misconduct in the military, especially sexual assault. Unfortunately, there has been some newspaper articles recently about that not being uniform in the military and some commanding officers not taking it as seriously.

And I don't mean to say those stories are true or not true but how would we ensure that every commanding officer takes it as seriously as the five of you do? I guess that's really the fundamental question I have.

CAPT. MILLICAN: Well, I guess I'll start. My initial answer is no, I have not denied a request for an expedited transfer.

In terms of who are the bad apples, you know identifying bad apples, that's tough. My brain went straight to a case years ago. It
wasn't sexual assault but it was a commanding officer of a high endurance cutter, an O6 peer of mine, and it was sexual misconduct. He was having sex with a junior aboard a ship. That's bad. And that was going on and people knew about it. So we get back into this culture, right? Is the command master chief in power to knock on that door, hey Captain, can I close the door for a minute? Captain, the words out on the mess deck. Everybody knows. Everybody knows about you and Seaman Susan.

Captain, I'm going to give you the opportunity to notify your three-star boss at the Atlantic Area by this time tomorrow. And if you haven't, I will.

So those are the stories that permeate military culture 99.9 percent. There's always going to be the 0.1 percent. But in my mind, 228 years of U.S. Coast Guard and our culture has zero tolerance for that sort of behavior.

COLONEL NEUMAN: So as far as the denials of ETs, I have not denied one. And to be
honest with you, I don't even know of any stories within my peers that they have denied one. We ask pointed questions anytime an ET comes up. At the end of the day, we try to take care of it based on the best we can. If it is a matter of healing and it's in the best interest of the victim in order to keep them in Service and continue their service, then we're going to support those.

As far as the standards across the board, every commander is going to take a hard look at this information to make the best decision, based on the good order and discipline of their organization and their mission. So I certainly can't second or armchair quarterback the decisions of the commander by any stretch of the imagination. I don't even have all the facts that they had or the advice of the stuff that they were given on their counsel.

But at the end of the day we all know what the UCMJ is and it's not tolerated in any of the Services. I think everybody that's in a
command position is going to take that -- you know.

COLONEL STEWART: As far as never denied an expedited transfer and I'm not familiar with any cases.

In terms of your second question, I think it's just incumbent upon the Service to continue to enforce the standards, the core values that we do. And I would say in those cases that may have been public where somebody was relieved, I think that that's the Service enforcing the standards and holding people accountable and saying that that type of action is not acceptable. And that, in and of itself, to see the Service make that decision, reinforces it amongst every future commander to say this is how you're going to do it, along with all the different leadership courses that the service provides to prepare you and to put you in that case and to continually review or find, ensure we select the best to do that.

CAPT. BUSHEY: Sir, for your first
question, I have not denied an expedited transfer, nor have I seen it denied.

Secondly, as far as the leadership goes, I think it begins with day one of training, that everybody understands what our culture is, what our acceptable norms are, and how we treat sexual assault and harassment.

So you being by that seed that's planted at recruit training or at officer candidate school and you continue to continually train that individual to make sure that if they make it to the level of master chief, if they make it to the level of command, that they understand the expectations.

And then also just like Colonel Stewart said, we hold our commanders to a very high standard. And when the senior leadership find out that somebody is not acting appropriately as a commander, they serve to be dismissed and they deserve to be dismissed because this is a very high priority and it is as equal to a mission as taking care of our people.
And this is definitely takin care of our people.

COLONEL GILBERT: So to answer the first part of your question, I don't recall denying any expedited transfers. I may have tried to commit somebody to go to a different location. As I stated in my opening remarks, my preference was to reassign on the installation.

And I uniquely came from Fort Bragg, where there's 54,000 soldiers. It's a little bit easier to hide amongst the masses.

My first command was a single battalion command on a Korean Air Base. There was nowhere to hide. They would have needed to move to another location.

I've had a couple in brigade command where the Soldier, when we peeled back the history, had previously tried to PCS that location for other reasons long prior to that request. So there was a little bit of misgivings about what the real reason was. But I think, as I recall, we approved them all. And again, I always felt the process better supported the
victim and the investigation by having it local.

Again, understand my basis if reference is Fort
Bragg, which is a very large installation.

To answer your second question, I
think it was kind of addressed but I think the
selection process by which the military selects,
and I'm not saying that for self-inflating by any
of us sitting here, but the Army and all the
Services are very stringent about how we select
our commanders. And then once you've made it
through selection, the real training begins
through, everybody's mentioned, either the Senior
Office Legal Orientation Course or their pre-
command courses. We all get a lot of training
and there is a lot discussion about SHARP. And
through your command, you get a lot of instances.

In my experience, more commanders are
relieved from command for failing to act than
they were for taking action. So if you didn't
take action on something, there is really a hell
of a bill to explain why you did not. And not to
say that didn't happen because, as you alluded
to, I'm sure it does but I think those are, by far, the exception. And I think the Services do pretty -- and I speak from my experience in the Army, is a very significant effort to weed out those who won't take action.

For example, in our Division Review Board we had every month, they look at all the numbers for -- I'm sorry. Every month, every brigade would have its numbers of restricted/restricted reported and how many.

In some cases we had one brigade, it was a very large infantry brigade that had no reports. And the question was is that a brigade which everything is perfect and nothing happens or are they afraid. You know and I had more reports. So the question was, are they more comfortable -- do we have a command climate where they are more comfortable reporting or is the other brigade just better at it and they just don't have any issues. And we never comfortably resolved that but everybody was kind of looking and trying to make sure they created an
environment where reporting did happen so we
could adjudicate it.

But I acknowledge your point. I think
we can acknowledge there are exceptions but I
think the Services are working very hard to try
and eliminate that and make sure everybody
understands the very seriousness of it.

I go to the very first question that
was asked, Ms. Cannon asked, which is do we want
to take this out of commanders hands. And I can
speak for the Army, which is we want to retain
that but we've got to demonstrate we have the
ability to adjudicate that, to be able to show
that we should have that control. And I think
we're very serious about that.

I know it's a long answer to your
question but I thought it was worth pointing out.

CHAIR BASHFORD: Ms. Long.

MEMBER LONG: Thank you. And thank
you also for being here. And I have a follow-up
question to the first question today. And I know
that it is, I don't want to say controversial
because obviously it is equally personal and I don't -- I feel like there is no way to ask the question without somehow suggesting that you're not capable of making fair decisions and that I don't believe is the case at all.

But because this is so unique, in other areas of personal decisionmaking, you never have a body recommending criminal charges that is sort of I don't want to say -- is also responsible for the people for whom they're recommending. I mean it seems very familiar, I guess.

So maybe you could help educate us on why you are able to make fair and impartial decisions, even with your role as being responsible for taking care of the folks underneath your command but you're still able to make what would be considered a fair and impartial decision, in this case, that would align with the rules with criminal justice process.

Is that a clear question?
COLONEL NEUMAN: Yes. Well, I'll jump on it here, first.

You know I think there is a lot of ways of looking at this. We are not attorneys. I don't think anybody up here has got a legal background. I certainly don't. I'm an operator by trade. I fly airplanes. And I have basically been trained to take people off the face of the earth.

Over a period of time, though, through leadership positions, you gain an incredible amount of human interface and understand how to interact and make critical decisions that impact the mission but yet take care of individuals at the same period of time. You don't get to our level of making these decisions overnight.

It takes -- you know I have 22 and a half years' of experience, 22 years' experience before I took this particular position. And so we've seen a lot of different things. We've been through a lot of military courses and it's really about the leadership piece of this. And like I
mentioned in the first part of the question there, there is a certain human element and a compassion that we have to continue to invoke in these decisionmaking processes. It's not black and white. Not every case is going to be clear-cut.

We have the ultimate responsibility to our nation to effect the mission that we're assigned. We have to have our Airmen that we lead involved in that mission. If we take that out of our hands and put it into a different court system or legal system that does not have the same responsibility to the mission, now it becomes how much money can we make. Is this a win/loss type thing? Do I have enough evidence to even prosecute it?

In most cases, the cases I get would never even be touched downtown because the court system is incredibly long and it would never get to trial because likely, the evidence is just not strong enough.

And so in order for us to maintain
that good order and discipline and uphold the
UCMJ, we'd have to have the ability to take a
case and maybe a minor case -- again, sexual
assault can be literally an inappropriate touch,
right? How many attorneys in here would take
that to a court downtown? Probably no one here
today.

MEMBER LONG: They get taken.

COLONEL NEUMAN: They could,

absolutely.

MEMBER LONG: I mean I was a
prosecutor. They get taken. As was suggested,
there are different types of inappropriate touch.
But I know what you're saying.

COLONEL NEUMAN: So anyway, that's my
point is we take the whole picture into account.
We care for each of our Servicemembers that we're
leading and it is part of our leadership role to
do that.

COLONEL STEWART: I would say I mean
I think that the process is such that first, you
have NCIS, which is an independent entity from
the command that conducts an investigation, a very detailed, thorough investigation. Additionally, you have the Article 32 hearing that's conducted by a trained lawyer, counsel that does a thorough investigation and then presents that information to you. And then along with your assigned SJA legal advice, along with all the other resources available, you're presented information from those sources that are essentially independent from your organization. So with respect where you mentioned the familial thing, I would argue it is independent entities and then you make the appropriate decision.

And it really, you know as you go through that, it is really, from the Marine Corps perspective, it is the crucible of due process and investigative action to determine what transpired and then appropriately handle it. Bringing all those resources together, I think it does enable a commander to make an effective decision.

CAPT. BUSHEY: I agree with my
colleagues. So from day one, an officer is in training to lead. And I remember as a junior lieutenant taking my little helicopter 200 miles over the horizon, with one place to land that was 200 miles behind me. And nobody else out there. I'm doing this at nighttime and I had a full crew of people that I was responsible for.

As you go up the chain of command, you have more and more people you're responsible for. Being responsible for those people includes their health and welfare. And this goes directly into whether or not a sexual assault occurred and then whether or not that is impacting your mission because it does impact your mission. If you have that happen in your crew, it's unacceptable and it's something that everybody wants to make sure that it's handled correctly.

And just like Colonel Stewart said, we have many different layers that are looking at what the facts are to try to make a good recommendation to the commander. And after 20 years of flying and 20 years of possibly doing
other military specialties, we've been trained to make some of those decisions. And we've also been trained to make sure that we take look at what the resources are and make sure that we make an informed decision as well.

COLONEL GILBERT: I'm going to wind up echoing everything that was said. But essentially the commanders here are empowered to make life and death decisions on a daily basis and we're expected to do so. So this is in that span of responsibility, first of all.

And second of all, at this level, we're no longer subject matter expertise on a very narrow topic. We are all broad managers who are not experts at every single thing with our organization because they are vast and complex. Even if it is an aviation organization, you have every imaginable specialty within these organizations.

We are trained to take the best advice from those around us, to know where to seek the advice to get the best counsel and not to rush to
a decision before we're comfortable we've got the
best advice.

And again, we also are closest to the
organization to understand what is in the best
interest of our commands and our Soldiers, in my
case, Soldiers, Sailors, Airmen. So I think
we're both positioned to understand the dynamics
of this situation because many of these things
will happen on deployments. And I don't know
what that court system and what the practical
application there would be in a remote place on
another continent or at sea. That's one aspect.

But more importantly, we're already
empowered with those broad authorities but with
very broad and complex organizations of which
none of us are the experts at everything in these
organizations because we simply cannot be, which
is why there is all these processes and systems
in place to provide us with that expertise to
give us advice. We're not making these on our
own. We've got great investigators, great
lawyers advising us much like you may be seeing
in the other situations.

So anyway, I think that is, from my perspective, why we should retain that role.

CAPT. MILLICAN: So, Ms. Long, I'll answer in two ways. Back to my earlier comment, we're already trusted to disclose an assault that isn't sexual in nature. We are already trusted to disclose sexual misconduct that is consensual in nature.

Secondly, as I mentioned is a best practice, when I brief Admiral Hines, he is within his purview to say the forensic evidence is so great, the severity of the accusations are so extreme, the eyewitness testimony is so compelling I have taken it up to the flag officer. This is going to be a general court-marital. We are really going to get not just one but two pounds of flesh. That's how bad this was.

As opposed to that case of, again, all sexual assaults are bad and illegal but there are degrees of severity and they can't handle them
all. And those ones that are in this category
over here on that spectrum, field commanders are
more than capable, as with many other elements of
the UCMJ that are violated, to handle those
matters.

MEMBER BRISBOIS: Just a follow-up on
Colonel Neuman's response, which generally has
been echoed by the rest of the panel.

But so the hypothetical, if you will,
that was presented to you, I got the impression
that in your mind that conjured up the
prosecutorial discretion being taken not just
away from you but away from your air base and put
out in D.C. or somewhere.

Isn't there a potential middle ground
where, relying on your subject matter experts now
and at the general flag level or your level,
which when I was in several decades ago wasn't
brigadier level, so again, the flag officer
level, they had Staff Judge Advocate Colonels as
a part of the stovepipe staff. Anywhere you
went, they went.
So if that prosecutorial discretion was put not in D.C. but at the Staff Judge Advocate for the first court-martial level, special court-martial, or general court-martial, doesn't that person then serve a subject matter expert consultative function as well as the specific needs of your mission? Because they are with you day to day. They know where you are going. They know what you're doing and they can answer all those questions. Yet, by having it at the Staff Judge Advocate level as prosecutorial discretion, there is a greater consistency throughout the whole command. Because once you filter down, you've got all the battalion commanders, you've got all the company commanders and everybody has been coming at this from a number of different experiential matters, and personal opinion levels and you get more fragmented responses.

So is there a middle ground that would be satisfactory to you?

CAPT. MILLCAN: I'll start. So the
Staff Judge Advocate is not physically with me in the Coast Guard because we're kind of small. So, they're in Norfolk, Virginia.

But the point of that story is they see all Coast Guard cases. So, they're the ones -- they don't have the fragmentation that I do. I know what's going on in New England and the Northeastern United States. So their recommendation is based on their need of the enterprise, the whole Coast Guard. So their recommendation to me is going to take into account what they see.

So I think that's addressing your point. I'm struggling a little bit though to still find, if you're asking -- you know right now you have initial disposition authority at the O6 level. The O7s and above have that authority today to pull it up to their level. I'm not sure what the middle level is that you are asking about.

Or you say take it completely out of that active duty chain of command and put it over
here in an SJA lane?

MEMBER BRISBOIS: I mean the Coast Guard, with no disrespect intended, but based on my experience, they cut you out of my experiential model. The Army Judge Advocate and the brigade --

COLONEL GILBERT: If I can help you out, sir, I'll just pick up where he left off, which is I think what you described is what I understand the process. I mean that's what I experienced. The brigade level Staff Judge Advocate opines, based on the investigation presented to them by our criminal investigation division whether there is enough to go forward.

And then if there's a disagreement there, it's a division in my case, the two-star command, my next higher command, their Staff Judge Advocate, which is a full colonel, is overseeing all these cases. And then there's the Review Board that we do monthly to talk about cases and trends, and that sort of stuff.

So I think what you described is
really what actually is occurring right now,
which is the decision is made, initially opined
about whether or not to go forward is at that O6
-- I'm sorry -- the Staff Judge Advocate at the
brigade level.

Brigade command are not only involved,
you know I can take it off the tracks or
something but, at the end of the day, I'm very
heavily relying on that Staff Judge Advocate.
That's really what occurs between CID and the
Staff Judge Advocate. So that's where that
expertise is really at. And I'm kind of there to
make sure the process continues forward and I'm
kind of holding everybody to the fire.

MEMBER BRISBOIS: And so my question
is they're part of the war community. They're
part of the mission. They're job is to help your
subordinate units do their job with all the
panoply of legal advice in order to get that
done. So they're intimately aware of what you
need to accomplish, what good order and
discipline is for your operation, your
That Staff Judge Advocate stands in the analogous position as the Attorney General to the Government. So they make the prosecutorial decisions. The governor, you know, doesn't lose any authority over the whole state or any other similar civilian analogy organization structure.

So if the concerns that you were expressing arise out of when the prosecutorial decision is being taken completely out of your community, out of your organization and placed somewhere 1500 miles away, and so again, back to my original question, if the prosecutorial discretion is still with the organization but in a subject matter expert area, isn't that a middle ground that does no injury to your ability to perform your mission?

COLONEL GILBERT: I'll only speak for myself, sir, and my concern would be the level of experience of that brigade Staff Judge Advocate. In the military, the selection process for that Staff Judge Advocate is different than for the
commander at that same level.

COLONEL STEWART: And I would ask --

I would argue he's trained to provide legal advice. I mean there's a difference between providing advice and making the decision. And that's where the role of the commander plays because it's many factors that have to be considered in terms of that organization.

I think they are integral to the process, integral to advise you, along with many others that do, but I would be hesitant to defer completely to a legal lawyer to make that decision that's going to have many other impacts.

CAPT. BUSHEY: I agree with my colleagues. One thing that I recommended to everybody who came before me for NJP was appeal it. Appeal it to my two-star. Let my two-star take a look at my decisionmaking. If you feel that I am in the wrong, the appeal is something that is a tool that they can use.

And so I think that there already is that oversight because I had every single Sailor
that came before me appeal. And every single one
was agreed upon or concurred with by my two-star
that I worked for.

So I'm not afraid to share my
decisions with my senior chain of command. In
fact, I welcome their feedback to make sure I'm
doing things correctly and my commander agreed
with my decisions.

So I think we've already got a tool
out there that other people can use if they wish
to appeal whatever the decision is.

COLONEL STEWART: Not to flip the
question back to the panel but like what problem
are we trying to solve by saying that O6
commanders are not capable or you're not
comfortable with us doing it? So I guess we're
saying to take it out of the commander's hand.
Is there a perceived problem with commanders
making the call? I mean I don't expect an answer
but that's kind of the flip side of the question.

CHAIR BASHFORD: We're just trying to
get your all thoughts on --
COLONEL NEUMAN: Let me just finish up on that particular one.

So the way it works, at least in the Air Force perspective, our legal teams are very well connected. There is a database and they communicate across the board all the time. So if there's a concern about standardization of advice that's provided to commanders, they have access to the databases and stuff that you know that they can go in and take a look at what similar cases have done, what other commanders have also done, and then bring those directions forward.

Inside of Air Force Global Strike Command, which is my current command, we have a MAJCOM legal team. That legal team stays in close contact with both of the numbered Air Forces, which is at the next level, that's the next flag level, two-stars level and they have their legal team. Those legal teams are then decentralized, again, down to at the wing level, which is where I'm at with our legal teams.

And inside of the Air Force where I'm
at, that's the general or the General Court-
martial Convening Authority. They advise down to
the five different wings within the Air Force.

On a regular basis, the wings do
monthly or quarterly status of discipline type
things. So we standardize the decisionmaking
based on cases, stuff across the wing.

At the MAJCOM level, the next level,
we do that on a quarterly basis as well, where
all the wings, the two-star general, and the
legal teams all get together and make sure that
everybody's enforcing things relatively standard,
as well as the discipline and stuff that's also
being handed out.

So I think there is really a good
balance there. There is a cross-sharing of
information and there is self-governing when it
comes to that process.

CHAIR BASHFORD: General Anderson.

MEMBER ANDERSON: Yes. Again, thank
you for coming and sharing your experiences with
us today. I have a slightly different question
and this includes you, Master Chief, as well.

Have any of you ever served on a panel for an Article 120 process. Is there any master chief on the panel?

COLONEL GILBERT: There are seven panels.

MEMBER ANDERSON: Seven panels?

COLONEL GILBERT: And I was eliminated on the first day of every court-martial.

(Laughter.)

COLONEL GILBERT: I considered it 7 and 0. However, but while that, I think, had to do with I had some family had a sexual assault background, which is why the lawyer I think did throw me out. The other thing was there is other panel members that worked for me, so I throw that out as well, as a kind of obvious link to the panel. But I was called for seven different panels over my two years.

MEMBER ANDERSON: Okay, so exclusive of 120, have you ever served on any panel?

COLONEL GILBERT: Just got off easy.
Fort Bragg's a busy place.

(Laughter.)

CAPT. TIDESWELL: Would the record please reflect that the response to the General's question was from Colonel Gilbert?

CHAIR BASHFORD: If we can just go across, I think that General Anderson wanted to know if any of you had that experience. Oh, you all said no?

MEMBER ANDERSON: Yes.

CHAIR BASHFORD: Okay. Ms. Tokash.

MEMBER TOKASH: I first had a question for you, Colonel Gilbert and then I have a question for each of the Service Commanders.

So, Colonel Gilbert, you said that you weighed many other factors that you believe the court system might not be able to view properly when there are gray areas in sexual assault.

My question is what are those factors that you weighed as a commander?

COLONEL GILBERT: Thank you. In an organization that is very broad but it has very
unique stressors. For example, in my brigade of 2800 folks, we did five rotations to the Joint Readiness Training Center, which is a very intensive, about a six-week event.

We deployed one squadron to Korea, had another detachment uniquely deployed to Africa providing some support. And the operational tempo and unique demands upon people of different skill sets. My cooks had a very unique time line. They did not get weekends. They worked from 3:00 in the morning to 11:00 in the morning five days to six days in a row, then they would get three days. So you had all this uniqueness to an organization. It was hard to extrapolate that. There is no cookie cutter within our organization with 2800 people, 110 helicopters, a very broad, diverse mission and we are an organization that with notification that we need to start packing up helicopters to deploy anywhere in the world. In 82nd Airborne Division, that's our unique mission.

You know in a very, very short order,
there is a very high level of readiness which is required. So there is a very high intensive amount of training.

The gray areas, those extra factors are the stressors and unit dynamics that are unique all the way to the company level. Within my brigade, we had 31 individual company commands. Those are commanded by captains. And then I had five battalion commanders and I head administrative oversight of a sixth battalion as well.

And understanding each of those unique organizations, the stressors, I will tell each of those battalion commanders didn't appreciate what the other battalion was doing.

At the brigade level, I was uniquely suited to see what all of them were doing because I was the one directing them all to do it and I was the one uniquely postured to go visit them at those training.

And I would go visit folks at the Joint Readiness Training Center, for example.
You might think you'd find a lot of disheartened Soldiers because they are muddy, wet, cold, and working really hard. Yet, what I found was people in very high spirits because they got to do their job.

The people back sitting on gate guards or mowing lawns, doing other tasks that weren't necessarily what they signed up to do didn't necessarily have the highest morale.

So I think you know postured uniquely within the military, we are uniquely postured to see these unique organizations and there are organizations that have higher morale than other. Sometimes it was a personality but sometimes it is mission-driven. And I just don't know if all of that could be understood well in a civilian court of law.

And I'm not implying the civilian judges or lawyers such as yourselves are not capable of understanding the dynamics of the organizations. I just think there's a uniqueness to the military that is not well understood
outside the military. And it's just a challenge.

And I'm talking about the gray area cases. There is hard to define cases that will likely not go forward to another judge. I think we are better suited to prosecute those things because we understand the impacts of going forward. It may not just be the victim. It may be the lawyers in your unit saying this is not okay or whatever it is.

I don't know if that fully answered your question.

MEMBER TOKASH: Yes, thank you.

Then my general question for each of the commanders from the different Services is with regard to written disposition guidelines.

So at the U.S. Attorney's Office, we have the U.S. Attorney's Manual. For the State prosecutors, the National District Attorneys Association has a standardization of factors to consider for prosecuting cases.

My question for each of you is would disposition guidelines that would tell you what
factors to consider and what factors not to consider when making a preferral decision be helpful to you as a commander.

COLONEL GILBERT: I would wish I had my brigade JAG here because I would refer to him and ask for his advice on that. I think that is a complex question.

I think it could be helpful. I think it would have been in the details. You know that was always in the details.

I think more narrow guidelines would be helpful. I, frankly, think you know we have two binary decisions of sexual assault or sexual harassment. I think the middle ground that was referred to earlier with the abusive sexual contact, in my opinion, could be broken out better as a separate area. It gets lumped in with sexual assault, which is a very -- you know it is kind of a binary at the high end. You know you are on the court-martial path and then you're kind of making decisions about something that maybe adjudicates to less.
So from my perspective, I think it could be.

And I also, you know, I haven't commented on this yet but the idea of having a way out for somebody who didn't mean to inadvertently disclose something is probably something to consider and those disposition guidelines that you are referring to, something that would allow for that for a young Soldier who did not mean to disclose or go down the unrestricted report I think would be something I would appreciate being addressed and something like that that would allow Soldiers to back out of it probably at some early level.

I think once you go past a certain level, I wouldn't be worried about witness intimidation and dealing with people that know. Once get to a certain level, it's going to be on the train; you've got to go forward.

But that is just, personally, my opinion. I don't speak for anybody else.

MEMBER TOKASH: Thank you.
Captain Bushey?

CAPT. BUSHEY: I agree with the colonel.

What I'm afraid of is what happens when you're in the gray area, you're in-between lines where the matrix says one thing but it says something right next to it and it doesn't fit perfectly into the square peg or the round hole that we've tried to identify by having written guidance. So that's my only concern with it.

I would like to see what that is and see how it could capture all of the different elements we look at. Because it's just like Colonel Gilbert said, there are so many other factors we have to consider. Are we deployed? How does this affect my other Sailors? How does it affect fill in the blank? There is just a lot of other things that I want to make sure that we don't take off the table for consideration when we decide to write that directive.

COLONEL STEWART: I would just simply say if it is a resource that can help a commander
make a better decision, then it's something that should be considered and reviewed.

MEMBER TOKASH: Thank you, Colonel Stewart.

COLONEL NEUMAN: First, you know I appreciate the way you asked the question because you asked the question essential. What factors -- you know would it be helpful for us to have guidelines, things to consider.

Well first, I think we get those guidelines through all the training courses and stuff that we need already. As soon as we start writing down prescriptive things to consider, we get to exactly what my colleagues just mentioned here. You know guidance and stuff quickly becomes regulation and pretty much turns into that black and white situation.

In these type of scenarios, we don't know what we're going to have to take into account until we see what the situation is. And I think you have to have a toolbox full of different tools and not every tool is going to be
used for the same project.

And so in order to put prescriptive
guidelines on a piece of paper and then hand it
to commanders I think would be probably
handcuffing us a little bit more than necessary
in these situations.

CAPT. MILLICAN: I'd say that we
already have written disposition authority for
all articles in the UCMJ.

I understand your question. Your
question is what about specific factors for this
particular article. So I certainly wouldn't be
opposed to that. I mean if you've served in the
Federal Government, if you've managed a civilian
employee, you're familiar with the Douglas
Factors. When a civilian employee is engaged in
some kind of misconduct, you go through the
Douglas Factors and it helps you make a decision
when you've considered all those factors and well
how bad was this and what should the discipline
be.

So I would say that we're certainly
not opposed to but I would say we do currently
have some level of written disposition guidance.

CHAIR BASHFORD: Sergeant Markey.

MEMBER MARKEY: Yes, well thank you
for being here today. I appreciate all the
information. We've heard about this position of
the O6 and the critical role that you play in
this decisionmaking process. You essentially are
gate keepers to the judicial process when it
comes to sexual assault. That's a very important
role and I think you've describe to us the
seriousness by which you accept that
responsibility.

I feel as part of this committee that
we are tasked with reviewing how effective is the
response in the military to sexual violence and
at the same time, looking for gaps and
opportunities, if they are so present, to improve
that response. And so that's kind of the way I'm
looking at this.

So a lot of things have been brought
up about the decisionmaking process, the
discretion used to make those decisions. And I think what I always was criticized for in the civilian world is the fact that making a decision using discretion, that might be different than agency from agency, person to person. And so as long as there was the information that supported that decision, I think it's easier to make that argument of why that decision was made.

So that means that you are really at the -- you are really subject -- your decision is subject to the information that you receive. And so through this process, I have been trying to follow the information trail. So where does this information begin? Where does it go to next and the next step? And there are several filters, it appears, where it starts as some sort of investigation through MCIO and then it may go through a separate SJA, or if I'm using the wrong terms. And then it may go through a trial counsel, and then it may go through your O5, and then it may come to you. And so I'm trying to follow this process.
And so one of the themes that was brought up in the previous panel was resources and, in particular, resources for the investigative process. I think one of the comments was the time line for which it was taking for these investigations to be completed appeared to be one, a lack of resources. And I think, Colonel, you had mentioned along those same factors is the lack of -- kind of the lack of resources within an investigative process to maybe do additional follow-up or gather additional information to help you with your decision on whether to move this case forward or not move this case forward.

So getting back to the resource issue, so would increased resources in the investigative stage, which is I think that's pretty much where a lot of these cases are starting, do you see that as a factor in your decisionmaking process and the information you receive whether that could be improved both on the time line and the quality you of information you get to make that
decision?

And I know that's a lot.

COLONEL GILBERT: Short answer is yes, from my perspective, more investigative resources would be helpful.

If something occurs off post, it's usually done with the civilian authorities and combined with the Criminal Investigation Division. Again, I'm not on that end of that but usually if it is off post or civilians are involved, the civilian authorities were doing that in parallel. There was some sort of collaboration going on on the law enforcement side.

But and I did mention the time line and, again, it may be unique to where I was at within Fort Bragg where there are 5400 Soldiers, there are a lot of things that are going on and the amount of investigators to cases is probably not a good ratio.

But the time line was very extended and in the gray area cases, the priorities for
those resources are, again, the higher profile cases. There are more very distinct, you particular something like rape or anything like that is going to get the highest level of priority for resources. But even then, these things, I mean they can take years. And I know it happens. My understanding it takes that time line on the civilian side as well. But a more timely decision is very helpful because of all the suspended animation everybody's in. We have to retain people. People may be getting out, PCSing, people going up for promotion boards on either side of that equation, a victim or a subject.

So time lines, you know everybody's life is frozen while it's occurring and then information gets old and stale, unless you've got good forensic evidence and it's captured early. You know memories get hazy. People move away because, unlike the civilian population, we all move very often and witnesses start moving.

So time lines were impactful. The
longer they got drawn out, the harder. But I saw cases that took a year and a half that went to court-martial successfully.

But yes, from my personal perspective, I think all resources would be welcome.

CAPT. BUSHEY: I agree with the colonel. I think more resources, especially like at the NCIS level, going to the investigation level would be more -- would be where I would like to put those resources at. Because it seems like with NCIS, they have so many cases, it takes so long to go through and it causes a lot of angst and frustration on both the alleged victims and the alleged offenders' parts. And just like the colonel said, everybody goes into either very slow motion or their careers are frozen right there until this is adjudicated.

So I think that that would help with the speedy trial, the speedy nature of trying to at least address the case. So that is where I would want to put those resources.

And of course, the JAG Corps would
like to have more resources, too, so they could have more people. And that would be of benefit to everybody in the service as well.

COLONEL STEWART: Firstly, I think all the investigations were very thorough and were extremely helpful but anything to improve the time line of investigation would be valuable.

COLONEL NEUMAN: Yes, I concur. The resources is a limitation.

But part of your question is also how we get the information. And it kind of goes back to the guideline type question.

When these cases come forward, a lot of times there's no evidence or the evidence is really old. So, by the time we get it, there may be a lot of complicated factors associated with it. We may have to go downtown. We may have to execute some of our MOUs and stuff that we have -- memorandum of understanding agreement with the downtown community in order to get into their investigative background. Or maybe they took the case and we have to negotiate with them to bring
that case into the UCMJ, under the UCMJ umbrella versus downtown. That adds time in the whole process. And really, at the end of the day, what we'd like to try and do is do these things as quickly as possible in order to get a disposition, get a conviction, get the discipline done and get the case closed by just getting it drawn out and largely could use a resource restraint.

But I would just emphasize again the different ways that we can actually bring cases to the forefront. And a lot of cases I've seen recently, as we get more education out there to our Airmen, the reporting of sexual assaults that have happened in the past. When you go back a year or so, it is very, very difficult to find evidence but yet we put it on our investigative teams and they have to go back and do the best they can but it takes a long time to get through those, those databases and such.

CAPT. MILLCAN: Sergeant Markey, I would say the resources are always welcome. I
would say that even though it takes a while to
get to my desk, the quality of the product that I
eventually get is very well done.

CHAIR BASHFORD: Several of you
mentioned you wished that there was sort of a
cleansing or claw-back opportunity for what seems
to be an inadvertent unrestricted report.

Is there any one thing in the current
system that if you could change you would?
Something that is not working well, something
they could do better, like what one thing would
you recommend be changed?

Colonel Gilbert, do you want to start?

COLONEL GILBERT: I think what you
just mentioned, ma'am would be my one
recommendation is the ability for a victim to go
back to a restricted report. There has probably
got to be a cutoff. I don't think going all the
way up to right before courts-martial are good
but somewhere in there I think that would be
helpful.

I would have to think a lot more about
it to give you any other feedback. Thank you, ma'am.

CAPT. BUSHEY: I already mentioned that I thought that the cleansing statement would be the thing that I would like to see. That's still my number one priority.

But I think we should go out to our junior personnel and say what would help you. I've heard a lot of them say they would like to have some type of an app that they could click on and that would give them resources right there on the spot.

There is many different resources out there that colleges are using, things that other communities are using. So I think that we should look at what their tools are and see if that could improve some of the things that we could use that are already developed and we can tailor them to fit our first needs.

COLONEL STEWART: To the last question, I think the resources to complete the investigations in a more timely manner to enable
a best decision possible would be number one.

COLONEL NEUMAN: To talk on the
reporting versus restricted reporting type thing,
so at least in the Air Force, as I understand it,
we have mandatory reporting positions. Generally
your front line supervisors, your commanders, and
so on and so forth.

A peer is not necessarily a mandatory
reporter, meaning that a young Airman can tell a
friend that they are sexually assaulted. Where I
think we could do better is education and victim
support assets at the installation. Our
Chaplains are few and far between. Our sexual
assault in the SARC offices and stuff are
generally short. Our Airmen and Family Readiness
Centers are running on very thin budgets. So the
resources that can help support the victims are
probably where I would focus.

CAPT. MILLCAN: So one thing I gained
from my team was the third-party reporting that
can be brought back down. Resources are always
good. I think our policy is pretty tight.
CHAIR BASHFORD: Let me go to Judge Walton and I'll come back to you.

MEMBER WALTON: What happens in a situation where a credible claim of a sexual encounter is made but the victim, despite how credible that claim is, decides that he or she doesn't want to go forward? What happens to that individual who is accused and you have a credible allegation that this person committed that crime? What happens in that situation or what should happen?

COLONEL GILBERT: In our brigade and my experience in my division, and I am certain that the whole Army does it this way but it marched on. Once it was an unrestricted report and we had the information we were going to prosecute the subject with credible evidence.

MEMBER WALTON: But what if you, I mean if the victim won't cooperate. She's made or he has made an allegation and you believe it is credible, you don't have corroborating evidence and without that testimony, you can't go
forward, what happens to that individual when the allegation has been made?

    COLONEL GILBERT: The only time I recall, and I don't even remember if this was in my brigade or not, the only time I recall dropping a case is when the victim made another sworn statement invoking their initial statement saying I was not truthful. And then you would be honest, you would go after that person for a false statement.

    So there is a jeopardy there but I don't know that I saw that but that was always a concern there.

    But anyway, there was -- I only experienced a couple of cases where people did another sworn statement and basically said that it is a false allegation or I withdraw my allegation. But short of that, if they just didn't want to cooperate, the case would continue on.

    CAPT. BUSHEY: I've not experienced such a scenario but I would get with my lawyers.
I think the lawyers would appreciate that. I would get with my lawyers and talk through what avenues of possibilities are out there. Can I do an administrative separation? Can I take other actions like the false official statement?

Because I think that the scenario you described is something that is very important to make sure that false allegations are not made. And we would owe something back to our personnel because they are going to wonder what are we going to do in this instance as well.

So I would definitely consult the personnel manuals and the JAGs to find out what avenues we have.

COLONEL STEWART: I'm just trying to follow you. It wasn't necessarily a false statement. She just doesn't want to participate but the belief is that strong indications are that it was a credible sexual assault but it the evidence to go forward is very difficult because she's --

MEMBER WALTON: Right.
COLONEL STEWART: So in our case, we would, based on available information and evidence, it should continue to go forward.

If there wasn't sufficient evidence because of her lack of or the victim's lack of participation, then potentially dispose of it or look for other potential offenses that are available, administrative separations and things like that that are available to at least attempt to hold the individual accountable who perpetrated the incident.

COLONEL NEUMAN: So I think I brought this up a little bit earlier as well. A lot of times the victim holds all the key evidence. If the victim is not able to provide that evidence but it is still credible information, we have different ways of going about looking at dispose of it from going into a court-martial type thing. But I can hand them back to the commander to do a commander-directed investigation to get some other facts and maybe we can get him under misconduct, inappropriate behavior, those type of
things and so we can go with different
disciplinary actions under UCMJ.

   It may not be the sexual assault
Article 120 type case but that's where I think
the SVC plays a huge part in this in the
communication with the victim that says realize,
depending on what outcome you are looking for
against the subject, these are some of the
impacts of you not going forward with your
evidence. If you don't go forward with the
evidence, this person could directly continue to
serve in our military and perhaps another victim
is in his or her target. And I think that is a
very important thing to say and I have tried to
communicate that with my legal team and stuff as
well, and those that are communicating with the
victims.

   Understanding totally that they may
want to come forward, but I think that is an
important thing; there could be another victim if
we don't try to get this person prosecuted and
out the door.
CAPT. MILLICAN: I would submit the way you phrased the question, sir, that someone came forward with a credible claim.

MEMBER WALTON: Right.

CAPT. MILLICAN: I do not view any claim through that filter. A claim is a claim. So anyone who steps forward and says I am victim of sexual assault, that's a claim. And that claim is going to be investigated.

Now, if the victim says I don't want to participate in this, I don't want to testify, I'm done, I won't say another word. It's already out of the bag. It's being investigated. I would submit that I have seen multiple cases in the Coast Guard where just knowing who the accused is has allowed us to go back to the accused's past assignments. It goes to our investigators who will go talk to crew members on those previous units and they will find people who will talk. And we have been able to find, through past maltreatment of other shipmates, other victims of sexual assault and they were
able to come forward and bring that Member to justice.

CHAIR BASHFORD: The last question from the panel and then we will --

MEMBER HARRISON: I have a question.

CHAIR BASHFORD: I'm sorry. We'll try to get you both in.

MEMBER HARRISON: And I'll be quick.

This is just for those of you who command aviation units. If your flight surgeon declares a pilot unfit for flying, grounds him, do you have any recourse? Can you overrule that?

COLONEL GILBERT: It's are recommendation to the commander but you ignore that expert recommendation at your own peril.

MEMBER HARRISON: Thank you, sir.

CHAIR BASHFORD: That was quick.

COLONEL GILBERT: I'm sorry. There is plenty of other answers, if you guys want to qualify it.

MEMBER SCHWENK: We have a total of probably 140 years of fantastic leadership
experience up there, and I would like your
thoughts on this very important subject.

Our military justice system goes all
the way back to George Washington and the
revolutionary war. And without good order and
discipline in the military justice, I'm 100
percent certain we would not have won our
independence as a nation.

My question to you is do you see our
military justice system relevant today and
tomorrow in maintaining good order and
discipline, properly equipping and training our
military to fight and win America's wars? Give
me your thoughts.

COLONEL GILBERT: Yes, sir. I think
it's as relevant as ever. I think the techniques
have changed. As one of my peers already
mentioned, the digital evidence is very
substantial on investigations these days. You
know usually an investigator will get a text or
other electronic stuff that was provided. And
sometimes accusations are made with part of the
information but when a person being accused
provides the other part of the context from their
half of that, sometimes it is often exonerating.

So I believe the military justice is
a critical part of what we do. And I will go
back to the good order and discipline comment. I
believe allowing commanders to make these calls
with the expert advice of our very good lawyers
who are very well trained and investigators, it
is a critical part of maintaining that
organization ready to fight.

And for Soldiers, and Sailors, and
Airmen to know that they go to their chain of
command and that they've got something really
happening, it will get dealt with.

And our concern is for that Soldier
but it's also for the entire organization and the
second and third order impacts that we're all
adjudging when these things happen.

And I firmly believe without that UCMJ
process in place, we will not be able to assure
good order and discipline and we will just become
another corporation that doesn't care what
happens when people go home because we care 24/7.

CAPT. BUSHEY: I completely agree with
Colonel Gilbert. I think it's important, too, to
see that the UCMJ moves with the times. We no
longer keelhaul people like we did back in the
revolutionary times. However, there is something
out there that is unique to us and that is
putting people on bread and water. I think that
that's a large discussion item that is going
through the GI Corps right now on whether or not
we should retain that punishment or not.

But I think it's absolutely critical
for good order and discipline, just like the
colonel mentioned, if something happens within
our unit, we are a family. We work together, we
live together, we fight together. And if
something happens to that family member, you want
to make sure something is done about it. And
having that good order and discipline established
by the commanding officer or by the entire
support of the organization is completely --
well, is essential. So I think that this needs
to be retained.

COLONEL STEWART: I would say yes,
it's critical, it's relevant, and it's effective.

COLONEL NEUMAN: I concur with all of
my peers up here.

The most valuable tool that we have,
as leaders in our Air Force is to build up with
good order and discipline. And through my
experience of prosecutions and seeing how the
UCMJ is handled, at least from the Air Force
perspective, is spot on. I mean I could not be
happier with what I've seen from that.

I think having not only our legal
teams embedded into our organizations so that
they truly understand the mission and then having
the commanders fully engaged in that process is
absolutely essential in order to execute with the
flexibility and the time lines and stuff with
which we are required to act.

I think we would be a very absent
organization without that legal -- without that
authority and capability within our organizations.

CHAIR BASHFORD: Thank you all for coming. I really appreciate your answers to our questions and your explanation of how the O6 level has trained you and works. So thank you very much.

We're a little bit behind. Do you want to go straight into your presentation?

MEMBER SCHWENK: That's fine.

CHAIR BASHFORD: I saw some people pushing back from the table.

MEMBER SCHWENK: Because he knew I was going to go next.

Okay, the first thing I want to do is I want to protest what the Staff Director did to me because she knows I never wear a coat and tie. I heard she scheduled C-SPAN so I would put on my coat and tie. I really feel like you owe me something.

Okay, so if you look at page one of your outlines, you all have a little outline.
The Staff threw some slides together.

So let me start by who is the CRWG, the Case Review Working Group? It is one of our working groups and it is -- now I've been locked between the slides.

Okay, so we're sort of balanced.

Except for Cassia, who got stuck at the other end of the table, we've got everybody else over here. So Cassia is on it. Martha Bashford is on it. James Markey, Kathleen Cannon, Reggie Walton, Jennifer Long, and myself. There are seven of us.

And then we have three dedicated support people and they are Kate Tagert, Terry Gallagher, and Jan Chayt. And so that's who we are.

Now last time we talked about this was the July meeting. And at the July meeting we decided, number one, let's try to put together a working group to look at the case review mission that we have. And number two, let's ask whoever this Case Review Working Group is, to look at, as
a quick look, the case files, such as they are, 
that are available, investigative files and 
records of trial. And so CRWG was established 
and we did what you asked.

And so I'm here to tell you what 
happened. So page two, what I intend to do is 
brief our initial case review plan. So we looked 
at the stuff and we came up with a proposal to 
give you and ask for your approval. And so 
that's the second part.

Page three, members of the CRWG, 
here's what we did. We reviewed nine CID case 
files, those are Army criminal investigative 
files, seven AFOSI files, those are Air Force, 
ten NCIS, Navy and Marine Corps, and five records 
of trial.

We also met yesterday for two hours 
and that's how we came up with the proposal 
that's in front of you.

Page four, so the next three pages, 
pages four, five, and six are the -- the first 
one is the what of what we've proposed. The
second one is the why we're proposing it. And the third one is the how we think we're going to do it.

So here's the why and this is going to sound familiar because at the July meeting, when we were brainstorming this, Chair Bashford said you know maybe this group, whatever it is, should first look at preferred charges because nobody's really looked at that too much and between 70 and 80 percent of all of the allegations that have been investigated, you never get preferred charges. So what happened between the allegation and the decision not to even charge in the case? So she suggested that. And if you read the first bullet, you will see that that's exactly what we're proposing.

Let us start by looking at the investigations of penetrative offenses not resulting in the preferral of charges. As I said, the numbers we've seen are somewhere between 70 and 80 percent of all the cases that's the end of it.
Only military subjects, adult victims, which is 16 and over in the military, and investigations closed in Fiscal Year 2017. So those are what we looked at.

Yes?

MEMBER MARKOWITZ: So just a very quick question. Can you help me understand why the choice was to look at adult victims 16 and over and not 18 and over?

MEMBER SCHWENK: Because adults are considered -- people 16 and over are considered adults under the UCMJ for our purposes.

MEMBER MARKOWITZ: Okay.

MEMBER SCHWENK: So that's why we -- so as a what that is the category of cases and that is how convening authorities look at them and commanders look at them and lawyers advise appropriately.

MEMBER MARKOWITZ: Thank you.

MEMBER SCHWENK: So that's why we did it. Sure.

Okay, yes, interrupt at any time. My
philosophy on that is if it's a question that I think is not going to get me in any trouble, I will answer it. If I'm worried, then I'm going to ask somebody else to answer it. If they get in trouble, it won't be me.

Okay, next page, the why. One, this category of cases not covered by prior panels. Nobody's done any in-depth looking at it. And so even the database that the Data Committee that Cassia is running is mostly post-preferral cases. So, we want to start looking at these pre-preferral decision cases.

There is a congressional interest. I believe the Staff met recently with some of the staff members from Senator Gillibrand's office and they indicated that this was a really good thing for us to sink our teeth -- from their perspective, sink our teeth into and see what we can come up with.

There's dueling data. We've all seen it on the one hand, the numbers themselves make you wonder how can 70-80 percent of all
allegations not even result in charges.

On the other hand, JPP reported that there is lots of trial counsel out there who say oh, we're taking a lot of not very good cases to court-martial, which means somebody preferred the charges to begin with.

So, we would like to try to drill down and see if we can't come up with categories of cases that helps explain what the numbers indicate.

Fourth bullet, case categorization --

yes?

MEMBER CANNON: Can you move the slides, please?

MEMBER SCHWENK: Oh, move the slide.

Thank you.

Okay, fourth bullet. Sorry. I apologize to the audience.

Case categorization is not uniform.

By case categorization we mean the reasons given back to the investigative agencies for why there was no preferral and those reasons differ from
Service to Service and they are not as clear as they might be what they mean. So we want to look into that and see if we can maybe propose something that might make it more uniform and clearer for people reviewing in the future.

The next one, capture preferred case. So we also want to capture, while we're at it, we're going to look at the ones that did not get preferred but we want to capture the data of those that were preferred so that we can make comparisons later on.

So if we came up with the amount of alcohol, you know the cases that have alcohol issues with them in the non-preferred and starting think, hmm, I wonder if alcohol is a significant factor. We'd want to see how many cases were preferred and what the alcohol number was there. And if it's the same, we might draw a different conclusion than we would if they differed. So, that'll be our proposal follow-on step two.

The method of review. So the Staff
will review the statistically valid sample. We
don't know the numbers yet so we have to find the
numbers. Then, based on that, we'll figure out
how best to attack them. But of course being
members, we're going to allow the Staff to do all
the really hard work.

Then we will -- the Staff will follow
the guidance that we give them as we develop more
information. Then we'll collect the data. We'll
try to identify trends and issues. And then we
will try to come back and report to you in
January about what we've done in the three months
between now and the January meeting.

So, those are our what, why, and how
to get started on data -- I mean on case review.
And we're all questions and answers.

Yes, Jennifer?

MEMBER MARKOWITZ: So I do not mean to
sound like a broken record.

MEMBER SCHWENK: Yes.

MEMBER MARKOWITZ: It should be of no
surprise that I am going to ask you this. Has
the group figured out a way to deal with protected health information and genital photography in the case files?

MEMBER SCHWENK: Okay, the approach we're going to take is one, we make -- first off, yes. And the comment last time was an excellent comment and we're concerned about protecting the privacy of the individuals also.

So we looked at it in two ways. One, our access to that is governed by the individual services when we make a request to go see it. So we'll make a request to them and they'll tell us yes or no. And they'll either give us access to all the files, whatever they give us access to.

If what they give us access to allows us to do what we think we need to do the mission that we're proposing to do for the DAC-IPAD, that's that. If it doesn't, then we'll come back and tell the DAC-IPAD and you can decide whether we want to fly it through up the legal chain, see if there is a legal basis or not. So that's number one.
But that's not the whole answer because we also feel like we have an obligation in how we look at the information and what we report. The way we do it, if we do get -- we're going to get personally identifiable information. We are going to get stuff that we need to be sensitive about including types of information that you're talking about, Jennifer. We want to make sure that if we are given access to it, that we take whatever steps are necessary to ensure that we don't bring it with us into any written documents, into any general discussion, that we just leave it as information we saw and we drew some conclusions here we believe but we're not going to talk about the information in individual cases. So, that's where we're at.

CHAIR BASHFORD: There also, sensitive to that, looking through the records that I saw, I saw references in medical records that photographs were taken. The actual photographs were not part of the file.

MEMBER SCHWENK: Right and we're told
that is supposed to be the way it is.

MEMBER MARKOWITZ: Yes.

MEMBER SCHWENK: We'll see when we get there. But anyway, so yes, both of those were handled.

MEMBER MARKOWITZ: Thank you.

MEMBER SCHWENK: Other questions?

MEMBER BRISBOIS: Isn't, because it's a working group, it's not covered, it's not considered public data.

MEMBER SCHWENK: Right.

MEMBER BRISBOIS: So no one gets access to it.

MEMBER SCHWENK: Right. And we just need to -- well, we want -- one, we don't want to -- I think Jennifer's point, the way I took it at least, we shouldn't even be having it we shouldn't be having it.

MEMBER MARKOWITZ: Right. And so that's governed by whoever gives us access from the Department of Defense and whatever they say goes, unless we all decide to file an appeal to
the Department and let them resolve the issue.

The second thing is your point. We're not going to you know see -- it's not going anywhere out of the working group, unless we bring it here. Now, if we bring it here, then it is public. So we have to be careful what we bring in and in what form so that we don't --

DR. SPOHN: But we would only bring aggregate data here.

MEMBER MARKOWITZ: Yes.

MEMBER SCHWENK: Right. Right. So we don't want to do individual stories or anything like that.

Yes, Meg?

MEMBER GARVIN: And this may be for either that back table over there or this table back here.

MEMBER SCHWENK: Could you put those over there?

MEMBER GARVIN: Do we know who -- so when the request is going to DoD, do we know how that is being processed? And one of the things
is there is disagreement over privacy issues sometimes. So for instance, the victim may have a very different legal interpretation over ownership of data than someone else in the system. And so I'm just curious. Do we know the process by which that is being determined?

MEMBER SCHWENK: I don't. I mean I know from other committees that I've been involved with the committee makes the request. It goes through the Service -- if it is Service information, it goes through the Service contacts. They take it back. They do whatever is appropriate within their Service and you get an answer. You either get all the information you wanted, some of the information you wanted, or let's talk about it and no information that you wanted.

But the committee -- it's up to the Service.

COLONEL WEIR: Basically, all of you fall under the Privacy Act. And I fall under as the Uniformed Member of this Staff.
So you have the same responsibilities to protect privacy information the same responsibility not to release privacy information. There is a process for that through FOIA.

Since you are considered special Government employees or regular Government employees, based upon the status of a committee member, you are not authorized to divulge privacy information that belongs within the organization.

So if you receive information, you would guard that, just as I would have that same responsibility.

None of us here are release authorities for any information. I don't anticipate, based upon what the committee is going to do that there would be a need for that but we've worked with the investigative services and they're happy with the arrangement and relationship that we have and will safeguard it.

MEMBER SCHWENK: Any other questions?

Oh, Meg, yes.
MEMBER GARVIN: I apologize that I was not here in July. So I did read all the materials but you can also redirect me to that if the answer is in there.

So I understand the what, and the why, and the general how. But what are the research question that -- what are we looking for in the files, rather than just reading the files and then having questions? What are we looking for -- what are you looking for in the files or is it to do a test first and then identify questions?

And what is that process?

Because normally you come up with your research questions first. You then look at data and see. So I am just curious about that.

MEMBER SCHWENK: Yes, we came up with a whole list of data points that we want the Staff to collect from each file they go through so that we can then pull the data points together, see what they tell us or don't tell us, and then go back and look for more data, or what have you. And we have a list.
DR. SPOHN: But the specific research question is what are the factors that predict whether a case would be preferred or not. So can we identify -- what are the correlates of preferral.

MEMBER GARVIN: Thank you.

So what are the correlates, if any and what percentages. Thank you.

MEMBER SCHWENK: Other questions?

Great. I guess I'm done.

CHAIR BASHFORD: Well then we need the committee to vote on the proposed initial case review plan. This vote is aye or nay.

Because we are large in numbers, I'm just going to go around -- is that your verdict?

MEMBER SCHWENK: No, I'm sorry. I vote approve.

CHAIR BASHFORD: Okay. Ms. Long.

MEMBER LONG: I vote approve.

CHAIR BASHFORD: Okay and --

MEMBER KRAMER: Approved.

CHAIR BASHFORD: Thank you. Ms.
Cannon.

MEMBER CANNON: Approve.

CHAIR BASHFORD: Sergeant Markey.

MEMBER MARKEY: Approve.

CHAIR BASHFORD: The chair approves.

MEMBER TOKASH: Meghan Tokash, approve.

CHAIR BASHFORD: Approved.

MEMBER MCKINLEY: Approve.

DR. SPOHN: Approve.

MEMBER BRISBOIS: Approve.

MEMBER ANDERSON: Marcia Anderson approves.

MEMBER HARRISON: Keith Harrison approves.

MEMBER GARVIN: I approve and after the vote I would like to make a few other comments.

CHAIR BASHFORD: Have you commented?

MEMBER MARKOWITZ: I approve with reservation but I do want to say I have significant concerns about the privacy issues
that we've discussed. I don't feel like they've been fully addressed. I think they can be and I hope we'll have the opportunity to do that.

But I do approve.

MEMBER GARVIN: And Madam Chair, my comment is actually regarding that --

CHAIR BASHFORD: Oh, okay.

MEMBER GARVIN: -- more than anything else, which is I, too, have concerns about the privacy and process because I haven't been involved in all the conversations. And so I certainly recognize that.

But I hope that there is some sort of notification happening to survivors that may fall in the pool of time that we might be pulling from that their files may be at issue. So very much like what we're doing nationally with regard to rape kits that have been on a shelf. There has been mass notification to people in that pool that your kit may now be tested and you may have some rights and a stake in this process. There has been notification processes put in place for
that.

And so I don't know the right way to go about it but I do have concerns and some sort of notification to those victims who may fall in the pool that might end up being considered seems appropriate.

CHAIR BASHFORD: Thank you for sharing your concerns. So it was, the Case Review Plan was unanimously approved with two members with some privacy reservations.

And Judge Grimm and Mr. Kramer were not present. Everybody else was present and approved.

Now, Ms. Garvin, you had another comment you wanted to make to the committee.

MEMBER GARVIN: Yes. Sorry, everyone. I know the time. This will literally be two minutes.

It was just in relationship to we heard wonderful explanations from all of the panels over the past two days and one of them was the Special Victims' Legal Counsel Panel from
yesterday. And there was some discussion, Marsy's Law from California was brought up.

I just wanted to flag a couple of things. The JPP previously took a lot of information in about the role of SVCs and the VLCs, including comparative data about what happens in the civilian world with victim counsel. I think that would be very informative to folks to go back and look at that because victim counsel has existed in the civilian world for quite a long time, with the most recent iterations coming in 2004 in the federal system and in the Federal Crime Victims' Rights Act, which the NDAA's Article 6b rights were directly pulled from in our model. So there are examples of victims' counsel doing pretrial motion practice, trial practice, and post-conviction practice in the civilian world that haven't morphed to SVC and VLC practice. And vice-versa because, honestly, the VLCs and SVCs that we heard from yesterday and some of whom are still in the room right now are really setting the bar
for the civilian practice now and the world kind
of inverted on me over the last decade.

But there is a lot there to understand
what their role is as we are investigating this.
So I would just recommend the prior JPP work to
them and then also some civilly comparative
analysis.

CHAIR BASHFORD: Well and Major King,
I believe we are done. If you could, officially
close us.

MAJOR KING: Yes, ma'am. In that
case, this closed meeting is officially closed.

CHAIR BASHFORD: At 2:55 -- 2:56.

(Whereupon, the above-entitled matter
went off the record at 2:57 p.m.)
CERTIFICATE

This is to certify that the foregoing transcript

In the matter of: DAC-IPAD Public Meeting

Before: US DOD

Date: 10-20-17

Place: Arlington, VA

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

[Signature]
Court Reporter