

UNITED STATES DEPARTMENT OF DEFENSE

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

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PUBLIC MEETING

+ + + + +

FRIDAY,
JANUARY 19, 2018

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The Committee met at One Liberty
Center, Suite 1432, 875 North Randolph Street,
Arlington, Virginia, at 8:45 a.m., Martha
Bashford, Chair, presiding.

PRESENT:

MS. MARTHA BASHFORD, Chair
MAJ. GEN. MARCIA M. ANDERSON, USA, Ret.
THE HON. LEO I. BRISBOIS
MS. KATHLEEN CANNON
THE HON. PAUL W. GRIMM
MR. A.J. KRAMER
MR. JAMES MARKEY
DR. JENIFER MARKOWITZ
CMSAF RODNEY J. MCKINLEY, USAF, Ret.
BRIG. GEN. JAMES SCHWENK, USMC, Ret. *
DR. CASSIA C. SPOHN
MS. MEGHAN TOKASH

WITNESSES:

DR. NATHAN GALBREATH, Deputy Director, Sexual
Assault Prevention and Response Office,
U.S. Department of Defense

STAFF:

CAPTAIN TAMMY P. TIDESWELL, JAGC, U.S. Navy -
Staff Director
COLONEL STEVEN B. WEIR, U.S. Army, JAG Corps,
Deputy Staff Director
MS. JULIE CARSON, Legislative Liaison/Attorney
Advisor
DR. JANICE CHAYT, Investigator
MS. THERESA GALLAGHER, Attorney Advisor
MR. GLEN HINES, Attorney Advisor
MR. CHUCK MASON, Attorney Advisor
MS. STAYCE ROZELL, Senior Paralegal
MS. TERRI SAUNDERS, Attorney Advisor
MS. KATE TAGERT, Attorney Advisor
MAJOR ISRAEL KING, USAF, Alternate Designated
Federal Official

* Present via telephone

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Public Comment n/a

Public Meeting Adjourned 146

P-R-O-C-E-E-D-I-N-G-S

(8:50 a.m.)

CHAIR BASHFORD: Major King, would you call us to order?

MAJOR KING: Yes. At this point, the meeting of the DAC-IPAD is officially open.

CHAIR BASHFORD: Thank you. Thank you, Major King, and good morning. I'd like to welcome the members, participants, everybody in attendance to the fifth meeting of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, or the DAC-IPAD.

The Secretary of Defense appointed 16 members to the Committee. All of the members are present, with the exception of Ms. Garvin, Dean Harrison, Ms. Long, and Judge Walton, and Brigadier General Schwenk is participating by telephone. Is he phoned in?

CAPT. TIDESWELL: Yes, ma'am, he is.

CHAIR BASHFORD: Okay. Thank you.

The DAC-IPAD was created by the Secretary of

1 Defense in accordance with the National Defense
2 Authorization Act for fiscal year 2015, as
3 amended.

4 Our mandate is to advise the Secretary
5 of Defense on the investigation, prosecution, and
6 defense of allegations of sexual assault and
7 other sexual misconduct involving members of the
8 Armed Forces.

9 Today's meeting is being transcribed,
10 and the complete written transcript will be
11 posted on the DAC-IPAD website.

12 The written materials provided to the
13 Committee members in preparation for the meeting
14 are also available on the DAC-IPAD website.

15 Before we get started, I would like to recognize
16 and introduce our Military Service
17 representatives who will assist the Committee
18 with any policy questions that might arise today
19 during our discussion.

20 Could you all each please stand and
21 just identify yourselves for the Committee and
22 for the public?

1 LT. COLONEL VERGONA: Hi. I'm
2 Lieutenant Colonel Mary Catherine Vergona, and I
3 represent the Army.

4 MR. McCLEARY: And I'm Steve McCleary.
5 I'm here on behalf of the Coast Guard.

6 MR. MARTINSON: I'm Jim Martinson
7 representing the Navy.

8 MAJOR SHEW: Good morning, everybody.
9 Major Wayne Shew with the Marine Corps.

10 MAJOR AHLERS: And good morning. I'm
11 Major Joe Ahlers with the Air Force.

12 CHAIR BASHFORD: Thank you very much.

13 So this meeting will begin with a
14 presentation on expedited transfer data by Dr.
15 Nate Galbreath, the Deputy Director of the
16 Department of Defense's Sexual Assault Prevention
17 and Response Office.

18 Dr. Galbreath's presentation will be
19 followed by three DAC-IPAD working group
20 presentations and deliberations. The Policy
21 Working Group will provide a presentation on the
22 Department of Defense expedited transfer policy,

1 the Data Working Group will provide a
2 presentation on fiscal years 2012 to 2016 sexual
3 assault case adjudication data, and the Case
4 Review Working Group will provide a presentation
5 on their case review strategic plan and
6 methodology.

7 Each public meeting of the DAC-IPAD
8 includes a period of time for public comment, but
9 we have received no requests for public comment
10 at today's meeting.

11 If a member of the audience would like
12 to comment on an issue before the Committee, you
13 should direct your request to the DAC-IPAD Staff
14 Director, Captain Tammy Tideswell. All public
15 comments will be heard at the end of the meeting
16 and at the discretion of the Chair. Written
17 public comments may always be submitted for
18 Committee consideration.

19 So thanks, everyone, for joining us
20 today, and I'd like to welcome our first speaker,
21 Dr. Nate Galbreath. Thank you. We look forward
22 to hearing from you.

1 DR. GALBREATH: Thank you very much.
2 My goal is to -- the staff asked me to come back
3 and answer a few questions that we had from last
4 time we were here. My goal is to answer those
5 questions and get off the stage as soon as
6 possible, because I know you've heard from me
7 quite a bit. So that is my goal.

8 So I did take the opportunity to pass
9 out a paper to each of you before the meeting
10 started. And so I'm using this paper as the
11 basis for some of my comments. And in addition
12 to that, we have also done some analysis of the
13 Request for Information that the Committee made
14 that was delivered to you I believe back in
15 December. And so some of my comments are also
16 based on that analysis.

17 I will tell you that it's rather
18 complicated because of all the different cases
19 that are there, so I have agreed to work with the
20 staff to help them walk through the basis for our
21 analysis and just kind of hit the high points
22 this morning.

1 What we did is, the information that
2 we looked at at SAPRO is a little bit different
3 than the Request for Information that the
4 Committee made, in that we looked at all
5 expedited transfers compared to all unrestricted
6 reports without expedited transfers since the
7 time of the policy inception.

8 And so, on that first page here, on
9 the table, that's the total count of cases that
10 we looked at. Unrestricted cases was about
11 14,518. And there in that total number there
12 were 2,307 cases with at least one expedited
13 transfer request.

14 And so that's, as you see, that's
15 about 16 percent of the sum total, and so that's
16 kind of the universe of cases that we're looking
17 at. And, again, this is an across-the-department
18 look. So this is all four Services combined.

19 The next table that you see, Table
20 Number 9, you can see the breakdown of the cases
21 that we had. In the first column are the cases,
22 the 2,300-some cases that had at least one

1 transfer request. The second column is
2 unrestricted reports with no transfer requests,
3 and then the total in the third column.

4 And as you see, the cases with
5 expedited transfer requests were weighted
6 slightly heavier in the penetrating crimes. So
7 this would be the allegations that you see here
8 with rape, sexual assault, and then prior
9 versions of the UCMJ with aggravated sexual
10 assault, indecent assault, and non-consensual
11 sodomy.

12 These cases here -- and that's
13 Article 125 of the UCMJ. So just to give you an
14 idea, so cases with expedited transfer requests,
15 about 54 percent of those involved a penetrating
16 crime, and those are the crimes that the law
17 considers to be more serious than the sexual
18 contact crimes.

19 So the first question I was asked to
20 answer was the statistics on the effect of
21 expedited transfer on victim participation. So,
22 and I'm using the third table to talk through my

1 next few points here. And I realize that this is
2 not going to be an easy table to follow, because
3 I know you're going to want to do the math along
4 with me.

5 But this largely follows our waterfall
6 charts that we do every year, and so this
7 corresponds very heavily to the configuration of
8 cases that we use in order to -- in order to
9 report out the dispositions of cases to Congress.

10 But what I would offer to you is that
11 what this table essentially tells us is that we
12 found no appreciable difference in any of the
13 case disposition outcomes across the board for
14 expedited transfers or cases -- cases with an
15 expedited transfer or cases without those. And
16 in some, expedited transfers appear to have
17 little to no impact on case dispositions within
18 the military justice system.

19 Why I say that is if I take a look at
20 the share of cases across the board, I can see
21 that about 68 percent of cases with at least one
22 transfer request received command action at the

1 same rate of cases that didn't have an expedited
2 transfer request.

3 Same thing, if you go down to the
4 other bold type at the bottom with the command
5 action precluded. These are cases that didn't go
6 forward. About 32 percent or about a third of
7 them also in both categories could not receive
8 command action for the reasons listed below.

9 So if you want to argue that transfers
10 somehow impede prosecution, we don't see any
11 evidence of that in the numbers. In fact, sexual
12 assault cases with transfers are preferred to
13 court-martial at just about the same rate as
14 sexual assault cases without a transfer.

15 So if you're going to argue that
16 victims are somehow making up allegations just to
17 get a move somewhere, then I would expect to see
18 higher rates of cases not proceeding to court-
19 martial in those cases involving a transfer
20 request. And that just simply isn't the case of
21 what you see here.

22 So cases that could be acted upon due

1 to insufficient evidence of a crime to prosecute
2 are about the same. You can see that down under
3 the command action precluded.

4 In addition, you're going to see that
5 victim declined to participate in cases. It's
6 just about four percentage points higher than
7 cases without a transfer request, so that's
8 really hardly convincing evidence that this is
9 somehow being abused.

10 And then, in addition to that, for
11 other reasons that -- the point that I would
12 really look for is the cases that are determined
13 unfounded. If you want to argue that a victim is
14 somehow making up an allegation just to get a
15 move, and there's no evidence that any crime
16 occurred, then I would expect to see a high rate
17 of unfounded cases, and we just simply did not
18 see that.

19 And so, in sum, what I would tell you
20 is is that so expedited transfer cases, if you
21 receive one or not, it just doesn't seem to have
22 any impact on how cases are disposed of in the

1 system, looking from all the years that we've
2 been doing this, and as a DoD-wide look.

3 So the second question I was asked to
4 answer is: what about statistics about the
5 prevalence of abuse of the expedited transfer
6 program? So when I got that question, I had to
7 kind of scratch my head a little bit because I'm
8 not exactly sure what an abuse is.

9 So, and why I say that is, we'd have
10 to figure out what constitutes an abuse. So my
11 understanding is that an allegation has been made
12 that victims lie about a sexual assault to get a
13 better assignment. So I would ask: what is a
14 better assignment, and who is going to be the
15 judge of that?

16 For example, I spent three years at
17 beautiful Minot Air Force Base, North Dakota.
18 Some people would argue that that is a really
19 cold and awful place to be, especially this time
20 of year.

21 However, I also know that a lot of
22 people like homesteaded at Minot Air Force Base,

1 North Dakota, because of the low crime rate,
2 great for families, and it was just -- for some
3 people, they really like that part of the
4 country.

5 On the flip side, I can tell you that
6 working in clinical psychology and talking to my
7 clinical psychologist colleagues that were
8 stationed at Hickam Air Force Base, Hawaii, just
9 as many folks came in complaining about Hawaii as
10 the location to be stationed.

11 People that grow up in the continental
12 United States find that being assigned sometimes
13 to an island is very limiting, and so they get
14 the island fever and they don't want to be there.

15 So I think a good assignment is
16 largely in the eye of the beholder. And folks
17 that have experienced trauma are probably looking
18 for places that get them the support of family
19 members, that get them out of environment that
20 they consider to be a reminder of the trauma that
21 they may have experienced, and so it's hard to
22 argue that one base is better than another.

1 And I guess that the people that are
2 making the allegation are going to be the
3 arbiters of what they think the abuse might be.
4 I just don't see it like that.

5 So, but nonetheless, we took a look at
6 the data that the Services submitted to you, and
7 like I said, we'd be happy to share our analysis
8 with the DAC-IPAD staff, because it is really too
9 detailed to jump into. But what I would say is
10 is that what we find is that people largely
11 transfer in between the Services' large
12 population centers.

13 And this is very similar to the
14 analysis that the Navy did that they told you
15 about the previous meeting. And so if you take a
16 look at the Marine Corps data, you will notice
17 that most of the Marine Corps transfers between
18 their bases in California and North Carolina,
19 where most of their bases are, about 26 percent
20 of Marine Corps cases transferred out of Japan,
21 because that's, again, a large population center.

22 And then for the Army, we saw Georgia,

1 Kentucky, and Texas posts as being locations both
2 receiving and losing personnel. About 12 percent
3 of Army transfers in 2016 came out of South
4 Korea.

5 With the Air Force, we didn't see any
6 appreciable trend, in that we set a trend -- we
7 just set it at about 10 percent of cases, if we
8 saw 10 percent or more for the Air Force. We saw
9 no real trend in places that people were leaving,
10 and like I said is we'd be happy to share this
11 and talk it over with the staff and then they can
12 give you more information on that.

13 So if you want to argue that maybe
14 perhaps soldiers made up allegations to move from
15 South Korea or maybe that Marines made up
16 allegations to get out of Japan, then the data
17 should show substantive evidence that those cases
18 don't go to trial or end up being unfounded.
19 And, again, that simply isn't the case. We just
20 don't see that in the data.

21 But, in sum, we see about equal
22 numbers of cases moving forward in the justice

1 system as we do in those cases not moving
2 forward. And, in fact, the difference in many of
3 these situations is really only two or three
4 cases. Even though we're talking about small
5 numbers of cases, so the percentage share that we
6 see as far as cases moving might look like a
7 difference of five or six percent, but in reality
8 those are only two or three cases, in reality.

9 So there is hardly convincing
10 evidence, at least in my mind, of any kind of
11 widespread abuse. So what I would offer to you
12 is, as you go into your deliberations today, if
13 you think that there are things that we could do
14 to better publicize this information or to get
15 after this allegation that the expedited transfer
16 is in a policy that's being abused, we certainly
17 would be happy to take that recommendation. We'd
18 be happy to do that.

19 I would also offer to you that when I
20 go out and I teach on this topic, one of the
21 first things that people do is raise their hand
22 and say, "What about that expedited transfer

1 policy?" Because they are not really sure about
2 -- it has kind of taken a life of its own as far
3 as people saying that they think it's being
4 abused, but yet when we look at the evidence
5 there isn't any there for that, at least in my
6 view.

7 And certainly if there is -- in the
8 Committee's review of the data, if there is other
9 things that you'd like us to look into, we would
10 be happy to do that.

11 So those are the two questions I was
12 asked to answer, and we also are working with
13 your staff to help kind of close the gap in some
14 of the other data that you might still be waiting
15 on the Services from. So we'll try to round that
16 information up for you as well.

17 So I stand open for questions.

18 CHAIR BASHFORD: Thank you, Dr.
19 Galbreath.

20 Questions from the panel? Well, I'm
21 not going to let you go away.

22 DR. GALBREATH: Oh.

1 CHAIR BASHFORD: Since you said you
2 would be happy to answer questions on a somewhat
3 -- actually, not really related. But I'm looking
4 at your fiscal year '16 completed cases. And on
5 the penetrating cases, which you had said the law
6 treats as more serious, 50 percent was listed as
7 command action not possible.

8 Now, I know there's a wide variety.
9 It can be an uncooperative witness, it can be
10 unfounded, insufficient evidence. Do you have
11 any further breakdown of that 50 percent number
12 as to why the cases couldn't go forward?

13 DR. GALBREATH: Absolutely. So the
14 vast majority of cases that don't go forward fall
15 into two categories. The first category is
16 insufficient evidence of a crime to prosecute.
17 And so that essentially means that not only have
18 they taken the sexual assault allegation, the
19 criminal investigators have also gone through and
20 looked for any other evidence of a crime.

21 Sometimes the sexual assault
22 allegation can't be prosecuted, but other crimes

1 can, such as false statements or simple assault
2 under Article 128, or other crimes like that that
3 might turn up in the course of the sexual assault
4 investigation.

5 But in this category, crimes that are
6 insufficient evidence of any crime to prosecute,
7 the legal review of the case disclosed there was
8 just simply no evidence of anything to go -- of
9 any crime to go forward. So that's the main
10 category in cases that don't go forward.

11 The second category -- largest
12 category of cases that don't go forward are
13 subjects whose cases could not be prosecuted
14 because the victim declined to participate. And
15 that constitutes about nine percent of all of the
16 cases that sit in front of a commander to
17 determine whether or not they can take action
18 based on the evidence in the case.

19 That has stayed remarkably the same
20 over the past four or five years. We are
21 watching very carefully to see how the addition
22 of the Special Victims' Counsel and Victims'

1 Legal Counsel program has an impact or not on
2 that percentage. But I don't have 2017 data
3 ready yet to share with the Committee, but,
4 again, that's a category that we are looking very
5 closely.

6 Certainly, a goal of the SAPR program
7 is to empower victims to participate in the
8 justice system to their comfort level. The other
9 two categories that we have for reasons why cases
10 don't go forward is statute of limitations
11 expired, and very, very, very small numbers of
12 cases fit into that, especially now that the UCMJ
13 has changed.

14 And then the last category of cases
15 that only had maybe a total of two or three cases
16 since my time in SAPRO where a victim died before
17 the prosecution could take place. And only one
18 or -- like I said, only a couple of those cases
19 ever occurred. So those are the four categories
20 for reasons why cases won't go forward as far as
21 command action precluded.

22 And then the very last category is

1 command action wasn't possible because the case
2 was unfounded, and that means that either the
3 case was determined to be false or baseless.

4 And back in 2009, the Department
5 adopted the FBI's category for false and baseless
6 cases, which essentially means that -- a baseless
7 case, which means that the case was improperly
8 recorded as a sexual assault, and a false case
9 means that evidence existed to determine that
10 either the crime did not occur or the accused did
11 not commit the crime.

12 And that percentage of cases every
13 year is only about two or three cases, two or
14 three percent of cases --

15 CHAIR BASHFORD: Two or three percent?

16 DR. GALBREATH: -- per year.

17 CHAIR BASHFORD: So you have about
18 nine percent where the victim chooses not to go
19 forward?

20 DR. GALBREATH: Yeah. It's -- because
21 we track dispositions by subject, the way that we
22 categorize those cases are -- the percentage of

1 subject cases that couldn't be prosecuted because
2 the victim declined. So I might have more than
3 one victim declining to participate in those
4 subject cases, but yes.

5 CHAIR BASHFORD: And you had said that
6 the people who choose not to go forward, it has
7 been pretty stable, about nine percent. How
8 about the insufficient evidence and the
9 unfounded, have they stayed stable, or have you
10 seen any changes over the years?

11 DR. GALBREATH: They have largely
12 stayed pretty stable over time. I have never
13 seen huge fluctuations in the numbers. What I
14 would tell you is is that proportionally the
15 largest number of cases that we can't prosecute
16 are due to insufficient evidence. And then the
17 second -- proportionally, the second largest
18 category of cases are victims declining to
19 participate, and then very, very small cases.

20 So those proportions stay relatively
21 similar, although of course, you know, numbers
22 fluctuate year to year.

1 CHAIR BASHFORD: Anything further for
2 Dr. Galbreath? Well, thank you for coming.

3 DR. GALBREATH: Thank you.

4 CHAIR BASHFORD: We are far ahead of
5 schedule. Is the Policy Working Group prepared
6 for their presentation?

7 CHIEF MCKINLEY: Yes, ma'am.

8 CHAIR BASHFORD: All right. Take a
9 moment, if you need, to get organized. Okay.

10 CHIEF MCKINLEY: Good morning.

11 Based on the strategic planning
12 discussion of the DAC-IPAD at its July 21, 2017,
13 public meeting, the Committee agreed to set up a
14 Policy Working Group to look at the issues of the
15 DoD, expedited transfer policy for active duty
16 Service members, who have been sexually
17 assaulted.

18 Article 140(a), UCMJ, regarding the
19 military justice data collection and management,
20 training for convening authorities, and training
21 for defense counsel. I am the Chair of the
22 Policy Working Group, which is composed of seven

1 members of the DAC-IPAD, Retired Marine Corps
2 Brigadier General James Schwenk, Retired Army
3 Major General Marcia Anderson, Dr. Jenifer
4 Markowitz, Mr. A.J. Kramer, Dean Keith Harrison,
5 Ms. Meg Garvin, and myself.

6 The Policy Working Group held its
7 first preparatory session on October 19, 2017,
8 where the members decided to first review the DoD
9 Expedited Transfer Policy and commander legal and
10 sexual assault prevention and response training.

11 The purpose of today's presentation is
12 to provide an initial assessment of the
13 Department of Defense expedited transfer policy
14 and its implementation in the Services and for
15 the full committee to deliberate and approve
16 findings and recommendations on this topic.

17 The framework of the Policy Working
18 Group has followed, and it has reviewed -- and
19 its review is the summarized testimony and
20 information it received from specific findings of
21 fact that have, in turn, led to the proposed
22 recommendations related to the expedited

1 transfers.

2 To conduct its review, the Policy
3 Working Group first issued a formal Request for
4 Information to DoD and the Services in September
5 2017 regarding all expedited transfer requests
6 and transfers of accused Service members related
7 to sexual assault allegations that were first
8 made in fiscal year 2016, as well as information
9 on commander legal and SAPR training.

10 At its October 19 and 20 public
11 meeting, the DAC-IPAD heard testimony from DoD,
12 SAPRO, and Service personnel, Special Victims'
13 Counsel, and Victims' Legal Counsel about their
14 experience with the expedited transfer program.

15 The Committee also heard from mid-
16 level commanders and special court-martial
17 convening authorities about their legal and
18 sexual assault-related training, as well as their
19 experiences handling expedited transfer requests
20 from Service members under their command.

21 To gain additional perspectives on
22 expedited transfers, the Policy Working Group

1 held a preparatory session on December 1, 2017,
2 where the members heard from DoD and Service
3 Family Advocacy Program personnel, Service senior
4 prosecutors, Service members who have received
5 expedited transfers, and Special Victims' Counsel
6 and Victims' Legal Counsel from all Services.

7 The Policy Working Group also reviewed
8 the expedited transfer data included in the
9 Service enclosures to the fiscal year '16 DoD
10 SAPRO Annual Report to Congress on sexual assault
11 incidents, as well as a recommendation of the
12 Judicial Proceedings Panel regarding expedited
13 transfers.

14 The testimony of stakeholders from
15 commanders to practitioners to victims themselves
16 was overwhelmingly supportive of the expedited
17 transfer policy as an effective mechanism to
18 assist members who are victims of sexual assault
19 in their recovery.

20 The Policy Working Group's overall
21 assessment of the expedited transfer policy is
22 that it is an important SAPR initiative offered

1 by the military, and we strongly recommend that
2 it be continued, and that improvements continue
3 to be made to the policy.

4 Specifically, our working group
5 recommends improvements centered on two issues.
6 And with that, I will hand the presentation off
7 to my colleague, Dr. Markowitz.

8 DR. MARKOWITZ: Thank you, Chief. I
9 will try to speak up as well as I can, getting
10 over this cold, but let me know if you can't hear
11 me.

12 The first issue of concern leading to
13 a recommendation by the Policy Working Group is
14 that many Service members have a mistaken
15 perception that victims abuse the expedited
16 transfer policy.

17 So our first proposed finding. A
18 number of SVCs, VLCs, and prosecutors reported to
19 the Policy Working Group that there is a
20 widespread perception across the Services that
21 victims are using the expedited transfer policy
22 to transfer to more favorable locations.

1 This concern was also raised by the
2 Judicial Proceedings Panel in its September 2017
3 report on concerns regarding the fair
4 administration of military justice in sexual
5 assault cases. The JPP's concerns stem from
6 military counsel interviewed by members of the
7 JPP subcommittee on a non-attribution basis
8 during installation site visits conducted over
9 the summer of 2016, who perceived that Service
10 members were abusing the policy to transfer to
11 more favorable locations.

12 Our second proposed finding. Several
13 presenters also noted that the Service members'
14 perception of abuse of expedited transfer policy
15 may have an effect on court-martial -- on courts-
16 martial, since defense counsel may attack the
17 credibility of victim witnesses by offering an
18 expedited transfer request as a motive for
19 fabrication of sexual assault allegation.

20 Our third proposed finding.
21 Notwithstanding these apparently pervasive
22 misperceptions about expedited transfers, the

1 presenters, the DAC-IPAD, and the Policy Working
2 Group heard from overwhelmingly testified that in
3 their experience with transfer requests they had
4 not encountered abuse of that policy.

5 Our fourth proposed finding. The
6 Policy Working Group also reviewed the
7 information on expedited transfer requests
8 reported by the Services in the FY16 DoD SAPRO
9 report to Congress on incidents of sexual
10 assault. According to this report, only 20
11 percent of Service members who made an
12 unrestricted report of sexual assault requested
13 an expedited transfer.

14 Further, although the Policy Working
15 Group is still reviewing the data it received
16 from the Services in response to its Request for
17 Information regarding the expedited transfer
18 request made in FY2016, there were no obvious
19 indications of abuse of the policy presented in
20 the data.

21 As a result of these findings, the
22 Policy Working Group makes two proposed

1 recommendations to the DAC-IPAD for the
2 Committee's consideration and approval. The
3 first recommendation is that the Secretary of
4 Defense and the Services take action to dispel
5 the misperception of widespread abuse of the
6 expedited transfer policy, including addressing
7 the issue in the training of all military
8 personnel.

9 The second recommendation is that the
10 Secretary of Defense identify and track
11 appropriate metrics to monitor the operation of
12 the expedited transfer policy and any indications
13 of abuse.

14 The Policy Working Group will continue
15 to evaluate the requested data on expedited
16 transfer requests made in FY16 and associated
17 training regarding the policy.

18 Are there any questions at this point,
19 or discussion from the Committee on these
20 findings and these recommendations?

21 CHAIR BASHFORD: Ms. Cannon?

22 MS. CANNON: I commend the policy-

1 making group. I think you did an outstanding job
2 of gathering all of this information. In
3 recounting the people that have testified and the
4 organizations that have come before you, I note
5 that there were no defense attorneys or
6 investigators presenting any information to you.
7 Do you think that that would be of assistance at
8 all in the input of information that you have
9 received?

10 CHAIR BASHFORD: Chief, do you want
11 to --

12 CHIEF MCKINLEY: I think that it would
13 be beneficial. You know, overwhelmingly, the
14 evidence that was presented to us from all the
15 people we had before us indicated no abuse
16 whatsoever, and the program is overwhelmingly
17 successful. I think there is a big education
18 thing that needs to go out to all the military,
19 because I think on the most part people don't
20 know about -- enough about the program until
21 after they are sexually assaulted.

22 So, therefore, they are not trying to

1 abuse the program to go out, but to look into
2 those others and get their response would be a
3 positive thing.

4 MS. CANNON: Well, certainly the data
5 and all of that that has been gathered, which is
6 incredible support for what you're recommending.
7 I just mean in terms of total transparency and
8 the integrity of the report. Would that be
9 something you would want to do?

10 CHIEF MCKINLEY: I think that we can
11 look at it. I think we can still gather that
12 information and put that in with the report also.

13 CHAIR BASHFORD: I want to second Ms.
14 Cannon's congratulations to the Policy Working
15 Group. They've done very hard work. And I think
16 what you have found is pretty much borne out by
17 what Dr. Galbreath said, and I think people would
18 be surprised to know that across all of the
19 Services, which includes the Navy where people
20 are stuck on a ship together, that it seems as
21 though only 16 percent of people even asked for
22 an expedited transfer.

1 I think the perception, which seems to
2 be wrong, is that it's much higher.

3 CHIEF MCKINLEY: Absolutely, ma'am.
4 We found that, and, you know, there's many out
5 there in the active duty military that really
6 feel there is an abuse of this, but there needs
7 to be an education process across the board that
8 this is a very good program, that it does not
9 affect the outcome of -- you know, of getting a
10 conviction or anything else like that, but also
11 that if there are victims that they know about
12 this program.

13 Not only do they know about it, but
14 the commanders and the persons in the leadership
15 chain are very well-educated about it on the
16 losing end and also on the gaining end. So there
17 is still a lot of work to do to make this program
18 more viable and more successful for the victims.

19 CHAIR BASHFORD: And so with respect
20 to the -- you're saying you're going to continue
21 to evaluate requested data and associated
22 training. As part of that, can you take Ms.

1 Cannon's friendly request to have some input from
2 defense or investigators --

3 CHIEF MCKINLEY: Absolutely.

4 CHAIR BASHFORD: -- going forward?

5 CHIEF MCKINLEY: We've got notes on it
6 right now.

7 CHAIR BASHFORD: Okay. Any other
8 comments?

9 DR. MARKOWITZ: Then, at this point,
10 I make a motion that the DAC-IPAD approve issue
11 1, findings 1 through 4, and recommendations 1
12 and 2 related to the mistaken perception of abuse
13 of the expedited transfer policy as discussed.

14 MR. KRAMER: Second it.

15 CHAIR BASHFORD: I'm going to go
16 around, then, just for the record. Mr. Kramer,
17 do you have any objection to approving the issue
18 and findings?

19 MR. KRAMER: No.

20 CHAIR BASHFORD: Ms. Anderson?

21 MG ANDERSON: No.

22 CHAIR BASHFORD: Judge Grimm?

1 JUDGE GRIMM: No objection.

2 CHAIR BASHFORD: Judge Brisbois?

3 JUDGE BRISBOIS: No.

4 CHAIR BASHFORD: Ms. Tokash?

5 MS. TOKASH: No objection.

6 CHAIR BASHFORD: Dr. Markowitz?

7 DR. MARKOWITZ: No objection.

8 CHAIR BASHFORD: The Chair has no

9 objection. Chief McKinley?

10 CHIEF MCKINLEY: No.

11 CHAIR BASHFORD: Dr. Spohn?

12 DR. SPOHN: No.

13 CHAIR BASHFORD: Ms. Cannon?

14 MS. CANNON: No.

15 CHAIR BASHFORD: And Mr. Markey?

16 MR. MARKEY: No.

17 CHAIR BASHFORD: Then --

18 CAPT. TIDESWELL: Chair Bashford, are

19 you going to --

20 CHAIR BASHFORD: Oh, I'm sorry. Some

21 of you have been so quiet. Do you have any

22 objection to the proposed -- the issue and

1 findings and recommendations?

2 BGEN SCHWENK: Good morning,
3 everybody. Thank you for waking me up, and I
4 have no objection.

5 CHAIR BASHFORD: Great. Then the
6 findings and recommendations are unanimously
7 passed. And, again, I want to thank the working
8 group -- Policy group for doing such good work.

9 DR. MARKOWITZ: Fantastic. Thank you.
10 With that, I will hand over the presentation to
11 my colleague, Major General Anderson.

12 MG ANDERSON: Good morning.

13 CHAIR BASHFORD: Good morning.

14 MG ANDERSON: The second issue of
15 concern leading to a recommendation by the Policy
16 Working Group regarding expedited transfers is
17 that active duty Service member, spouses, and
18 intimate partners covered by the Family Advocacy
19 Program are excluded from the DoD-level expedite
20 transfer policy.

21 And just briefly, for those who may
22 not be familiar with FAP, it has been in

1 existence for 36 years, and it generally
2 addresses instances of child abuse, child
3 neglect, and domestic abuse across the Services.
4 However, as I have noted, victims who are
5 eligible for the Services can also be active duty
6 Service members, spouses, and intimate partners.

7 We have six prepared findings --
8 proposed findings, rather, for this issue.
9 Proposed finding number 1. The expedited
10 transfer statute, 10 USC Section 673, was enacted
11 in the FY12 National Defense Authorization Act.
12 It applies to all active duty Service members who
13 are victims of sexual assault and does not
14 differentiate between those whose reports are
15 handled by the SAPR Program and those handled by
16 the Family Advocacy Program.

17 Proposed finding 2. The DoD
18 instruction implementing this statute and
19 establishing the expedited transfer policy at the
20 DoD level applies only to the Sexual Assault
21 Prevention and Response program, and explicitly
22 states that it does not address victims covered

1 under the Family Advocacy Program.

2 Our next proposed finding, number 3.
3 No DoD-level policy establishes an expedited
4 transfer option for FAP victims of sexual assault
5 who are active duty Service members. DoD and
6 Service FAP representatives testified to the
7 Committee that they use other transfer options,
8 such as humanitarian or compassionate transfers,
9 as needed and if they are available.

10 Proposed finding number 4. Safety
11 transfers and humanitarian or compassionate
12 transfers, which are options utilized by the FAP
13 program, have different standards for approval,
14 and they also differ across the Services.

15 Our next finding, number 5. The
16 expedited transfer statute requires that the
17 expedited transfer option be available for all
18 Service members who make unrestricted sexual
19 assault reports regardless of the context of the
20 relationship, whether they're an intimate
21 partner, spouse, acquaintance, or stranger.

22 There are instances where the option

1 of an expedited transfer would be beneficial to
2 Service members covered under the FAP program.
3 Such as cases where a Service member wishes to be
4 away from an alleged perpetrator, or to be closer
5 to family or other support systems to assist in
6 their recovery.

7 And our final proposed finding,
8 number 6. The Department of Defense regulation
9 regarding procedures for military personnel
10 assignments, DoDI 1315.18, also called Procedures
11 for Military Personnel Assignments, references
12 the DoD expedited transfer policy but does not
13 require assignments, personnel, or commanders to
14 communicate or coordinate with SAPR or FAP
15 personnel in the expedited transfer assignments
16 process.

17 So as a result of these findings, the
18 Policy Working Group makes two proposed
19 recommendations to the DAC-IPAD for the
20 Committee's consideration and approval. The
21 first recommendation is that the DoD-level FAP
22 policy include provisions for expedited transfer

1 of active duty Service members who are victims of
2 sexual assault similar to the expedited
3 provisions, transfer provisions in the DoD SAPR
4 policy, and consistent with 10 USC Section 673.

5 The second recommendation is that the
6 DoD-level military personnel assignments policy
7 include a requirement that assignments personnel
8 or commanders coordinate with and keep SAPR and
9 FAP personnel informed throughout the expedited
10 transfer, safety transfer, and humanitarian or
11 compassionate transfer assignment process when
12 the transfer involves an allegation of sexual
13 assault.

14 So before I proceed any further, are
15 there any questions or discussion from the
16 Committee on these findings and recommendations?

17 CHAIR BASHFORD: Major Anderson, could
18 you just explain in a little bit more detail how
19 the current FAP policy is insufficient, I guess
20 is the word, compared to the expedited transfer
21 policy. What doesn't it cover, or how -- I know
22 you said the standards are different across the

1 Services.

2 But in the Policy Working Group's
3 opinion, is it being adequately addressed as is
4 being excluded from the expedited transfer? Or
5 would it be improved if they were included?

6 MG ANDERSON: We think at this point
7 that there is a gap that and it needs to be more
8 specifically expressed in policy, so that people
9 across the Services who are responsible for
10 administering the program, as well as victim
11 advocates, commanders, personnelists, understand
12 everybody's roles and responsibilities, and also
13 what is going to be available to these particular
14 class of victims, because right now there is a
15 definite gap in the policy.

16 Anybody want to add anything from the
17 Policy Working Group?

18 CHAIR BASHFORD: Anybody else have any
19 questions or discussion? General Schwenk,
20 anything? I keep forgetting you're behind me.

21 Okay. I think there is no more
22 questions.

1 MG ANDERSON: Okay. All right.
2 Accordingly, I would like to make a motion that
3 the DAC-IPAD approve issue 2, findings 1 through
4 6, and recommendations 3 and 4 related to the
5 inclusion of expedited transfer provisions in the
6 DoD-level FAP and military personnel assignments
7 policies.

8 JUDGE GRIMM: Second.

9 CHAIR BASHFORD: Had you stopped
10 before you got to the recommendations in your
11 discussion, or did you go through them?

12 MG ANDERSON: I just went through.

13 CHAIR BASHFORD: Okay. So we have the
14 motion and a second, so I'm going to go around.
15 We'll start -- Mr. Markey, do you have any
16 objection to us approving the findings and
17 proposed recommendations?

18 MR. MARKEY: No, I do not.

19 CHAIR BASHFORD: Ms. Cannon?

20 MS. CANNON: No. Thank you.

21 CHAIR BASHFORD: Dr. Spohn?

22 DR. SPOHN: No objection.

1 CHAIR BASHFORD: Chief McKinley?

2 CHIEF MCKINLEY: No.

3 CHAIR BASHFORD: Brigadier Schwenk?

4 BGEN SCHWENK: No objection.

5 CHAIR BASHFORD: The Chair has no

6 objection. Dr. Markowitz?

7 DR. MARKOWITZ: No objection.

8 CHAIR BASHFORD: Ms. Tokash?

9 MS. TOKASH: No objection.

10 CHAIR BASHFORD: Judge Brisbois?

11 JUDGE BRISBOIS: No objection.

12 CHAIR BASHFORD: Judge Grimm?

13 JUDGE GRIMM: No objection.

14 CHAIR BASHFORD: Major Anderson?

15 MG ANDERSON: No objection.

16 CHAIR BASHFORD: And Mr. Kramer?

17 No objection.

18 CHAIR BASHFORD: Then the findings and

19 recommendations have been unanimously adopted,

20 approved. And, again, thank you for your work.

21 MG ANDERSON: Thank you. And with

22 that, I'd like to hand the presentation over to

1 my colleague, Mr. Kramer.

2 MR. KRAMER: Thank you very much.

3 There are six additional issues that the working
4 group identified during its review that may merit
5 policy changes. However, on these issues, the
6 working group plans to gather additional
7 information and testimony before making findings
8 and recommendations.

9 The first issue for further review is
10 that the expedited transfer option is not
11 available to Service members who made restricted
12 reports, sexual assault reports, as opposed to
13 unrestricted. From the information the working
14 group has reviewed to date, we believe the
15 development of a workable option for allowing
16 Service members who make restricted reports to
17 request and receive expedited transfers, without
18 triggering an investigation, would be beneficial
19 for certain victims. The working group will
20 continue to explore this issue.

21 The second issue the working group
22 plans to further review is the DoD-level

1 expedited transfer policies approval standard and
2 purpose are not sufficiently clear or
3 comprehensive.

4 From the information the working group
5 has reviewed to date, we believe the purpose,
6 standards, and criteria outlined in the expedited
7 transfer policy should be further evaluated and
8 clarified. The working group will continue to
9 explore this issue.

10 For instance, the standard that
11 commanders must follow to approve expedited
12 transfers is unclear. First, a commander must
13 find that a credible report has been made. This
14 term is not clearly defined and is coupled with a
15 presumption in favor of the transfer. In
16 addition, the commander must consider a list of
17 up to 10 additional criteria.

18 Further, the stated purpose of the
19 expedited transfer policy, to address situations
20 where a victim feels safe but uncomfortable, does
21 not cover the important purpose of recovery and
22 seeking needed care before resuming military

1 duties.

2 And then the third issue which I will
3 talk about that the working group plans to
4 continue to explore is that some active duty
5 Service members who are sexually assaulted are
6 not able to successfully return to duty, even
7 after an expedited transfer because of a need for
8 transitional assistance.

9 From the information the working group
10 has reviewed to date, particularly the extremely
11 compelling testimony of Ms. Amanda Hagy, which we
12 heard on December 1st, the mother of a medically
13 retired Army private who was brutally sexually
14 assaulted by two soldiers, as well as the other
15 survivors who bravely told their stories to the
16 working group.

17 We believe that some active duty
18 Service members who are sexually assaulted are in
19 need of transitional assistance before they are
20 able to successfully return to duty. The working
21 group will continue to explore this issue.

22 With that, my colleague, Brigadier

1 General Schwenk, if he is awake, will present --
2 will present telephonically the remaining three
3 expedited transfer issues for further review by
4 the working group.

5 BGEN SCHWENK: Good morning, and hello
6 from Key West. I'm having a great time.

7 (Laughter.)

8 BGEN SCHWENK: The fourth issue that
9 the working group will continue to explore is the
10 classification of both intra-installation moves
11 as well as moves to a new duty station as
12 expedited transfers. Though there are many
13 reasons for these transfers on the same
14 installation, these moves do not always
15 adequately separate sexual assault victims from
16 the accused or problematic situation, and,
17 therefore, sometimes necessitate subsequent
18 additional transfers to resolve the issue.

19 The Navy study that Nate Galbreath
20 mentioned earlier in his testimony actually had a
21 complete addendum on multiple expedited transfer
22 requests, and one of the reasons cited for the

1 concern about them was that when a person
2 transfers on the same installation they are
3 likely to end up seeing the alleged perpetrator
4 over and over again at the PX, the commissary,
5 you name it, which then causes the victim to have
6 to put a second request in to go elsewhere. And
7 that, according to the Navy study, stokes the
8 perception, which the working group considers to
9 be a misperception, of abuse of the system by
10 multiple requests.

11 Consequently, service members who
12 initially receive an intra-installation expedited
13 transfer may be penalized if it does not resolve
14 the situational issues, and they subsequently
15 request a second expedited transfer to leave the
16 installation entirely. The working group will
17 continue to explore this issue.

18 The fifth issue that the working group
19 plans to further review is that the expedited
20 transfer policy is limited to sexual assault
21 victims who are service members and may leave a
22 gap by not including service members whose

1 civilian spouses or children are victims of
2 sexual assault and face the same difficult
3 situations that didn't improve with an expedited
4 transfer.

5 For example, I'm married, I'm in base
6 housing. My spouse is sexually assaulted by our
7 next-door neighbor. I'm not eligible for the
8 expedited transfer program, and yet I and my wife
9 confront the exact same problem that a service
10 member would have if the service member had been
11 sexually assaulted.

12 So we believe that the expedited
13 transfer policy should be a complete program,
14 without gaps in eligibility within the military
15 community, including family members. And the
16 working group will continue to explore this
17 issue.

18 The sixth and final issue identified
19 by the working group during the expedited
20 transfer review project is not directly related
21 to expedited transfer, but it came to light
22 during the testimony that the DAC-IPAD received

1 during the October 19th and 20th meetings.

2 It came from commanders, and the
3 concern is that inadvertent disclosures to
4 command of sexual assaults and reports made by
5 third parties deny the service members -- victims
6 -- the opportunity to make a restricted report
7 and protect their privacy, if desired.

8 Several of the commanders said if
9 there was one thing they could change, or that
10 the staff told them might be changed, was to
11 allow somebody -- a victim to unring the bell and
12 return to restricted report status, even though
13 the initial report, either through a third party
14 or because the victim was so upset they just went
15 to their command, and the command was aware.

16 We believe the victims who lose the
17 ability to make a restricted report, because of
18 third party reports, or because they are unaware
19 of the consequence when they report to a member
20 of their chain of command, may benefit by having
21 an ability to further -- to restrict further
22 disclosure or investigation of the incident if

1 they wish to protect their privacy. The working
2 group will continue to explore this issue.

3 So that concludes the six issues that
4 the working group continues -- is going to
5 continue to look at, and I now turn it over to
6 Chief McKinley, who will summarize the commander
7 training review and the way ahead for the working
8 group.

9 CHAIR BASHFORD: Yes, Judge Grimm.

10 JUDGE GRIMM: General, this is Paul
11 Grimm. I have a question on the fifth issue,
12 sir. When the working group focused on the
13 circumstances and the potential problems
14 associated with the victim being the civilian
15 spouse or child of a service member, was there
16 data from the number of instances in which that
17 situation presented itself so that we have some
18 sense of the size of the population affected by
19 the lack of ability to have the expedited
20 transfer?

21 Because you're absolutely right. From
22 the perspective of the service member, if their

1 spouse or child is the victim, and the -- and the
2 perpetrator is in the same installation, all of
3 the same impacts that happen if it's -- the
4 victim is a service member or right there, and
5 the extra impact is is that the service member
6 who was not the victim, they're -- you know,
7 they're -- they have a tremendous issue that they
8 had to deal with and now it has to affect their
9 readiness and their ability to do their work as
10 well.

11 I'm curious as to whether or not we
12 have information regarding the frequency with
13 which that happens. And, if not, would that be
14 helpful information to have as the working group
15 goes forward to explore that issue?

16 BGEN SCHWENK: I think that that's an
17 excellent observation, that as we continue -- but
18 we do not have the data at the moment. We're
19 just aware that these people are not covered by
20 the existing policy.

21 And so we want to look at that gap,
22 and part of that look is exactly as you

1 recommend, to gather data on numbers, although,
2 you know, personally I expect the numbers to be
3 pretty small. At least I hope they're small.
4 But we'll find out as we go into a more in-depth
5 review of the issue.

6 JUDGE GRIMM: Thanks, General.

7 CHAIR BASHFORD: Any other questions
8 about the future issues? First five of them at
9 least? And I don't know if you need formal
10 approval of us to continue exploring those, but
11 it -- do we need formal approval from the -- to
12 continue exploring those?

13 CAPT. TIDESWELL: I think the General
14 was going to -- no, ma'am. I think if you could
15 just ask if there is any objections.

16 CHAIR BASHFORD: Okay. Does anyone
17 have any objections to these first five future
18 issues that the Policy Working Group would like
19 to continue exploring? Okay. Seeing none, have
20 at it.

21 CHIEF MCKINLEY: All right. Thank
22 you, ma'am. While our working group received

1 preliminary information on command legal and
2 sexual assault response training from testimony
3 and responses to its Request for Information, our
4 working group plans to make further detailed
5 requests for information to better evaluate the
6 status, consistency, and content of commander
7 training on dealing with sexual assault incidents
8 in their commands.

9 Our working group will follow up on
10 the issues it has identified before concluding
11 its assessment of the expedited transfer policy
12 and commander training in the months to come.

13 Our working group will also begin to
14 explore another issue in the coming months that
15 is time sensitive. Identified as a topic for the
16 Policy Working Group to review at the July 21,
17 2017, DAC-IPAD public meeting, Article 140(a)
18 will be the priority for the Policy Working Group
19 for the April 19, 2018, DAC-IPAD public meeting.

20 This provision of the Military Justice
21 Act of 2016 requires the Secretary of Defense to
22 prescribe uniform standards and criteria for

1 collection and analysis of military justice data
2 across the services by December of 2018.

3 Because of the expertise of this
4 Committee, its experience and knowledge gained
5 through the work of the JPP in collecting sexual
6 assault case adjudication data, and its ability
7 to seek input from stakeholders within and
8 outside of government to make well-considered
9 recommendations and identified best practices,
10 the DAC-IPAD body is ideal to provide advice to
11 the Secretary of Defense on this matter.

12 The Policy Working Group will
13 coordinate with the Case Review and Data Working
14 Groups, as well as maximize the inputs received
15 from consideration by the full Committee.

16 Are there any other questions or
17 discussion about the future issues and way ahead
18 for the Policy Working Group?

19 CHAIR BASHFORD: Well, I think I
20 misspoke when I said there was no objection to
21 five proposed things going forward. There were
22 six. And I just want to make sure that nobody on

1 the Committee has -- if you have -- let me know
2 if you have any objections to the Policy Working
3 Group continuing to work on 140A.

4 Seeing and hearing none, I want to
5 join everyone in thanking you for -- not only
6 just for all your presentations, but for the
7 tremendous amount of work that you have done to
8 date. Thank you so much.

9 CHIEF MCKINLEY: Thank you, ma'am.
10 This concludes our presentation.

11 CHAIR BASHFORD: I think this would be
12 time, then, for a break?

13 CAPT. TIDESWELL: Yes.

14 CHAIR BASHFORD: So we could have a
15 15-minute break, so back at 10:00.

16 (Whereupon, the above-entitled matter went off
17 the record at 9:47 a.m. and resumed at 10:02
18 a.m.)

19 CHAIR BASHFORD: All right. Welcome
20 back, everyone.

21 We are changing up the order of the
22 presentations. So just pretend it's 1:30, and

1 we're going to hear a presentation from Mr. Chuck
2 Mason on the work of the Data Working Group.

3 MR. MASON: If it's 1:30, it's good
4 afternoon.

5 (Laughter.)

6 MR. MASON: I'll stick with good
7 morning.

8 PARTICIPANT: This is improv. Go with
9 it.

10 MR. MASON: Improv. Okay. We're
11 rolling now.

12 I would like to present to you what
13 the Data Working Group has accomplished so far.
14 And at the end of this, we'll be looking for
15 validation that you're okay with where we're
16 heading and what our future plans will be.

17 After our last meeting, we took
18 recommendations from the working group and made
19 modifications to our SharePoint database. Now,
20 the database that we have is the database that
21 the JPP created and handed over to us. So we
22 have made modifications to that.

1 One of the things, just as an example,
2 is we're now going to be able to track whether
3 offenses took place CONUS, OCONUS, or on a
4 vessel. It's something that we haven't been able
5 to pull out individually, so we've made
6 modifications to the database to make this an
7 easier process.

8 So that has happened, and what that
9 means is we now have over 3,000 files that we
10 have to go through and update, physically make
11 the changes so that that database will reflect
12 these new dropdowns that we have. But it will
13 make the actual output file much more powerful in
14 the end because you're going to have more ways
15 that you can manipulate the data.

16 The second thing, and it was in your
17 read-ahead materials, we did send out an RFI for
18 fiscal year '17 case files. Again, because we
19 were following the JPP's procedures and timeline,
20 we would not actually be doing the fiscal year
21 '17 data call until later this year.

22 And we realize that if we could get

1 closer to what the case review timeline that
2 they're working on, because they're already in
3 the FY17 data, it would be advantageous. So we
4 sent out the FY17 RFI on January 11th. Chair
5 Bashford signed off on the letter.

6 And we have received information back
7 that we are on a very aggressive timeline, and
8 that they may not be able to meet this deadline
9 due to the fact that SAPRO, which is the first
10 phase of our RFI, their numbers are not released
11 to Congress until May. And because of that, they
12 don't want to give us anything that they haven't
13 released to Congress at this point.

14 We're waiting for an official position
15 or official response back. There is some
16 question about, are you -- they're actually not
17 releasing anything to us. They're just giving us
18 raw data that is going back to the Services, so
19 the Services can do a data pull to provide the
20 cases to us. So we aren't releasing anything to
21 the public. And even if we were, we don't
22 release until March of 2019 for our next report.

1 So we aren't going to be putting them
2 in a bad position. Nobody is going to see this
3 information except for the DAC-IPAD, staff, and
4 the Services, who were the ones that reported
5 this information in the first place.

6 So we will try to work through and see
7 if we can get them to stay on the schedule that
8 we have set, so that we are actually producing a
9 product that is beneficial to our users.

10 In the alternative, which is I think
11 the direction that we would like to see how the
12 Committee feels, is we will send out a new RFI
13 that just goes directly to the Services and says,
14 "Here is the criteria of the cases we're looking
15 for. Go into your own internal database that you
16 have more than likely for tracking courts-
17 martial, and pull the cases that meet these
18 standards. And you don't have to look at the
19 SAPR report, you don't have to match up the
20 numbers at this point; just give us the files."

21 And we could do that while this other
22 RFI is still out there, and then we could try to

1 reconcile them at some point. But in theory, we
2 might actually get a better universe because
3 we're taking out one step and going directly to
4 the source. So, at the end of our presentation,
5 that's something for you to consider as a
6 committee, if you would like us to go in that
7 direction because we would be happy to do that.

8 Now, one of the things that we have
9 found in the FY16 data, we had -- the original
10 plan for the data group was that the report that
11 the DAC-IPAD would be publishing in March was
12 going to be just an FY12 through '15 overview.
13 So all the data that the JPP gave us, we were
14 going to try to break it down on a year-to-year
15 basis, which had not been done at this point.

16 The JPP aggregated FY12 to FY14 as one
17 block, and then FY15 separately. So our plan was
18 to just do '12 to '15. As we were looking at our
19 timeline, realizing that with a little extra work
20 we could make it happen, we decided to close out
21 the FY16 information.

22 So our revised plan and what we're

1 presenting to you today is actually data FY12
2 through FY16. And I have to thank the Services
3 because they jumped through the hoops to get us
4 the files that we needed. We set a hard deadline
5 and they met it. But, more importantly, I have
6 to thank Stayce on our staff because she is the
7 one that actually enters all of these files into
8 our database, and she worked and worked to get it
9 done, and she met the deadline.

10 So without that, we would not be
11 sitting here today being able to show you the
12 data for '12 to '16.

13 So where that takes us now is I have
14 deliverables for you today that you are going to
15 see for the first time. These are the tables and
16 charts that will make up the body of the Data
17 Working Group's contribution to the report that
18 is going to be published in March.

19 And I invite your attention to the two
20 stacks of information that were included in your
21 day-of folder. One set are black and white
22 tables, and they all say Table 1A, 1B, 1C. And

1 then the other set of information are the
2 colorful charts.

3 And I would like to start with the
4 tables to give you an idea of what you're looking
5 at. In order to make this happen, the end
6 product that our SharePoint database puts out is
7 an Excel spreadsheet. And Dr. Spohn can tell you
8 it is a very tedious process to break it down and
9 to pull the information out of it, because you're
10 literally looking at 3,000 lines of data and
11 having to filter it to find out the information
12 you're looking for.

13 So I was able to reverse engineer the
14 tables that Dr. Spohn provided to the JPP when
15 they did their report, and what you will find in
16 these tables are each fiscal year, each table
17 broken down by fiscal year. So what was in the
18 annex of the previous reports are now going to be
19 these 55 tables.

20 And it is all the demographic data,
21 the case characteristics, the case disposition
22 and case outcome information, but broken down by

1 year. And then it breaks -- it goes into further
2 detail of different scenarios, outcomes of sexual
3 offenses by military service of the accused, and
4 different variations.

5 If you would like, we can go table by
6 table and discuss it. Or, if you would rather, I
7 can focus more of the attention on the colorful
8 charts, which are what everybody generally goes
9 to. It's up to what you would feel more
10 comfortable with hearing today.

11 CHAIR BASHFORD: Is there anyone that
12 would prefer to start out with a table-by-table
13 look? If you could just tell us a little bit
14 more about what the tables will show us. Like
15 when we look at them, what are we looking for?
16 What is --

17 MR. MASON: Absolutely.

18 CHAIR BASHFORD: -- the most
19 significant I think.

20 MR. MASON: And where this is going to
21 be in the report, when you see the complete
22 report, this will be an appendix. And there will

1 be a couple of pages as a cover to these tables,
2 and the tables will explain the methodology, how
3 -- first, how the DAC-IPAD came into formation
4 and how they became the owners of this project,
5 this database, and the recommendations that the
6 JPP made to the DAC-IPAD, and how the DAC-IPAD
7 embraced that, and how we're in the position that
8 we're in now.

9 And then all of these tables will be
10 there. And the thought behind including all the
11 tables is that if somebody would like to look at
12 our report and figure out how we got to a
13 specific statistic, they have the data points,
14 and they can then do it themselves, so that
15 everything is out there in the open and they have
16 the ability to figure out what they want to do
17 with our numbers.

18 The first two tables are really the
19 basic information. You know, how many
20 individuals in our database in a particular
21 fiscal year are from the Army? How many from the
22 Marine Corps? How many from the Air Force? What

1 is the data count?

2 It breaks it down by enlisted versus
3 officer, and then it breaks it even further by
4 individual pay grades, so that you can see the
5 cases that we're looking at, the cases that we're
6 analyzing, where do they come from.

7 And because we're focused on
8 penetrative offenses versus contact offenses, how
9 many people are being tried -- or charged with a
10 penetrative offense? How many with contact?
11 When they're charged with a penetrative offense,
12 how many of those are found guilty, convicted?

13 So those are the types of information
14 that are in your first two tables. After that,
15 it gets down -- we start breaking it down into
16 charged with an offense and convicted of at least
17 one count. What happened? Or if somebody
18 contested, they pleaded not guilty to the
19 charges, what is the likelihood of them being
20 convicted? And likelihood in the sense of these
21 are the raw numbers. This is just sorting it out
22 and presenting it.

1 The one thing that we have not done
2 with these numbers which you will find in the
3 appendix that Dr. Spohn did was the multivariate
4 analysis, which we have not contracted with a
5 criminologist at this point to do that component
6 of our data. We will be doing that. We had a
7 meeting with our Service reps, and they stressed
8 to us how important it is that they get that
9 multivariate analysis, that they actually utilize
10 it.

11 So we will be working with the case
12 review group to utilize the same criminologist,
13 so that we're getting double our bang for the
14 buck. But they will take this information and
15 get into the likelihood, the percentages of it's
16 more likely than not, and the statistically
17 significance of these factors.

18 You will see a chart in here that we
19 did not have, which is the CONUS/OCONUS versus
20 vessel. We didn't do that in the past. I was
21 actually able to break it down by reading, if
22 there were 700 cases going in and clicking every

1 case that was in the CONUS, and then every case
2 that was OCONUS, and then every case that was on
3 a ship, and sorting it that way and then
4 physically counting them.

5 So you can tell it's labor-intensive,
6 but you actually get great results when you do
7 it.

8 JUDGE BRISBOIS: Were the Services
9 tracked based on CONUS versus combat zone?

10 MR. MASON: I am not aware. I have
11 not asked that question, so I can't tell you yes
12 or no. We have looked at trying to figure out if
13 we could get into combat zone versus not, and one
14 of the things that you'll see in like groups that
15 are deployed, they may send somebody back to
16 actually do the trial. So then when they're back
17 here, the convening authority is now CONUS. So
18 you then get into the charge sheet and have to
19 look at the charge sheet, where the offense took
20 place, and it isn't easy for us to make that
21 determination.

22 So, specifically, when we're talking

1 CONUS, OCONUS, and vessel, we are talking about
2 where the convening authority, the command, and
3 on the vessel the question that we had to
4 struggle with, is a vessel at sea? Is it at
5 pier? Are they underway, combat, not? And we
6 can't make that determination on every case. So
7 it's just vessel in this case came from the USS
8 Ronald Reagan, and those are the type of
9 determinations that we've made.

10 Now, in our methodology, in our
11 explanation, and something that I should say,
12 with all of these tables and these charts, there
13 is text that surrounds them, that informs them.
14 So you won't be seeing them just in a vacuum.
15 There will be some explanation of what these
16 things mean and how we got there.

17 CHAIR BASHFORD: And so this data
18 underlies the colorful chart data?

19 MR. MASON: Yes. If you take all of
20 these tables, you are able to recreate the
21 charts, the colorful charts, and the colorful
22 charts will be the chapter in the report from the

1 Data Working Group. And I would like to go
2 through these with you.

3 There is a limited number, so it won't
4 take long. But it's something that we can go
5 chart by chart, and if you have a question or a
6 concern I can take it down and we can modify
7 between now and the time that we actually
8 publish.

9 First and foremost, when you look at
10 -- there are color schemes that are happening
11 here. The first chart, you'll see that there's
12 five colors, and the question has been raised,
13 why is FY12 a gray, drab color, and the others
14 are more vibrant? And there is a reason behind
15 that. It's because it was the first year that
16 data was collected.

17 So if you look at the number, it's a
18 considerable drop compared to the others. So
19 there is less overall confidence in that this is
20 the complete universe for that year. So by using
21 an off-color, a gray, it actually diminishes how
22 -- the importance of that set of information when

1 you're looking at the others, because we have
2 more confidence in the other years than we do in
3 what we received in FY12. So there was a
4 reasoning behind that.

5 One thing to note, if you look at the
6 first chart, FY14 and FY16, we had the exact same
7 number of cases, 738, which is kind of strange
8 that you would think in this big picture of what
9 we're doing that you would hit an exact number.
10 And it happens throughout the report. You'll see
11 exact percentages. It just doesn't seem like it
12 should happen, but it does.

13 When you look at the next chart, the
14 military Service of the accused, on this one it's
15 a different color scheme because we tried to go
16 with colors that were more representative of the
17 Services, except we ran into two colors of blue.
18 So the Coast Guard had to go purple, which
19 everybody knows is joint, and that's not what
20 you're supposed to do, but we had to make a
21 decision. So we did acknowledge what we're doing
22 here.

1 But what I was drawing your attention
2 to on that slide, or that chart, is the Army has
3 usually been in the 47, 48 range, and for FY16
4 they're 35 percent of our database, which might
5 be troubling to some.

6 But if you flip the page, to page 2,
7 and look at the very bottom table, it breaks down
8 the number of cases that we have based on each
9 Service, and based on their population. The
10 Army's total percentage of population of the
11 Armed Forces is 35.5. Their percentage of cases
12 is 35.2.

13 So this year they have actually fallen
14 right in line with what their percentage of the
15 total population -- their cases represent that in
16 our database.

17 The Coast Guard is an example. They
18 are three percent of the active duty population.
19 They are three percent of the cases that we're
20 reviewing in our database.

21 So these type of charts -- and the
22 second page I consider an eye chart because there

1 is so much data on one page -- again, will be
2 broken up with some text, so that it will make it
3 easier for you to read and for the readers that
4 get our finished product to utilize.

5 But we were then able also -- we now
6 have it broken out '12 through '16 each year,
7 which we were not able to do in the past.

8 Yes, sir.

9 CHIEF MCKINLEY: Mr. Mason, for the
10 numbers that you have here, for instance, this
11 past year, 738, what is your confidence level
12 that that's a good number? I mean, is there a
13 possibility that there are cases unaccounted for?

14 MR. MASON: Absolutely. We are very
15 confident in the 738 cases that are in our
16 database deserve to be in our database. And the
17 reason that I say that is that we have a
18 document-based system, and you've heard these --
19 these talking points in the past, but it's a
20 document-based system in that we see every
21 document, we scan that document, and then we make
22 the determination, we fill in our data -- our

1 spreadsheet with the information directly from
2 that sheet. We're not interpreting it. If it's
3 there, it goes into the database.

4 What happens is because we're relying
5 on self-reporting, the Services are going and
6 telling us these are the cases. We don't know if
7 we're getting all the cases. And I can tell you
8 with respect to the overall project when we sent
9 out the FY16 RFI, we received from the Services
10 that we would have 960 cases that would meet your
11 criteria.

12 If you look at that first chart, the
13 number 738. So what happened between the 960
14 cases they told us we were going to get and the
15 738 that meet our criteria? There were
16 duplicates. There were cases where they
17 interpret it to meet our criteria, but it was
18 actually a non-sex offense that was preferred, so
19 it doesn't meet our criteria.

20 It might have been that they were a
21 child case, which we're not tracking. So they're
22 overreporting in that sense, that we're getting

1 960. I can also tell you in FY16 there was a
2 case reported to SAPR that went into the SAPR
3 report that was actually adjudicated in fiscal
4 year 2007, but it was reported for the first time
5 on their report in FY16.

6 So that's a number that is in that
7 960. Well, we're only doing fiscal year '16
8 right now. But if it was fiscal year '12 to '15,
9 we would add it to the database at the correct
10 place. But a case that is reported to SAPR in
11 '16 that actually took place in fiscal year '07
12 doesn't help us.

13 The other component that we have run
14 into, of the 960 cases that were reported to us,
15 and the 730 that we -- 738 that are in our
16 database, we actually found while we were out,
17 because we physically go to locations and scan
18 files that are in the National Capital Region.
19 At one location, they provide us a banker's box,
20 and in that banker's box it has the record of
21 trial that we need. But it also has other
22 records of trial.

1 Stayce, as she is doing this and
2 scanning, she was looking at the other records
3 that were in that box as well to see if we were
4 missing anything. We found 25 cases that were
5 never reported to SAPR, that never made it to the
6 RFI, that were never reported to us, but there
7 were 25 cases from fiscal year '16 that should
8 have been in the database.

9 Now, we scanned them. We're looking
10 at them. They meet our criteria. We scanned
11 them. They've been added to the database. So I
12 have confidence that the 738 cases, the universe
13 that we're dealing with, is a valid universe.
14 However, it is not the full universe. And as
15 long as we are relying on self-reporting, we'll
16 never be able to say that we're getting 100
17 percent of the cases.

18 Does that answer your question?

19 CHIEF MCKINLEY: Absolutely.

20 MR. MARKEY: Mr. Mason, also a
21 question -- so as part of the -- part of the task
22 is to ensure that we're getting accurate and

1 timely information. Is there a mechanism or is
2 there something we can look at that would help
3 improve that system, help identify accurately
4 what cases that are out there that we may be
5 missing?

6 And you repeatedly say voluntarily
7 submit this information to you and to us. Is
8 there something, based on your experience,
9 something that would be of assistance to ensuring
10 that this is accurate, timely, and complete
11 information we are receiving?

12 MR. MASON: Well, I think -- and we
13 interact with many different constituencies, but
14 I think one thing that you could be looking at
15 that -- that has some weight behind it is if
16 there were a centralized location, our office
17 being that for what we're doing, if every case
18 were opened, as soon as that charge sheet was
19 created -- there is a distribution list attached
20 to it -- that it gets sent then to this office as
21 well. And the office at that point would enter
22 into the database.

1 If it meets our requirements, we would
2 keep tracking it at that point, and we would know
3 that it's out there. And if we would know in
4 maybe fiscal year '17 or '18 or '19, this case is
5 actually going to be finalized, and it's going to
6 be in a database.

7 But as each step is happening, if that
8 information were pushed forward, you could have a
9 centralized location of professionals that are
10 taking a document, looking at it, entering it
11 into a database that gives you a solid result
12 when you ask the question.

13 But as long as you are -- as long as
14 the individuals that are tracking don't have
15 hands-on with all of the originals, there is no
16 way to say that you're getting 100 percent.

17 And I can say the JPP created this
18 database based on two people with a part-time
19 contractor who was the SharePoint architect. So
20 you had two full-time staff and one individual
21 doing the IT. They created the database, and now
22 we're tracking 3,000 cases since FY12.

1 So it's a heavy lift for two people,
2 but it's not out of the realm of possibility that
3 it could be done for all the Services in one
4 location with a minimal professional staff.

5 Okay. If you want to go to page 3 of
6 the -- yes, ma'am.

7 CHAIR BASHFORD: Before we leave that,
8 Mr. Mason, because I'm discounting to some extent
9 2012, because you had had such a small number of
10 cases. The -- a lot of the Services seem to
11 track fairly well. Army had a big improvement in
12 2016, but the Marines certainly jumped up from
13 2013.

14 And the other one, you see the Air
15 Force sort of goes up and down. What do you --
16 how do you account for that?

17 MR. MASON: I think it's an
18 improvement. Each of the Services is dedicating
19 time in tracking their files and having a better
20 grasp of the files that are in their care and
21 being able to know what's happening with them.

22 CHAIR BASHFORD: So you think it's

1 more of a data collection as opposed to an
2 increase or decrease in intakes?

3 MR. MASON: I think what I -- based on
4 what I see, I look at it more as awareness of
5 what they're tracking and the ability to pull
6 that data when they need to.

7 CHAIR BASHFORD: Thank you.

8 MR. MASON: Yes, ma'am.

9 For those of you that don't know,
10 that's Stayce. She is the guru when it comes to
11 the database. And the one thing she wanted me to
12 stress was that, as I'm talking about this
13 database and what we have created, it is focused
14 solely on sexual assault because that was what
15 our task is.

16 One thing, though, when a case comes
17 in, charges that are not sexual offenses we still
18 track. So when we get into the chart, if there
19 were 10 charges, and there might have been a
20 missing movement, or dereliction of duty and a
21 sexual assault, we put all of those into our
22 database.

1 So we do have the ability to track
2 bigger than just the sexual offenses, but you
3 have to have the sexual offense to get into the
4 database.

5 The part that Stayce wants to stress
6 is our database is scalable. So as we're talking
7 about 140 Alpha and these other programs that
8 might be out there as a model or a proof of
9 concept, you could scale that we do to pull in
10 everything, since the framework is there.

11 So on page 3, then, the first slide is
12 gender of the accused, male and female, and you
13 can see that those numbers are fairly static.
14 They are tracking in the general category. At
15 the bottom of page 3, and then 4 and 5, this
16 breaks out the rank of the accused in each fiscal
17 year, and you can see there is a general
18 distribution that holds true.

19 Now, a question was raised yesterday,
20 what does this mean? You know, E4s are the peak
21 on each of these. Does that mean that there are
22 184 E4s and they're all getting hit? What is the

1 percentage? How do you inform this larger
2 discussion?

3 I was able to pull some information,
4 and this is what's going to be included in the
5 text that will inform it. But for the overall
6 Armed Forces, paygrades E3, 4, and 5, which are
7 the three peaks, they make up 51 percent of the
8 Armed Forces.

9 So if half of your Armed Forces are
10 represented in those three paygrades, and then
11 you look at these charts and you see there's a
12 peak in there, it makes logical sense that there
13 should be a peak in that area.

14 However, if you then go to the tables
15 that are in the appendix and look, while they
16 make up 51 percent roughly of the population, if
17 you look at our numbers, they actually make up
18 60, 65 percent of the cases that we have. So
19 they are a higher representation compared to
20 their overall population.

21 So based on comments that we received
22 yesterday, that will be incorporated into the

1 language, so that there is more context of what
2 you're looking at, which then takes us to page 6,
3 the gender of the victims.

4 You can generally see that as would be
5 expected based on what we have all seen there are
6 more female victims than male victims. However,
7 in FY16, male victims fell -- they dropped
8 considerably compared to FY15.

9 We don't know why. I can't tell you,
10 looking at our numbers, why that is. But this
11 will be something that we can look when FY17
12 numbers come in to see now if we have a trend.
13 Do they continue to fall, or does it jump up
14 again? It will be something that the data might
15 direct -- the DAC-IPAD might want to look at a
16 future issue as to how did this happen or why did
17 it happen.

18 Number of victims per case is fairly
19 straightforward and fairly steady with respect to
20 the percentages over the five years that we're
21 looking at.

22 Yes, ma'am.

1 DR. SPOHN. So I noticed that you
2 didn't break the data down by whether the victim
3 was a spouse or intimate partner. Is that
4 because that was only available from 2015 and
5 2016?

6 MR. MASON: In some -- Stayce, do you
7 want to -- how we're tracking the intimate
8 partner component?

9 MS. ROZELL: We can do a search by
10 that. We give each case its unique number based
11 off of the Service and the fiscal year that it
12 falls in. And then for those cases that have an
13 intimate partner or spouse, we do add an F to
14 that title, to that name. So we can search
15 those.

16 We are also -- I also noticed a trend
17 in that. I've seen several instances where there
18 are companion cases. There are two or more
19 accused on one victim. So we can capture that
20 information as well.

21 MR. MASON: And we will once -- I
22 think once we have another year where we --

1 because we talk about the '15, once we have '17
2 and we start looking at that, we may break out
3 just an analysis of '15, '16, and '17, since we
4 have that data point. But we didn't have it,
5 like you said, from the beginning.

6 So I tried to keep this a 1,000-foot
7 overview without getting into some of these
8 details that we have been able to track
9 individually.

10 MS. ROZELL: Because we weren't
11 receiving family advocacy cases in the past, and
12 we only started receiving them in fiscal year '15
13 and '16, so we can't go back and capture that
14 before -- before those years.

15 MR. MASON: And, again, we -- there
16 will be throughout the text the information that
17 informs that as well, that explains what the --
18 the limitations that do exist in our database,
19 acknowledge that it exists.

20 On page 7, it gets to the type of sex
21 offense charged, and you can see penetrative
22 versus contact. And then with case disposition,

1 the number that -- the court-martial type and the
2 trend that you might see, a general decrease in
3 the number of summary courts-martial, which would
4 be expected based on the status of the law.

5 Page 8 is also another eye chart for
6 you. It's just breaking down the Services and
7 how each Service handles whether they are doing
8 percentage to general, special, or summary court-
9 martial, and you can look to see if it -- one
10 Service might be utilizing it or not utilizing,
11 and see if there is something there.

12 These are, again, things that when you
13 do the multivariate analysis will come into play,
14 that you can break down to see if there is --
15 statistically if there is something that is going
16 on there.

17 So then pages 9, 10, and 11, this is
18 where the numbers really get fascinating. And I
19 have to say I talked to Dr. Spohn yesterday. I
20 geeked out. I was doing this on Monday. I came
21 in because I wanted to get these numbers for you
22 guys. And at the end of the day on Monday, the

1 holiday, so nobody is here, I started populating
2 charts.

3 And I was so excited I was dancing
4 around my office because I could see things, and
5 up to this point I just looked at numbers. And
6 now there's colors, so I -- I'm a visual learner,
7 so I told Dr. Spohn I can understand her line of
8 work where these days you have this excitement
9 because you start seeing trends. And now, in 9,
10 10, 11, you're going to start seeing that.

11 If you look on the first chart on
12 page 9, the case disposition, penetrative
13 offenses referred to trial, you can see general
14 distribution. General court-martial is where the
15 majority of the cases are going, special, and
16 summary.

17 With respect to contact offenses,
18 though, you are seeing a wider spread, a more
19 even distribution between general and special,
20 with a smaller number then going to the special -
21 - or to summary. So you can see how overall,
22 depending on what type of offense you're looking

1 at, which court-martial they are going into.

2 Now, when you go to page 10, this is
3 contested penetrative offense trials. So these
4 are not summary courts-martial because we're
5 talking about a military judge versus members,
6 which at the summary court-martial you just have
7 a summary court-martial officer. So we excluded
8 those, and these are cases where they pled not
9 guilty. So we're going for a full-blown trial.

10 When you look at this, the top one
11 being the judge, military judge, you can see how
12 often someone is convicted of a penetrative
13 offense, a contact offense, might have been a
14 lesser included, a non-sex offense, some other
15 offense that they were charged with that has
16 nothing to do with the sex offense, or they were
17 acquitted.

18 Well, then compare that same set of
19 facts to the chart below it where you're talking
20 about with military members, and you see, if I
21 were a defense counsel, I would want to go with
22 members and contest the trial because there is a

1 more likely chance I'm going to be acquitted.

2 Now, the question that was raised
3 yesterday, what does this mean about punishment?
4 Because maybe the members would punish harder,
5 more severe than what the military judge does for
6 a punishment. And that is something that we have
7 taken under advisement.

8 As we modify our database, those
9 changes that I talked about in the beginning, one
10 of the things that we have done is we're cleaning
11 up the database so that we can track punishments
12 better.

13 Yes, sir.

14 JUDGE GRIMM: I have a question
15 relating to that. And this is fantastic work,
16 and I'd like to thank you for your dedication of
17 coming in on a day when you weren't required to
18 do it and --

19 MR. MASON: I was -- honestly, I was
20 excited to do it because I wanted to see the
21 results. So --

22 JUDGE GRIMM: Notwithstanding that, it

1 still deserves note that you did.

2 One of the data points, if you look at
3 the tables alone, and you try and look at overall
4 conviction rates, they tend to blend somewhere in
5 the neighborhood of 25 to 30 percent across all
6 of the years. If you would look at it from the
7 lens of the civilian criminal justice system, a
8 25 percent conviction outcome would be shockingly
9 low.

10 When you look at this table on page
11 10, and you see, for example, convicted of
12 penetrative offense but convicted of non-sex
13 offense, and you start to add in the
14 circumstances where you have not a conviction of
15 a penetrative offense or a contact offense, but
16 convicted of something else, my question is, does
17 this suggest that there are instances in which,
18 if you could then compare that with a number of
19 cases going to members, whether or not there is
20 some trend where trials with members, for
21 example, they are splitting the difference.

22 They are not convicting on the

1 penetrative or contact offenses, but they are
2 convicted on something else. And whether there
3 is a trend in there that is information, because
4 those numbers, from the point of view -- A.J., I
5 mean, you would agree on that, and I think that,
6 Leo, you would as well, is he's talking about
7 conviction rates of 25 percent. It is shockingly
8 low in terms of the number of cases that go to
9 trial.

10 But this suggests that there may be
11 something else lurking there, and I don't -- I
12 don't know whether the data can help us get our
13 arms around that, but that's something I'm
14 interested in.

15 MR. KRAMER: And can I just tag on to
16 that for one second? It also has been going up
17 significantly.

18 JUDGE GRIMM: Yeah.

19 MR. KRAMER: Culminating in 2016.

20 JUDGE GRIMM: That's exactly right.

21 If you look at that --

22 MR. KRAMER: And I don't know if there

1 is an explanation for that either.

2 MR. MASON: These are the things that
3 we have talked about as we're -- as we're
4 entering it and we're seeing different trends
5 maybe.

6 JUDGE GRIMM: Right.

7 MR. MASON: We're looking forward to
8 getting an FY17 data, since that gives us a solid
9 '15, solid '16, solid '17, and then having a
10 criminologist or statistician that can help us
11 manipulate the numbers and actually try to find
12 that relationship, because we've said the same
13 thing. Are we getting jury nullification? Are
14 the members just tired of the push for
15 convictions and they're saying, "No, we're just -
16 - we're not going to do this."

17 Is it a situation of a -- members are
18 looking at the victim and the accused were both
19 drinking, and the members are saying, "Hey, that
20 happens and we're not going to convict." But a
21 judge is looking at the victim, and the member
22 and the accused are both drinking and saying,

1 "Hey, well, the victim didn't consent, so I'm
2 going to find you guilty."

3 There is a lot of issues there that we
4 would love to know, and we're hoping our data
5 will be able to tell us that.

6 CHAIR BASHFORD: But, Mr. Mason, it
7 seems as though whether it's member or judge, the
8 convicted of the penetrative offense is pretty
9 close --

10 MR. MASON: Yes.

11 CHAIR BASHFORD: -- where you -- where
12 it really falls up as the outright acquittals.
13 But the conviction of the top count, although
14 it's -- it's a low number, it doesn't seem to
15 make that much difference whether you went judge
16 or member.

17 MR. MASON: And that is -- that first
18 delta is there. They're on the same -- they're
19 at 28.1 and 28.2. You can't get much closer.
20 But then if you look at convicted of non-sex, the
21 military judge is at 37 percent; the members are
22 at 13.

1 So that might be that concept of the
2 judge is looking, I'm going to -- I'm getting you
3 on something, you know, dereliction of duty or
4 failure to obey, where the members are looking at
5 that saying, now, we've all disobeyed something
6 at some point, and maybe we're not going to -- I
7 mean, I'm just saying these are things that are
8 out there. I don't know, but we're hoping that
9 when we start looking at it we can figure out if
10 there is a trend in there.

11 CHAIR BASHFORD: And I've been trying
12 to do the math, and I think I -- I understand.
13 So a case would only -- you will only put into
14 place once. So if it was convicted of a
15 penetrative offense and non-sex offense --

16 MR. MASON: They got penetrative --
17 it's the most serious offense, and that's the
18 term that we used in the past was most serious.
19 It's a step down.

20 CHAIR BASHFORD: Okay.

21 MR. MASON: And then, if you look at
22 page 11, it is the same charts but now dealing

1 with contact offenses. And interestingly enough,
2 as we were just talking, there's a higher
3 conviction rate on that first one for members on
4 a contact versus the judge, but then non-sex, a
5 considerable jump with the judges versus military
6 members. And then again your full-out acquittal
7 is very high when compared -- for members when
8 compared to the judge.

9 So these are, again, 1,000-foot
10 overview. I think it's fascinating that there is
11 some information out here, and we're looking
12 forward to, as we get another year, that we can
13 then start comparing them against each other and
14 see if we can find some trends.

15 MS. ROZELL: When we created -- when
16 we were initially going through the creation of
17 the database, we wanted to capture all of the
18 different changes within the laws that have
19 occurred over these years. So we can identify
20 the three different statutes of these crimes. We
21 can also identify those cases in which there is -
22 - the new Article 32 hearing is in effect, as

1 well as those charges that now require the
2 minimum sentence required, as well as other types
3 of changes that have occurred over time.

4 So that might be something that --
5 that we can look at, pull those cases that are
6 now waiving the 32, and we've got some figures on
7 those, and how those changes are now affecting,
8 you know, these types of cases.

9 MR. MASON: And that brings us,
10 actually, to our last page, which is the
11 Article 32. And I'll tell you how this came
12 about. The JPP had received testimony. You have
13 heard that the change in the Article 32 process,
14 it has resulted in a paper exercise, and that
15 there isn't a lot of value for defense counsel to
16 have that discovery that they used to get under a
17 32.

18 CHIEF MCKINLEY: Mr. Mason, I'm sorry,
19 can you back up --

20 MR. MASON: Absolutely.

21 CHIEF MCKINLEY: -- on the previous
22 chart, for the sake of members -- members on the

1 Committee, plus in the room, could you tell us
2 how we make up the members for the Court? When
3 we're not going by judge but just by the members,
4 how are the members made up for the Court?

5 MR. MASON: Well, you are looking at
6 peers, individuals from the command, that if you
7 are an officer, you have officers that are on
8 your members. If you are enlisted, it's
9 officers, or you can ask for enlisted
10 representation. And much like in a civilian
11 court, you have voir dire, you go in and you
12 question whether you feel those members are going
13 to be to your benefit. But they are your --
14 truest sense, your peers.

15 So you are looking for, you know, the
16 government, the defense are going to have
17 differing views on who they would want on their
18 panel, but they are looking for Service members
19 that are going to be of the same mind-set of the
20 accused.

21 CHIEF MCKINLEY: If you had a staff
22 sergeant as the accused, what would you expect

1 the members to -- on the Court to look like?

2 MR. MASON: You're looking at officers
3 and possibly, you know, it has been so long since
4 I practiced on the military side, but you're
5 going to have senior enlisted as well. And when
6 you think of it from that standpoint, you're
7 going to -- you're going to have the feeling --
8 yes, sir.

9 JUDGE GRIMM: Well, go ahead and
10 please finish Chief McKinley's question --
11 answer. But then there's another -- there's
12 another slice of how that -- the members are
13 selected that needs to be recognized as well.

14 MR. MASON: Well, and one thing that
15 -- people will argue that you're not getting your
16 highest performing individuals to be your members
17 because you're looking at who has time available
18 in their schedule that can be away from the
19 command for maybe some extended period of time.
20 That argument could be made that you're not
21 getting --

22 JUDGE GRIMM: But the convening

1 authority identifies them, right?

2 MR. MASON: Yes.

3 JUDGE GRIMM: This is not like in --
4 where you go through the voter registration rolls
5 and --

6 MR. MASON: No, absolutely.

7 JUDGE GRIMM: -- bringing them in, and
8 you get a larger selection process through the
9 entire population of the -- of the area where
10 you're drawing your members, your jury.

11 The convening authority identifies
12 those folks, and the convening authority
13 presumably is not identifying sub-performing
14 individuals to serve this job.

15 COLONEL WEIR: And, Chief, if I could
16 help out on that -- this is Colonel Weir -- if
17 you were talking about an E4, the panel members -
18 - and I am speaking from my Army experience, they
19 are going to be sergeant majors and first
20 sergeant.

21 It's not going to be a -- if the
22 enlisted Soldier requests one-third the panel be

1 enlisted, it's not going to be a senior E4 and an
2 E5. It's going to be those old crusty sergeant
3 majors and first sergeants. And if you are an
4 officer, you only get an officer panel.

5 So if you're a second lieutenant or a
6 first lieutenant who is going to be sitting on
7 your panel, it's brigade and O6, O5 level
8 commanders. And there's criteria that the
9 convening authority is required to consider in
10 order to make up the panel members. So, you
11 know, the SJA goes in with a list of officers and
12 enlisted of -- in the command that makes up that
13 convening authority's command, and that convening
14 authority selects based upon that Article -- I
15 believe it's 25 criteria, experience, demeanor,
16 all those things that go in.

17 So for the Army you would have a very
18 senior panel of officers, and if the enlisted
19 soldier requested one-third of enlisted members
20 in the panel, it would be very senior enlisted
21 members.

22 CHIEF MCKINLEY: Thank you, Colonel

1 Weir. I'm one of those old crusty --

2 (Laughter.)

3 COLONEL WEIR: That's what I thought,
4 Chief. I meant it in the nicest way.

5 CHIEF MCKINLEY: Yeah. I think it's
6 very important for everybody to understand, when
7 we talk about the acquittal rate and everything,
8 that the makeup of the military members on the --
9 in a court is quality people. You know, so I
10 think it's important to know that.

11 COLONEL WEIR: And one of the
12 Article 25 criteria is experience. And so you're
13 going to have those enlisted panel members
14 sitting on there who have been in the military
15 who have gone through each rank, so they have
16 been, you know, specialists and sergeant first
17 classes and master sergeants, and now they've
18 seen it all.

19 So, and then there is this belief that
20 an enlisted Soldier would love to have enlisted
21 members on the panel. In my experience as a
22 defense counsel for many years is you didn't want

1 that old crusty chief sitting on your panel if
2 you're an E4 and you've committed misconduct,
3 because you have put a stain on the -- on the
4 enlisted corps. So --

5 MR. KRAMER: While we took a step
6 back, can I ask a question about pages 10 and 11?

7 MR. MASON: Absolutely.

8 MR. KRAMER: So the -- you talked
9 about how the acquitted of all charges is about
10 double across all the years, or as for the
11 military judges as opposed to the members, on
12 page 10, and it has gone up dramatically from
13 29.3 to 55, and from 9.1 to 26.

14 But there's a huge difference on
15 page 11. The acquitted for the contact offenses
16 -- the acquitted of all charges by the judge is
17 pretty steady with the exception of 2013 which
18 may be an aberration, but it's 8 to 10 percent,
19 which is way lower than acquitted of all charges
20 on the penetrative offenses, and yet the
21 acquitted of all charges on the military members
22 is still very high, but it's now four to five

1 times as opposed to twice as high on the
2 penetrative. Do you have any idea why that --
3 it's a huge variation there. Do you have any
4 idea why that is?

5 MR. MASON: I do not. And I hope that
6 when we have our criminologist -- that we can see
7 if we're able to tell -- from the straight data
8 that we have, if we can find some sort of a
9 correlation there.

10 MR. KRAMER: Because the acquitted of
11 all on the contact offenses is actually not
12 probably far from civilian courts with a military
13 judge, but for the military members, it's, like I
14 said, orders of magnitude higher than for the
15 other -- for the penetrative offenses.

16 MR. MASON: And something that we'll
17 be looking with the database to see if we can
18 break out, when we see these, if there are
19 specific offenses that are being charged and
20 getting a particular result versus other types of
21 charges and having a different result.

22 I don't know that we'll be able to,

1 but it's something that, as we keep developing
2 the information that we have, how we can figure
3 out if there are correlations or not.

4 MS. ROZELL: Also, with the military
5 judge versus members, you're going to have a
6 military judge if there's a pretrial agreement
7 involved as well. So there might be a raise in
8 that number.

9 MR. MASON: Which takes us to the last
10 page, which is page 12. And to give some
11 context, Chair Bashford had contacted us and said
12 that, because you have been hearing about the
13 Article 32s, and whether it was with the change
14 in the law, whether it was becoming something, if
15 it was of value anymore or not, people were
16 waiving it or not, she asked, is this something
17 that we could do an RFI, go to the Services, and
18 find out what the waiver rate is.

19 And we took a step back and said we
20 don't need an RFI. Our database already tells
21 us, because it's something that we were tracking.
22 So something that normally would have taken a

1 couple months, put the RFI out, wait for the
2 request to come in. Fifteen minutes later we had
3 some numbers. So the power of that database is -
4 - is pretty impressive.

5 If you look at FY16, you can see that
6 the number of Article 32s in blue that were held
7 has dropped compared to FY15, but the number of
8 Article 32 hearings that were waived has
9 increased as compared to FY15, and essentially
10 doubled from FY15, which FY15 doubled from FY14.
11 So you're seeing there is some step up there.

12 Now, the law changed in between fiscal
13 year '14 and '15. December of 2015 is when the
14 law was modified. So you're seeing this new
15 preliminary hearing framework. So we took those
16 -- those numbers, and the final chart that you
17 have breaks it down into specific issues, so the
18 percentage waived without a pretrial agreement.

19 So one thing that happens is, in the
20 military court, if you have a pretrial agreement
21 that says I'm going to plead guilty to X, you may
22 have agreed to waive your 32. Why put the

1 government through all of the steps if we're just
2 going to waive that and go to trial?

3 So waiver without a pretrial agreement
4 before the change was hovering in the 28 to 24
5 range. Then the law changed and it went up; 50
6 percent of the time they were waiving without a
7 pretrial agreement.

8 In this most recent year, almost 71
9 percent of the time they waived without a
10 pretrial agreement, so that's a big jump. Does
11 that -- is that directly responsive -- a result
12 of the change in law? We won't know until we
13 have more data to look at. But you can make an
14 inference possibly.

15 But then when you go to the very
16 bottom, the conviction rate when the Article 32
17 was waived, it goes close -- it follows with that
18 pretrial agreement that you have people who are
19 waiving because they have a pretrial agreement.
20 You have a higher percentage of conviction when
21 you look at '13 and '14. In '15, it started to
22 drop, and then in '16 you have them waiving, and

1 yet they're not getting convicted.

2 So does this mean that -- is it a
3 paper exercise? The defense doesn't feel that
4 it's necessary, so their complaint is that we
5 don't get the discovery that we used to have, but
6 are we now going to see a situation where maybe
7 cases are going forward that would have fallen
8 out when there was a 32? Or the trial counsel,
9 the government, is not getting a chance to have
10 that mini-trial and try their theory in an
11 Article 32 and find out that there might be some
12 flaws in their case instead of just going to
13 trial.

14 So these are the kind of things that
15 we'd like to see, and when we get '17 we'll be
16 able to look at that again.

17 Yes, ma'am.

18 DR. SPOHN: So conviction rate, does
19 that include -- is that based on referrals or
20 preferrals?

21 MR. MASON: That is with referral.

22 DR. SPOHN: And does it include guilty

1 pleas as well as conviction for any charge? So
2 this is just the overall conviction rate.

3 MR. MASON: I think it's just overall
4 conviction rate. I'd have to look at how my
5 numbers were created.

6 DR. SPOHN: But it includes guilty
7 pleas.

8 MR. MASON: Yes. It should.

9 DR. SPOHN: Okay.

10 MR. MASON: Yes, ma'am.

11 MS. TOKASH: I have a question with
12 regard to, I mean, obviously, these are all
13 referred cases. Were the Staff Judge Advocates'
14 recommendations to the convening authority, the
15 commander who refers the case to court-martial,
16 part of the files that you looked at?

17 And, if so, is there a way to add the
18 SJARs to this data project to see what the
19 lawyer's recommendation was versus the command
20 decision ultimately to refer the case? That may
21 or may not have some play on the shockingly low
22 conviction rates.

1 MR. MASON: We do track. We have the
2 SJARs. They are something that we scan. That
3 the opinion, the advice of the Staff Judge
4 Advocate is tracked in our database. So it's
5 just another data point that we could look at and
6 see how it plays.

7 These are the types of things that
8 will be written down, so it will now be something
9 that we'll look at and see if we can find
10 something there.

11 MS. TOKASH: Great.

12 MS. ROZELL: We can compare what the
13 investigating officer's recommendation for each
14 offense versus what the SJA's advice is for each
15 of the offenses, and then what actually goes
16 forward or doesn't go forward.

17 MS. TOKASH: Thank you.

18 CHAIR BASHFORD: And, Mr. Mason, just
19 we all went to law school because we weren't
20 good at math.

21 (Laughter.)

22 CHAIR BASHFORD: For fiscal year 2016,

1 if the conviction rate was 52 percent when
2 Article 32 was waived, would it then be 48
3 percent when it wasn't waived? Or are the
4 numbers going to add up to 100 percent? Or is
5 there a different chart?

6 MR. MASON: I am not -- because I'm a
7 lawyer, I -- I will have to play with the
8 numbers. I will have to ask that in the database
9 and see what the result comes out to see if the
10 way it's filtered, if it does work out to 100
11 percent or not.

12 CHAIR BASHFORD: It just would be
13 interesting to see if waiving or not waiving had
14 a measurable impact on the conviction rate.

15 MR. MASON: I cannot give you a 100
16 percent answer, so I would prefer not to.

17 MS. ROZELL: I might be able to answer
18 that question.

19 MR. MASON: Sure.

20 MS. ROZELL: Because of the records of
21 trial and acquittals are abbreviated, or they're
22 summarized, in some cases not all the

1 documentation is contained within the record of
2 trial. So, therefore, if it's a full acquittal,
3 there may not be the advice with -- contained
4 within the record of trial. The 32 may not be
5 within the record of trial because it's so
6 abbreviated.

7 So in those cases where we don't have
8 the document to make that selection, then we just
9 left that information blank or not applicable.
10 Maybe that might be --

11 CHAIR BASHFORD: Well, this is
12 wonderful and such a lot of work.

13 JUDGE GRIMM: So I would recommend
14 that the record reflect our -- our appreciation
15 for the amount of effort that went into this,
16 because it is unbelievably helpful when you start
17 to dial into the data from various points to see
18 what's going on.

19 CHAIR BASHFORD: And it's presented in
20 a very approachable manner, which I certainly
21 appreciate.

22 If I made a note correctly, is the

1 Data Working Group recommending a new RFI
2 directly to the services for the case
3 information?

4 MR. MASON: We would like to go that
5 route, if the Committee supports going that
6 route.

7 JUDGE GRIMM: I'd make a motion for
8 that.

9 CHAIR BASHFORD: I'd second that. Is
10 there any opposition to that? Seeing and hearing
11 none, have at it.

12 MR. MASON: We will make it happen.

13 MR. MARKEY: I just want to emphasize
14 how -- obviously, how important these numbers are
15 and to identify what this Committee may be able
16 to recommend and look for opportunities for the
17 Armed Forces to improve the response.

18 And so given that timely -- you
19 mentioned early on about the 2017 statistics, and
20 I think that's what the motion was, to try to
21 expedite that through, going directly to the
22 Services. I just can't emphasize enough how

1 having that information is going to be so
2 critical to see if there's patterns and trends
3 that we can identify and assist the Services with
4 the recommendations we made. So I just want to
5 emphasize the importance of that.

6 CHAIR BASHFORD: And since we know the
7 plural of anecdotes is not data, it's great
8 having the actual data to look at. So I commend
9 the work of the Data Working Group, and continue
10 heading forward. Thank you so much for the
11 presentation.

12 MR. MASON: Thank you very much.

13 CHAIR BASHFORD: Since we are way
14 ahead of schedule, I would suggest that we start
15 with the presentation of the Policy Working
16 Group. And if it's still going on at lunch,
17 which is scheduled for 12:30, we'll break then
18 from that. Case review, I'm sorry.

19 CAPT. TIDESWELL: The slide show
20 presentation.

21 MS. TAGERT: Okay. Good morning. I
22 think we are going to get started. We are the

1 members of the Case Review Working Group. And if
2 you're wondering why there are so many of us,
3 it's because the tasking that we have chosen to
4 undertake is a very large one. And I would just
5 like to say that the colleagues of yours that are
6 on the Case Review Working Group have already
7 done a lot of work to come in and coordinate it
8 with us to do case reviews.

9 So they have -- you know, they are
10 putting in the work for this project that we're
11 chosen to do. So we want to tell you what the
12 purposes are for the initial case review.

13 And the first one is we are going to
14 start capturing data within investigative case
15 files in order to see whether or not we can
16 predict the outcome. And what we are proposing
17 to do is to review investigation -- investigative
18 files which resulted in no action and compare
19 them to investigations where preferral did
20 result. And we have created a checklist which we
21 are hoping to capture those different facts which
22 may predict outcome.

1 Some of these data points may be self-
2 explanatory as to why a case was not preferred, a
3 victim doesn't want to go forward, and has made
4 those wishes known. But there may be other
5 factors which are not as clear, and those are the
6 ones that we're really trying to zero in on.

7 So to some extent -- so to some extent
8 we're hoping to -- the data that was presented to
9 you previously, some of you have asked questions
10 like, why is that happening? And we're here to
11 potentially tell you why certain things happen in
12 the military justice process.

13 The second purpose is to capture
14 demographic information, to look at, you know,
15 characteristics of people involved in the cases
16 to determine whether or not there is some
17 outcome-related demographic information.

18 Recently, Protect Our Defenders put
19 out a report which will be on our website that
20 shows that there are some racial disparities when
21 action is taken. I encourage you all to read
22 that. I thought it was interesting.

1 And to refresh your memory, you heard
2 some testimony about 140 Alpha, and I think that
3 the policy group addressed it again. But we are
4 looking at the case disposition categories that
5 are in the case file versus the DIBRS
6 classification versus what the command action
7 taken was concluded as.

8 And we have seen some discrepancies in
9 those three different categories, so we really
10 kind of want to narrow in why these cases are
11 getting closed and what the action taken is being
12 reported as.

13 And, finally, we are literally going
14 to review 1,317 cases, which no action was taken.
15 And we are going to be making a determination
16 based on the investigative file only whether or
17 not that decision was reasonable based on the
18 evidence or some other factor that is obvious in
19 the case files.

20 JUDGE GRIMM: Excuse me. On that --
21 that's a fascinating issue and a lot of work,
22 too. Will you have -- you investigative file

1 only. Is there a way to correlate those -- well,
2 if there is no action taken, does that mean that
3 there was no review by an SJA on that?

4 MS. TAGERT: No, sir. We can't -- I
5 mean, we can't tell that from the investigative
6 file.

7 JUDGE GRIMM: Exactly. Right. And
8 that alone.

9 MS. TAGERT: The command is required
10 to make a decision on those case files with the
11 assistance of their Judge Advocate. So this is
12 not -- you know, this is not a study in whether
13 or not the investigators are taking action on
14 their own. That is not our understanding of the
15 case files that we're looking at.

16 JUDGE GRIMM: Okay.

17 MS. TAGERT: We just asked for the
18 investigators to give us their disposition
19 classifications to make sure they are accurate
20 with potentially the JAG's information and then
21 ultimately the --

22 JUDGE GRIMM: So does the

1 investigation file make a recommendation, or does
2 it just present the outcome of what that
3 investigation was?

4 MS. TAGERT: It -- it does both. In
5 some cases, the reporting can say just no action
6 taken without any additional information, or
7 otherwise we receive, you know, a little write-up
8 that I assume is produced potentially by the JAG
9 Office, but approved by the command. But we just
10 don't know yet. In March, we're having a Case
11 Review Working Group session, where we'll have
12 people from the different JAG offices as well as
13 commanders and law enforcement to talk about it.

14 JUDGE GRIMM: Thank you.

15 DR. CHAYT: May I address that for a
16 moment? If your question is, does the
17 investigator make a recommendation on what
18 appropriate action in a case would be, the
19 investigators are prohibited from making any kind
20 of recommendation.

21 They are to discover the facts and
22 present those facts to the commanders and the

1 JAGs, so that a determination may be made at that
2 level.

3 MS. TAGERT: Does that answer your
4 question, Judge?

5 JUDGE GRIMM: Well essentially because
6 -- yes, because it would be interesting that
7 obviously you're starting at the right place.
8 But based upon what you find, it might be
9 interesting then to do a sampling of cases where
10 you look at cases where the investigative file
11 led you to a certain conclusion about whether it
12 was right or wrong and then get other related
13 documents to go in the chain, the lifespan of
14 this as it goes beyond the investigation itself
15 to try and figure out what happened there. That
16 might be informative.

17 MS. TAGERT: Yes.

18 JUDGE GRIMM: But that's not where you
19 start.

20 MS. TAGERT: Yes, in a couple of
21 slides, we're going to show you the time line
22 because we are going to do that.

1 JUDGE GRIMM: Great.

2 MS. TAGERT: So at our last meeting we
3 discussed what the initial case review was going
4 to be and that was based on the testimony of the
5 investigators regarding their total amount of
6 sexual assault investigations that were closed in
7 Fiscal Year 2016. And that's when the DAC-IPAD
8 said why is there only a 20 percent preferral
9 rate across the Services for sexual assault
10 cases. But it wasn't broken down into contact or
11 penetrative.

12 And if you remember at the last
13 meeting, you also felt that we should only look
14 at penetrative cases for our first initial review
15 because we thought potentially that 20 percent
16 preferral rate was related to the fact that
17 contact cases were not necessarily getting
18 preferred to a general court-martial.

19 So we asked the investigators for the
20 Fiscal Year 2017 information and we had to kind
21 of get a world view. So in your read ahead
22 materials, you can see the RFI. If you want to

1 fall asleep and read that, go ahead later, but we
2 asked for all the sexual assault investigation
3 data that the different Services had investigated
4 that year, including cases that were open for
5 informational purposes only.

6 And then we asked them to break it
7 down further, based on only penetrative sexual
8 assaults. And we asked them to give us a little
9 more detail about those cases, which they
10 provided to us in an Excel sheet.

11 So we have every single case that was
12 closed in that Fiscal Year, what the disposition
13 was according to the Services database, and what
14 the case clearance category is according to
15 DIBRS. And the reason that we wanted that
16 information, again, is to look at these
17 disposition consistencies because, as you have
18 heard from speakers throughout your public
19 meetings, this data is something that needs to be
20 looked at potentially.

21 So again, Mr. Mason was talking about
22 cases and data previously and he's only talking

1 about cases that are preferred. So our universe
2 right now is only cases where there was no
3 preferral action at all. And based on the
4 numbers that we received, we believe that we're
5 only going to look at no action cases to start,
6 where absolutely no action was taken -- no
7 general officer's reprimand.

8 So that is where we are as far as the
9 RFI is concerned. And Stacey, if you could --
10 oh, sorry. Can you go back to case disposition?

11 Terry?

12 MS. GALLAGHER: Yes, just to point out
13 with regards to the case dispositions and kind of
14 the pattern we are following through is Rules for
15 Courts-Marital 306, which is precedentially
16 prescribed, sets forth what a command can do with
17 an offense when it comes to them. And there are
18 really four things they can do. They can do no
19 action, administrative action, non-judicial
20 punishment, or they can do charges.

21 And with regards to no action, it of
22 course does not mean that somebody made a

1 complaint and absolutely nothing happened with
2 the complaint. It means that a complaint came in
3 and it was investigated fully that a final report
4 of investigation was prepared and that the final
5 report of investigation was served on the
6 command.

7 And you know the command, in
8 conjunction with the legal adviser, presumably,
9 is making the decision on what is going to happen
10 with the case.

11 And they have not only -- you know the
12 baseline standard of whether an offense occurred
13 and whether the suspect committed it, but they
14 also have different disposition factors that they
15 look at as well, one of which would be is there
16 admissible evidence and such like that.

17 So the first phase of what we're going
18 to be looking at are the cases that do fall into
19 the no action category. It is the largest
20 category of dispositions being recorded. And so
21 we're trying to unravel really what they consist
22 of and record the factors involved.

1 MS. TAGERT: So, the moment you've all
2 been waiting for, the consolidated data that we
3 came up with.

4 I just want to -- a little caveat
5 about these numbers, the 2,069. The Services
6 gave us more case numbers than that and more
7 dispositions. However, cases that we didn't find
8 responses to the original request we took out;
9 i.e., the person was retired, or a civilian. So
10 I mean there are reasons that investigators open
11 cases that aren't necessarily able to be
12 prosecuted in the first place. And we just don't
13 want to muddy the waters. We're only talking
14 about cases where we have jurisdiction.

15 And as you can see -- another thing I
16 want to say about these numbers. These are self-
17 reported, unlike what Mr. Mason was talking
18 about. We don't have documentary evidence as to
19 whether or not this is correct. We will after we
20 go through our 1,300 cases but as of now, the
21 numbers are what they are. We don't really make
22 any judgment on them. And as you'll see, we

1 don't really know what they mean based on the
2 dispositions that we were given by the
3 investigators.

4 It is interesting to go through the
5 numbers by Service. So the Naval Criminal
6 Investigative Service, they obviously cover both
7 the Marine Corps and the Navy. And as you'll see
8 here, the column on the left indicates what the
9 investigative agency has classified this case as.
10 So preferral action, admin, civilian authority,
11 which we believe means that the civilian chose to
12 prosecute that particular case, non-judicial.

13 It gets a little bit more complicated
14 in the no action reported cases. No action
15 reported is not necessarily what NCIS classified
16 those cases. They used insufficient evidence, no
17 action taken, and unfounded.

18 For the asterisk, prosecution
19 declined, victim uncooperative, or arrest, those
20 were the DIBRS classifications based on the fact
21 that the Navy classified those cases as unknown.
22 So rather than give you what unknown was, we

1 decided to just go with the reason that was given
2 to DIBRS as to why that particular case was
3 closed.

4 You know I know that Dr. Galbreath
5 said earlier that insufficient evidence was the
6 largest body of cases that were closed with no
7 action, according to SAPRO, but only the Naval
8 Service uses that terminology insufficient
9 evidence. So, potentially, in March when we have
10 our Working Group, we'll discuss what
11 insufficient evidence is defined by DoD SAPRO and
12 whether or not that covers prosecution
13 declination cases or not.

14 The Navy and Marine Corps, for
15 whatever reason, had very similar numbers. But
16 again, NCIS -- I mean the Naval cases were also
17 unknown and then we relied on the DIBRS
18 classification.

19 The Army numbers, obviously, are the
20 highest because they have the highest population.
21 And their internal system, the reasons that were
22 given as to why a case was closed was no action

1 taken or unfounded. That was for their internal
2 database.

3 The other classification that have an
4 asterisk are, obviously, the ones that we had to
5 rely on the DIBRS classification to figure out
6 potentially the reason as to why that case was
7 closed.

8 The Air Force, I want to give them
9 some -- their database is very good, as compared
10 to the other Services. When we reviewed the
11 reasons given as to why a case was preferred or
12 another action took place, it was very clear from
13 the investigators' data what happened in that
14 case. And that may be why their preferral rate
15 is tracking as higher because we actually were
16 able to figure out what the disposition was. I
17 don't know that for sure but never in their
18 internal database was a case classified as
19 unknown or no action taken. There was always
20 what the action was.

21 Yes?

22 MS. TOKASH: Can you tell us what

1 arrest means? Does that mean arrest by civilian
2 authorities or -- if you know?

3 MS. TAGERT: So I'm actually going to
4 let Jan answer that. It's a DIBRS
5 classification.

6 DR. CHAYT: The DIBRS classification,
7 as I'm sure many of you do know, is how the case
8 was closed, solved or unsolved. And arrest
9 means, and for the Military it's or equivalent,
10 and that means that after that person was
11 identified, their fingerprints were taken, that a
12 probable cause determination was made by the SJA
13 that there was sufficient information to send
14 those fingerprint cards forward for NCIC entry.

15 He was arrested; however, in this
16 case, still no action was taken. Of course,
17 we're looking forward to reading the case files
18 to determine why.

19 MS. TAGERT: But yes, to go back to
20 the Air Force's database, if a case was
21 unfounded, the reason for the unfounding was very
22 clear and they used the FBI's definition

1 describing it as baseless or false.

2 If there was a prosecution declined,
3 adjudication it said evidence threshold. It was
4 very specific and we found it very helpful in
5 going through the data to have that specific
6 information known.

7 Again, so the conclusion of this
8 story, based on the data, is that even when you
9 sort the cases into penetrative cases only, we're
10 still seeing a similar preferal rate, which is
11 in the 20 percent range, other than the Coast
12 Guard, which -- sorry, I didn't mean to forget
13 them. The Coast Guard had a preferal rate of 41
14 percent. We don't know why that is but it's much
15 higher than the other Agencies.

16 So again, we were correct in deciding
17 to look at the no action cases because the
18 percentage are the same. There is no difference
19 between contact and penetrative when we're
20 looking at them.

21 And the last slide just shows the
22 percentage of no action taken across the Services

1 on one page, so you can see the different rates.

2 MS. GALLAGHER: And then now, just to
3 kind of let you know where we're going, the goal
4 here is by the end of 2018, really by the end of
5 the summer, we anticipate we will have reviewed
6 all investigation files that meet our criteria,
7 which are penetrative offenses with a military
8 subject, an adult victim closed by the
9 investigative agency in Fiscal Year 2017.

10 And you know I talked earlier about
11 the phases. The first phase is these no action
12 cases, which are the 1,317 cases. After that,
13 we're going to roll into the preferred cases,
14 which is it looks like 408 cases.

15 And then after that, we're going to be
16 tackling the administrative action cases, 201
17 civilian authority, and non-judicial 129 cases.

18 So we think that we should be able to
19 review and record the data from the 2,069
20 investigative files.

21 And then once we have extracted all
22 the data and put it into the database, we are

1 going to have a criminologist take a look at the
2 data, do the analysis and then we'll be
3 presenting results to you all.

4 MS. TAGERT: This time line is subject
5 to the Government shutdown, just so you all know.

6 MS. GALLAGHER: That will delay
7 things. We'll be looking for volunteers to come
8 in and review these cases.

9 DR. CHAYT: Can I add a slight caveat
10 for explanation for everyone? In your read ahead
11 we had the question we originally asked. And you
12 might notice that the number of cases reported by
13 the MCIOs is a lower number than the number of
14 cases we addressed by the individual. And that's
15 because when they recorded investigative cases,
16 they were actually reporting the number of files
17 and investigations which they conducted, which
18 might contain multiple subjects.

19 And when we refer to cases that we're
20 going to be looking at to track what happened,
21 we're actually going to be tracking by offender
22 identified. So the numbers are different and I

1 just wanted you to be aware of that.

2 MS. GALLAGHER: Okay and now the
3 strategic plan. This is to give you just kind of
4 an idea of where the Case Review Working Group
5 has looked at going after really calendar year
6 2018, which is kind of encompassed by these
7 investigations, with a goal towards the write-up
8 being in the March 2019 report.

9 After that, really we have all of
10 calendar years '19 and calendar year '20 to
11 continue to do additional case reviews. And
12 we've looked at the attrition of the cases
13 between preferral and referral. So of like the
14 408 preferred cases we're looking at, can we
15 track down why it is that they were -- you know,
16 were they referred or were they not referred and
17 why, if we can tell from the data in the
18 document.

19 Also, they've contemplated looking at
20 the cases that resulted in acquittals. That's
21 clearly of concern to say you know why is this
22 happening. And we hope to be able to get into

1 the whys of that by looking at cases. And then,
2 of course, the comparison being the cases that
3 have resulted in convictions, so that we have a
4 comparative sample that Dr. Spohn will be happy
5 with.

6 And then of course, any of the data
7 points that come up and raise issues in trends
8 might raise other issues that we want to take
9 another look at.

10 And then -- oh, yes. Sorry, Dr.
11 Spohn.

12 DR. SPOHN: I just had one thing. I
13 noticed that although the staff is going to be
14 analyzing all 1,317 of these cases, the Members
15 of the Case Review Committee are each going to
16 do, what, 24 I think cases and then we will be
17 comparing our evaluations of the cases to ensure
18 consistency and intercoder reliability.

19 DR. CHAYT: Just Dr. Spohn didn't
20 mention it, but she mentioned they'll be looking
21 at 171, and that is the statistically significant
22 number required so that they can do a comparison

1 of mean.

2 MS. GALLAGHER: And that's the number
3 for the no action cases. Of course there's
4 additional when you move into the other
5 categories.

6 So the view is that the staff will
7 review 100 percent of all the investigations.
8 The Working Group Members, themselves, will
9 review a statistically significant random
10 sampling and then we have different avenues in
11 place to ensure the reliability and consistency
12 between the reviews of both the staff and the
13 Working Group Members, trying to ensure we have
14 the best possible data that we can.

15 The checklist is still being compiled.
16 We've had you know our Case Review Working Group
17 Members have all reviewed. We've got five cases
18 that we're having all of staff, all of the
19 working group work through to make sure that
20 we've got consistency to the greatest extent
21 possible but also to capture everybody's insight
22 and expertise in what they believe should go into

1 the checklist, what kind of data points are
2 meaningful for everyone.

3 So the checklist right now is about 12
4 pages. You know there will be some narrative but
5 we're trying, to the greatest extent possible, to
6 ensure dropdowns and non-narrative input.

7 We've got things on the checklist like
8 the timing of reports versus the timing of the
9 incident, the timing of investigation and action
10 by the command, different locations, suspect
11 information, and victim information, the race,
12 ethnicity, age, relationship between suspects and
13 victims, the different statements being made by
14 both parties, alcohol/drug use, digital evidence,
15 pretext communications, mental health issues to
16 some extent, just recording whether or not there
17 is anything reflected in the file.

18 And that's really about it. Are there
19 any questions?

20 JUDGE GRIMM: Did you mention whether
21 there was either a relationship or knowledge
22 between the victim and the accused?

1 MS. GALLAGHER: Absolutely, we've got
2 a significant number of dropdowns to try and
3 capture that. And if it's not one of these you
4 know 14 different dropdowns, then there is a
5 narrative to write it in.

6 And as we go through the cases, if you
7 know we normally have like another factor, if
8 we're seeing another that is repetitive, like we
9 seem to have a lot of roommates. So if we see
10 something that's repetitive, we'll add it in as a
11 dropdown and go back in and reenter those in the
12 appropriate dropdown for ease of data analysis.

13 CHAIR BASHFORD: The staff has done
14 and is continuing to do yeomen's work in terms of
15 this. Clearly, when you look at the statistics,
16 there's a huge number of cases that never make it
17 to the referral/preferral stage. And I believe
18 we're the first group to really look at those
19 cases in-depth.

20 So I think we're trying to do two
21 things: one, see does this seem, in some sense
22 of the word, reasonable on each case but also, I

1 think and as importantly, by capturing these data
2 points now and then comparing to the cases where
3 charges were, in fact, made, can we see anything
4 that accounts -- is there anything there that
5 accounts for the differences.

6 JUDGE GRIMM: And I just wanted to
7 make an observation. It's an enormous
8 undertaking but it's extremely important. And so
9 the work you're doing is absolutely -- we're
10 trying to answer questions about what's going on
11 here. It can't be done without that work. So
12 it's really vital and I'm very grateful to your
13 group.

14 MS. TOKASH: Is there any way that the
15 staff can get us, as a committee, any standards
16 from the Services that are used to arrive at a no
17 action required?

18 MS. TAGERT: So yes, in our March Case
19 Review Working Group meeting, we're going to have
20 -- we haven't put the request out yet. So, it
21 will come to you all later.

22 We want to have Judge Advocates, the

1 Provost Marshal, the different investigators so
2 that they can tell us, flush out a lot of what
3 the terminology means to them and to make sure
4 that there's an understanding as to what we're
5 looking at.

6 MS. TOKASH: And if there's anything
7 in writing, like by way of like anything so that
8 we have a better understanding of how these
9 decisions are being made, I think that would be
10 helpful.

11 MS. TAGERT: Yes, and we'll share that
12 with the DAC-IPAD.

13 MS. TOKASH: Thank you so much.

14 MS. CANNON: One of the things that I
15 think we, as the committee, have found is that
16 there is kind of inconsistency across the
17 different branches of Service as to what their
18 reasoning is, what means unfounded. Are they
19 using the same definition? What is insufficient?

20 So we're hoping that at this next
21 meeting, we'll get a sense of each branch's
22 definitions, as well as the problems of the

1 inconsistencies so that working toward everybody
2 using kind of a uniform standard. That seems to
3 be lacking but that's just a guess.

4 MR. HINES: Ms. Tokash, one of the
5 things that we talked about yesterday on this
6 issue was first of all, our SOP that we have in
7 place for reviewing the cases is there are going
8 to be multiple people looking at each one of
9 these files. And the decision was made that if,
10 collectively, there is an opinion that there is
11 some other questions that need to be asked about
12 one of these cases -- and again, this is just the
13 investigative file. It almost never has a legal
14 memorandum or a prosecutor. So you've just got -
15 - but you can still look at it and sort of tell,
16 based on your experience, you know there are some
17 issues in this case.

18 So what we're planning on doing in the
19 Working Group is if we see a file and there is a
20 consensus there are further questions, you know
21 we can't really figure out maybe why this case
22 wasn't charged, we're going to pull those cases

1 out. And then there's going to be more review by
2 the Working Group Members and the Staff.

3 And if it gets to the point where
4 there is then a more common consensus that we
5 need more information, that the committee needs
6 more information, then we're going to approach
7 the question do we need to go back to the Service
8 branch in this case and ask for more information.
9 And there is obviously, if you get to that point,
10 various ways that you could do that. You could
11 go back and formally -- you know do you want the
12 prosecution memo? Do you want the Staff Judge
13 Advocate's input? Is that information there and
14 do you need to look at it?

15 So, we've got a pretty good plan in
16 place about how we're going to address that
17 issue.

18 MR. KRAMER: Can I ask, in the files
19 that you're reviewing right now, is there any
20 indication about social media of either the
21 victim or the accused being looked into?

22 MS. GALLAGHER: Yes, we're recording

1 all of the digital evidence as well, recording
2 what type it was, you know whether -- and we're
3 looking at was the corroborative evidence, so
4 corroborative of the victim, corroborative of the
5 suspect, or there was neither. So, yes.

6 MR. KRAMER: Because it can make a big
7 difference in the civilian forum for either a
8 victim or accused social media.

9 MS. GALLAGHER: Yes, I mean, these
10 days it is more or less in every file, either
11 before, during, or after.

12 JUDGE GRIMM: Particularly the age
13 group of the people you're looking at that cannot
14 imagine life without it.

15 MS. GALLAGHER: Right.

16 CHAIR BASHFORD: Any further questions
17 of the Staff on this?

18 MR. MARKEY: I just wanted to thank
19 the Staff for -- I echo your thoughts about the
20 support that you've given us and the guidance.
21 And hopefully, we've been helpful as well.

22 I think one of the things that we

1 talked about and I think there was a concern, I'd
2 heard from outside that we are looking to
3 determine whether these investigations were
4 within the policy of each one of the branches.

5 So we're not really focusing on
6 whether there is a policy violation within that,
7 because that's already been done by some of the
8 MCIOs over the course of the years whether
9 they're following policy, but if something does
10 show up within our review, it may be a policy
11 issue that we can see when we finally look at the
12 numbers as maybe that's a causal effect of why
13 this particular case went in one direction or
14 didn't go in a direction.

15 But that's really not the focus.
16 We're trying to see, I guess look at the meat and
17 potatoes of the case and was that information
18 that was provided sufficient to make a
19 determination by the commander whether that was
20 going to be preferred or actioned or not.

21 MS. TAGERT: Yes, I think Mr. Markey
22 is right. Obviously, you're not DoD IG. We're

1 not looking at specific cases. We want to look
2 at trends and we want to see whether or not
3 outcomes can be predicted. And we don't know if
4 it can but it's not a review of cases in that
5 sense, exactly.

6 Yes, thank you for bringing that up.

7 CHAIR BASHFORD: Anything further for
8 the Staff for the Case Review Working Group?

9 Well, thank you very much. Thank you
10 for your work and thank you for the presentation.

11 We have zoomed through our agenda very
12 efficiently.

13 Before we draw to a close, though, I
14 want to add my own appreciation to Captain
15 Tideswell. This is her last public meeting of
16 the DAC-IPAD before she retires after 30 years'
17 service. She gave a tremendous work to the JPP
18 before us but, in the past year that we've been
19 working with her, she's just been an invaluable
20 asset. We look forward to continuing to work
21 with you until you leave. We wish you wouldn't
22 but life moves on and we just really, as a

1 committee, really wanted to thank you for your
2 service to the country, for your service to us.

3 So thank you so much.

4 CAPT. TIDSWELL: It's been my honor.

5 CHAIR BASHFORD: And with that, Major
6 King?

7 MAJOR KING: Yes, the public meeting
8 of the DAC-IPAD is officially closed.

9 (Whereupon, the above-entitled matter
10 went off the record at 11:31 a.m.)

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This is to certify that the foregoing transcript

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Before: US DoD

Date: 01-19-18

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was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

Neal R Gross

Court Reporter

NEAL R. GROSS

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