

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

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FRIDAY,
JULY 20, 2018

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The Committee met in Suite 1432 at One Liberty Center, 875 North Randolph Street, Arlington, Virginia, at 9:00 a.m., Ms. Martha Bashford, Chair, presiding.

PRESENT:

Ms. Martha Bashford, Chair
Hon. Leo Brisbois
Ms. Kathleen Cannon
Ms. Jennifer Gentile Long
Dean Keith Harrison
Mr. James P. Markey
Dr. Jenifer Markowitz
CMSAF Rodney J. McKinley, USAF, Ret.
Brig. Gen. James Schwenk, USMC, Ret.*

Dr. Cassia Spohn

Ms. Meghan Tokash*

Hon. Reggie Walton

WITNESSES:

Mr. John E. Hartsell, Associate Chief, Military
Justice Division, Air Force Legal
Operations Agency

Ms. Janet K. Mansfield, Chief, Programs Branch,
Criminal Law Division, Office of the Judge
Advocate General for the U.S. Army

Mr. Stephen McCleary, Senior Military Justice

Counsel, Office of the Judge Advocate

General for the U.S. Coast Guard

Lieutenant Commander Jeffrey Pietrzyk, U.S.

Navy, Deputy Director, Criminal Law

Division, Office of the Judge Advocate

General for the U.S. Navy

Major Wayne Shew, U.S. Marine Corps, Deputy

Branch Head for Military Justice, Judge

Advocate Division, Headquarters, U.S.

Marine Corps

SERVICE REPRESENTATIVES:

Lieutenant Colonel Mary Catherine Vergona,

U.S. Army

PUBLIC COMMENTERS:

Kylisha Boyd

Ryan Guilds, Arnold & Porter

Alyssa Rodriguez

STAFF:

Colonel Steven B. Weir, U.S. Army, Staff

Director

Major Israel King, Alternate DFO

Ms. Julie Carson, Deputy Staff Director

Ms. Theresa Gallagher, Attorney Advisor

Mr. Chuck Mason, Attorney Advisor

Ms. Meghan Peters, Attorney Advisor

Ms. Terri Saunders, Attorney Advisor

Mr. Dwight Sullivan, Designated Federal Official

Ms. Kate Tagert, Attorney Advisor

*Present via telephone

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

2 (9:04 a.m.)

3 MAJOR KING: This public meeting of
4 DAC-IPAD is officially open.

5 CHAIR BASHFORD: Thank you, Major
6 King. Good morning. I'd like to welcome the
7 members and everybody in attendance today to the
8 8th meeting of the Defense Advisory Committee on
9 Investigation, Prosecution, and Defense of Sexual
10 Assault in the Armed Forces, or the DAC-IPAD.

11 The Secretary of Defense appointed 16
12 members to the Committee, 12 of whom are present
13 today, including two members who are
14 participating by phone, General Marcia Anderson
15 and General James Schwenk. Four Committee
16 members, Ms. Meg Garvin, Mr. AJ Kramer, Judge
17 Paul Grimm, and Ms. Meghan Tokash are not able to
18 be here today.

19 The DAC-IPAD was created by the
20 Secretary of Defense in accordance with the NDAA
21 for fiscal year 2015, as amended. Our mandate is
22 to advise the Secretary of Defense on the

1 investigation, prosecution, and defense of
2 allegations of sexual assault and other sexual
3 misconduct involving members of the Armed Forces.

4 Today's meeting is being transcribed.
5 The complete written transcript will be posted on
6 the DAC-IPAD's website.

7 At today's meeting, the Committee will
8 conduct deliberations on Article 140a, Uniform
9 Code of Military Justice, which was enacted as
10 part of fiscal year 2017 NDAA.

11 Article 140a requires the Secretary of
12 Defense to set uniform standards and criteria for
13 managing courts-martial and collecting data on
14 criminal cases across all of the Military
15 Services no later than January 1, 2019.

16 The Committee plans to make its
17 recommendations to the Secretary of Defense on
18 this issue based on the Committee's review of
19 best practices in the civilian and military
20 justice systems.

21 This task ties together several issues
22 of importance for this Committee. First, the

1 Committee has reviewed the findings and
2 recommendations of the Judicial Proceedings Panel
3 concerning the need for improvement in the sexual
4 assault case data collection. Second, the DAC-
5 IPAD has collected, and continues to review,
6 court-martial case documents from 2012 to the
7 present from each of the Military Services.

8 Finally, with the passage of the
9 Military Justice Act of 2016, Congress has
10 enacted a substantial overhaul of the procedural
11 and substantive provisions of the UCMJ, and many
12 of those changes will affect the investigation,
13 prosecution, and defense of sexual assault in the
14 Armed Forces.

15 Article 140a provides a vehicle for
16 understanding the effect of those changes and for
17 obtaining valuable information about sexual
18 assault cases prosecuted by the military. This
19 Board's members, as practitioners and experts in
20 the field of civilian and military criminal
21 justice, are well-positioned to advise the
22 Secretary regarding the sexual assault case

1 information that should be available under
2 Article 140a and how best to obtain this
3 information.

4 Each public meeting of the DAC-IPAD
5 includes a period of time for public comment.
6 Today we will hear from two survivors of sexual
7 assault who have been through the military
8 justice process and wish to share their
9 experiences with the Committee.

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

18 It is very important to the members of
19 this Committee that we offer each of the Military
20 Services here an opportunity to voice their
21 perspectives before we finalize our
22 recommendations to the Secretary of Defense

1 concerning 140a.

2 For the first section of today's
3 meeting, we have invited representatives of each
4 of the Services to join us for this express
5 purpose.

6 Thank you all very much for joining us
7 today. And if you would please start by
8 introducing yourselves, and tell us briefly about
9 your current position, we will proceed with
10 questions. Thank you. In any direction you care
11 to.

12 MAJOR SHEW: Good morning, ma'am.
13 Good morning, Panel members. My name is Major
14 Wayne Shew. I am the Deputy Branch Head for
15 Military Justice in the Marine Corps. In that
16 capacity, I have worked with the military justice
17 policy legislation section of our office. I was
18 a former service representative to this
19 committee. I also served on -- well, I do serve
20 on the Joint Service Committee on Military
21 Justice as well.

22 MR. McCLEARY: Good morning, Madam

1 Chair, members of the Panel. My name is Steve
2 McCleary. I work with the Coast Guard's Office
3 of Military Justice. I am the senior military
4 justice counsel. I am also the Coast Guard's
5 service representative to the Committee.

6 I served on the Joint Service
7 Committee's subcommittee that looked on -- looked
8 at Article 140 alpha. And then, when I was on
9 active duty, on two separate occasions I was the
10 Coast Guard's voting member on the Joint Service
11 Committee.

12 MS. MANSFIELD: I'm Janet Mansfield.
13 I'm the Chief of the Programs Branch for the Army
14 Criminal Law Division, office of the Judge
15 Advocate General. In that capacity, I'm the
16 primary legal advisor to the Army SHARP Program.
17 I'm a DSAID legal officer, and I am an
18 administrative Army-wide user of the two
19 databases, ACMIS, the Army Court-Martial
20 Information System, and MJO, Military Justice
21 Online, for use for answering external or
22 internal RFIs.

1 LCDR PIETRZYK: Good morning. I'm
2 Lieutenant Commander Jeff Pietrzyk. I'm the
3 Deputy Director of Code 20, Military Justice
4 Policy, Office of the Judge Advocate General. I
5 am a former prosecutor and defense counsel as
6 well.

7 MR. HARTSELL: Hi. Good morning. I'm
8 Mr. John Hartsell. I'm the Associate Chief of
9 the Military Justice Division at the Air Force
10 Legal Operations Agency. I'm a retired judge
11 advocate. I previously served as the Staff Judge
12 Advocate for Information Technology Acquisition
13 Unit within Air Force Materiel Command. I'm a
14 prior military judge.

15 I also served on the Voting Committee
16 for the Joint Service Committee and also served
17 on the subcommittee for the 140a subcommittee
18 report for the Joint Service Committee. And I
19 currently, within my portfolio, oversee the
20 responsibilities for AMJAMS, which is our data
21 collection system in the United States Air Force.

22 CHAIR BASHFORD: Thank you all for

1 appearing. The Committee is aware that this is
2 still under deliberation by the Secretary of
3 Defense, so there are some questions you may feel
4 you are not able to answer. We hope, though,
5 that you will be able to tell us what sort of
6 impacts certain changes might have on your
7 Services.

8 So I'm opening it up to questions from
9 the Committee.

10 CHIEF MCKINLEY: I'll start first.
11 Article 140a does not require the use of an
12 electronic database. It just says to implement
13 the same standards and criteria for military
14 justice across all of the services. What would
15 the impact be on your Service if Article 140a
16 required an electronic database for collecting
17 and analyzing case information?

18 CHAIR BASHFORD: Do you want to go
19 first?

20 MAJOR SHEW: Sure. So, Chief, I think
21 the question is, you know, what impact would it
22 have? It really depends on what the uniform

1 standards are. The Services, as far as I can
2 tell, collect similar information, but we have
3 slightly different ways in which we record that
4 information based on each Service's military
5 justice practice.

6 I think there probably will be some
7 issues, you know, ensuring we have a uniform
8 standard and how do each Service's military
9 justice information system, you know, adjust to
10 that. I can't tell you what the impacts are
11 without really knowing what the proposed uniform
12 standard looks like.

13 MS. MANSFIELD: I think that for the
14 Army we have existing databases that our
15 practitioners use to manage their cases on a
16 daily basis, and that our headquarters uses to
17 analyze data or respond to RFIs. And we all have
18 the statutory requirement, all of the Services
19 do, to report a significant amount of information
20 in the DSAID database.

21 So an additional database would be an
22 additional workload for us. So if there is not

1 an additional benefit to that database for the
2 Services, you know, I would ask you to take that
3 into consideration.

4 MR. McCLEARY: We also, the Coast
5 Guard, have our own electronic system for
6 tracking data related to military justice cases.
7 We have had it since 2000, so we have now 18
8 years' worth of data in it. And so, you know,
9 depending on, you know, how we -- how
10 Article 140 alpha would get implemented, if it
11 involves changes to the database, that is an
12 impact.

13 If we were talking about some sort of
14 a uniform database, that would be a much bigger
15 one because it would likely put us in a situation
16 where we would have 18 years' worth of data that
17 would be separated from whatever the data was
18 going forward in any sort of a uniform system.

19 LCDR PIETRZYK: The Marine Corps and
20 the Navy share a system. We both use what is
21 called CMS, the Case Management System, for our
22 rudimentary case processing right now. If what

1 you would propose is an upgrade to that system,
2 then, you know, the effect on our Services would
3 be the cost to transfer the data, technical
4 upgrades, the cost of manpower, and how to
5 transfer the data, if not reenter the data
6 completely.

7 Our system goes back -- I can speak
8 for the Navy -- to 2012. So if we were required
9 to go take data from before that, we would have
10 to go to hard copies that are stored in, you
11 know, different federal repositories.

12 MR. HARTSELL: Let me start by saying
13 I absolutely love Article 140a. I think that is
14 a fantastic article because what it does is it is
15 a very strong nudge to the Services. Hey, common
16 standards and criteria, whether it's a database
17 or not, you all have to speak the same language,
18 so we can analyze data on any crime. Whether it
19 be sexual assault or kidnapping, or what have
20 you, there have to be common standards and
21 criteria separate and distinct of whether or not
22 there is a single database that in the darkness

1 binds you, as some would argue.

2 The common standards and criteria,
3 everybody is speaking the same language with the
4 same data points and the same information then
5 analysis can be done to help identify trends, to
6 help identify issues, to help identify the
7 training needs and resource needs. So I think
8 140a is tremendous in that it says to the
9 Services common standards and criteria, but it is
10 also very clear it doesn't talk about a single
11 system.

12 And I think it is very wise in that
13 regard, because if information technology
14 promises us anything -- well, two things it
15 promises us, great expense and relentless
16 optimism that it always seems to be unfulfilled.
17 None of us worked the two-hour days that were
18 promised to us many years ago when computers came
19 online.

20 Chief Master Sergeant in the Air
21 Force, you are familiar -- probably Major General
22 Anderson is familiar with the DIMHRS effort that

1 in the 1990s, by the Services, you have one
2 system just for human resources. Just for human
3 resources.

4 How simple could that be? One billion
5 dollars later, Secretary Gates eliminated the
6 entire program. It could not be done. It was
7 too problematic. The Services were too
8 idiosyncratic, and some of you may think, well,
9 hmm, maybe that's a military problem. California
10 went through the same issue as well recently. If
11 you'll look online, you'll see their initiative
12 to create one system for public records, just in
13 the state of California. It's all the same law.
14 They couldn't do it.

15 Two billion dollars later, they
16 abandoned the initiative and now they go with
17 individual district systems. So our systems
18 reflect not just our military justice exercise in
19 our particular Services, but also the human
20 resources, the structure of our Services, the way
21 the convening authorities work. So the Services
22 are idiosyncratic of ways the Services are

1 organized around their particular command
2 structure.

3 So I tend to think that a single
4 system is going to do a disservice to the
5 individual Services because they won't reflect
6 the particular structures the command needs for
7 necessary discipline and for monitoring purposes.
8 But common standards and criteria is absolutely
9 monumentally imperative amongst the Services in
10 their system.

11 So if their systems don't currently
12 have the same language and don't currently have
13 the same standards, they need to change.

14 DR. MARKOWITZ: So understanding, Mr.
15 Hartsell, what you just said, let's say, however,
16 that we did move to a single centralized
17 document-based system. If that ended up being
18 the case, can you envision a way that would best
19 allow us to collect documents that reflect the
20 actions that a commander took in these particular
21 cases?

22 And not -- I'm not just asking you --

1 I'm asking everybody -- so that, I mean, do we
2 have a sense of how we could do that, if there
3 was one system? Is there a way to be able to
4 collect those documents, understanding that there
5 are personnel documents such as Article 15s or
6 separation actions?

7 MR. HARTSELL: Yes. That's --

8 DR. MARKOWITZ: Right. Yes.

9 MR. HARTSELL: -- always our lawyer
10 answer.

11 DR. MARKOWITZ: Right.

12 MR. HARTSELL: And a document-based
13 system is a terrific bumper sticker. But, of
14 course, in order to generate the documents, there
15 is data being put into by a data entry individual
16 to then generate the document, to then take that
17 document later on and it be input into another
18 system.

19 So in that respect, there is an
20 inefficiency that exists there. But one of the
21 great limiting factors, aside from the fact that
22 there is decades of data that is already in the

1 individual Services' systems, one of the great
2 limiting factors is there are only so many fields
3 that one can put on so many forms to capture the
4 necessary data points that are necessary, not
5 just for data collection but for case management.

6 And I believe the Army system collects
7 over 1,000 different fields in their system. The
8 Air Force system is relatively similar. That's a
9 lot of information. I know one of the things
10 that the DAC-IPAD staff has looked at, and the
11 Services were asked about as well, deals with
12 race injustice issues.

13 That information is not currently
14 captured on the charge sheet, and, in my opinion,
15 nor should it. The commander -- that should be
16 inconsequential, what the race or gender or
17 religious background of an individual is when
18 charges are preferred. So how is that data
19 captured if it's a document-based system? There
20 has got to be training of staff, pulled from some
21 of their information, pulled from somewhere.

22 So if there was a document-based

1 system, it couldn't solely be documents. There's
2 got to be other avenues by which you can input
3 data and provide information. There is an
4 insatiable appetite for data from Congress and
5 from outside organizations and through FOIAs.

6 Many of those are not contemplated
7 when the systems are built, and as a result --
8 and I believe the DAC-IPAD system is a similar
9 way, too, right? The DAC-IPAD system has had to
10 adapt and build new fields as it has gone along.
11 So there is this constant, insatiable appetite
12 for yet a new explanation for a reason why or a
13 purpose.

14 And as a result, you've got to
15 continue to collect that information and change
16 the field. But with the changed fields, you're
17 going to have to change the documents. And it's
18 a constant update of trying to chase down
19 documents, update them, just so you can later get
20 them into the system.

21 So it does become problematic
22 technologically in ensuring that you have the

1 flexibility to adapt to those new needs and set
2 up something else.

3 MR. McCLEARY: If I could kind of pick
4 up on that, one of the other considerations is
5 that all of us use our existing systems for case
6 management, you know, for tracking what is going
7 on with particular cases and measuring things
8 that I think kind of -- any prosecutor's office
9 does. You know, how long is it taking to get
10 from the point where there's a complaint to the
11 point where a case is resolved?

12 And a document-based system is
13 inherently somewhat backward-looking, and so it
14 doesn't really work particularly well for that
15 case management purpose that we currently use our
16 systems for. I think all of us would agree that
17 none of our systems are perfect, and I completely
18 agree with Colonel Hartsell that the idea that
19 140 alpha has that, hey, all five of you need to
20 be measuring a lot of the same data, the same
21 way, is highly beneficial.

22 But at least from my perspective I

1 think a document-based system doesn't accomplish
2 everything that we need. And so in some -- in
3 order to manage our cases and measure what is
4 going on, and so a document-based system would
5 probably end up in a situation where we would
6 have two.

7 One would be the document-based
8 system, and one would be some form of case
9 management, so that we could track the data that
10 we need in order to just kind of maintain the
11 flow of the cases that we're all dealing with.

12 CHAIR BASHFORD: Anybody else?

13 LCDR PIETRZYK: Yeah. I think if you
14 want to make -- in talking about the scenario of
15 the one system to rule them all, you have to have
16 DoD make the system and direct it for all of the
17 services, then, if it's specifically document-
18 based.

19 And then you would need a DoD
20 requirement that all Services use the exact same
21 forms for every court-martial form, because
22 currently we have a lot of DD forms that are

1 standard throughout the Services, but then some
2 of the different things, how we -- you know,
3 records of trial, things like that, we do
4 different from Service to Service. So it would
5 have to be directed that we all use the exact
6 same form for different steps of the court-
7 martial for the purpose of publishing some sort
8 of outward-facing system that the public could
9 look at the documents that we're using in court-
10 martial.

11 The other issue I think that would
12 need to be addressed then are some of the
13 restrictions on the Services on those documents
14 or the Privacy Act. And so we have a lot of
15 issues releasing documents, and we have to go
16 through FOIA, and it takes a lot of time to
17 release documents. But if there was some sort of
18 relief from the Privacy Act, we would be able to
19 release documents much more quickly on a system
20 like you suggested.

21 DR. MARKOWITZ: And do you have in
22 your Service an alternate source to be able to

1 get that information rather than the documents
2 themselves?

3 LCDR PIETRZYK: Depends what
4 information you're talking about. So we --
5 tracking the numbers of court-martials, we get so
6 many requests for information on, you know, how
7 many cases involve sex assault, but also involve
8 alcohol use. I mean, we don't know to track it
9 until we're asked the question. So our system,
10 CMS, that the Navy and Marine Corps uses, we
11 can't do it all.

12 So I think what a number of us are
13 bringing up now is that we would need two
14 systems, one to track our internal court-martials
15 and one for this document tracking. Yeah. I
16 mean, that's the issue we're dealing with. It
17 would be nice if we could have one system. I
18 just can't see how we can make it work from down
19 here working upwards to you. So --

20 MS. MANSFIELD: So for the Army, data
21 is entered by individuals into both our databases
22 that allows us to run checks and answer RFIs and

1 all that. And the documents are then uploaded
2 into the system for verification or for when
3 we're asked for, you know, don't just tell us
4 what you did; let's see what you did.

5 So it's easier to pass data, in my
6 experience, with two systems talking to each
7 other. Data exchanges are pretty easy. Document
8 exchanges are much more difficult. So --

9 CHAIR BASHFORD: Some of you have
10 mentioned that it would be good if you were
11 tracking common data points. Have you compared
12 amongst your Services what type of variety in
13 data points that you're collecting? How much
14 overlap there is and how much is different?

15 MS. MANSFIELD: We're all looking at
16 140 alpha committee member.

17 MR. HARTSELL: Ma'am, as the team and
18 I were looking at, we have to be careful so we
19 don't breach the 140a discussions. But I would
20 anticipate that this Committee would be very
21 pleased with the recommendations that were made
22 amongst the Services. The Services spent

1 considerable time doing just that, and attempting
2 to create a reconciliation amongst the Services,
3 which is one of the great things, as I mentioned,
4 of 140a, it was that necessary nudge that forced
5 the Services to do that.

6 So I -- without revealing deliberative
7 processes, I believe this committee would be very
8 pleased with the -- with the outcome of that
9 report.

10 MS. GENTILE LONG: I can switch gears
11 and ask questions about -- this question is about
12 providing case documents, which I know you've
13 been doing to the -- maybe in the previous Panel,
14 ours, and maybe a future Panel. Can you talk
15 about the impact on your Services, given your
16 present staffing and funding, of providing
17 procedural case documents to us for analysis?

18 MS. MANSFIELD: So for the Army your
19 staff does it for us, which we're incredibly
20 grateful for, because we have a lot of cases.
21 And this is an individual pull, right? We aren't
22 just giving you the whole record of trial.

1 You're asking for four, five, six selected
2 documents out of each case. Some of that is
3 paper. Some of that is electronic.

4 Your staff has valiantly gone to the
5 various locations. Some are in Suitland in
6 storage. Some are at our appellate court. Some
7 are in my office at OTJAG. Some are at the
8 installations. So we have not suffered the
9 impact your staff has.

10 CHAIR BASHFORD: Any other comments?

11 MAJOR SHEW: So, I mean, ma'am, if I
12 could just clarify the question. So you're
13 asking what the burden would be to provide case
14 documents to your staff for analysis?

15 MS. GENTILE LONG: To continue or to
16 any other independent group for analysis.

17 MAJOR SHEW: Well, I think to the DAC-
18 IPAD it's a little bit easier. We have an
19 agreement for data-sharing to other groups. I
20 think we have some concerns with Privacy Act
21 issues. We don't want to reveal certain
22 information that's protected. But --

1 MS. GENTILE LONG: From a staffing and
2 -- I think we're looking from a staffing and
3 funding issue.

4 MAJOR SHEW: It takes time for us to
5 pull information out. Like with the Army, a lot
6 of our data is spread throughout our offices of -
7 - our legal service support sections. So we have
8 four main sections where we pull that information
9 from.

10 Usually when we get in a request from
11 your staff on an annual basis, it takes us about
12 three to four weeks to pull that information out
13 from our cases, from our offices. I'd estimate
14 that it probably takes anywhere between eight and
15 24 manhours, depending on the size of the legal
16 service support section that is supporting that
17 data pull.

18 And we get all of that information at
19 Judge Advocate Division in the Military Justice
20 Branch, and then try to put that together into a
21 OneNote workbook for your staff, so they can then
22 see the documents that were provided.

1 That usually takes us in total
2 probably about, I'd say, a month, month and a
3 half, to get all of that information for you.

4 MR. McCLEARY: In some respects, for
5 the Coast Guard, we are a terrible example
6 because we have very few -- you know, we can
7 manage the workload for that without that much of
8 an impact. The one thing I would mention about
9 it that probably to some degree all of us face is
10 it's relatively straightforward to obtain
11 documents out of a record of trial.

12 When we get requests for documents
13 that relate to disposition of cases that didn't
14 go to court-martial, it went to NJP or some sort
15 of administrative proceeding, those are more
16 time-consuming to obtain because they are usually
17 located -- they are more dispersed. There is
18 other entities within the Service that we have to
19 talk to to get those. The records of trial
20 information is a lot easier to obtain.

21 MS. GENTILE LONG: Before proceeding,
22 I just -- I wanted to clarify, Major Shew, is it

1 eight to 24 hours for the total pull or per
2 piece?

3 MAJOR SHEW: Say for a total pull for
4 each legal service support section. Understand
5 that the legal service support section gets
6 tasks, and they send it out to the service
7 support teams, which are subunits of --

8 MS. GENTILE LONG: So then they would
9 also have a staffing or burden impact.

10 MAJOR SHEW: Yes, ma'am.

11 MS. GENTILE LONG: Okay.

12 LCDR PIETRZYK: So Navy -- it has
13 certainly gotten better with time, because now
14 that we know what you ask for, we know to collect
15 exactly that. So I have -- usually what we do is
16 we have a lieutenant that comes straight from the
17 justice school, is really excited about getting
18 into the law. And we assign them to go find
19 these documents for you. And then they quickly
20 try to transfer out of our department.

21 (Laughter.)

22 LCDR PIETRZYK: That's -- we can

1 certainly get that for you and don't require
2 anything further to do that.

3 MR. HARTSELL: On the Air Force,
4 similar to what Mr. McCleary -- if we're talking
5 about records of trial, my office is the
6 custodian of records of trial. So we publish a
7 System of Records Notice, our SORN, which allows
8 us to share those records with you.

9 So it is a completed record of trial
10 then what we'll do is we'll get the request from
11 you. We will use AMJAMS to identify those cases
12 and identify where the record of trial is, and
13 then obtain the record of trial, whether it has
14 been staged in the warehouse in Suitland, or
15 whether or not it actually is still in our office
16 waiting to be staged. So we will track it down
17 from there.

18 That will ordinarily, a normal request
19 from you for the completed records of trial, I
20 won't say that an individual works on it nonstop,
21 because ordinarily what they'll do is identify
22 all the cases and then try to track them, and

1 then await the information back. But we're in a
2 healthy battle rhythm right now because of the
3 RSP and JPP and now the DAC-IPAD, that we'll do
4 it, and maybe per data pull it's going -- per
5 request it's probably going to be about maybe I
6 guess 20 to 25 hours FTE, full-time employee, to
7 collect the records, gather them, and put them
8 all together and make sure they're what you want,
9 and then get them to you. But that's a real lag.

10 MS. MANSFIELD: And I would add one
11 additional point. If that system that collected
12 the documents then was intended to be public
13 facing, there would be a tremendous amount of
14 work required to prepare the documents for the
15 public facing. So we have already talked about
16 how the Privacy Act applies to Article I courts
17 that does not apply to Article 3 courts. So we
18 are -- we are liable for our errors if we release
19 Privacy Act information.

20 So, for example, we get a similar
21 request from the Senate, right, where we have to
22 redact all of the documents because personal

1 staff are going to see them. And that process
2 for just one installation takes months because of
3 the redaction requirements and the Privacy Act
4 checks by the Privacy Act lawyers.

5 CHAIR BASHFORD: Well, I have a follow
6 up on Ms. Long's question, and it flows right
7 from yours, Ms. Mansfield, is what is the impact
8 on each of your Services in answering
9 congressional inquiries or media inquiries? And
10 when you are trying to answer them, what do you
11 find that you're missing, whether it's data
12 points or documents, that would have made this
13 easier, or more efficient I guess?

14 MS. MANSFIELD: We generally don't
15 have problems answering the requests, either from
16 the media or from Congress or internal requests
17 from senior leaders. What happens is what
18 everyone has described is when a new issue
19 bubbles up, and then we get asked by the media --
20 the most recent example would be the victim's
21 preference for civilian or military prosecution,
22 the statutory requirement.

1 And there is no requirement to track
2 it, but we then got asked, how many people have
3 asked for it, how many -- so it's when a new
4 issue comes up that we don't have the ability to
5 just hit a button and say, here you go. So
6 that's part I think of the standardization across
7 the Services. We're never going to be able to
8 predict the future of what people will ask for
9 next, but we can certainly predict what has been
10 asked for, what is required by statute, what are
11 typical data points collected in other systems.

12 CHAIR BASHFORD: Anybody else?

13 MR. HARTSELL: I guess the answer --
14 and I apologize if I'm talking loud. I'm very
15 congested. I'm from New Jersey, and I've got a
16 double-whammy there, so I apologize if my voice
17 is too loud.

18 But it really depends upon what the
19 request is. Many times we will get a request
20 from, say, a researcher or a member of the media
21 who is doing an expose or writing an article, and
22 they want a dive into data. So we actually have

1 to figure out, okay, how exhaustive is this data
2 drive to actually do this inquiry and put
3 together all of this data and then provide it to
4 them, so they can do their own calculations.

5 That can take a while, and sometimes
6 it does require some programmatic SQL requests
7 actually put into the system, pull the data out
8 of the systems, and give it to the requester.
9 That's one kind of data request.

10 If we get a request from, say, on an
11 individual case where the Privacy Act is
12 involved, and that's frequently the case, that
13 can be very time-intensive because, as it was
14 mentioned, we have to comply with the Privacy Act
15 and there is a lot of stuff that we have got to
16 redact.

17 So especially if it comes from the
18 record of trial, we have to redact out. It takes
19 considerable time to pull information out from
20 the record of trial. So say we get a request
21 from a member of the media who says, I'd like to
22 know about all of the drug cases at a particular

1 base during this particular timeframe. I want
2 all of their records of trial.

3 So we collect all those records of
4 trial, but some of those may have been
5 acquittals, some of those may have been
6 convictions, some of them may have involved
7 witnesses, through no fault of their own they're
8 testifying. So we have to comply with the
9 Privacy Act and do every redaction. So that is a
10 significant list.

11 If they are just standard questions
12 where a Privacy Act waiver has been submitted by
13 the constituent to the member of Congress, or the
14 member of Congress want it in their official
15 capacity, so they don't need to worry about the
16 Privacy Act implications, that's much more quick.
17 We can provide that a lot more quickly to them
18 once we figure out exactly what they want.

19 So it really kind of depends upon what
20 the exact request is. But it's part of our
21 standard process. We have a full-time person who
22 does nothing but these types of requests and

1 trying to sort through them. We received several
2 hundred requests last year.

3 CHAIR BASHFORD: And one person was
4 able to handle them?

5 MR. HARTSELL: Well, no. That person
6 is supplemented by a number of attorneys and a
7 number of paralegals who do that in addition to
8 their regular workload. So I believe -- and I
9 could check momentarily -- I believe we released
10 in the realm of I think 64,000 pages of data last
11 year, and much of that -- and several hundred --
12 as a result of several hundred requests. So that
13 can't all be done by one person. We have one
14 person full-time. We had a second paralegal who
15 was on an MPA tour, an additional tour, to be
16 able to provide this, and then we had additional
17 attorneys as well doing redaction, including
18 reservists, to maintain -- keep up with that
19 request.

20 But military justice is an interest
21 item these days, and there are time limits
22 attached to all of these. So we have to turn

1 them -- try to turn them very quickly.

2 DEAN HARRISON: I've got two
3 questions. One has to do with I guess I'm a
4 little confused on Privacy Act issues. I assume
5 courts-martial are still open to the public,
6 excluding classified information.

7 MS. MANSFIELD: Correct.

8 DEAN HARRISON: So if I am a member of
9 the public, and I want to attend a court-martial
10 for any reason, am I going to be hearing things
11 that you would later have to redact under the
12 Privacy Act?

13 MS. MANSFIELD: Yes.

14 DEAN HARRISON: That's confusing.

15 MS. MANSFIELD: That's the Privacy
16 Act.

17 (Laughter.)

18 DEAN HARRISON: So I can come and
19 listen and hear all sorts of things. You ask
20 somebody their Social Security Number, their date
21 of birth, their residence. If I'm sitting in the
22 public gallery, I can hear all of that.

1 MS. MANSFIELD: Correct.

2 DEAN HARRISON: But if I don't make
3 it, and I ask for the record of trial, all of
4 that will have to be redacted.

5 MS. MANSFIELD: You would be asked to
6 leave the courtroom for sealed proceedings for
7 the Privacy Act, right, that we would also have
8 to take out of the record. But you would be
9 sitting there when names got said or addresses or
10 phone numbers or indications in the record that
11 told you who the victims were or witnesses of
12 certain categories. We would have to redact all
13 of that information.

14 MR. HARTSELL: Yes, sir. Because
15 those records of trial are kept in the system of
16 records. And as a result, it triggers the
17 Privacy Act within the executive branch. And as
18 a result, all of those requirements in the
19 Privacy Act now apply to our records.

20 DEAN HARRISON: I mean, is this under
21 some general counsel advice, or, I mean, is --
22 I'm not sure that came to be.

1 MS. MANSFIELD: It's statutory.

2 DEAN HARRISON: All right. Well --

3 MR. HARTSELL: Yes, sir. And it's
4 actually tougher than that, because if anything
5 is redacted, like EOT policy, if anything is
6 withheld from a requester, there must be a legal
7 review that accompanies the withholding. So not
8 only do you have to do the redaction process, you
9 also actually have to do a legal -- written legal
10 review that accompanies the hold.

11 DEAN HARRISON: Okay. That's more
12 confusing than I thought.

13 The second question I have has to do
14 with data collection under 140a. If the
15 Secretary of Defense decided that in order to
16 implement this statute -- and I'm excluding all
17 historical requests, all archival requests coming
18 from this Committee or elsewhere, just looking
19 forward, if the Secretary of Defense said, I want
20 to implement -- I being the Secretary of Defense
21 -- a uniform data collection system, an
22 electronic system, and have all five services

1 enter the same data collection points going
2 forward -- and this can be on top of what you're
3 already doing or replace what you're already
4 doing, is there any one of the five services that
5 would be unable to comply with that request from
6 the Secretary of Defense?

7 LCDR PIETRZYK: So I think all of us
8 would agree that if you're told to do something--

9 (Laughter.)

10 MS. MANSFIELD: You do what SECDEF
11 tells you.

12 (Laughter.)

13 MR. HARTSELL: You make every effort
14 to get it done. That said, information
15 technology acquisitions, whether it be civilian
16 or military world, have a terrible success rate
17 in those types of initiatives to create a single
18 system.

19 As a matter of fact, the National
20 Center for State Courts has currently
21 acknowledged that, and their recommendation is
22 common standards or at least the -- what they

1 have said is the states are moving in the
2 direction of common standards, but not single
3 monolithic systems, as a result of all of the
4 differences between counties, states, and various
5 jurisdictions.

6 DEAN HARRISON: And I think that each
7 of your Services has taken a look at what is
8 going on in the federal civilian courts, in PACER
9 system for example, and you don't think that that
10 would be --

11 MR. HARTSELL: Yes, sir. Well, and
12 I'm sorry if I'm -- PACER is tremendous in terms
13 of what it can do. But it does have a number of
14 detractors that are out there. PACER, as you
15 know, works in combination with other systems,
16 right?

17 So that pleadings are uploaded by the
18 users through one system, and then there's a
19 second system which allows the public interface
20 to then look at those documents. The challenge
21 with that is -- there is currently litigation on
22 this -- that it is expensive to request access to

1 that.

2 There's a veterans' group right now
3 which has significant litigation because they do
4 not want to have to pay, I believe, it's a dollar
5 per page to be able to access the pleadings. But
6 even with PACER, the challenge with it is PACER
7 does not give you the ability, as a user, to go
8 out and do queries.

9 So, for example, if you wanted -- you
10 were in -- I believe PACER began with the
11 bankruptcy court, so if you wanted to go to PACER
12 and say, okay. I want to know how many people
13 are suffering bankruptcy as a result of payday
14 loans, you can't do that query. In order to do a
15 query in PACER, you've got to know the name of
16 your litigant, and you've got to know where the
17 case was.

18 So it's a very limited system in what
19 you can do in terms of trying to pull data. It's
20 a tremendous system in terms of being able to
21 access pleadings. So, really, what PACER is,
22 it's your -- it's your openness, it's your

1 transparency system, which allows you to
2 demonstrate to the public that you have a
3 specific system where the public can see what is
4 going on in the court system. But it's not a
5 data analysis system.

6 DEAN HARRISON: What does the Air
7 Force have now for that transparency?

8 MR. HARTSELL: For the transparency,
9 what we have -- we have a number of things. We
10 used -- within AMJAMS, AMJAMS has a public facing
11 aspect to it, and that public facing aspect is
12 the aspect whereupon we have a public facing page
13 where we show not just the docket but also the
14 case results.

15 We do not put the pleadings up on
16 that. Pleadings are, of course, subject to the
17 Privacy Act. So if there are requests as the
18 case is going on, then we will do the Privacy
19 Act. We've got the redactions as the case is
20 pending.

21 So that's one thing about PACER,
22 right? PACER has the wonderful advantage of

1 being -- as part of an Article III court, right?
2 Because the Privacy Act doesn't apply. So it's
3 the user who is required to redact sensitive
4 information.

5 But on the military side, if we put
6 pleadings on it, well, we're Article I courts and
7 we were doing violations of the Privacy Act --
8 there was a study done not too long ago. There
9 was -- Judge Walton, I believe your court system,
10 your appellate judge, ran the RACER study last
11 year. And within the RACER study, they took a
12 look -- they cited an evaluation of PACER where
13 they looked at 27 million records in PACER, and
14 they found 6,500 Social Security Numbers that
15 were unredacted.

16 Look, that would be 6,500 lawsuits
17 against the military, right? But in the PACER
18 system, that's all the individual litigants'
19 fault. That's not the fault of the courts. So
20 it's a real challenge for us using them.

21 But back to your initial question,
22 which is what we use, so we will provide the

1 docket information, we will provide what the
2 outcome of the case is, and as requests come in,
3 we will provide information, but we will redact
4 it of course. That's what we currently provide.

5 DEAN HARRISON: So there is no real-
6 time access to it.

7 MR. HARTSELL: There is no real-time
8 access. But for parties, we do have a closed
9 system. We have a SharePoint system for the
10 parties themselves, and that's a system that a
11 number of state courts use. They use practical
12 obscurity, right?

13 So, in other words, they have a closed
14 system to the public but not to the parties
15 themselves. So that's -- we have that with
16 SharePoint. So the litigants, the parties can
17 communicate with the judge and file pleadings for
18 the judge electronically, but it's not seen by
19 the public.

20 DEAN HARRISON: Thank you.

21 JUDGE BRISBOIS: How often are your
22 redactions really challenged in court filings,

1 and what imposition does that impose on your
2 resources?

3 MR. HARTSELL: I believe in the last
4 five years we only had one ongoing suit regarding
5 redactions.

6 DR. SPOHN: So perhaps a better
7 analogy than PACER would be the database
8 maintained by the United States Sentencing
9 Commission, which collects data from all of the
10 district courts throughout the United States and
11 presents it in a unified fashion.

12 It's a document-based system where the
13 courts provide certain documents to the
14 Sentencing Commission, and the Sentencing
15 Commission then enters the data, which is
16 available for researchers or others who want to
17 use that data. Or perhaps NIBRS, which is a
18 database system that is not covering all law
19 enforcement agencies in the United States, but at
20 least it's starting to be a nationally
21 representative sample of cases.

22 Why would something similar to what

1 the United States Sentencing Commission does with
2 respect to data collected by the federal district
3 courts not be applicable to -- why would that
4 model not be applicable to what you're doing?

5 MR. McCLEARY: If I could start,
6 ma'am. Two things -- I'm sorry, both with regard
7 to the Sentencing Commission and with regard to
8 NIBRS. The Sentencing Commission is gathering
9 data post-trial from documents that are related
10 to the sentencing process, so it captures a
11 relatively narrow window of information, mostly
12 related to sentencing.

13 Our needs for data, both for our own
14 internal management issues, and then also in
15 terms of what we get asked to provide with regard
16 to data, are broader than that. And then, also,
17 the Sentencing Commission has a pretty
18 significant staff that does nothing but extract
19 the data from the documents, and then input it
20 into the database that they maintain.

21 So that would have an impact I think
22 on all of us. If we were going to move to that

1 kind of a system, we would need people to
2 basically -- or wherever that resided would
3 require staffing in order to make it happen.

4 And then NIBRS tends to capture data
5 at kind of the -- the way I would frame it, the
6 beat cop level. It's like law enforcement
7 information related to police interactions. It
8 has some data that it tracks into the prosecution
9 process, but it is more oriented towards law
10 enforcement, not so much prosecution.

11 So NIBRS, in and of itself, also only
12 captures a portion of what it is that we track.
13 So even if you combine both of them, it doesn't
14 capture all of the data that we're currently
15 trying to measure.

16 MS. MANSFIELD: And so just to be
17 clear, also, we are at NIBRS -- DIBRS feeds
18 NIBRS. So we do have -- we do feed that data,
19 but that's directly law enforcement database.
20 There is no military justice aspect to that.

21 JUDGE BRISBOIS: I just want to
22 doubleback on Mr. Harrison's comment about a

1 centralized system. You know, PACER, just to
2 clarify things, I mean, PACER is an overlay
3 access. A centralized system seems -- you know,
4 the public does not have access to the entirety
5 of CM/ECF, but the courts do. And the courts,
6 through the AO, can run statistical analysis on
7 all the CM/ECF. And so that would be similar to
8 what you do in responding to FOIA requests,
9 et cetera.

10 So PACER and the issues that you have
11 brought up don't answer the question that Mr.
12 Harrison raises. There is over 90 separate
13 district courts. There is circuit courts, which
14 prior to the implementation of CM/ECF had the
15 historical problem that you're talking about, you
16 know, different ways of doing things.

17 So it all has, over time, come to a
18 centralized data point, common uniform practices,
19 and into a centralized system. So it takes time.
20 It takes effort. But it does function and it
21 does work and it allows the research aspects and
22 the pulling of information.

1 PACER creates some problems for you
2 for public access, you know, because of the
3 Privacy Act, but it doesn't defeat the
4 functionality of CM/ECF that Mr. Harrison was
5 asking you about.

6 MR. HARTSELL: CM/ECF is -- it is very
7 effective as your -- in terms of allowing your
8 electronic filings and management.

9 My understanding from talking with
10 peers who currently work within the clerk's
11 offices is that it's -- because each district is
12 permitted to make -- tailor adjustments to CM/ECF
13 to accommodate the needs of their local justices,
14 what that -- it's allowed and is permitted.

15 And as a result, it does create
16 limitations on the ability to do data queries or
17 data pulls nationwide, because the data, as a
18 result, is impacted by those tailored changes
19 within the districts.

20 That being so, clearly, the court
21 administrators have greater access than the
22 public. But in terms of the public being able to

1 do data pulls on their own, that is, yes,
2 absolutely a limitation.

3 JUDGE BRISBOIS: Well, the model has
4 a foundation based on CM/ECF. Without -- and if
5 you don't give the five branches the ability to
6 modify their systems -- the Secretary of Defense
7 says there will be one system -- I mean, that,
8 again, takes the legal issues, you know,
9 seriously.

10 MR. HARTSELL: Yes, it could. But the
11 question is, does it meet the needs of the
12 Services by denying the opportunity to adjust
13 accordingly to the needs of the Services?

14 JUDGE BRISBOIS: Just one last point.

15 MR. HARTSELL: Yes, sir.

16 JUDGE BRISBOIS: I think the -- you
17 know, the legislation behind Article 140a is sort
18 of establish the policy towards which everybody
19 is expected to move. And so right now most of
20 the items that -- in the discussion that I have
21 been hearing and reading about are problems with
22 implementation.

1 But you said, give us an order, and
2 we'll move forward. Don't we really have that
3 order, and don't we have to find a way to comply
4 with that? I mean, we're looking for the best
5 way -- nothing is perfect, but we're looking for
6 the best way to do that.

7 MR. HARTSELL: The language of the
8 article, I don't know if it's sure per se, other
9 than to study and make the recommendations. But
10 certainly 140a is tremendous because it's a
11 transparency article. And I think we all welcome
12 that, because one of the challenges we're
13 wrestling with is because the military justice
14 system is foreign to many members of the public.
15 And, therefore, it's met with suspicion on many
16 fronts.

17 And the greater transparency we have
18 in what we do, the more folks who understand that
19 there is due process and there are rights
20 afforded both victims and the accused.

21 So we -- they are absolutely embracing
22 the idea of whether it's an order or not, the

1 idea of 140a and establishing common standards
2 and criteria to move forward to make the systems
3 more transparent.

4 JUDGE BRISBOIS: Well, that's sort of
5 what this process is about.

6 MR. HARTSELL: Yes, sir.

7 JUDGE BRISBOIS: Once the Secretary of
8 Defense makes a decision, it comes in --

9 MR. HARTSELL: Yes, sir.

10 JUDGE BRISBOIS: It will, won't it?

11 MR. HARTSELL: Yes, sir.

12 MR. McCLEARY: If there's one thing I
13 could add just about PACER and CM/ECF, I may have
14 mentioned this the last time -- I may have
15 mentioned this the last time that I was here.
16 We, the Coast Guard, had approached the
17 administrative office of the courts about the
18 potential use of CM/ECF and were told by the
19 administrative officer, at least in part based on
20 their experience applying CM/ECF to the court of
21 appeals for veteran claims, that they would not
22 make it available, either to us or to the

1 Department of Defense; that it would take
2 legislation before they would be willing to do
3 that. So that kind of -- we stopped exploring
4 that.

5 JUDGE BRISBOIS: I guess I wasn't
6 saying that you take it and import it and deal
7 with all of the intellectual property. But the
8 framework, the model, the concept has been shown
9 to exist and work in the field.

10 CHAIR BASHFORD: If each of your
11 Services, with your current system, was asked for
12 fiscal year 2017 how many penetrative sexual
13 assaults occurred where alcohol use by either the
14 complainant or the suspect was a factor, would
15 your systems allow you to answer that without
16 going back and pulling every file?

17 MS. MANSFIELD: For the Army, that
18 would be in law enforcement, yes. That's a
19 field.

20 LCDR PIETRZYK: For the Navy, yes.

21 MR. HARTSELL: We would have to go to
22 law enforcement. We do have a field where we

1 monitor whether alcohol was involved, but we do
2 not identify whether or not it was the victim or
3 the accused that was using alcohol.

4 MR. McCLEARY: Ours is the same,
5 although, you know, dependent on the accuracy of
6 the data that is put in, and it's a combination
7 of our system and the one that CGIS uses.

8 MAJOR SHEW: Same for the Marine
9 Corps, ma'am.

10 CHAIR BASHFORD: Does the staff have
11 some questions? We've got a little bit more
12 time.

13 MS. PETERS: Yes, ma'am.

14 CHIEF McKINLEY: Can I ask one?

15 CHAIR BASHFORD: Of course.

16 CHIEF McKINLEY: After a recent mass
17 shooting, we discovered that we were lacking in
18 the compliance with the Brady Handgun Violence
19 Prevention Act. And how would a new data system
20 best monitor compliance with the federal
21 statutory reporting requirements, such as the
22 Brady Act, the Sex Offender Registration and

1 Notification Act?

2 MS. MANSFIELD: So those are not
3 military justice functions. Those are law
4 enforcement for the Brady and the NCIC/III
5 databases. And the sex offender registration is
6 actually run through Corrections Command in the
7 military.

8 So for the Brady case, which is called
9 NICS, we have -- it's not a biometrically based
10 system, so the Army has a weekly push of data
11 from our law enforcement who is identified as
12 originating record identifier, someone who can
13 directly put records into Brady, and we put those
14 in for all of the categories weekly.

15 For NCIC, that is a biometrically
16 based database. It's for fingerprints that law
17 enforcement people take when you are a probable
18 cause or arrest, and those get submitted to the
19 other separate database. So that although the
20 military justice plays a role in that we tell the
21 law enforcement when we have a qualifying
22 conviction, and we have sort of redundancies in

1 place to make sure we're capturing all of the
2 data that is reported directly to law
3 enforcement, to the FBI databases.

4 Then the sex offender comes out of our
5 Corrections Command. So if you're not familiar,
6 the Services do not have the same authority as
7 the states. We can't register people. We have
8 to add them, direct people to register.

9 So the Corrections Command identifies
10 everybody who is required to register, which
11 there is a redundant system in the military
12 justice system that tells Corrections Command
13 this is a sex offender registration in several
14 parts.

15 And then the Corrections Command
16 directs the individual, when they are being
17 released to go register, they notify the gaining
18 installation or the gaining local community, and
19 then we have an officer who works with the U.S.
20 Marshal's Office, the sex offender tracking
21 office, who follows up on all -- everybody who is
22 released from military confinement to ensure that

1 they are registered.

2 So I don't see that in the military
3 justice database. You know, compliance with
4 those are really tracked in different places.

5 CHIEF MCKINLEY: Do we know if we
6 corrected some of the issues on those that we had
7 with compliance, you know, especially in the Air
8 Force with that last incident?

9 MR. HARTSELL: With the acts that you
10 had mentioned, there are various states within
11 the progression of an investigation or the case
12 itself that may trigger the need for registration
13 in one system or the other.

14 In the past, what had been done is
15 that has been provided to the investigative
16 agency for them to input the data, and that was
17 not done in that particular case. To remedy
18 that, we are -- we've got a number of processes
19 going on to remedy that.

20 One is we're currently working with
21 contractors, so that our AMJAMS system pushes
22 those gates, those triggers, to I2MS, which is

1 our MCIO -- our AFOSI, the investigator, it
2 pushes that data automatically to them. So our
3 contractors are working on establishing that
4 portal.

5 In the meantime, we run a coded query
6 weekly of the status of cases. In my office, we
7 run that, and we provide it to an indexing cell
8 that is currently at Quantico in Virginia, and it
9 is a combined team of security forces and AFOSI
10 investigators. And they sit side by side with
11 the computers and terminals, and they are
12 entering that data weekly. And we have monthly
13 meetings where we sit down with the SES who runs
14 the cops and the commander of OSI to make sure
15 that the process is running smoothly, so that we
16 are pushing and indexing information.

17 So the systems we currently have, in
18 summary, are already now doing that
19 automatically, so we can make sure we are
20 capturing that. And there is going to be
21 redundancy in the system.

22 CHAIR BASHFORD: Staff?

1 MS. PETERS: You all commented earlier
2 on the procedural case documents that you're
3 pushing to the JPP and now the DAC-IPAD, and that
4 regards sexual assault cases. So each one of
5 those involves one or more allegations or charges
6 that have been preferred involving sexual
7 assault. Is that effort scalable to all of the
8 UCMJ offenses? If you had provided --

9 MS. MANSFIELD: Are you still going to
10 do it for us?

11 (Laughter.)

12 MS. PETERS: The charge sheet for --
13 plus for all offenses preferred in the military.

14 MAJOR SHEW: Well, I believe we could
15 do it, ma'am. I think the question is, you know,
16 in terms of the resources that are required to
17 produce those documents. And also, I think we
18 need a way to capture what happens in all of
19 those cases after preferral, because we can also
20 -- when we withdraw a case, there is many ways
21 that certain Services -- certain offices do it.

22 And whether it's, you know, a

1 requirement that you can line through the charge
2 sheet, initial it, and that's sufficient to
3 withdraw the case, other offices have a letter
4 that is signifying that you can withdraw these
5 charges, things like that.

6 So we can push those documents to you.
7 I think the question is the -- do you have a
8 staff that is capable of collecting all of these
9 documents, because I'm sure the Services will use
10 a massive amount of these.

11 You know, within the Marine Corps, I
12 think we had maybe 200 courts-martial for fiscal
13 year '17. But there are a number of other cases
14 that never made it to the potential of a courts-
15 martial; it was just preferred charge sheets, and
16 then alternative dispositions.

17 So part of the question would be, how
18 far do you want to track these cases within the
19 military justice process? Those documents aren't
20 just limited to what is contained within the code
21 or the UCMJ, but there is other administrative
22 remedies that may result. And if they're

1 collecting those documents, I think you're
2 looking for a very -- they need a lot of staff
3 and a lot of funding to track all those documents
4 they collect.

5 LCDR PIETRZYK: Yeah. I agree with
6 Major Shew. It is very difficult to track down,
7 especially when we haven't been mandated by law
8 to track certain cases such as unauthorized
9 absences, things like that, like we are with sex
10 assault cases.

11 Alternative dispositions would be very
12 difficult to find because we have to go to the
13 individual command or unit that took care of the
14 case, whether it was a summary court-martial or
15 non-judicial punishment, track down the
16 documents. So that can be very difficult to do,
17 especially as time goes on.

18 The project becomes a little easier at
19 preferral. It becomes much easier after
20 referral. And if it's a case that involves a
21 conviction, it's very easy for us to find it.

22 MS. MANSFIELD: I would agree. So

1 referred cases, you know, we have about 600 a
2 year of GCMs or specials. So probably we're
3 giving you about a third of those cases that have
4 an adult sexual assault charge somewhere in
5 there. But preferred would be beyond -- that
6 would be very difficult for us to do, because of
7 the dispersion.

8 MS. PETERS: Does it become easier if
9 it's a real-time data collection versus a
10 historical data pull? After a year has gone by,
11 is it easier to put someone on a CC line for a
12 preferred charge sheet, or do something like with
13 what the Sentencing Commission does, saying the
14 judge has to provide the documents within 30 days
15 of the judgment? So , is it easier to put
16 someone on a CC line for a preferred charge
17 sheet, or do something like with what the
18 Sentencing Commission does, saying the judge has
19 to provide the documents within 30 days of the
20 judgment? So --

21 MS. MANSFIELD: Right. So for
22 referred cases, we would -- the judges would be

1 entering that data and we'd have it. For
2 preferred, it would be in MJO. But until it's
3 closed, we wouldn't know it existed. Or I
4 suppose you would put out -- it could be done,
5 obviously, and then we could just tell everybody
6 when you prefer charges you have to send a copy
7 to us.

8 MS. CARSON: How burdensome would that
9 be to do, to add to an entity that collected the
10 documents, not to use the data until the things
11 end, but just so there is a comprehensive
12 universe being collected. It doesn't have to go
13 back and use the resources of the Services to do
14 these big data pulls, but another entity would
15 just be collecting a bunch of data.

16 MS. MANSFIELD: So someone else is
17 doing the work?

18 MS. CARSON: Yes.

19 MS. MANSFIELD: Well, then it's a lot
20 easier.

21 (Laughter.)

22 MS. MANSFIELD: You know, we do our

1 cases, so --

2 MS. CARSON: Would that be --

3 MS. PETERS: Or are there any other
4 considerations around doing something like that?
5 Anything like what Major Shew mentioned with
6 cases that result in an administrative action
7 that falls in someone's personnel file and that
8 is a personnel document with additional
9 protections, very limited, you know, records,
10 disposition dates. So they don't necessarily
11 even have to hang around very long, and they may
12 or may not exist in an archive somewhere after a
13 certain amount of time.

14 So I think staff understands that
15 those are probably I think some of the concerns
16 you are alluding to with cases that fall short of
17 trial after preferral, and is there anything else
18 in terms of the scale of producing procedural
19 case documents from a start point in the military
20 justice system? I think we're just asking the
21 rest of the Services to finish the comments
22 started on this end of the table.

1 MR. HARTSELL: I remember as a Staff
2 Judge Advocate when I would ask my young
3 attorneys, oh, can you do X? It's only going to
4 be five minutes, and it becomes death by a
5 thousand cuts at a certain point in time, you
6 only have so many minutes in a day. At a certain
7 point in time, you exhaust your minutes in a day.

8 So every minute becomes precious,
9 especially for military members who are
10 constantly working overtime. So I don't want to
11 cavalierly dismiss an impact, even if there is a
12 de minimis amount of time.

13 I think if there is a collection of
14 documents you would have to examine to ensure
15 that they have value and validity later on. At
16 what point in time you were collecting, preferral
17 may not tell you very much at all because those
18 charges may not survive contact with defense
19 counsel. And it may be a completely different
20 case that goes at arraignment, much less the
21 final verdict of the case.

22 And then, of course, there are all of

1 these changes that are going to go into place now
2 as well as a result of the Military Justice Act
3 of 2016. At what dates would you want
4 information to make sure that they have value for
5 analysis and data analysis later on? The data
6 analysis from the JPP was fantastic for FY15, and
7 we're looking forward to FY16. That was
8 tremendous.

9 But in that regard, I would caution
10 this. This Committee has -- we're very fortunate
11 because there is a wide variety of disciplines
12 and experiences and training and education that
13 we don't necessarily have. And I would hate to
14 see a focus on anything other than sexual assault
15 when we're wrestling with these issues and trying
16 to help victims and trying to ensure due process.

17 And we're trying to resolve this
18 issue, and we've got this body who can help
19 advise us on that. So I would -- I would hate to
20 see the direction kind of pointed different
21 directions. It's kind of like having first round
22 draft pick quarterbacks, and you ask the

1 quarterback to punt and to kick. We've got the
2 skill sets to do other stuff, so, yeah, we can do
3 that, but I'm not sure ultimately the value added
4 to the Services in terms of what we're trying to
5 accomplish with adult sexual assault and trying
6 to address that.

7 MR. MARKEY: First of all, thank you
8 very much for doing what you do. I want to go
9 back to the logistics for implementation of 140a.
10 And looking at that, it sounds like there is
11 already what is called a working group, internal
12 working group that is looking at that as well.

13 One of the things you mentioned was
14 the standardization of language in forms and
15 metrics of what you are going to collect. I
16 think in order to do comprehensive analytics, you
17 need that uniformity. Can you discuss or advise
18 whether that is being supported, and would we see
19 that product come out of this Committee? I don't
20 know if you can answer that, but --

21 MR. HARTSELL: I think I can answer
22 around it. That might help. But the Joint

1 Service Committee has the authority to create
2 subcommittees and working groups. And they
3 created a subcommittee, and the Department of
4 Defense, the General Counsel, gave that
5 subcommittee a charge to study specifically 140a.

6 And there was a year-long study into
7 140a where there were interviews with experts,
8 there was analysis done of various systems,
9 extraneous systems in the states and the federal
10 courts, and such, and then the Services got
11 together and discussed and then made
12 recommendations to the subcommittee, to the Joint
13 Service Committee. And that report was provided
14 to the Joint Service Committee the first week of
15 July of this year.

16 The Joint Service Committee now needs
17 to provide, in accordance with Article 140a, a
18 recommendation to the Secretary of Defense by the
19 end of August of 2018, has to give
20 recommendations.

21 Now I am being careful going across --
22 I think it would be very productive if there were

1 hundreds of common points of agreement, data
2 points of agreement, amongst the Services. And
3 without saying much else, I think the Committee
4 would be pleased with the recommendations that
5 were made, allowing experts to do great data
6 dives into information with commonalities amongst
7 the Services sooner rather than later. Without
8 relying upon an information technology
9 acquisition, that may take five to 10 years to
10 yield any fruit.

11 MR. MARKEY: Can I ask a follow up on
12 that? I presume all of the branches would
13 support that, the common language. We've had
14 some discussion at previous meetings where, you
15 know, the nuances of what we do within our
16 organization are different from the other one,
17 and that's problematic. So I just wanted to
18 determine if that would be supported.

19 And the second would be, once that is
20 established -- and I don't know if you can answer
21 this a well -- did the subcommittee look at how
22 that could be implemented electronically through

1 some sort of a database system that everybody
2 would agree on? And was there exploration into
3 looking at that IT aspect of now taking this
4 information and be able to go to a keyboard and
5 get that information at your fingertips?

6 MS. MANSFIELD: The Service IT
7 representatives were part of the subcommittee.
8 So it was absolutely considered, whether or not
9 the standard -- I mean, the plain language of 140
10 told the subcommittee to look for uniform
11 standards and criteria. And they were not just
12 lawyers sitting in the room. They were tech
13 people, too. And the law enforcement.

14 MR. MARKEY: Well, I look forward to
15 August --

16 (Laughter.)

17 MR. MARKEY: -- with that information.

18 MR. McCLEARY: The subcommittee was
19 split evenly between IT folks and attorneys.

20 CHAIR BASHFORD: Any last question
21 before we --

22 MS. GALLAGHER: With regards to your

1 command disposition documents, is there some
2 reason you could not attach your alternate
3 dispositions to the command disposition document
4 to preserve them? You were talking about how
5 difficult it was to track.

6 MS. MANSFIELD: Do you mean the Army's
7 4833?

8 MS. GALLAGHER: Well, yes, or if there
9 is a new form.

10 MS. MANSFIELD: So right now, that's a
11 law enforcement document that is just data-
12 populated without document-based. So the Army
13 is, by the end of December, going to have those
14 two databases -- law enforcement and the military
15 justice database -- talking to each other, and
16 prepopulating that form based on the documents
17 that would exist in the military justice. So I
18 don't know if the actual document is going to
19 transfer, but it will be -- the document will
20 exist at least in the military justice database
21 that prepopulates the data that then goes to --
22 and then goes to the FBI after that.

1 MS. GALLAGHER: So you will at least
2 have the data but not necessarily the actual
3 alternate disposition?

4 MS. MANSFIELD: I don't think that's
5 part of the plan. I think the plan is to have
6 the Military Justice Online and ACMIS prepopulate
7 the 4833 and have the documents that back up the
8 actual disciplinary documents would be maintained
9 in the military justice databases.

10 MS. GALLAGHER: Is that relying on a
11 user to input -- to transfer the documents, the
12 data from the actual documents into the database?

13 MS. MANSFIELD: Yeah. So the same
14 people who put the data in to generate the
15 disciplinary document would -- that data would
16 then feed -- you know, so when you're typing in
17 findings and pleas, and that kind of thing, to
18 generate the promulgating order, that same data
19 would exist and would prepopulate the 4833.

20 MS. GALLAGHER: And the rest of the
21 Services?

22 MR. HARTSELL: On the Air Force side,

1 I have to take a look at that. Again, that's a
2 form that is being coordinated through our
3 investigative processes, so I'd have to look and
4 make sure -- figure out how we could capture
5 that.

6 So I don't have an answer in that
7 regard, but you did, in asking that question,
8 remind me of a related issue. It's a question
9 that Ms. Peters had asked regarding collection of
10 additional data.

11 I will say that in terms of permanence
12 of records on individuals, separate and distinct
13 from the Services, makes me very nervous because
14 that would not be consistent with our SORN, and
15 we're jeopardizing -- we're flirting with some
16 Privacy Act issues, if there is a separate
17 permanent system of records on individuals.

18 Temporarily, I think it is consistent
19 with our SORN, and I think we're okay in terms of
20 sharing the documents with you. So I would have
21 that limitation with respect to the question that
22 Ms. Peters asked. But I will check on the

1 disposition documents for you, and I'll get back
2 to the staff.

3 MS. GALLAGHER: Thank you.

4 MR. HARTSELL: Okay.

5 LCDR PIETRZYK: So I'd have to
6 understand what the disposition documents -- I'm
7 not familiar with the language you're using. It
8 sounds like that's more Army talk.

9 MS. GALLAGHER: The SADR is really
10 what the Navy and Marine Corps are tracking, or
11 to have --

12 LCDR PIETRZYK: So that's
13 investigations. The SADR is investigations of
14 any sex assault, and, yes, we track that.

15 MS. GALLAGHER: Right.

16 MS. TAGERT: We're only talking about
17 command documentation action, not the
18 investigative.

19 LCDR PIETRZYK: No. We don't have
20 that.

21 MS. GALLAGHER: So you don't have the
22 command -- the command disposition documents at

1 all.

2 LCDR PIETRZYK: If we have -- no. No.
3 Because if something -- if the command determined
4 -- let's say the case determines there is no
5 probable cause, well, nothing is filled out to
6 say, we're not going to do anything. Just nothing
7 happens, because there is no probable cause to
8 continue.

9 So, or if there is a non-judicial
10 punishment, the command will report higher up, we
11 have had a non-judicial punishment, but that's
12 it. We're just tracking that it occurred,
13 because, you know, it's just for good order and
14 discipline. There was no reason for us to see
15 why one individual was going to an NJP at -- on a
16 ship somewhere in the Pacific at a given time.
17 So, no, that's not something we currently track.

18 MAJOR SHEW: So, similarly, in the
19 Marine Corps, we don't have a command disposition
20 form. You know, like if there is an NJP, you
21 guys have our paperwork. That will record it,
22 but it's also non-judicial punishment.

1 That's maintained in the command
2 files, and a copy in the Service member's
3 personnel files. But we don't have a centralized
4 database that can pull all of those documents
5 from to show the alternate disposition or what
6 was once a preferred charge.

7 CHAIR BASHFORD: So for the Navy and
8 Marines, if the command decision is no action,
9 for whatever reason, that's not documented
10 anyplace?

11 MAJOR SHEW: Ma'am, it depends on the
12 type of case. So for a sexual assault case, we
13 document those decisions. That's where we get
14 those SADRs from, or where what we use SADRs for,
15 ma'am. So we, you know, document all of the
16 process, the investigation, and the command
17 action that was finally taken, whether it was
18 court-martial or some other form of punishment or
19 no action.

20 For other types of cases, such as
21 underage drinking, we do not have a command
22 disposition form for that.

1 MS. MANSFIELD: But that would be
2 maintained in the law enforcement databases
3 because we're required by statute to report to
4 DIBRS that reports to NIBRS. So every CRC
5 reportable offense has an outcome, essentially,
6 which might be unfounded.

7 MAJOR SHEW: So I do want to add,
8 ma'am, that in our case management system we do
9 have I'll say a field to indicate that there was
10 an alternate disposition if there was a preferred
11 charge. But we don't always -- you know, the
12 quality of that data depends on who entered it.
13 So we may have alternate disposition, but nobody
14 will have uploaded, like, if this was an NJP or,
15 you know, no action was taken.

16 CHAIR BASHFORD: Well, I want to thank
17 everybody for coming. We wanted to have your
18 input one last time. We've seen some of you
19 before, and thank you again.

20 And I think it's time for us to take a
21 brief break. Thank you so much.

22 Whereupon, the above-entitled matter

1 went off the record at 10:21 a.m. and
2 resumed at 10:35 a.m.)

3 CHAIR BASHFORD: Ms. Peters, would you
4 like to get us started? I think they're just
5 trying to get General Schwenk on the line.

6 MS. PETERS: Okay. Yes, ma'am.
7 Members, good morning. I am here to facilitate
8 your deliberations today on the implementation of
9 Article 140a, Uniform Code of Military Justice.

10 I have a PowerPoint presentation that
11 will align with Tab 2 of your read ahead
12 materials, the Deliberation Guide, and we will be
13 following that.

14 So, I'm going to just introduce the
15 statute under consideration, same statute that
16 the Services commented on in our previous hour.
17 And then, Chief McKinley will go over some of the
18 work that the Policy Working Group has been doing
19 on this issue. And then, I'll guide you through
20 the rest of the outline.

21 So, to start, what is Article 140a?
22 It is a new article of the UCMJ that was

1 recommended by the Military Justice Review Group
2 and it was passed as part of the FY17 NDAA.

3 And it says that the Secretary of
4 Defense shall prescribe uniform standards and
5 criteria for the conduct of each of the following
6 functions, at all stages of the military justice
7 system, including pretrial, trial, post-trial,
8 and appellate processes using, insofar as
9 practicable, the best practices of federal and
10 state courts.

11 Those four functions are the
12 collection and analysis of data, case processing
13 and management, the production and distribution
14 of records of trial, and the facilitation of
15 access to docket information, filings, and court
16 records.

17 With regard to collection of data, in
18 particular, the purpose of that data is also
19 stated in the statute, and that's on the next
20 slide.

21 It's to do the following: it's to
22 collect data on military justice activities in

1 order to facilitate case management, to enhance
2 military justice decision-making. As broad a
3 term as that seems, that could encompass a lot of
4 different things.

5 But it also makes mention in the
6 statute that it should enhance periodic
7 assessments of the UCMJ that are now to be
8 mandated under a new or a revised Article 146 of
9 the Code.

10 Article 146 is an important statute to
11 read in conjunction with this one, because it
12 says, that periodic comprehensive evaluations of
13 the procedural and substantive provisions of the
14 Manual for Courts-Martial, the offenses in the
15 UCMJ, and that all of the rules for court-martial
16 and the evidence rules will be evaluated
17 periodically, based on the data, potentially,
18 that 140a mandates be collected in the
19 standardized format.

20 One of the first things Article 146
21 requires is that all of the new changes that are
22 going to go into effect next year be evaluated

1 regularly.

2 So, that's the first thing that they
3 have to do is, any recent changes to the UCMJ, of
4 which there will be many, have to be evaluated
5 somehow, so the military is to come up with data
6 that will facilitate that evaluation.

7 And they specifically have to gather
8 and analyze sentencing data, because the military
9 is moving towards a more determinant sentencing
10 structure, rather than a unitary structure. So,
11 they have to gather historical and current
12 sentencing data somehow.

13 So, that's -- when you look at, why is
14 140a talking about standardizing criteria for
15 data collection, these are the three main
16 purposes for which that data should be collected,
17 according to the statute.

18 So, with that very brief introduction
19 to the statute under consideration today, I'll
20 turn it over to the Chief to talk about what the
21 Working Group has been doing.

22 CHIEF MCKINLEY: Thank you. I'll give

1 a quick overview. Our committee heard from
2 military and civilian witnesses at its April 20,
3 2018 public meeting.

4 The committee reviewed read ahead
5 material and RFI responses regarding the
6 capabilities of the Military Services' case
7 management systems.

8 Our Policy Working Group deliberated
9 on the implementation of Article 140a and we have
10 met basically every month since April. The
11 Policy Working Group identified seven issues for
12 discussion by this full Committee.

13 Those seven issues are: offenses,
14 functions of Article 140a, when a case begins,
15 when a case ends, monitoring federal statutory
16 requirements, best practices for data collection,
17 and other specific data elements. And with that
18 said, Ms. Peters is going to go over each one of
19 those issues.

20 MS. PETERS: So, the first two issues
21 on this list, what offenses does the Committee
22 want to speak to and what functions under that

1 list of four things 140a addresses does the
2 Committee want to address today?

3 These two issues, the Working Group
4 identified as sort of your scope issues. And so,
5 I will just briefly walk through what the Working
6 Group has discussed as really things to keep in
7 mind as you get to the substantive decisions
8 around, if 140a were to look at a case, when
9 should it begin? What aspects of the system
10 should it cover?

11 So, to that first issue, on what types
12 of offenses should the DAC-IPAD focus its
13 recommendations concerning 140a? Just speaking
14 from Page 2 of the Deliberation Guide, really,
15 there were three options the Working Group came
16 up with.

17 Today, think about only how sexual
18 assault offenses or cases involving those
19 offenses should be handled in terms of data
20 collection or other functions. You
21 recommendations would only extend so far as sex
22 assault cases.

1 Two, your recommendations, in part or
2 in whole, could extend to all UCMJ offenses.

3 Three, the Committee could focus on
4 sexual assault plus other groups of related
5 offenses, to include any sort of domestic
6 violence, interpersonal violence that would
7 sometimes have a sexual assault component.

8 Whether or not it's on the charge
9 sheet or not, there's related offenses around
10 child abuse, domestic violence, prostitution, and
11 other violent offenses, again, that could be
12 treated similarly in the system, have similar
13 characteristics, or have similar sensitivities
14 and complexities. So, we can get to that.

15 But those are the three ways to look
16 at how the Committee approaches its
17 recommendations. Do you want to do one type of
18 offense, all offenses, or sexual assault plus
19 some related important group of offenses?

20 The pros and cons listed in your Guide
21 around that really are considering only sexual
22 assault cases. And I shouldn't say only, but

1 that is the Committee's charter, in effect, and
2 that is what it has decided to focus on, adult
3 victim sexual assault offenses, in its own study
4 of issues to comment on to the Secretary of
5 Defense.

6 By focusing there, the Committee can
7 really make specific targeted recommendations,
8 whereas if you look at the entire body of UCMJ
9 offenses, there are so many considerations that
10 maybe we haven't had time to study and receive
11 information on.

12 There's a wide variety of offenses.
13 You can even incorporate state and federal law
14 into a UCMJ offense. There's also a lot of
15 military-specific offenses under the Code that
16 could be handled very differently from a typical
17 sexual assault case.

18 And the third option, the
19 consideration from the Policy Working Group was
20 that sexual assault is the subject of this
21 Committee's focus, but it occurs in a variety of
22 contexts that are complex.

1 So, a lot of fact patterns can give
2 rise to a sexual assault, but a prosecution may
3 not involve a sexual assault on the charge sheet,
4 necessarily.

5 Or it's a domestic violence incident
6 that triggers reporting to law enforcement, not
7 the sexual assault that also occurred in the
8 context of the interpersonal relationship between
9 the victim and the accused.

10 So, is there value in understanding a
11 wider array of offenses around which sexual
12 assault may occur, because sexual assault
13 occurred in the background and it comes into the
14 case as uncharged misconduct, or maybe it is on
15 the charge sheet, but it doesn't live on the
16 charge sheet until trial, but other offenses,
17 such as strangulation or an aggravated assault,
18 are the things that are prosecuted.

19 So, just think about -- and these are
20 again, this is just food for thought at this
21 point. How you want to think about the scope of
22 your own recommendations and how that influences,

1 I guess, how broad or how narrow you scope the
2 data or other facets of 140a.

3 And again, these -- we're talking data
4 that has a research value, it has policymaking
5 value, it has value to customers on the outside
6 of the military who are constantly requesting
7 information about cases going on in the system
8 and what policies and procedures are in place to
9 address the public's concerns.

10 The second issue that deals with scope
11 is, on what -- which functions under 140a do you
12 want to focus? 140a does a lot, potentially, to
13 streamline and modernize military justice.

14 They're all interrelated in some
15 respect, but they are very different and the
16 Committee has spent a differing -- a certain
17 amount of time on things like data collection and
18 establishing public access through PACER.

19 We've spent a lot of time talking
20 about those things, but maybe not so much how the
21 military produces records of trial. So, I think
22 the second scope issue is, what types of

1 recommendations do you want to make?

2 Does the Committee just want to focus
3 on data collection? And we're going to say what
4 to collect and how to collect it?

5 Does the Committee want to focus on
6 data collection and case management? We've
7 certainly heard a lot about, from a Service-wide
8 level, I guess, maybe not a practitioner level,
9 but a Service-wide level, about how cases are
10 managed in the electronic systems.

11 And, certainly, for consideration,
12 there's an overlap between case management and
13 data collection. We heard from the Services that
14 those two functions are very much interrelated,
15 in their minds, that the case management system
16 is the source for their data.

17 But are there alternative ways, like
18 the Sentencing Commission model, where the data
19 is harvested separate from the case management
20 system and the data analysis function entirely
21 separate from the case management systems?

22 And so, it doesn't derive -- since the

1 Commission received documents, it doesn't receive
2 information, statistics from AO. So, there's an
3 issue there around, does the Committee want to
4 talk about data collection, data collection and
5 case management?

6 Does the Committee want to say
7 something about one or both of those functions
8 and public access? Public access, the fourth
9 prong, says facilitation of access to docket
10 information, filings, and records.

11 The Policy Working Group looked at
12 this issue a little bit more broadly in that it
13 saw two components to public access. One is,
14 public access to historical data, aggregate data
15 for research purposes or for transparency
16 purposes.

17 And the other aspect of public access
18 is the ability to access individual cases and the
19 documents, while the case is pending, or
20 possibly, after the case is pending, requesting
21 the pleadings that were filed in an individual
22 case. So, you have historical data and how do

1 you get to live case documents?

2 And so, the Policy Working Group felt
3 that you could take a slightly broader view of
4 maybe what the language of the statute says and
5 say, well, if we're going to also talk about data
6 collection, we should talk about how to make that
7 data, that aggregate data public. So, those,
8 both data collection and public access, became
9 very much related.

10 So, I think, those are the three
11 options: data collection; data collection and
12 case management; data collection, case
13 management, and public access.

14 Those three options are sort of the
15 way we -- or those three groupings are the way we
16 kind of viewed how the Committee could look at
17 its recommendations.

18 Within the outline, I have some pros
19 and cons for each of the options. Without going
20 into too much detail, just want to consider on
21 this issue of scope. Again, the less -- if the
22 Committee only talks about data collection, you

1 could say more about it.

2 If you add more functions, like we
3 want to talk about case management and public
4 access, it may be a challenge in the time, based
5 on the information we've received, to make really
6 detailed recommendations about all three of those
7 things.

8 And we also have to consider the level
9 of detail in the information we've received
10 around things like case management. Clearly, the
11 Services are doing a lot to develop systems with
12 thousands of data points.

13 They also are managing cases from the
14 earliest stage of the case and we haven't
15 necessarily looked at all of the things around
16 managing an active military justice case from the
17 investigative, trial, and appellate phases.

18 However, those issues -- all of these
19 issues in 140a do relate to one another and can
20 depend on one another. So, that's just sort of
21 food for thought, I think, on how you approach
22 this, what offenses are we talking about and what

1 types of functions do you want to address in your
2 recommendations?

3 I think the first substantive issue in
4 your outline is, when should a case begin in
5 Article 140a?

6 So, again, assuming the Committee
7 wants to talk about data collection as being sort
8 of the primary focus of this statute, there are
9 some options around when a case should begin.

10 So, it's kind of obvious -- I'm
11 actually going to start backwards with option
12 three. A case begins at referral of charges.
13 That's when a convening authority has said, a
14 court-martial shall be convened and that's the
15 first time in which a military judge gets
16 involved.

17 Second option is preferral of charges.
18 That's a much broader lens. The military
19 witnesses you just heard from said that a case
20 can go in any direction after preferral. It's
21 relatively informal, a lot of the serious charges
22 require an investigation at an Article 32 after

1 preferral.

2 But the numbers, I tried to put in
3 there just for scope, what we're talking about
4 just in terms of hard numbers, referred cases
5 that the DAC-IPAD's had in terms of sexual
6 assault cases, we're looking at 450-500 referred
7 cases involving adult victim sexual assault. If
8 that's at least -- well, maybe at least a third
9 of all of the referred cases, that might give you
10 a sense of the scope.

11 I tried to look at some annual reports
12 where all Service information is combined, and it
13 looks like, cases, not just referred cases, but
14 cases that make it to trial, we're talking 1,500
15 cases across all the Services. When you look at
16 -- if you only wanted to scope 140a for referral.

17 If you look at preferral, the best
18 sort of ballpark estimate I can give you is what
19 the DAC-IPAD has collected. In 2016, they had
20 738 cases in which one or more charges of adult
21 victim sexual assault were preferred.

22 So, again, if that's a good proportion

1 of all the cases, 140a would, to include all
2 preferred cases for all offenses would obviously
3 be much larger, but in the realm of sexual
4 assault, that is just sort of your ballpark.

5 And each year, we're looking at
6 anywhere from 30-50 more or less than that.
7 There's some fluctuation year to year in our
8 data. But 738 was our sort of starting point.

9 When it comes to the third option for
10 starting a case, starting data collection, the
11 third option is to look at the initiation of a
12 law enforcement investigation into the sexual
13 assault.

14 We know every sexual assault report,
15 whether made to the command or to the SARC, if
16 it's unrestricted, it has to get reported to an
17 MCIO.

18 And so, the Committee could say that
19 that is when we believe a case should begin, for
20 purposes of data collection. This is also the, I
21 think the option that the Policy Working Group
22 recommends.

1 By way of the numbers, I think the
2 DAC-IPAD has received responses from the
3 investigators to show that in FY17 alone, the
4 number of penetrative sex assault cases closed in
5 FY17, and that is the metric we requested, is
6 roughly 2,000 cases, cases closed in a given
7 year.

8 And if 140a is a backward looking
9 system, you would say, I want closed
10 investigations or investigations closed in the
11 last year, that's where you're looking at, in
12 terms of numbers for adult victim sexual assault.

13 So, the Policy Working Group supports
14 starting sexual assault cases from the point of
15 the opening of an investigation by the MCIO,
16 because we're talking about military offenders,
17 so military has jurisdiction, the MCIO is going
18 to investigate.

19 And there are a lot of important
20 decisions that can get made at the investigative
21 stage that can affect the outcome of a case.

22 This approach also would take into

1 account a way to document, in some form, taking
2 into consideration what you heard this morning,
3 all of the disciplinary and legal actions
4 potentially that could result from an
5 investigation of sexual assault, short of
6 prosecution.

7 And I think the JPP and the DAC-IPAD
8 have found this kind of information useful, cases
9 that are resolved outside of the court-martial
10 process, gives you a better picture of what is
11 going on in the system. And certainly, the DAC-
12 IPAD is even looking at cases in which no action
13 was taken.

14 So, the idea is, should the Committee
15 -- or the Committee should recommend that DoD
16 look at cases similar to what the DAC-IPAD has
17 done.

18 And when you look at the justification
19 for 140a, at previous meetings, we presented the
20 justification that the Military Justice Review
21 Group gave, appended to the statutory language.

22 And some of it was to better align

1 military justice data collection with the Uniform
2 Federal Crime Reporting Act of 1988 -- that's the
3 NIBRS, the federal law enforcement database
4 information -- the Victim Rights and Restitution
5 Act of 1990, and the Brady Handgun Violence
6 Prevention Act of 1993.

7 And I think, as you heard from the
8 previous set of witnesses, some of those
9 functions are being handled by law enforcement,
10 meaning they also occur in the investigative
11 stage.

12 Could 140a have awareness or promote
13 awareness of that on the part of the Judge
14 Advocates, to mark when those things are
15 happening?

16 You can only do that if you start
17 looking at a case from the point of an
18 investigation. If you start at preferral or
19 referral, you might miss some of those
20 considerations.

21 We'd also say that -- I think, Dr.
22 Spohn, this is something that the JPP had noted

1 in your work, I think helped flesh this out --
2 the procedural case documents, like the charge
3 sheet, the Article 32, and the results at trial,
4 are very important for understanding case
5 outcomes.

6 But you might miss important case
7 facts and things that bear on the evidence
8 involved in a case, if you're not looking earlier
9 in the case.

10 So, by having the investigative file,
11 you might get access, or investigative -- let's
12 say, data elements that come from the
13 investigative stage, it might be easier to
14 capture the important facts and evidence in the
15 case.

16 Understanding that, as you heard the
17 Bureau of Justice Statistics say, you cannot
18 collect everything about everything. If
19 everything's important, then nothing's important,
20 I think is the message he gave to the Committee,
21 so you have to set priorities.

22 But the Policy Working Group felt that

1 there are several issues of priority, of
2 importance, that can come from the investigative
3 stage of the case.

4 And the last thing is that public
5 controversies that have arisen in recent years
6 around military justice data, reporting, do
7 involve the investigative phase.

8 If that was a consideration in the
9 drafting of the statute, it may not be readily
10 apparent in a narrow reading of the language of
11 the statute, but could the Committee, should the
12 Committee recommend that you start looking at
13 information from the investigative stage in order
14 to sort of ward off these issues?

15 Where DoD doesn't understand the scope
16 of the problem, it can't find the information in
17 one place, it's very difficult to go back and
18 look historically, could 140a be the remedy for
19 some of those issues?

20 So, that is what the Policy Working
21 Group came up with. So, I think the launching
22 point for the discussion is, how does the

1 Committee feel about saying that a case, for
2 purposes of 140a, begins when a report of sexual
3 assault is made to law enforcement?

4 CHAIR BASHFORD: Is it possible to have
5 carve-outs? Does 140a apply -- would our
6 recommendations necessarily have to apply to the
7 entire world of UCMJ?

8 Or could, as implemented, could 140a
9 say, for this purpose, a case starts here, but
10 for theft collection data, it starts someplace
11 else?

12 MS. PETERS: Yes, ma'am, that's what
13 the Working Group contemplated. You would
14 collect this set of data for sexual assault,
15 other offenses could start later in the process.

16 CHAIR BASHFORD: But that's possible?

17 MS. PETERS: Yes, ma'am.

18 CHAIR BASHFORD: Okay.

19 MS. GENTILE LONG: I mean, from my
20 point of view, I think you have to start at law
21 enforcement, or else you're really missing a
22 whole piece of the picture.

1 And some of the frustrations from the
2 civilian world have been from the disconnect
3 between what is the universe of cases reported
4 versus what we say? And so, I just feel like it
5 has to start there, or else you don't know what
6 you have.

7 MS. PETERS: Okay.

8 MR. MARKEY: And I would concur. I
9 think in the civilian world, in my experience,
10 that's where the data collection starts.

11 And I think it's really critical to
12 have that information from the very beginning, in
13 order to -- one of the tasks from 140 is to
14 facilitate the decision-making process.

15 And there's a lot of decisions being
16 made within that investigative process that
17 affect the outcomes, that can identify trends,
18 allocation of resources, review how the response
19 is or is not occurring, look for opportunities
20 for improvement, and identify gaps in the entire
21 process.

22 So, I think that's the gold standard

1 that we need to look at.

2 DR. MARKOWITZ: Meghan, are you going
3 to let the Committee know what our
4 recommendations are as the Working Group also, as
5 we are having these discussions, just so they
6 sort of know where we've fallen out on these
7 different?

8 CHAIR BASHFORD: I think she said --

9 DR. MARKOWITZ: Oh, I'm sorry, I may
10 have been out of the room. I apologize.

11 MR. MARKEY: Yes, she did.

12 CHAIR BASHFORD: At initiation.

13 DR. MARKOWITZ: Oh, I apologize, sorry.

14 CHAIR BASHFORD: It was a little buried
15 in there, though.

16 DR. SPOHN: So, I agree with Jennifer
17 and Jim on this issue, because especially when
18 you consider that there are 2,000 cases initiated
19 each year and, what is it?, 450 result in
20 referral, 700-and-some result in preferral.

21 And so, the vast majority of the cases
22 never get to that point. And I think it's really

1 important to understand why that is. And I think
2 our review of cases over the last several months,
3 the no-action cases, has pointed us in a couple
4 of different directions.

5 But until we actually analyze the
6 data, we won't know if those directions -- if our
7 sort of anecdotal impressions are actually based
8 in reality.

9 MS. GENTILE LONG: I want -- and I'm
10 only saying this because I figure you're also
11 going back for the Services' perspective.
12 Because I think a lot of times, what we hear is,
13 it seems like it's all outward looking, like this
14 is being collected so others could take a look
15 and then tell.

16 But I think what we know from Dr.
17 Spohn and others' research about decision-making
18 at the law enforcement point, it's so often
19 influenced by what they think prosecutors may do
20 or elsewhere down the line.

21 And I -- so, having an understanding
22 that this actually will help both sides

1 understand, communicate and maybe understand the
2 impact of practice, one practice on another, is
3 another important piece of it.

4 So, I'm always trying to -- I don't
5 always know that it's understood by the Services
6 how important some of this work can be to their
7 day-to-day practice and what they do every day,
8 their management of their work.

9 CHAIR BASHFORD: You simply can't set
10 up a system that ignores 80 percent of what you
11 have. And I'm not putting any value judgment on
12 that, it's just, if you start at referral or
13 preferral, you're ignoring all the no-action and
14 that's just such a huge percentage.

15 MS. CANNON: Another thing is that,
16 this impacts the suspect tremendously. And I
17 know it also impacts the complaining witness,
18 about what happens with their lives.

19 It also -- you can have expedited
20 transfers occurring, that aren't going to be
21 tracked if you don't start there and the cases
22 aren't preferred.

1 But there's a lot of important impacts
2 that are occurring to individual liberties and
3 rights that will be lost.

4 MS. PETERS: I think the Working Group
5 looked at this as the starting point -- and going
6 back to the scope of this, is this, starting an
7 investigation, does this apply just to sexual
8 assault offenses or to all offenses?

9 Does the Committee have a -- do people
10 have any sense on where that would -- how far you
11 want to take this recommendation about starting a
12 case at the point of investigation?

13 JUDGE BRISBOIS: Well, to just restate
14 briefly kind of the theme we've been hearing for
15 a year and a half. We've got five different
16 investigative recordkeeping systems. We've got
17 five different judicial recordkeeping systems,
18 once you transfer from one to the other.

19 And so, now, if we're going to
20 recommend that a centralized uniform system, but
21 it only applies to Article 121 offense, now we've
22 got ten more individuals -- a third set of

1 systems on top of what they're already doing.

2 So, their point of resource
3 management, if we are not saying, one system, all
4 crimes, all punitive articles, uniform for
5 everything across the board, then, yes, their
6 concerns about resource management, it's
7 unwieldy.

8 There is transition pain, there is
9 transition resource expenditure, but if you're
10 consolidating ten different investigative units,
11 because we're starting at the point of
12 investigation, I mean, five different
13 investigative systems, five different court
14 systems, into one, that initial transition seems
15 to me, in the long run, will actually result in
16 resource savings.

17 Because now, everybody's using the
18 same form, same terminology, same system, same
19 platform, and starting at the same point. So, if
20 we recommend something other than that, we're
21 just adding fuel to the resource management
22 hodge-podge fire.

1 DR. SPOHN: What about a sort of
2 compromise position, where -- and I think this
3 was one of the options, that it only apply to
4 felony type offenses, as opposed to underage
5 drinking or conduct unbecoming to an officer,
6 those military-specific offenses?

7 MS. PETERS: You would like to make a
8 distinction there, in terms of the scope of the
9 data?

10 DR. SPOHN: I think that's a
11 possibility.

12 CHAIR BASHFORD: I'm a big believe in
13 staying in our lane. And I, for one, don't have
14 the expertise to know what data points and when
15 it should start for other felonies, assaults,
16 robberies, drug cases.

17 I'm in complete concurrence with the
18 Working Group that data collection for sexual
19 assaults should occur at inception of the charge,
20 but I don't know whether we should opine, as
21 opposed to other people opine, on how far out
22 that should extend.

1 DR. MARKOWITZ: I guess I'm also not
2 clear on the amount of work that it would be to
3 actually ask for data collection for all UCMJ
4 offenses at the point of investigation, whether
5 that's actually a greater burden, or if it's a
6 greater burden to separate out only sexual
7 assaults.

8 So, I guess that's the question.
9 Because I understand your point of saying that,
10 from your vantage, it's simpler to just ask
11 everybody to do everything for all UCMJ offenses.

12 My question is, is it actually simpler
13 or is it a greater burden to ask for data
14 collection for all UCMJ offenses from the very
15 point of investigation? Is that actually a
16 greater lift?

17 JUDGE BRISBOIS: Well, there's a burden
18 for everything. There's --

19 DR. MARKOWITZ: Well, yes, but --

20 JUDGE BRISBOIS: -- and the question is

21 --

22 DR. MARKOWITZ: -- I'm just saying,

1 like, which is the greater burden? I'm not clear
2 that what you are saying is actually a lesser
3 burden on the Services.

4 JUDGE BRISBOIS: Well, I think we are
5 mixing detail with policy, at this point. And is
6 it going to be a priority of DoD to have a
7 uniform centralized criminal justice system,
8 investigation and judicial?

9 And I think until you answer that
10 threshold question --

11 DR. MARKOWITZ: Sure.

12 JUDGE BRISBOIS: -- if this group is
13 saying, no, it should only be for sexual criminal
14 conduct, that's a different recommendation. If
15 it's saying, it should be across all systems, to
16 consolidate and minimize disparate functions,
17 that's a different question and it drives a
18 different recommendation.

19 DR. MARKOWITZ: Right, and I think --

20 JUDGE BRISBOIS: So, I don't think
21 we've reached -- gone beyond that threshold
22 question yet, as to what we feel we are going to

1 recommend.

2 DR. MARKOWITZ: Sure. I -- sure.

3 MS. PETERS: Putting -- the order of
4 the issues, ordering is difficult, because you
5 have this, what do we talk about?

6 What types of offenses and what types
7 of functions under 140a do those -- are we saying
8 we want to talk about sexual assault with regards
9 to case management and data collection?

10 For, I guess, a hypothetical for the
11 Committee's concern, if data collection were
12 viewed as a separate function from managing
13 courts-martial, if it happened like the
14 Sentencing Commission does, and you only wanted
15 to talk about sexual assault cases, in your
16 recommendations, are you -- would it be helpful
17 to view this as, this recommendation is part of a
18 view that the system is backward looking, it's
19 looking at closed cases and saying, 140a is going
20 to collect data on all offenses, we're going to
21 recommend how to do that.

22 But as far as the what to collect

1 goes, looking backwards at completed cases
2 involving sexual assault, we wanted to start at
3 the investigative phase.

4 We're mindful of the burden on the
5 Services, so we're going to recommend a way to do
6 that that minimizes that burden in the how we do
7 it recommendation.

8 So, we address it in how we collect
9 it, in what I call best practices, in Issue 6.
10 So, identify an ideal up-front and then, address
11 the resourcing and the time concerns and the
12 logistical concerns, in the best practices
13 section, so that that is factored into your
14 recommendations.

15 And that's what I would recommend,
16 that we just start trying to pin the question
17 down to, when looking at sexual assault cases,
18 what's the lens: referral, preferral,
19 investigation?

20 And I'm finished, but I was hoping
21 that that brought together a couple different
22 thoughts about how to think about this aspect of

1 the recommendations.

2 DEAN HARRISON: I just, as a member of
3 the Policy Working Group, I think that, at least
4 for me, knowing that there were 2,000, roughly,
5 cases closed in Fiscal Year '17 --

6 MS. PETERS: Yes.

7 DEAN HARRISON: -- it seems that all of
8 those cases are important enough to at least
9 start the definition of a case as when law
10 enforcement gets involved.

11 I have no idea how many allegations of
12 absence offense, obedience offenses, and the
13 other things encompassed under the UCMJ there
14 are.

15 I'm not saying they shouldn't begin or
16 where they should begin, but I don't think we
17 have enough of a foundation to know anything
18 about that universe yet. And it might very well
19 be that everything should begin at the time of a
20 law enforcement report, I just don't know.

21 MS. CANNON: I agree with those
22 comments, as well as the Chair's comments. By

1 doing the work we've been doing, it seems like
2 that would be important everywhere.

3 So, perhaps it would be that that's
4 worth looking into if that is true. But I think
5 we can only recommend based on our work and our
6 own direct experience with sexual assault cases.

7 But it does give rise to the belief
8 that this may be true as to everything, but that
9 that would be someone else's weigh-in, but it
10 might be something that we'd recommend looking
11 at, because what we're getting from all of this
12 is that it needs to be more systematic, it has to
13 be more global and uniform.

14 So, I don't know if someone overall is
15 looking at this and going to be able to make
16 those choices.

17 JUDGE BRISBOIS: Well, maybe you can
18 clarify. I mean, I -- 140a, as you bullet point,
19 you didn't -- the whole statute's not up there,
20 but you --

21 MS. PETERS: Right.

22 JUDGE BRISBOIS: -- bullet-pointed the

1 statute. 140a is a directive to look at the
2 entire DoD investigative and criminal justice
3 courts-martial system, not just Article 121. Did
4 I -- am I missing something?

5 MS. PETERS: No, that's correct, sir.

6 JUDGE BRISBOIS: Yes. So, either way,
7 no matter what we recommend, we either recommend
8 as a stovepipe subject matter group to go into
9 the mix with everyone else, to be reconciled
10 somewhere else, or we recommend how we see it
11 fitting into a system as a whole.

12 But in the end, the SECDEF is going to
13 decide all investigations, or not, all courts-
14 martial, or not, across DoD, right?

15 MS. PETERS: Yes.

16 CHAIR BASHFORD: That's why I asked,
17 was there a possibility for a carve-out, so that
18 under 140a, certain types of investigations could
19 start at the initial report and other types of
20 cases could start at referral or preferral.

21 And I just don't know if it's one-
22 size-fits-all or if there's opportunities to do

1 difference within it.

2 MS. PETERS: The discussions that we've
3 had as a group contemplate that, 140a applies to
4 all offenses, it clearly means at least referred
5 cases.

6 Nothing in the statute prevents you
7 from going broader, because it doesn't define
8 what pretrial means. It says, collect data at
9 all pretrial, trial, and post-trial and appellate
10 stages of a case.

11 It does not say when pretrial begins.
12 And it says, you're to collect information on
13 substantive offenses and on procedural matters.

14 And certainly, in practice, the
15 Services have had to treat sexual assault cases
16 differently, in every military justice activity
17 they do. There is more reporting, there are
18 specific command disposition forms only for
19 sexual assault cases.

20 There are a host of practices that are
21 done for sexual assault cases that are not done
22 for the other cases or less -- things that are

1 not high visibility in their, I guess, operating
2 environment.

3 So, there is nothing in the statute
4 that prevents, or nothing, I think, from the
5 Committee's perspective that would prevent them
6 from saying, you can treat sexual assault cases
7 this way, you can look at data for other cases
8 differently.

9 And that is, I think, the option
10 around which the Policy Working Group coalesced
11 yesterday, that we are only talking about sexual
12 assault cases.

13 It's certainly permissible under the
14 statute to look at preferral and referral for
15 everything else. And everything else will
16 include cases that aren't preferred and referred,
17 in theory, so you have to draw the line
18 somewhere.

19 But we said, treat sexual assault one
20 way and the other offenses a different way under
21 this statute.

22 JUDGE WALTON: Well, I mean, the

1 outcome of all cases is going to be affected by
2 the quality of the investigation. So, I don't
3 think it makes sense to make a distinction
4 between you start for one type of case as
5 compared to another.

6 But our scope is limited. And
7 therefore, I think we should, as indicated, stay
8 within our lane and make a recommendation
9 regarding sexual assault cases but say --

10 MS. PETERS: Nothing.

11 JUDGE WALTON: -- that obviously it
12 makes sense for it to apply to all types of
13 cases.

14 MS. PETERS: And to be silent as to --

15 JUDGE WALTON: Right.

16 MS. PETERS: -- the rest of the Uniform
17 Code of Military Justice. Okay.

18 MS. GENTILE LONG: Can I ask a
19 clarifying question?

20 MS. PETERS: Yes.

21 MS. GENTILE LONG: Just making sure
22 that when we're saying sexual assault, you mean

1 all felonies and misdemeanors, right? You're not
2 --

3 MS. PETERS: That is the next question.

4 MS. GENTILE LONG: Okay.

5 MS. PETERS: Especially given our
6 discussion around felonies/misdemeanors, in this
7 very conversation. Virtually all offenses under
8 the UCMJ are felonies, by a civilian definition.
9 They all have a punishment of, most of them have
10 a punishment of a year or more that's possible.
11 And then, we have the general and special court-
12 martial distinction.

13 So, that's a difficult place to draw
14 the line. Where the Committee has drawn the line
15 in terms of its case review, obviously, is, was
16 the initial allegation a penetrative offense?

17 And the Case Review Group is not
18 looking at the contact offenses. They are much
19 more likely to be handled outside of the court-
20 martial process.

21 And I don't mean -- I'm not speaking
22 to that all of them are Article 15, I'm saying,

1 relative to penetrative offenses, many more of
2 them are handled outside of a court-martial.
3 They may not be contemplated for prosecution.

4 So, I wanted to ask, does the
5 Committee want to say, we aren't talking about
6 tracking only -- we are going to speak to
7 analyzing penetrative sexual assault offenses
8 from the point of investigation, and say that we
9 are not including the contact offenses in our
10 recommendation as to data collection?

11 CHAIR BASHFORD: I say all.

12 MS. GENTILE LONG: All.

13 MS. PETERS: All? Okay.

14 DR. MARKOWITZ: I agree with all.

15 DR. SPOHN: Agree.

16 MS. GENTILE LONG: Child and adult? I
17 mean, if you're -- yes. I mean, I know what
18 we're doing, for our purpose right now, I think
19 is just limited by how we're starting our case
20 review, but, yes, I would do everything.

21 CHAIR BASHFORD: Do we know what that
22 universe is?

1 MS. PETERS: No, I don't have a sense
2 of the scope beyond what we've received in RFIs
3 from the Services.

4 CHAIR BASHFORD: And what we've
5 received is just the penetrative?

6 MS. PETERS: Yes, ma'am. And that was
7 about roughly 2,000 cases. And that didn't
8 include child victim cases and that did not
9 include sexual contact offense, unless it
10 occurred alongside a penetrative.

11 DR. SPOHN: Meghan, do you have the
12 2015 report that -- because that had both
13 penetrative and contact offenses?

14 MS. PETERS: It does --

15 DR. SPOHN: But that was from the point
16 of preferral.

17 MS. PETERS: So, for 2015, the number
18 of cases that we received involving a penetrative
19 offense, accused charged with a penetrative
20 offense, 556 cases preferred across all the
21 Services. Charged with a sexual contact offense,
22 225 cases charged across all the Services.

1 MS. GENTILE LONG: I think the universe
2 that we're talking about here is so small, it's
3 manageable. I mean, 2,000 cases may seem like a
4 lot, but in the universe of the world and in
5 large jurisdictions, it's not that big.

6 MS. PETERS: And is it going to
7 contemplate what the allegation is? For example,
8 a sexual contact is alleged. The Article 15 or
9 the basis for the separation or administrative
10 action that results, because no court-martial is
11 going to result, the basis for it is an Article
12 128 charge of assault and battery.

13 MS. GENTILE LONG: I say it starts
14 just like the other ones, whatever the report is
15 to the police, or else you don't know what's
16 happening, if you're taking a piece out of it.

17 CHAIR BASHFORD: But I imagine, the
18 universe is much larger than that, because you're
19 just looking at the ones that went to preferral,
20 right?

21 MS. PETERS: Yes, ma'am.

22 CHAIR BASHFORD: Is that what that

1 number was?

2 MS. PETERS: Yes.

3 CHAIR BASHFORD: And if most of them
4 are being settled elsewhere, taken care of
5 elsewhere, we don't know that number, right?

6 MS. PETERS: Correct.

7 CHAIR BASHFORD: And we don't know the
8 number that doesn't get -- where no action is
9 taken?

10 MS. PETERS: In the realm of sexual
11 contact offenses, correct. And we don't know the
12 realm in which the action was nonjudicial, it was
13 administrative. And that could be much greater
14 than the number of preferred cases, I'd imagine.

15 DR. MARKOWITZ: That, in and of itself,
16 I think will be useful to know.

17 MS. PETERS: I mean, it's not --

18 CHAIR BASHFORD: I'm sure it's
19 knowable, we just don't --

20 MS. PETERS: Yes.

21 CHAIR BASHFORD: -- we just don't have
22 that --

1 MS. PETERS: Right.

2 CHAIR BASHFORD: -- data evidence.

3 MS. PETERS: Right. The JPP looked at
4 SAPRO's data on nonjudicial punishment and
5 administrative separations. It found it
6 difficult to follow and track, even when they did
7 it.

8 They require data on the outcome of
9 every alleged sexual offense, penetrative or
10 contact. However, they prioritize nonjudicial
11 punishment over separation.

12 It's difficult to tell if both actions
13 resulted in a case, which one is technically more
14 severe. The Services have a disagreement over
15 the DoD's determination of, if you're supposed to
16 report the most severe action taken, which one is
17 more severe, getting separated from the Service?

18 Or getting an Article 15 and, in
19 theory, another bite at the apple, and getting to
20 stay via this rehabilitative tool? Which doesn't
21 happen if it is sexual assault anyways.

22 So, it's very complicated and I don't

1 think even DoD's efforts have provided a lot of
2 clarity around those -- that information.

3 So, yes, that would counsel in favor
4 of it being valuable for somebody to do and put a
5 lot of effort into a very focused study of that
6 issue. It's been difficult to study and parse
7 out thus far, at least in the staff's experience.

8 So, I think, in the -- what I'm
9 hearing are the options, are that the Committee
10 will recommend building out from this issue slide
11 and the outline in front of you on Issue 3, when
12 does a case begin?

13 It is a case begins when a report of
14 sexual assault involving adult victims, involving
15 child victims, penetrative offenses, contact
16 offenses, that is one definition of sexual
17 assault, when that report is received by law
18 enforcement.

19 And that that is the trigger for a
20 case data point to enter a 140a system. That is
21 one option.

22 The other option is to have all

1 offenses under the UCMJ that require a report to
2 law enforcement and that are investigated by an
3 MCIO be a part of our recommendation, that we're
4 not going to be specific to sexual assault, we're
5 going to say, all offenses should be treated the
6 same.

7 And so, I see that as our two options,
8 based on the Committee's discussion. Is there
9 anything else --

10 JUDGE BRISBOIS: Well, I don't know
11 that it's that binary. I mean --

12 MS. PETERS: Okay.

13 JUDGE BRISBOIS: -- the purpose and
14 goal, as I understand 140a, is uniformity and
15 transparency and data collection. And the
16 question is, as I see it, centralized or
17 decentralized systems?

18 We have a current decentralized system
19 right now. And that undermines uniformity and
20 access and transparency.

21 So, I think there's a third, where we
22 can say, we support the broader concepts of a

1 centralized uniform system, but our specific
2 recommendations, because of our specific charges,
3 are going to be limited to Article 121.

4 And we commend our recommendations to
5 other groups commenting on applications to all
6 other punitive articles, to consider our
7 decisions about where a case starts, where a case
8 ends.

9 So, I don't think our recommendation
10 should be that binary. It's either all uniform
11 or not uniform. Or if there -- because Article
12 140a isn't just directed at Article 121.

13 MS. PETERS: Is it also possible,
14 without -- I think that the format is
15 potentially, I think, as has been discussed
16 before, a letter to the Secretary of Defense,
17 where there is an opportunity to explain the
18 rationale around a given recommendation, to
19 express an entire thought process, to express the
20 considerations that you're bringing up right now.

21 So that recommending one thing about
22 data collection doesn't preclude the Committee

1 from making certain affirmative statements, that
2 aren't necessarily a recommendation, they could
3 be, but we could potentially work on phrasing in
4 the letter that addresses these other concerns.

5 JUDGE BRISBOIS: Well, I mean, I guess
6 my -- maybe another way to state it is, I think,
7 from our perspective, we can limit our threshold
8 issue, as I've phrased it, to a platform.

9 Is it five individual platforms or one
10 DoD-wide platform? What do we think would be the
11 best practices? I mean --

12 MS. PETERS: Okay.

13 JUDGE BRISBOIS: -- in the federal
14 courts, it's one platform. In Minnesota, which
15 has 87 counties and a state court system, it's
16 one platform. And so, there are examples of that
17 can be done and doable.

18 Beyond that, within our stovepipe of
19 Article 121, then we can make the recommendations
20 however we end up coming out on it. Where does
21 the data start collecting, where does it end,
22 what types of things are important? And then,

1 that can be informative to anybody else who wants
2 to comment.

3 MS. PETERS: So, having had this
4 discussion around offenses, would you recommend
5 that we just really look at this point at Issue
6 6, which is the best practices, which is the
7 structure, the methodology, for 140a?

8 JUDGE BRISBOIS: Well, again, I don't -
9 -

10 MS. PETERS: As a -- to facilitate a
11 discussion --

12 JUDGE BRISBOIS: Yes, I don't
13 necessarily disagree that we focus our
14 discussions, our detailed, specific discussions
15 on Article 121.

16 I just think, before we -- we have to
17 make a preliminary recommendation as to whether
18 we're recommending an additional system across
19 five separate branches that's directed just at
20 Article 121 or if our detailed recommendations
21 are assuming a centralized system that replaces
22 the current decentralized process?

1 So, I mean, that is necessary to put
2 our detailed recommendations into proper context.
3 Otherwise, someone's going to read whatever they
4 want to read into it.

5 MS. PETERS: Okay.

6 JUDGE BRISBOIS: Well, they said it
7 should be everyone. Or someone else will say,
8 no, they said it should only be an Article 121
9 system.

10 MS. PETERS: Okay. So, should we just
11 move to that portion of the outline and we can
12 come back to this issue of what offenses, and we
13 can really get to sort of platform, best
14 practices, issue first, as the preliminary matter
15 that should be decided maybe first by the
16 Committee? Would that be --

17 CHAIR BASHFORD: Would the scope --

18 MS. PETERS: -- advisable?

19 CHAIR BASHFORD: Would scope be the one
20 we should look at? Are we only going to be
21 making recommendations about sexual assault or
22 are we going to be making recommendations about -

1 - because that sort of -- that was the first
2 thing on the -- that was the first point. What
3 is the --

4 MS. PETERS: Yes.

5 CHAIR BASHFORD: -- scope of our
6 recommendation going to be? So, if the scope of
7 our recommendation is not going to be case
8 management, then we're talking about something
9 else. If the scope of our recommendation is more
10 expansive, then we have more to talk about.

11 MS. PETERS: So, when we originally put
12 this together, we said, that is a preliminary
13 decision, do you just want to talk about data
14 collection?

15 Do you want to, in our own minds say,
16 data collection is separate from case management,
17 so that you're not envisioning a system where
18 Military Justice Online is the source for all
19 data for 140a? The data collection happens
20 independent, because you want a centralized
21 document-based system across all Services.

22 So, Madam Chair, would you like a vote

1 or a further discussion on whether this really --
2 to decide, are we just talking about data
3 collection? Are we talking about data collection
4 and case management?

5 CHAIR BASHFORD: I don't think we've
6 discussed it.

7 MS. PETERS: Okay.

8 CHAIR BASHFORD: We kind of went to --

9 MS. PETERS: Right to when --

10 CHAIR BASHFORD: -- when does --

11 MS. PETERS: -- does a case begin?

12 CHAIR BASHFORD: -- case begin?

13 MS. PETERS: Okay.

14 CHAIR BASHFORD: So, I just -- it would
15 be helpful to me to know what the Working Group
16 thought on that.

17 DR. MARKOWITZ: So, I think that we
18 were in favor of the most all-encompassing, if I
19 remember correctly. I mean, I think that we had
20 talk about really endorsing data collection, case
21 management, and public access.

22 Being able to weigh in on how people

1 can access this information, how it can be used,
2 that felt like a good use of our energy, our
3 resources, along with the other components as
4 well. So, I think, for us, that was our
5 conversation yesterday.

6 CHIEF MCKINLEY: Yes, absolutely. And
7 we fully understood and we talked at length about
8 140a and understand that that just does not cover
9 sexual assault.

10 But in the scope of what we were
11 looking at, we can to the recommendation that we
12 should focus on the sexual assault part of it,
13 when does it begin?

14 And with kind of the recommendation
15 going with that that maybe for the other issues
16 out there, offenses, that it would go the same
17 line, but because of all the different cases out
18 there, we don't know how those would play out,
19 but we focused on sexual assault.

20 So, that was the best avenue that we
21 could go with a recommendation is how this would
22 play out with sexual assault, and that's why we

1 said it should begin at the MCIO initiation
2 there.

3 And so, we discussed this and, should
4 we go very broad with all cases, and we just
5 thought that was a little bit outside of our
6 scope?

7 JUDGE BRISBOIS: Well, I think you
8 misunderstand what I'm saying. I'm not saying we
9 make -- these are the data points for every
10 article that should be collected, these are --
11 I'm not saying that at all.

12 But the third option that was
13 presented, or that I suggested, is that we
14 endorse a centralized data and case management
15 system that contemplates public access at some
16 point, to replace the five decentralized systems
17 that are out there for investigative and judicial
18 case management.

19 That's as far as that needs to go. I
20 don't -- if that's what we want to do. And then,
21 now, we can say, given our legislative charge,
22 this is how we see Article 121 fitting into that

1 sort of platform. And so, I think that's what
2 we've been talking about.

3 DR. MARKOWITZ: Yes.

4 CHIEF MCKINLEY: Yes, sir. Option
5 three is --

6 JUDGE BRISBOIS: Yes.

7 CHIEF MCKINLEY: -- definitely the
8 direction that we recommend.

9 DR. MARKOWITZ: Right. I think maybe
10 some of the confusion is just that we took that
11 particular issue, as Meghan was saying, and we
12 just separated it out into a completely separate
13 consideration point.

14 So, I think that's where maybe the --
15 we're getting at cross purposes here. So, we've
16 talked about sort of the platform as one
17 completely separate issue and then, how we're
18 going to consider it, when it gets considered,
19 the scope, as all different issues.

20 And it sounds like, if I'm
21 understanding your point, you've just simply
22 moved that piece to the forefront --

1 JUDGE BRISBOIS: Yes, I mean --

2 DR. MARKOWITZ: -- or combine them, to
3 some extent.

4 JUDGE BRISBOIS: -- because if we don't
5 support a centralized uniform system, then we
6 have to justify why we think we need to create an
7 independent, standalone Article 121 system. And
8 that's a discussion I don't think we need to
9 have.

10 MR. MARKEY: Well, and I would agree.
11 I think the third option, I think how does this
12 Committee fit and impact with 140a and how does
13 140a impact this Committee?

14 And I think our scope is the sexual
15 assault response and concerns that we're looking
16 at. But I also agree that -- I don't want to say
17 this would be -- so, I'm trying to look
18 downstream.

19 So, what would that look like in a
20 logistical implementation process, of the folks
21 that are on the front, having to do that? So,
22 what would that look like?

1 And so, I don't think we would want to
2 dump every UCMJ investigation to begin with from
3 the get-go. And I'm almost thinking of, like, a
4 beta test or a phasing in of this type of
5 collection of offenses.

6 And you could look at the data we're
7 collecting from the sexual assault cases and how
8 is that implementing? What are the logistics?
9 What are the resources needed to do that?

10 And how much would it take to, in the
11 future, expand that out, either within the
12 database, the platform? How much data would you
13 have to change, how many questions would you have
14 to change to collect different types of data?

15 I don't think there's that big a
16 difference in some of the other crimes, because
17 you're going to get the basic data that you're
18 going to be collecting. So, what would that look
19 like?

20 I think if we did look at the wide
21 scope and say, yes, I think we need to collect
22 everything, which I do, but I think at this

1 point, the scope of our Committee would be
2 beyond.

3 But I definitely think that needs to
4 be something that can be addressed and maybe
5 phased in over a period of time, that the burden
6 is not so great from the very beginning that you
7 would look at that and say, well, it's going to
8 be a failure, because we can't manage this much
9 data or this much information and the resources,
10 the drain of our resources would be too great.

11 So, almost taking, like I said, like a
12 beta test of this sexual assault issue and the
13 cases we're looking at and start as that point,
14 as how is that process going? How is that across
15 the different platforms and Services looking
16 like?

17 And then, start to look at, could this
18 work with other types of cases? And I don't know
19 if there's other committees or other groups that
20 are looking at the other types of crime and the
21 concern with collecting that data as well.

22 MS. PETERS: I don't have that

1 information for you, but I can speak to a little
2 bit about what the discussion that the members
3 had. And please, correct me if I'm wrong or add
4 on to this.

5 But in terms of the scope was looked
6 at as, again, what types of offenses? And then,
7 what are we speaking to within 140a?

8 The Working Group reflected on the
9 fact that, in April and you heard a little bit of
10 it this morning, the Services do data collection
11 and case management at the same time. They are
12 using their case management system to generate
13 data.

14 You also heard from the federal system
15 that does things a little bit differently. They
16 have uniformity across jurisdictions, but they
17 have CM/ECF for managing their cases, filing
18 cases in court.

19 They have PACER, an overlay for public
20 access. And then, they have the -- I guess, AO
21 funnels data, I think to the Federal Judiciary
22 Center for research and analysis and aggregation.

1 And the Sentencing Commission is yet
2 another system that collects aggregate data and
3 generates reports and aggregate data, so that
4 they -- and they specifically, Mr. Schmitt went
5 into a lot of detail about how and why they
6 separate their data collection and analysis
7 function from the processing of a case in federal
8 court.

9 And that's for his own quality
10 assurance goals and standards. So, because he
11 has a research or a different purpose than the
12 federal courts do, in counting cases and managing
13 cases.

14 So, I think the Working Group was
15 saying, the Services are expert at managing their
16 cases. They each have an electronic systems,
17 they're each working on improvements.

18 But we find that data collection is --
19 there are deficiencies that, or issues that the
20 Committee can address around data collection for
21 sexual assault cases. Let's recommend a system
22 where data collection is done separately, like

1 the Sentencing Commission.

2 So, the scope of the recommendations,
3 the things I think that they would prioritize
4 are, sex assault data collection, commenting on
5 the fact that case management is done at the
6 Service level.

7 And certainly, can make broad comments
8 about it, but not getting into detail. And
9 really saying, one system means one system for
10 data collection across a swath of offenses.

11 I think that's where the
12 recommendations all sort of come together, or the
13 issues come together. Is that correct?

14 JUDGE BRISBOIS: Well, again, just to
15 clarify, the AO does its data mining from CM/ECF.

16 MS. PETERS: Yes.

17 JUDGE BRISBOIS: So, there's no
18 separate collection -- you don't go back to each
19 of our chambers and say --

20 MS. PETERS: Okay.

21 JUDGE BRISBOIS: -- look through your
22 hard paper files. I mean, it --

1 MS. PETERS: Right.

2 JUDGE BRISBOIS: So, it's not really a
3 separate system.

4 CHAIR BASHFORD: I don't care how the
5 Air Force manages its cases compared to how the
6 Navy manages its cases. I don't think I have the
7 expertise to say, you should use this system if
8 this system works.

9 So, I think what's important is that
10 we standardize language, because that's all over
11 the place among the Services, and that we
12 standardize what data is in fact collected, so
13 that's standardized across the system.

14 How are you managing your cases, what
15 you find helpful or not helpful to see if some
16 station or base is overworked and some base has
17 cases that are lingering too long and another
18 base has a high acquittal rate, I don't feel that
19 I have the expertise to say you should all use
20 the same system or you should use different
21 systems.

22 I just want the information coming in

1 to be accessible and --

2 MS. CANNON: Uniform.

3 CHAIR BASHFORD: -- the same. So, I'm
4 not quite sure, are we saying, we are going to
5 make recommendations about case management
6 systems? Is that -- and I also kind of have the
7 same thing about public access.

8 I don't feel I have the expertise to
9 know how that -- other than the public should
10 have access to some portion, some record. They
11 probably don't have -- are not going to have any
12 access to investigations with no actions.

13 MS. PETERS: Correct. So --

14 CHAIR BASHFORD: So, I'm not quite --
15 I'm not sure what we would be recommending on
16 those other two things.

17 DR. MARKOWITZ: I don't think we're
18 recommending anything yet. I think that's future
19 action, correct? That's what we decided
20 yesterday was that that would be something that
21 would come in the future.

22 We would elicit information about

1 that, consider it, and that that would be part of
2 the work of the Committee in the future, going
3 forward.

4 CHAIR BASHFORD: So, apart from 140a
5 then? Because don't we have a deadline to get
6 stuff in for that?

7 MS. PETERS: Yes. I think --

8 CHAIR BASHFORD: Can you be more --

9 MS. PETERS: -- it was the phased
10 approach idea that, we are talking about one
11 uniform data collection system and recommend.

12 If the Committee wanted to recommend
13 one uniform case management system that either
14 connects to the data collection system or exists
15 independently, that's for future study, that is a
16 goal that we know is going to take years to
17 implement anyways.

18 But we would need more information to
19 comment on a uniform case management system and
20 whether that's advisable.

21 MS. CANNON: When you're saying a data
22 system, are you saying one uniform data system

1 across five Services or are you saying everybody
2 implements this data in whatever system, but make
3 it accessible in a central way?

4 MS. PETERS: It is one centralized data
5 collection entity --

6 MS. CANNON: Okay.

7 MS. PETERS: -- wherever that is, sort
8 of independent of the Services. I think, Mr.
9 Schmitt had commented that you could have five
10 Services in five separate data centers, it would
11 be less efficient to go to five different places
12 for the information.

13 Especially given the relatedness of
14 the Services and the way they interact, even in
15 the life of the case. They do all coexist,
16 right?, in the same place. And sometimes, within
17 a court-martial, you can cross Services, in terms
18 of the functions.

19 And so, there is a lot of reasons to
20 say, one data system is simple, it's efficient,
21 and it gives you that Service-wide view, that
22 DoD-wide view that is lacking.

1 MS. CANNON: And at this point, the
2 recommendation or the thoughts of this Policy
3 Group is that that be focused on sexual, the 121
4 cases that we're charged with, with thoughts that
5 you might want to look into making this in other
6 areas as well?

7 MS. PETERS: Right. I think the
8 decision is, sexual assault, we want to comment
9 on how you collect data on those. And I think it
10 is -- the other decision point for the Committee
11 is how you to refer to all others as, we're going
12 be silent on it or we're going to say, you should
13 do something about all others in a certain way.

14 I think that's the decision point. It
15 seems like the sentiment is let's at least say,
16 we -- let's just say, this is how you should
17 collect data on sexual assault cases.

18 CHAIR BASHFORD: And how detailed does
19 the Working Group think our recommendation should
20 be? Like we think you should collect data from
21 this point? Are we saying what data should be
22 collected, how it should be collected, documents

1 or inputting -- do we get that specific on a
2 recommendation?

3 CHIEF MCKINLEY: Well, we, ma'am, we
4 have provided all the data that DAC-IPAD collects
5 right now, which is enormous, as kind of a
6 starting point, to make sure that -- there's some
7 very good information there.

8 We at no point think that each branch
9 of Service should change and have one system and
10 drop all those systems that they have now. But
11 just, as you said, Chair, is to go -- to make
12 sure that -- going to the direction, when they
13 input the data, it's all the same language and
14 it's all understandable, when it goes into one
15 system.

16 And from testimony this morning, I
17 think they're really moving in that direction.
18 But to get as much information to them to compile
19 all the data requests that we think we would
20 need, I think we have a really good starting
21 point with what we already request.

22 CHAIR BASHFORD: So, I'm -- excuse me,

1 because I'm just slow today. So, that would be
2 each Service inputting the same data into their
3 own system or are we envisioning that plus an
4 overarching system that the data gets --

5 CHIEF MCKINLEY: It's whatever system
6 they have right now. It really, to an extent,
7 really doesn't matter. But what matters is what
8 they put into our system.

9 CHAIR BASHFORD: Right.

10 CHIEF MCKINLEY: So that we have all
11 the information from all branches of Services
12 with the same language, same data, that we can
13 understand, present it to Congress or whoever.

14 But -- and they have to work to make
15 that common language between an Article 15 and
16 whatever differences they have in terminology,
17 that they come with one language and they put it
18 in one data system that everybody can understand.

19 MS. CANNON: Well, that sounds
20 contradictory. And maybe it's because I don't
21 understand systems. But it's one data system,
22 which sounds different than, through their own

1 case management system.

2 So, I thought the clarification was
3 that we were recommending one data system and
4 that whatever else they're doing, they can do,
5 but that we are recommending one uniform data
6 system.

7 CHIEF MCKINLEY: That would be the one
8 system that they input into, but we're not
9 recommending that each Service changes their
10 system that they already have into our system.
11 But whatever they input into is one system that
12 they all input into. Does that make sense?

13 MS. CANNON: Yes, that clarifies
14 something.

15 JUDGE BRISBOIS: We have to distinguish
16 a data collection system is different than a case
17 management system. The other proposal is a
18 consolidated data and case management system.

19 So, if I'm -- I'm trying to
20 understand, you're saying a centralized uniform
21 data collection system, but you're going to leave
22 the five decentralized case management systems in

1 place. That's what you're recommending?

2 CHIEF MCKINLEY: Yes.

3 JUDGE BRISBOIS: Yes.

4 MS. PETERS: The -- up on the slide,
5 and this is Page 13 of the outline, these are
6 brief description of, I think, the way the Policy
7 Group envisioned laying it out.

8 This borrows heavily from the
9 Sentencing Commission's recommended best
10 practices. And that is, it is separate and apart
11 from the case management system, because it
12 relies on source documents.

13 Forward those documents to one single
14 entity, one place, and in that one place, data is
15 extracted from source documents that are
16 generated in the course of the military justice
17 process.

18 The Working Group is recommending that
19 you do create an electronic database, because
20 that's not spelled out in the strict reading of
21 140a's language. It says, standards and
22 criteria. And that you limit the data entry to

1 one small team.

2 And that you do everything in terms of
3 quality assurance to make this sort of the gold
4 standard of data, of which the Services can be
5 customers, DoD, anybody with particular interest
6 in issues, researchers want access to the data
7 for research purposes.

8 And that the Services maintain their
9 independent systems, because that threshold issue
10 that I think Judge Brisbois keeps hitting on is,
11 do you -- 140a has potentially two visions.

12 One system that does every one of the
13 four things. It collects data. It manages cases
14 across all Services. It produces records of
15 trial. And it facilitates public access.

16 The Policy Working Group took the view
17 that, based on even the testimony of the very
18 advanced systems of the federal system, one
19 system does not necessarily do all of those four
20 things.

21 But this Committee seems to be very
22 focused on what you can do with the data around

1 these sex assault cases to understand important
2 issues.

3 So, it wanted to focus on data
4 collection in 140a, again, with the understanding
5 that the Services have the expertise to manage
6 their cases.

7 And it wasn't so much a comment on
8 whether their platforms are wonderful or not, it
9 was just, that's where the expertise lies, that's
10 where the administration of military justice
11 happens in each of the Services.

12 We do care about the quality and the
13 type of data that comes from military justice.
14 And we wanted to -- I think they wanted to
15 divorce the data from the hand-entry into each of
16 the systems, at every installation, by every
17 prosecutor and very paralegal imaginable, which
18 is the way data is fed into these systems, to
19 some extent, now.

20 So, by relying on a document-based
21 system and a centralized entry point, I think we
22 tried to get around the tension between case

1 management and data collection.

2 CHAIR BASHFORD: Since we seem to have
3 a consensus that, at least for the cases we look
4 at, it should start at the initiation of a
5 report, if it's going to be document-based, it
6 seems that there has to be some sort of new
7 standardized form, because we're getting the
8 whole report of investigation, in order to enter
9 all the data points we're collecting.

10 It's just a lot of work. If you're
11 set -- it's much easier with the referral and
12 preferral because there are, seems to be fairly
13 standardized forms.

14 You've got to capture the demographic
15 information, all the information we're capturing,
16 somehow from the investigative file. And then,
17 the closing of the file and the reasons for the
18 closing, right?

19 Other than -- I mean, if all you have
20 is demographics and then, insufficient evidence,
21 I'm not sure what that data's going to tell you.
22 How are we going to get that through a document-

1 based system?

2 MS. PETERS: So --

3 CHAIR BASHFORD: I don't mean to be
4 putting you on the spot, I'm just --

5 MS. PETERS: No, the --

6 CHAIR BASHFORD: -- talking out loud.

7 MS. PETERS: Well, we've thought
8 through some of this, right? You can't collect
9 an entire investigative file, even for every
10 sexual assault case. That may not make sense or
11 be practical. And very inefficient to look
12 through an entire file for all the information.

13 So, you have to prioritize the data
14 that you'd like. If you want a concise sense of
15 the fact pattern giving rise to the alleged
16 incident, if you want to know the commander's
17 disposition, no-action or otherwise, you
18 standardize sort of the, it's usually one, max
19 two pages, initial report of investigation, or
20 some call it an interim.

21 So, yes, they would have to kind of
22 standardize how the MCIOs summarize the initial

1 complaint and where their investigation led. And
2 then, standardize the form on which the
3 commander's action is captured.

4 At least those documents are already
5 generated as part of everybody's process, you're
6 not just necessarily creating a new independent,
7 at this point, a new independent form, which in
8 essence is self-reported data.

9 You're trying to get around that,
10 because each of these elements has a purpose
11 independent of data collection and it is
12 reporting an existing process.

13 It is the way that process is
14 reported. The opening of an investigation, who
15 made the complaint, how it came to law
16 enforcement, and then, what the commander did at
17 the end.

18 These are both items that are in those
19 investigative files case review is looking at.
20 And, yes, they require some standardization, but
21 they would give you the shell of the facts.

22 And things like -- there are certainly

1 nuanced facts that would require a more in-depth
2 reading of every case file and that might have to
3 be obtained in a different way.

4 But absent reading every
5 investigation, but still relying on documents,
6 you'd trim it down to the initial ROI, report of
7 investigation, and the commander's action report.

8 CHAIR BASHFORD: And then, hopefully
9 those get standardized across the Services?

10 MS. PETERS: Yes, ma'am.

11 MR. MARKEY: I think part of -- two of
12 the challenges I see is, because we do have five
13 separate case management systems, but we want to
14 extract certain data from each one of those
15 systems, and the most efficient way, obviously,
16 is electronic.

17 So, I don't know if their current case
18 management systems, where they're inputting the
19 demographics and some of the key points of these
20 cases, I don't know if they're electronic, where
21 somebody could look at that and say, can we just
22 extract that or can that data just be dumped

1 every month?

2 The other concern, and we heard this
3 over the course of the last year, is, within each
4 branch, they have separate systems for collecting
5 data.

6 And the first time I heard today was
7 the Army is actually looking at trying to have
8 those two systems, the prosecutorial, or the
9 court-related, I don't know if that's the right
10 terminology, and the investigative system
11 actually talk to each other.

12 I don't know what the other branches
13 have, as far as whether those systems -- I think
14 one of the frustrations we had was, within their
15 own Service, your systems are in silos, not
16 communicating.

17 And now, the expectation is, we're
18 going to have all Services communicating to each
19 other. So, I think there's a couple of
20 challenges to try to identify.

21 And maybe that's down the road, the
22 implementation of, can we just extract or dump

1 this data into this, as efficient as we can,
2 without using additional resources to do hand-
3 entry, data entry on it.

4 I think we need to be looking at that,
5 because it is 2018, there are systems out there
6 electronically that allow a lot of things to
7 occur by the press of a button, without actually
8 having to use additional manpower and resources
9 to do the old fashioned typewriter entry.

10 So, I don't know, when you talked
11 about policy, if you were able to look at what --
12 how would this look, implementing this, and what
13 are the different ways that this would look,
14 implementing what we want to try to do?

15 MS. PETERS: I think the Policy Group
16 got so far as to say, they -- the Sentencing
17 Commission Model does everything around quality
18 assurance that it possibly can.

19 So, you can make recommendations, I
20 guess, irrespective of resources and everything
21 else, and maybe that's effective in saying, this
22 is what you should do, and it's not on the

1 Committee to figure out how the resources or
2 whatever is obtained to do it.

3 It's clear that unless there is a
4 directive to do something a certain way, it may
5 not get done that way at all.

6 In addition, Glen Schmitt says the
7 Sentencing Commission has toyed with the
8 automated document reading functions. They have
9 chosen not to do so.

10 They have found over time that highly
11 trained personnel who are doing these repetitive
12 tasks are just as accurate, if not more so, in
13 terms of culling the data from the source
14 document and entering it into the system.

15 So, they have been trying to strike a
16 balance between efficiency, but ensuring data
17 quality. But I think you heard a little bit of
18 testimony on that in April.

19 CHAIR BASHFORD: So, that's just --
20 it's two different systems. One is, you've got
21 input at every installation and shove it up
22 electronically. Or the other is, you send the

1 core documents to someplace and somebody enters
2 it, right?

3 MS. PETERS: Yes.

4 CHAIR BASHFORD: And the Working Group
5 was recommending the latter? Or not recommending
6 at this point?

7 CHIEF MCKINLEY: Well, we never
8 distinguished between a core document or
9 electronic, just so that each Service sent the
10 data to one location, with the same language,
11 same common talk and everything else, and it was
12 all consistent.

13 Because right now, as we know, each
14 branch of Service has all different languages.
15 But they're working on getting it into one
16 language, to put in one data system. And that's
17 what we're looking at.

18 MR. MARKEY: Well, and I would just
19 say, I think we definitely need to be cognizant
20 of the recommendations we make and whether we're
21 asking for something that, in reality, would not
22 be feasible in any way, shape, or form.

1 But at the same time, I think we need
2 to look at, what would be the gold standard of
3 the best implementation or the best
4 recommendation for these particular points that
5 we're trying to establish.

6 So, I think there has to be a balance.
7 We certainly have to respect what the resources
8 and capabilities of the Services have in order to
9 fulfill what maybe our recommendations would be.

10 So, I don't know how we'd balance that
11 and how we'd look at that. And that might take
12 some time to kind of tease out a little bit.

13 CHAIR BASHFORD: It's just more
14 difficult for the no-action cases, because
15 there's --

16 MS. PETERS: Right.

17 CHAIR BASHFORD: -- right now, it's not
18 really that standardized.

19 CHIEF MCKINLEY: If you looked at the
20 best thing, the best thing would be to have each
21 Service go to one system and basically,
22 transition from the system that they're using,

1 like Air Force AMJAMS, that they've been using
2 that since like 1975 or so, into one system, one
3 documentation, and everything else.

4 The resources, the funding for that
5 would be, and timing, would be astronomical.
6 Somewhere down the road, that may be the
7 direction to go, but right now, to just be able
8 to get them into a common language into one
9 system is what we're recommending.

10 MR. MARKEY: Agreed.

11 DEAN HARRISON: I think we're in
12 agreement that, at least with regard to sexual
13 assault cases, for Article 140a, we want a common
14 set of data points from all Services, starting
15 with a report of a crime, to be collected
16 centrally.

17 I think that's, at a minimum, what we
18 are recommending. Now, whether that collection
19 is done electronically or through paper, I'm not
20 sure at this point.

21 But I think we do want to say, and I
22 think -- is it Tab 3 that has an example of all

1 of the data points that we --

2 MS. PETERS: Yes.

3 DEAN HARRISON: If you look at Tab 3,
4 there are a list of documents and a list of about
5 70 data points at various stages that for --
6 without regard to what Service it is, there is a
7 charge of sexual assault that has been reported
8 to the MCIO, we start collecting that data
9 centrally.

10 And the further along it goes in the
11 process, up through appeal, we get more data
12 points. If it is found to be unfounded, we get
13 fewer data points. But we get the same data
14 points from all five Services.

15 CHAIR BASHFORD: So, would we be
16 saying, you should use these same data points?
17 Or are we saying, here's an example of the data
18 points that we have been using? I mean, how --

19 DEAN HARRISON: These are the data
20 points that we have been using.

21 CHIEF MCKINLEY: Yes, this is what
22 we've been using, as an example. And they can

1 take from it, they can add to it, but this is
2 what we've been using.

3 CHAIR BASHFORD: But they all have to
4 take from or add to or take from the same?

5 DEAN HARRISON: Well, we're making the
6 --

7 CHIEF MCKINLEY: Yes.

8 CHAIR BASHFORD: Yes.

9 DEAN HARRISON: -- recommendation to
10 the Secretary --

11 CHAIR BASHFORD: Yes.

12 DEAN HARRISON: -- and I think we're
13 saying, from our corner of the universe, looking
14 at what we've been tasked to look at --

15 CHAIR BASHFORD: This is what we would
16 like you to collect?

17 CHIEF MCKINLEY: Yes, ma'am.

18 DEAN HARRISON: Yes.

19 DR. SPOHN: So, Meghan, the proposed
20 recommendation under Tab 2, on Page 13 --

21 MS. PETERS: Yes.

22 DR. SPOHN: -- are those -- those

1 essentially encapsulate what the Working Group is
2 recommending, with respect to process?

3 MS. PETERS: Yes. Would you like me to
4 go through those? I think the proposed
5 recommendations, or ideas from the Working Group
6 were that the standards and criteria developed to
7 achieve the goals of Article 140a should reflect
8 the following best practices for data collection.

9 A, that they collect information from
10 standardized source documents, legal and
11 investigative documents, that are produced in the
12 normal course of the military justice process
13 described therein.

14 Such as, the report of investigation,
15 command disposition decision, charge sheet,
16 Article 32 report, report of result of trial, and
17 convening authority action. Appellate work is
18 not listed in there, but it should be included.

19 B, centralize the data collection by
20 mandating all jurisdictions provide the same
21 documents and information.

22 C, develop one electronic database for

1 the storage and analysis of data and source
2 documents.

3 D, limit data entry to one team of
4 trained professionals, whose full-time or primary
5 occupation is data entry and analysis. This team
6 should comprise expertise in the military justice
7 process and in social science research methods.
8 Individuals would transfer information directly
9 from the source documents into an electronic
10 database.

11 E is, ensure that Article 140a is the
12 Services' primary source for all military justice
13 case information and that other systems within
14 DoD collect and rely on this information by
15 becoming customers of the data and analysis
16 produced pursuant to 140a.

17 And I'll add that the Working Group
18 felt that the Military Justice Review Panel, the
19 new 146 Blue Ribbon Panel that will evaluate the
20 system, should be the customers and that the
21 Committee should state so, because 146 doesn't
22 say where their information has to come from,

1 necessarily. It has to come from the TJAGs.

2 But if SECDEF were to mandate that
3 Article 146 reviews had to rely on 140a data,
4 there would be a built-in incentive for everyone
5 to produce complete and accurate data.

6 The next prong would be, F, collect
7 and analyze data within a reasonable amount of
8 time from the end of the established review
9 period.

10 So, this is something, I think Ms.
11 Garvin had said back in June, we don't want to
12 wait a year and a half to find out what happened
13 so long ago. We would ideally like the
14 information produced to be six months out from
15 the event.

16 So, you're sort of within the same
17 calendar year or so from the date of the
18 activities being reported. So, you're closer to
19 current information.

20 And, lastly, was to clarify that issue
21 of what functions the Committee is addressing,
22 let's say the Military Services may, I think your

1 documents says should, but I think the preferred
2 language is, the Military Services may retain
3 their own respective systems for case management
4 in the field, provided they are all using the
5 same standards and definitions to refer to common
6 procedures and substantive offenses under the
7 UCMJ.

8 So, those are the -- that's the how,
9 the how we get there, as recommended by the
10 group.

11 MS. CANNON: What about adding, and
12 work toward a uniform system?

13 MS. PETERS: Okay, as a future goal.
14 And uniform system of --

15 MS. CANNON: A uniform --

16 MS. PETERS: -- case management?

17 MS. CANNON: -- case management system,
18 because it's true, this is all very cumbersome
19 and difficult, but if that were the reason not to
20 do something, we wouldn't be doing half the
21 things we do anymore. It makes the future
22 easier, even though getting there is hard.

1 MS. PETERS: I think, Major General
2 Anderson will be joining us in the afternoon.
3 She had provided a lot of commentary to our group
4 and to the Committee about how even in the
5 federal system, there are local modifications
6 that facilitate the way a judge wants to run his
7 courtroom.

8 And the uniform system provides that
9 flexibility. So, it's not that everyone has to
10 change the way they do business, it's that, on
11 the back end at least, everyone is speaking the
12 same language in their case management systems.

13 JUDGE BRISBOIS: But even with those
14 adaptabilities in CM/ECF and in the Bankruptcy's
15 version of CM/ECF, it still provides a
16 centralized uniform data collection system, which
17 is part of an integrated data collection/case
18 management system, as opposed to all of these
19 decentralized systems that we've got now and what
20 we're proposing on top of it.

21 MS. GENTILE LONG: I don't know if this
22 is an appropriate question, but the testimony

1 from the Air Force, though, about the -- because
2 I don't know IT, that that's -- those have been
3 failed historically, is that -- not that his
4 testimony is inaccurate, but is there a different
5 view of that --

6 MS. PETERS: Of which systems?

7 MS. GENTILE LONG: -- here or is this
8 something totally different? Because I thought I
9 understood them saying --

10 CHAIR BASHFORD: Google CityTime, which
11 was New York City's effort to put all agencies on
12 a single time thing, and the cost, the theft, I
13 think most of the IT people pocketed the money
14 and went to a different country.

15 (Laughter.)

16 CHAIR BASHFORD: You can just Google
17 it. It -- and again, I don't know IT, but I
18 think things are much more difficult than they
19 often seem.

20 CHIEF MCKINLEY: Ma'am, having spent 31
21 years in the Air Force, I can tell you,
22 experience of many new IT systems that came in

1 that were complete failures and a tremendous loss
2 of money.

3 MS. PETERS: The testimony from the
4 Services previously was also that their -- some
5 of them have attempted just that connection to
6 the law enforcement databases and those have been
7 pending for years, for a reason. It's difficult,
8 there's difficulties they've encountered.

9 MS. GENTILE LONG: But then, you're
10 saying that your system is good, as a Judge?

11 JUDGE BRISBOIS: I mean, it --

12 MS. GENTILE LONG: It's something,
13 right?

14 JUDGE BRISBOIS: Well, and it -- I
15 mean, CM/ECF works across all 90-plus District
16 Courts and allows for local modification. CM/ECF
17 covers the Circuits, allows for Circuit
18 modification. And the AO, even with those local
19 modifications, can mine the data they need to
20 make Congressional reports.

21 And so, it is doable. The State of
22 Minnesota had 87 separately funded -- it was one

1 state district court system, but all funded and
2 operated at the 87 county-level, in the 90s and
3 early 80s.

4 They said -- they went through the
5 same pain and transition process that the
6 branches want to avoid now. We now have a
7 centralized uniform case management/data
8 collection system on the state level.

9 So, it's possible, it just requires
10 effort and resources. So, and some efforts and
11 resources are mismanaged and fail and some are
12 successful.

13 Minnesota state level, federal courts
14 are examples of -- went through the same
15 transitions, the same expenditure of resources,
16 and they are now successful.

17 Is anything perfect? No. But it
18 provides and meets the goals that we're talking
19 about. So, it can be done. The question is,
20 whether there's political and resource will to do
21 it.

22 MS. PETERS: So, Madam Chair, the

1 issues, we have identified seven and it seems
2 like the approach is to touch on each issue, have
3 some discussion, and revisit for a more -- once
4 we've had, I guess, a discussion around all
5 aspects of the recommendation.

6 So, would it be appropriate just to
7 list one other issue that we haven't discussed
8 yet, understanding that we haven't made any sort
9 of decision on the existing issues or options?

10 CHAIR BASHFORD: And we continue with
11 this discussion after lunch as well, so we've got
12 plenty of time.

13 MS. PETERS: Okay.

14 CHAIR BASHFORD: So, we've got 25
15 minutes, 20 minutes, now, so --

16 MS. PETERS: Okay.

17 CHAIR BASHFORD: -- have at it.

18 MS. PETERS: So, the two issues, I
19 think, left for discussion are, one, when would a
20 case end, for purposes of 140a? We've talked
21 about when it begins, but when would it end?

22 And the other is, should 140a function

1 to sort of monitor federal statutory reporting
2 requirements or other federal statutory
3 requirements that are now embedded in the system?

4 They're often administrative and they
5 go on around a court-martial or the military
6 system. So, maybe that's the issue that really
7 hasn't been touched and we can discuss. 140a
8 says to cover pretrial, trial, and post-trial
9 phases, it doesn't define when those things begin
10 or end.

11 But the justification for the statute
12 was that it wanted to bring the military in
13 better compliance with several federal laws. And
14 some of those are on Page 10 of your outline.

15 I think the focus of the Working Group
16 was on the Brady Handgun Violence Prevention Act
17 and seeing what role 140a could or should play in
18 collecting information about notifications made
19 when someone's under indictment, when someone's
20 been convicted, or meets some other trigger for
21 reporting to the FBI.

22 So, the issue is, if that was one of

1 the rationales for 140a, but it's maybe not
2 explicit in a reading of the statute, but it
3 could fit in, is there a particular issue, a
4 particular statute, that you want to focus on?

5 Or would you want to make a broad
6 statement about, there are a number of federal
7 reporting requirements where it seems it's
8 difficult for DoD or the military to get their
9 hands around compliance with those requirements,
10 could 140a be the answer?

11 Again, it doesn't just deal with a
12 court-martial, it doesn't necessarily just deal
13 with other military justice activities, but
14 that's an option for you to recommend.

15 The Policy Group agreed that, to the
16 extent practicable, other federal reporting
17 requirements should be included in a 140a system
18 and lists as an example what the MJRG's report
19 listed, and I think those are the ones that are
20 on Page 10 of your outline.

21 So, does it make sense to include
22 these elements, without listing them all out

1 explicitly, but make reference to these statutes
2 in the Committee's recommendation to the
3 Secretary of Defense?

4 Some of the pros, again, were aligning
5 military justice data collection with federal
6 crime reporting statutes.

7 It could provide a means to monitor or
8 to audit administrative information that exists
9 in other systems and be a check on law
10 enforcement's functions.

11 We're not taking it from them, but
12 we're saying, we're an additional check on all of
13 the convictions that require reporting. And to
14 some extent, this is already occurring, as you
15 heard, but does 140a have a role there?

16 And to what extent is this beneficial,
17 because public scrutiny that DoD has received is
18 often around, well, what is the scope of the
19 issue here? What is the scope of the problem?
20 I.e., it looks like maybe you didn't comply with
21 the statute, can you show us that you have?

22 And then, the difficulty lies in

1 pulling data that shows that they've been doing
2 something or that they haven't. So, could 140a
3 be the answer there? That was the big question.

4 The harder question is, what are the
5 statutes, what are the examples we want to
6 highlight to the Department of Defense? That
7 gets complicated.

8 Factors not in favor are that you're
9 often crossing organizations and functions,
10 you're crossing law enforcement, you're crossing
11 into corrections.

12 And so, especially if you want to be a
13 document-based system, you're adding a lot of
14 complexity to what you're telling DoD and all the
15 Services to do.

16 So, those were the concerns, however,
17 it -- the sense of the Working Group was, we
18 should mention as examples, find ways to monitor
19 these things mentioned by the Military Justice
20 Review Group, like the Brady Handgun Act, in your
21 system, because it's part of your profession and
22 there's a value to consolidating that data.

1 CHAIR BASHFORD: I don't remember, when
2 we heard from the Sentencing Commission person,
3 do they grab -- I mean, they're subject to the
4 same Brady Handguns, sex offenders, do they play
5 any part, were they a part of the redundancy for
6 notifications? I don't remember it coming up at
7 all?

8 MS. PETERS: I don't think so. I think
9 that comes out of AO --

10 CHAIR BASHFORD: I mean, because if
11 we're having --

12 MS. PETERS: -- that data.

13 CHAIR BASHFORD: -- if we're
14 envisioning a document-based independent group
15 doing this overarching data collection, I'm not
16 sure that they're the people who should be
17 responsible for all of these things. That we're
18 kind of taking it outside of the Services to do
19 that, right?

20 MS. PETERS: Yes.

21 CHAIR BASHFORD: Or on top of them?
22 But I'm not -- I don't think the people in the

1 Sentencing Commission are doing that.

2 MS. PETERS: No, that's not -- we did
3 not see an example of that from the testimony or
4 anything.

5 CHAIR BASHFORD: Judge Walton, you
6 don't --

7 JUDGE WALTON: No.

8 CHAIR BASHFORD: -- believe they're
9 doing that?

10 JUDGE WALTON: No, they do not.

11 DR. SPOHN: And this would be a
12 database that would be six to 12 months behind
13 the conclusion of the case. And so, it seems
14 like these items are more case management than
15 data collection issues. I mean --

16 MS. PETERS: Absolutely, there is a --

17 DR. SPOHN: -- particularly the victim
18 --

19 MS. PETERS: -- there is definite --

20 DR. SPOHN: -- notification things. I
21 mean --

22 MS. PETERS: Yes. So, there -- yes,

1 the time lag is an issue. I think one of the
2 other underlying concerns, just food for thought,
3 was also, one of the other justifications was
4 helping facilitate responding to ad hoc queries.

5 So, the more 140a contains, even
6 around administrative requirements, maybe the
7 easier it is, the less burdensome it is on the
8 Services, to find out whether someone was
9 notified of their right to receive the record of
10 trial and did, in fact, receive it, under one of
11 the articles of the UCMJ. If that was built in
12 and somebody had a question about that, you'd be
13 able to find out.

14 So, easier to think about in theory
15 than maybe implement in practice. But that was
16 one of the underlying concerns.

17 But it sounds like the -- without a
18 specific, really without a specific impetus, that
19 it might be beyond the scope of the purpose for
20 which you see the data collection function of
21 140a existing. It's sort of beyond it.

22 CHAIR BASHFORD: It would seem to me

1 that, although redundancy is good, the more
2 diffuse you make responsibility, it seems to me
3 the more likely things will fall through the
4 cracks.

5 MS. PETERS: Okay.

6 DEAN HARRISON: I don't think that we
7 were anticipating that the data collection of
8 140a, for example, would be responsible for doing
9 any notification regarding sexual offender
10 registry or handgun control issues. It would
11 just be a checkpoint that this had been done by
12 somebody else.

13 CHAIR BASHFORD: So, some document
14 saying, the sex offender reporting was done,
15 click, this was done, click?

16 DEAN HARRISON: Exactly.

17 MS. PETERS: Right.

18 DEAN HARRISON: In those cases that
19 require it. So, basically, 140a would collect,
20 at least with regard to sexual assault cases, and
21 maybe other cases in the UCMJ as well, all data
22 points from report to a law enforcement agency to

1 the end of process, whether that end of the
2 process is unfounded report, administrative
3 processing for discharge, or a criminal
4 conviction with a sentenced confinement and
5 release from confinement. Is that about right?

6 MS. PETERS: Yes --

7 DEAN HARRISON: Okay.

8 MS. PETERS: -- it was. So, what that
9 does effectively, though, is say, there may be --
10 there's requirements that are sort of very
11 germane to the process, like when a conviction is
12 obtained, that triggers requirements. And 140a
13 is the check.

14 But I think practically speaking, it
15 would not extend to whether sex offender
16 registration occurred so many years down the
17 line, upon release from confinement to whatever
18 jurisdiction.

19 So, there was a limit. So, we also
20 found difficulty in even identifying a specific
21 statute that extends, practically speaking,
22 across a greater length of time and

1 functionality.

2 But at a minimum, what does a
3 conviction trigger, in terms of requirements?
4 Would 140a -- would everybody benefit if they
5 could come to a 140a system and to this well-kept
6 data, this good quality data that has a document
7 behind it, so it's verified, and say, yes, this
8 happened, these are the names you have of people
9 who have to register and they're in the system.

10 It is another check. It's also
11 awareness for the Services. Not to say that
12 that's not -- it clearly is already going on.
13 So, that's the other consideration.

14 But, obviously, the ability to
15 understand compliance with these statutes was the
16 thought process for the statute too. So, where
17 to draw the line, was I think what the Policy
18 Group wrestled with.

19 CHAIR BASHFORD: How is it tracked now?

20 MS. PETERS: I'm sorry?

21 CHAIR BASHFORD: How is it tracked now?

22 That somebody is going to be subject to sexual

1 offender registration?

2 MS. PETERS: I think, the information
3 the staff has to provide, is essentially what Ms.
4 Mansfield testified to this morning, along the
5 lines of, there is a form that encapsulates the
6 results of the trial, the conviction, the offense
7 of conviction.

8 And that has to go to the right law
9 enforcement entities and then, get reported into
10 the federal databases, essentially. So, it's not
11 -- right now, a Judge Advocate doesn't
12 necessarily follow through, but there are systems
13 where the -- at the Service level, they're aware
14 of those events and they transmit them, largely,
15 usually to a law enforcement body, who transmits
16 that information to the feds or whomever.

17 But it leaves the Judge Advocate's
18 hands after the conviction. They check the box,
19 sex offender is required.

20 CHAIR BASHFORD: I mean, no -- at the
21 local level, we do those. I don't know that
22 we've ever reported back that, yes, the person's

1 been registered. It's --

2 MS. PETERS: Right. And I don't know
3 that it -- we don't have the information to know,
4 in that level of detail, what the Services do and
5 how they account for all of that.

6 I think, you heard a little bit about
7 that this morning. We didn't send an RFI for
8 policies and practices, so I don't have that well
9 developed for you.

10 DEAN HARRISON: And not all military
11 convicts are held by the military.

12 MS. PETERS: Right.

13 DEAN HARRISON: They're sent out to
14 civilian prisons as well.

15 DR. MARKOWITZ: And I think we were
16 also thinking about Lautenberg and some of the
17 other issues, too, not just the sex offender
18 registry. So, some of the other things that may
19 have a more immediate consequence.

20 MR. MARKEY: Can I -- are you
21 envisioning this sexual assault module on 140a, I
22 guess, collecting certain data fields and data

1 points, are you envisioning that these would be
2 part of that, or the bigger 140a, this would be
3 somewhere in 140a that would be captured?

4 Or are you thinking, that's something
5 we want capture when we start looking at the data
6 fields, the metrics that we're collecting for
7 sexual assault?

8 DR. MARKOWITZ: I think, our
9 conversations have always been specific to sexual
10 assault. And then, whoever is looking at this
11 from the broader picture can decide whether or
12 not they also want to apply this to other
13 offenses.

14 MR. MARKEY: But this -- you're
15 considering that this would be in the sexual
16 assault, I'll just call them module for lack of a
17 better term? This would be data that would be
18 dumped or transitioned to this sexual assault
19 collection --

20 DR. MARKOWITZ: I think that's --

21 MR. MARKEY: -- entity?

22 DR. MARKOWITZ: I mean, I think that's

1 what we've --

2 CHIEF MCKINLEY: Yes.

3 DR. MARKOWITZ: -- talked -- I mean,
4 our --

5 CHIEF MCKINLEY: Yes.

6 MR. MARKEY: Okay.

7 DR. MARKOWITZ: -- conversations
8 related to all these different things, for the
9 most part, except where we've talked about should
10 it be for sexual assault or for other things?
11 But related to these very specific issues, have
12 really been related to sexual assault.

13 MR. MARKEY: Okay.

14 DR. MARKOWITZ: With the understanding
15 that somebody may decide, oh, it's a really good
16 idea, and broaden the lens beyond sexual
17 offenses. But, yes, we've been specific to the
18 sexual offenses.

19 CHIEF MCKINLEY: If you look at the 72
20 that we've included in here, this would be in
21 addition to that, just --

22 MR. MARKEY: Okay.

1 CHIEF MCKINLEY: -- more information.

2 MR. MARKEY: Okay.

3 JUDGE WALTON: I mean, in regards to
4 the sexual assault registration, I mean, as I
5 understand, there's no entity that collects that
6 information that would then keep track of that
7 and see whether someone is in fact registering.

8 While they're under supervision, the
9 probation department, obviously, would monitor
10 that. But once they're off of supervision, it
11 then becomes their obligation to report.

12 If they don't report and it's found
13 out, then they're prosecuted. But I don't think
14 there's any overarching entity that is monitoring
15 them during the course of their period when
16 they're on supervision, which can be long after
17 they're off supervised release.

18 DR. MARKOWITZ: I think it's, again, I
19 think it's been -- I think we were considering it
20 as sort of a quality checkpoint, was the
21 paperwork completed? Was that part of the
22 process post-trial completed?

1 Not necessarily to then follow up and
2 follow them over the long-term, just those
3 immediate steps post-trial, were they done, to be
4 able to assess the consistency, the follow-
5 through, and to be able to query that
6 information, I think, to look at how consistently
7 things were happening, to make sure there wasn't
8 any kind of procedural challenges related to
9 things falling through the cracks on a regular
10 basis.

11 Because I agree, I think that what
12 you're saying is absolutely true, that would be
13 an enormous task that would be pretty improbable.

14 CHIEF MCKINLEY: And we looked at,
15 along with when a case ends, were all these steps
16 accomplished? And then, put that into the data
17 system.

18 MR. MARKEY: And I'll go back to Chair
19 Bashford's question, how is sex offender
20 registration being captured now, that you'd be
21 able to use that as a data field, to populate,
22 yes, it was done? Is that in the files? Is that

1 part of the court record? Is that part of the
2 judicial decisions?

3 MS. PETERS: Well, to clarify, I think
4 where the thinking started was, the trigger is
5 the offense of conviction. And that would be
6 something 140a would be recording.

7 And that -- because you have at least
8 that information, regardless of the
9 administrative steps triggered beyond that, at
10 least 140a would be the source for that
11 information.

12 I think that was the idea, because
13 that's organic to the military justice process
14 already.

15 As you get further afield from that, I
16 think the Working Group is drawing a line and
17 saying, no, we don't in fact think we can follow
18 somebody through to release from corrections. I
19 think that was definitely a decision on the, when
20 does the case end?

21 We're not necessarily -- we don't
22 think that has enough value or practicality to it

1 to say that that's when a case ends for 140a,
2 even if you, in theory, wanted to track all these
3 requirements.

4 So, it was very limited. And so, I
5 think where you come down is, there was a desire
6 to assist with understanding compliance with
7 these things that the public and Congress and
8 people are constantly asking about.

9 At the same time, it may not have as
10 much value for the Service -- or for the people
11 who aren't performing the function, like you
12 said, and it's very, very difficult to monitor
13 across organizations.

14 So, I think the idea was, this kind of
15 -- these statutes were contemplated when 140a was
16 drafted, is there a way to help people out with
17 understanding whether they've complied to the
18 extent they can?

19 It seems that every time we get
20 further down into the weeds on how you implement
21 these statutes -- again, without knowing from the
22 Services what they're already doing. We haven't

1 brought you extensive information about what
2 they're already doing in their systems.

3 So, that was one consideration. But
4 this is an important potential aspect of 140a
5 that we didn't want to leave off the table
6 either.

7 DR. MARKOWITZ: And is it worth
8 referencing the article behind Tab 5, just as
9 sort of an example of --

10 MS. PETERS: Yes.

11 DR. MARKOWITZ: -- why we were
12 considering this in the first place? This is
13 part of why we took this on in the Policy Work
14 Group, because of articles like this that were
15 generated related to crime reporting from the
16 Services.

17 And so, that was why this issue came
18 in front of us in the first place, just to give
19 context to how this conversation started for us.

20 MS. PETERS: Right. How can we ease
21 the difficulty it seems --

22 DR. MARKOWITZ: Right.

1 MS. PETERS: -- people have with
2 obtaining this information? Five and six, those
3 tabs deal with the reporting of a conviction of
4 domestic violence to the FBI for purposes of
5 prohibiting a handgun purchase.

6 And number six deals with child on
7 child sex assault on military bases, over which
8 DoD does not have jurisdiction, and Department of
9 Justice typically does not take a juvenile case.

10 And when this was investigated by the
11 media, their first issue was, we can't even get a
12 sense of the scope of the number of cases from
13 DoD in which this is happening. So, we were
14 trying to say, how many -- in what ways can 140a
15 ameliorate that issue?

16 CHAIR BASHFORD: If we are -- if I
17 heard you right, the suggested, when does a case
18 end, would be, when the appellate process is
19 complete --

20 MS. PETERS: Yes.

21 CHAIR BASHFORD: -- and not when
22 somebody is released from jail?

1 MS. PETERS: Correct.

2 CHAIR BASHFORD: But the release from
3 jail is what triggers the SORA hearing.

4 MS. PETERS: Yes.

5 CHAIR BASHFORD: So, if you're not --
6 if you've already said the case is -- I'm not
7 quite sure how those two things come together.
8 It seems like we would need a little bit more
9 information, to me.

10 MS. PETERS: No, absolutely. I think
11 we needed to -- I think the Policy Group felt it
12 was important to walk through these issues, why
13 are they in the background, the justification for
14 the statute?

15 What can we do to address these issues
16 that keep coming up? We have the opportunity to
17 create a military justice database with a lot of
18 information that could be useful. So, that's --

19 CHAIR BASHFORD: I think it's time for
20 our buffet lunch.

21 (Laughter.)

22 CHAIR BASHFORD: But before we break

1 for lunch, I just really want to thank the
2 Working Group and the staff for putting this
3 together and doing all of this work and bringing
4 it to us this morning. And then, for another
5 round in the afternoon. Thank you.

6 (Whereupon, the above-entitled matter
7 went off the record at 12:28 p.m. and resumed at
8 1:31 p.m.)

9 CHAIR BASHFORD: Just sort of like a
10 recap of our discussion so far.

11 BGEN SCHWENK: Now you're back.

12 CHAIR BASHFORD: We know the Services
13 have their own data. Just processing systems and
14 data systems.

15 And they've invested money in them and
16 time in them. And they seem to be happy with
17 them.

18 But I don't want us to lose sight of
19 the fact that we know, not just from the
20 sentencing commission, but we know from the DAC-
21 IPAD and the JPP that we can in fact have a
22 robust document-based, across all five Services

1 database, because we have it.

2 And our database, we'll continue to
3 add to it. And if the Services are doing the
4 same documents up the way that we have it, we
5 know it works. It's worked well.

6 It can be housed in DoD. We're not
7 going to house it. And eventually we'll sunset
8 out. But DoD can handle it.

9 And I just -- well, what I heard
10 missing from here this morning is that there
11 seemed to be a lot of, it will never work. Or it
12 will have to be really developed. Or a big long
13 term.

14 If we were doing a big global thing
15 maybe. But we know our system works. So, I
16 think wanted to stress that.

17 And there maybe, my sense definitely
18 was this morning that whatever any other group
19 under subject to the USMJ, however they decide to
20 do 140a, our recommendation, based on the
21 recommendation of the Policy Working Group,
22 should be that for sexual assault cases, we start

1 at the initiation of the investigation.

2 How the documents get up there, there
3 was some talk this morning when the service
4 members were speaking that maybe it's as simple
5 as a cc line on an email.

6 Maybe it's different. I don't know.
7 But it's how the documents get there can be dealt
8 with.

9 But we know it works. And we know we
10 can integrate the documents across all five
11 systems.

12 The only difficulty we've had is that
13 definitions are different. And some of the
14 documents are different.

15 If there is coming up, agreement on
16 all that, I think we'll have a much easier time
17 comparing the Army to the Navy or to the Marines
18 or whatever. It should work very well.

19 So, just I want to commend the JPP and
20 our staff for putting together. And I'm not a
21 data person. I'm not on the data group.

22 But what seems to be a real amazing

1 robust system where people from the Hill contact
2 our staff to get information. People from the
3 Services sometimes contact our staff to get
4 information.

5 So we know it's workable. I think it
6 -- I don't see why it wouldn't be scalable beyond
7 sexual assault cases to other types of cases.

8 We know it works for the Sentencing
9 Commission. Which clearly has a higher volume
10 then this would have.

11 So I think it's definitely doable.
12 It's definitely doable. And I again, want to
13 commend our Working Group.

14 I did not realize you were meeting
15 monthly. That's a heavy lift for doing a great
16 job on a very narrow time table.

17 Over to you Meghan.

18 MS. PETERS: Well, the Committee had
19 left off discussing some of those best practices.
20 So that we had hit the highlights there.

21 I think before delving into any more
22 specifics along any one issue, the Policy Working

1 Group had set up Issue Seven on the last page of
2 the outline to say, irrespective of everything
3 else, is there a particular issue around sexual
4 assault cases that should drive the form or the
5 substance of 140a?

6 Is it to make sure that the Services
7 and DoD are looking at something they may not
8 otherwise be looking at. Like the issues listed
9 here.

10 Expedited transfer requests from the
11 victim or expedited transfer requests that result
12 in the transfer of the accused. Issues like
13 collateral misconduct whereby a victim in the
14 course of the events that give rise to a sexual
15 assault, how those are handled.

16 Studying that in a 140a system, case
17 processing time lines might maybe go without
18 saying. And the other issue was studying mil --
19 studying crimes committed on military bases by
20 civilians to the extent that Judge Advocates
21 handle those cases in the sense they hand them
22 off to the States or the federal entities

1 hopefully.

2 You know, hopefully there's a handoff
3 there. So, and that's another issue that's come
4 up in the press.

5 I think that really relates back to
6 your issue of the AP story saying, crimes
7 committed by juveniles on bases are sometimes
8 lost in the transfer between jurisdictions.

9 So, without getting into the weeds on
10 any one issue, we also said other items. Other
11 issues that the rest of the committee members
12 feel strongly about that's not on this list, or
13 that you would maybe add or change to the
14 existing -- the existing items on this list. And
15 this isn't meant to be comprehensive.

16 You can end up with one of these or
17 none of these. It is up to you all for
18 discussion.

19 I know that offender and victim
20 demographics isn't on this list per se, but it's
21 come up in discussion.

22 And we left off things that I think

1 are already intuitive in a data and analysis
2 process such as conviction and acquittal rates
3 from the point of preferral/referral. Those
4 kinds of things we kind of left off.

5 And we were thinking of things that go
6 on around the system that might otherwise not be
7 accounted for. Because this is that opportunity.

8 CHAIR BASHFORD: But I would -- and
9 where we're capturing it where we can on our
10 data. But I think victim declination.

11 MS. PETERS: Okay.

12 CHAIR BASHFORD: Would be a good data
13 point to capture since it seems to lead directly
14 into a lot of the no action cases.

15 MS. PETERS: Okay. And that's
16 something that can occur at any point --

17 CHAIR BASHFORD: Um-hum.

18 MS. PETERS: After --

19 CHAIR BASHFORD: Of course.

20 Restricted reports going too unrestricted. If we
21 can get a sense of the numbers of those. It
22 would be useful.

1 MS. PETERS: Okay.

2 CHAIR BASHFORD: I don't want to be
3 doing all the talking. And just again, was it
4 the Working Group's thought that in our
5 recommendation we would share -- in our
6 recommendation to the Secretary of Defense we
7 would share the data points we are currently
8 collecting?

9 CHIEF MCKINLEY: Yes.

10 CHAIR BASHFORD: Not necessarily
11 saying you have to collect all of these. But it
12 would be useful for them to see.

13 DR. MARKOWITZ: Yes.

14 MS. CANNON: You know, we haven't
15 looked at what happens in the adjudications in
16 terms of content that might have some pattern
17 that would enlighten us about acquittal rates,
18 conviction rates and such.

19 So, I just say this off the top of my
20 head based on a little bit of knowledge. And
21 that is, the issue of experts.

22 MS. PETERS: Um-hum.

1 MS. CANNON: There's been a continuing
2 concern that experts are more readily accessible
3 to the prosecution and not the defense. But the
4 defense has to go through the prosecution and
5 then through the court.

6 So, I -- that would be a variable that
7 I would find interesting in terms of the effect,
8 if any.

9 MS. PETERS: Um-hum.

10 MS. CANNON: So, whether experts were
11 used and by which sides they were used in a
12 courts martial or other adjudication.

13 MS. PETERS: And is that for sexual
14 assault cases specifically? Or any case?

15 MS. CANNON: Well --

16 MS. PETERS: We are speaking of sexual
17 assault, so that would be.

18 MS. CANNON: I feel that I'm coming
19 from this sexual assault committee.

20 MS. PETERS: Um-hum.

21 MS. CANNON: And -- but it might be
22 something worthwhile if there generally an issue

1 about it. But certainly from our standpoint.

2 MS. PETERS: Okay. And that would
3 include requests in --

4 MS. CANNON: Yes.

5 MS. PETERS: In approvals and denials.

6 MS. CANNON: Yes. That's a good
7 point. Yes.

8 MS. PETERS: The DoD will at some
9 point respond to the JPP recommendation that
10 expert funding be housed in the service defense
11 organizations and that defense investigators be
12 appointed.

13 Those things are pending. But I think
14 around the discussion of what the committee looks
15 at in the future, separate and apart from 140a,
16 you could always specifically request -- we'll
17 ask for a timetable on that response.

18 And ask is something in the works
19 along those lines. You would still want this
20 data. So this is a separate issue.

21 MS. CANNON: Yeah, so --

22 MS. PETERS: But, you could

1 potentially get more feedback from DoD over if
2 you plan to do about defense resources in
3 response to the JPP's recommendations.

4 While you all are -- if you don't have
5 any other ideas, if -- and we can --

6 CHAIR BASHFORD: Well, that sounds
7 harsh.

8 (Laughter)

9 CHAIR BASHFORD: Sorry though.

10 MS. PETERS: No, I mean, I could talk
11 while you think.

12 (Laughter)

13 MS. PETERS: One of the issues that
14 came up, that was actually -- there is not a
15 consensus around civilians committing misdemeanor
16 and felony crimes on military bases.

17 In particular, sex crimes. There
18 wasn't a consensus around that necessarily. No,
19 I think several people said that sounds good.

20 But the other idea was that this isn't
21 a crime over which the military has jurisdiction.
22 It's just something that JAGs handle in their

1 function as temporary Special Assistant U.S.
2 Attorneys.

3 And there's been concern and media
4 attention around how well the transfer is
5 happening to the Federal systems or to the State
6 systems. And if cases are getting lost in the
7 process.

8 And again, bringing out data from the
9 investigative files for cases that are closed, or
10 prosecutors' files, has been proven difficult.
11 So --

12 DEAN HARRISON: Excuse me.

13 MS. PETERS: The Staff said, would
14 this be a place to record that information?

15 DEAN HARRISON: Could you explain the
16 issue a bit more? Because I was not aware of it
17 until we talked about it yesterday.

18 Could you explain it to the Committee
19 a bit then?

20 MS. PETERS: The issue is explained in
21 part in Tab Six. With that child on child sex
22 assault cases languish on U.S. bases.

1 It's that juveniles -- Civilians, whether
2 they're DoD family members, civilian contractors,
3 and juveniles as parts of families are on the
4 base. And they are the offenders against
5 somebody on the military installation.

6 For the most part, we're talking about
7 a place of Federal jurisdiction. Not the
8 military's jurisdiction, but it's on the
9 military's footprint.

10 What typically happens is, there's a
11 report made to the law enforcement. They should
12 connect with Federal law enforcement, or State
13 depending.

14 And hand off the investigation or hand
15 off the prosecution of the case. But it just --
16 there's a decision point there that the receiving
17 jurisdiction take it or not. Take the
18 investigation or take the case.

19 There's a concern that those cases
20 either are not handed off or that in the hand off
21 they are dropped. Because they're no one's
22 priority because it's on a military base.

1 It's really in a different place.
2 It's a different kind of offense or occurrence.
3 And there's different interests around those
4 cases.

5 DEAN HARRISON: Right.

6 MS. PETERS: So the issue is, are they
7 falling off everybody's radar screen because no
8 one's tracking how often this is happening?

9 And if the hand off was successful,
10 what was the end result of the investigation or
11 prosecution?

12 DEAN HARRISON: So in the case of a
13 Federal exclusive -- enclave, --

14 MS. PETERS: Right.

15 DEAN HARRISON: The victim could be a
16 military dependent or military member. The
17 suspect is a civilian. The U.S. Attorney would
18 have jurisdiction.

19 But the U.S. Attorney has designated a
20 JAG officer as a Special Assistant U.S. Attorney.

21 MS. PETERS: Um-hum.

22 DEAN HARRISON: But the case goes

1 nowhere essentially.

2 MS. PETERS: It could. In some cases
3 the Department of Justice may decline to take it.
4 They often decline to take a juvenile case.

5 And if there isn't a concurrent State
6 jurisdiction on that case then, is there an
7 agreement or how would this -- how would a
8 juvenile offender get into the juvenile
9 adjudication system in that State locality?

10 Different jurisdictions have different
11 solutions that they maybe crafting or may not be
12 crafting based on whether the place is exclusive
13 Federal or concurrent State and Federal
14 jurisdiction. It's a subject that has come up.

15 I think it grabbed Congress' attention
16 because it's in one of the NDAAs, I think to look
17 at this issue. And they've been studying this
18 idea of retrocession.

19 I mean, DoD has. And it's an idea
20 that's out there where at least jurisdiction over
21 juvenile offenses could be retroceded to State
22 authorities.

1 So these transfers don't have to
2 happen like it's the first time this has ever
3 occurred to anybody. And when you have different
4 people coming in and out of a system, there's
5 already a process outlined so a case doesn't get
6 dropped.

7 And the idea behind putting it in
8 140a, is that the Judge Advocate who's designated
9 on every installation to be that Special
10 Assistant U.S. Attorney, he may not be
11 prosecuting the case, but they are part of that
12 hand off.

13 They're part of the transfer. And the
14 point at which information about that case could
15 be collected.

16 So the concern is that right now we're
17 looking at juvenile offenses on bases. Is there
18 also a concern about civilians who are not being
19 prosecuted because DoD doesn't have jurisdiction?

20 And we're not saying that that --
21 anyone is saying that it is a particular problem.
22 I think the issue has been -- is could 140a

1 provide comprehensive awareness of the numbers?

2 And we didn't ask the Services, you
3 know, we didn't do an RFI to the Services to say
4 how many are there? We're just saying, is this
5 one of those cases that it comes up in the media
6 first, and then everyone looks for data later?

7 Could we build that into 140a to say -
8 - to try to get ahead of these kind of issues?

9 Not that -- again, not that there is a
10 fundamental problem, but that it would be easy to
11 access data to give you a sense of this -- the
12 number of times these issues arise about
13 transferring, about handling these kinds of
14 crimes on bases.

15 DEAN HARRISON: And there are some --

16 CHAIR BASHFORD: Who does the
17 investigation though? Isn't it either the State
18 police or the FBI?

19 MS. PETERS: Depending on who has
20 jurisdiction. Yes, ma'am. I mean, they might
21 notify the MPs on base or the MCIO.

22 And then they have to pick up the

1 phone typically to the FBI or somebody to let
2 them know.

3 CHAIR BASHFORD: Right. I just don't
4 know that DoD could get the same kind of data
5 from a U.S. Attorney's office or a local
6 prosecutor that you can get when the military
7 does it.

8 I know when we started out, we said we
9 were going to look at military subjects only.

10 MS. PETERS: Um-hum.

11 CHAIR BASHFORD: I think it could be
12 useful to do an RFI --

13 MS. PETERS: Right.

14 CHAIR BASHFORD: To find out, you
15 know, in fiscal year whatever, how many times did
16 this occur? And so we can have a sense if it's
17 ten or six hundred.

18 MS. PETERS: Um-hum.

19 CHAIR BASHFORD: You know, I just
20 don't have any idea.

21 DEAN HARRISON: But that was the
22 concern of putting this in 140a, since we're

1 dealing with people who even if they are guilty
2 of a crime, are not subject to the UCMJ.

3 CHAIR BASHFORD: Yeah.

4 DEAN HARRISON: Which is what 140a is.
5 Yeah.

6 CHAIR BASHFORD: Yeah. I don't -- I
7 think it's an interesting thing to find out. But
8 I think we should do an RFI probably, instead of
9 trying to put it under this.

10 MS. PETERS: Okay.

11 CHAIR BASHFORD: I don't know what
12 other people think, but.

13 MS. PETERS: These issues, I think,
14 are something that the -- between now and when we
15 finalize the letter as well, we can collect that
16 after the meeting from members via email or
17 subsequent phone conversation or whatever the
18 case maybe.

19 So, I wouldn't say that this is their
20 only opportunity. Certainly to communicate to
21 the staff an issue that should be highlighted in
22 the recommendations.

1 Or even in the letter generally. So,
2 and I think some of the things that we had just
3 put down there as -- had issues are already
4 encompassed in the DAC-IPAD's case review
5 checklist that we -- that you have agreed to
6 enclose alongside the letter to the Secretary of
7 Defense.

8 CHAIR BASHFORD: I think your proposed
9 -- I can't count that fast, seven recommendations
10 on page 13, --

11 MS. PETERS: Um-hum.

12 CHAIR BASHFORD: Are all good. I
13 think we -- well, as somebody said, instead of on
14 G, the military Services should retain their own
15 systems. That we were going to switch that to
16 may.

17 MS. PETERS: Yes, ma'am, we are.

18 CHAIR BASHFORD: Just what I -- and
19 again, I just -- it shouldn't be that heavy of a
20 lift to develop an electronic database. Because
21 the JPP and DAC-IPAD with fairly limited
22 resources have been able to develop it and

1 maintain it.

2 The documents go back to 2012.

3 That's, you know, pretty impressive. I think DoD
4 has the capability of doing what our staff does.

5 At least they never say they don't.

6 MR. MARKEY: And I would just -- I'm
7 going back to Issue Seven. I'm trying to think,
8 you know, and I'm hoping I might have some time,
9 maybe not today but later on to get an idea of
10 what other data elements might be important.

11 Because I think the purpose is kind of
12 twofold. One is a snapshot of what is occurring
13 as far as the demographics involved? Who's
14 involved?

15 Where are they occurring? Was there,
16 you know, declination, no declin -- you know,
17 what -- that kind of technical data that you're
18 collecting.

19 And then there's -- I think there is
20 the idea that what does the response look like,
21 right? Is it following best practices?

22 Are there gaps or opportunities in the

1 response that we're seeing? Not just the
2 numbers, but say for instance, so I'm trying to
3 think of some questions to identify whether best
4 practices are being followed.

5 You know, are -- you know, do the
6 investigations appear to be, you know, trauma
7 informed as far as interaction with the victim?

8 When you look at declination, you
9 could look at that number, and then you'd have to
10 say, is -- you know, is there a rationale? Was
11 there a reason why, you know, we had a 50 to 60
12 percent declination rate?

13 So you look at the number. And then
14 you want to break it down to say, is there
15 something within the process that's causing that
16 to occur?

17 And so I'm trying to think of data
18 elements to collect that would focus not just on
19 the, you know, what we're looking at as far as
20 where they're -- who's involved? Where they're
21 occurring? The numbers?

22 But, is the response, you know,

1 following generally accepted best practices for
2 sexual assault across the board? And I'm
3 thinking, you know, are there elements that
4 perhaps the Services would like to see collected.

5 Not just these four, but is there
6 something that they would like to look at to
7 identify anything within their organization that
8 might help them improve that response too?

9 And I don't know how we would, you
10 know, what's your wish list? If you need -- if
11 you wanted to collect data and look at things,
12 what are some things you'd like to see or know
13 about?

14 CHAIR BASHFORD: I think they did that
15 in their -- in the Committee, right?

16 MR. MARKEY: Well, --

17 CHAIR BASHFORD: We think.

18 MR. MARKEY: We think.

19 CHAIR BASHFORD: Yeah. We think so.

20 MR. MARKEY: Yeah. So, that --

21 CHAIR BASHFORD: So we'll know August
22 1, right?

1 MR. MARKEY: Absolutely. And the
2 question is, will we -- will that be released
3 where we would be able to --

4 CHAIR BASHFORD: We'll find out.

5 MR. MARKEY: Okay.

6 MS. PETERS: We're going to have to
7 ask --

8 CHAIR BASHFORD: I mean, we'll find
9 out if we -- if it will be released. I'm not
10 saying we will find it out.

11 MR. MARKEY: Oh, okay.

12 MS. PETERS: At a minimum when --
13 well, when they promulgate a proposed regulation
14 in the Federal Register for public -- for
15 comment.

16 But hopefully before then, before that
17 point in the process.

18 MR. MARKEY: Okay.

19 CHAIR BASHFORD: I just want to follow
20 up on what Mr. Markey said too. Is I don't think
21 the collecting data gives you answers
22 particularly as to why things happen.

1 I think it gives you areas to then
2 look at to explore. Is this a training issue?
3 Is there something about the pleadings, the
4 charging, is it a member?

5 You know, it just gives you areas to
6 look at. I just don't want people to think that
7 we think that if we collect the data that we have
8 all the answers.

9 MR. MARKEY: Um-hum. Right.

10 DR. SPOHN: Meghan, just as a point of
11 clarification, could you explain what we need to
12 do by some deadline? I'm a little confused.

13 We as a committee?

14 MS. PETERS: The goal is to transmit a
15 letter containing the Committee's thoughts and
16 recommendations, we said around 1 September.
17 Right around the beginning of September.

18 With the expectation that the
19 statutory deadline to implement anything, to know
20 what's implemented is 1 January 2019, or the very
21 end of December. The Secretary of Defense should
22 have to decide what these standards and criteria

1 are.

2 There's an additional time built into
3 the statute to implement those standards and
4 criteria. But the general timeline the Services
5 and DoD are working on, is by the end of the
6 year, the decision is made regarding standards
7 and criteria.

8 The staff's projected goal then would
9 be to transmit the Committee's information at the
10 latest in early September. So, a little over a
11 month from today.

12 CHAIR BASHFORD: But before that you
13 will circulate amongst us a draft letter, --

14 MS. PETERS: Yes.

15 CHAIR BASHFORD: For our comments,
16 changes, and -- correct?

17 MS. PETERS: Yes, ma'am.

18 DR. SPOHN: And do we need to vote on
19 these recommendations?

20 COLONEL WEIR: Yes.

21 MS. PETERS: I think the issues that I
22 see, there are still some, I think, areas of

1 disagreement. Or places where we would need, I
2 think, more of a decision on what to put in the
3 letter in terms of recommendations.

4 I think the things that are most set
5 up for that are the proposed recommendations on
6 page 13 around best practices. And we've amended
7 -- we have amended these a little bit in our
8 discussion yesterday and today.

9 So, when you were sent this two weeks
10 ago, it didn't have the benefit of everybody's
11 thoughts. So, Madam Chair we could vote on these
12 sort with the verbal amendments discussed today.

13 And I could express those as each of
14 these come up. Or, I could produce a draft based
15 on today's discussion, and we could vote at a
16 later meeting date.

17 CHAIR BASHFORD: I think we can -- I
18 think we can vote on the substance, not
19 necessarily the word-smithing of these in case
20 that's changed.

21 MS. PETERS: Okay.

22 CHAIR BASHFORD: The only thing I

1 would add in there that I don't see, is that it
2 seems like we were all in consensus that our
3 recommendation for at least sexual assault cases
4 would be that they start collecting the data when
5 the charge is filed.

6 MS. PETERS: Right. So, then separate
7 from this issue, it was the type of cases and
8 when a case begins.

9 CHAIR BASHFORD: Right.

10 COLONEL WEIR: Um-hum.

11 MS. PETERS: Were the two other issues
12 to vote on outside of this page. So we can take
13 those -- we can do those first and then get to
14 this page.

15 CHAIR BASHFORD: Correct.

16 COLONEL WEIR: But Ms. Cannon, you had
17 -- you had something you wanted to add right now,
18 an addition to that?

19 CHAIR BASHFORD: On G she thought
20 instead of should retain, I think it was may
21 retain, wasn't it?

22 MS. CANNON: Yeah. And there was an

1 issue. And work toward developing a uniform --

2 MS. PETERS: Case management system.

3 MS. CANNON: Case management system.

4 MS. PETERS: Right. I had that down
5 as sort of an H.

6 MS. CANNON: And with that -- thank
7 you. With that, it's my understanding that the
8 defense does not have a case management system.

9 Which, I think is a big problem if my
10 information is accurate.

11 MS. PETERS: I can't speak to every
12 system off the top of my head. It would be
13 limited if any.

14 In that at the last meeting the Army
15 said, we're serving documents on defense via the
16 Military Justice Online system. With that said
17 it was largely it seemed the emphasis was on
18 prosecutors and managers getting their case loads
19 straight, and judges understanding their docket.

20 DR. MARKOWITZ: Can these guys speak
21 to it?

22 LT. COLONEL VERGONA: So, for the

1 Army, the defense does have access to Military
2 Justice Online. Consider though it's usually the
3 government who's preparing documents.

4 And so there isn't a need for defense
5 to prepare as many documents. But the defense is
6 served with the government documents through
7 Military Justice Online, the MJO program.

8 There are some preloaded documents for
9 defense to respond. So when I have a client come
10 in and he's going to do his election of rights, I
11 can do it on MJO as well.

12 I can gather the templated document
13 and use MJO. So, in the Army the defense does
14 have access to it.

15 MS. CANNON: But you don't have your
16 own system --

17 LT. COLONEL VERGONA: No, ma'am.

18 MS. CANNON: Where you maintain where
19 this case is? Who has it once it -- in other
20 words --

21 LT. COLONEL VERGONA: So, I would
22 certainly -- each of our regions, we would have a

1 shared drive. And it's a secure shared drive so
2 that only my defense counsel and I have access to
3 that.

4 Because you've got to keep it, make
5 sure that it's not on the government's server.

6 MS. CANNON: Right.

7 LT. COLONEL VERGONA: You have your
8 own share drive. It might be the government's
9 server, but we have our own share drive.

10 But not -- if you're thinking, is
11 there a system that the defense uses to input
12 data, no ma'am.

13 MS. CANNON: And to get data from.

14 LT. COLONEL VERGONA: I'm sorry?

15 MS. CANNON: And to obtain data from.

16 In other words, all these management systems
17 we're talking about and data, are coming from the
18 prosecution.

19 LT. COLONEL VERGONA: Yes, ma'am. I
20 would say yes.

21 LCDR PEITRZYK: It that -- it's -- I
22 will tell you, I haven't looked at the defense

1 case management system that's used here since I'm
2 not a defense counsel. So, I'll probably have to
3 supplement my answer to the staff.

4 But, from my knowledge, we do have a
5 system. It's more of a case load management
6 system.

7 So, as a defense counsel, I put all of
8 my clients -- the various stages that our case is
9 in there. How much information or how that was
10 utilized varies from defense counsel to defense
11 counsel.

12 Your point though regarding queries
13 into the system, and where data comes from, that
14 largely comes directly from the government
15 system. Merely because the government can't be
16 querying, right, from a defense case management
17 system. That would cause all kinds of problems.

18 I do know the defense system that we
19 have does pull some information from the
20 government system. So, as a defense counsel if
21 I've got a client, I could input their name and
22 some information would pull to me.

1 But of course, it doesn't work the
2 other way around. If that helps.

3 MS. CANNON: Well, I understand that
4 there are privacy issues, confidentiality issues,
5 all the privileges. But the concern I have is
6 that there may be information we could glean from
7 the defense if it was systematized that would be
8 valuable.

9 Not only that, but anecdotally I
10 received information that they don't have a
11 system where they really -- it's consistent in
12 terms of where cases are. Attorneys change,
13 things happen.

14 It just doesn't seem to be
15 systematized even in a small sense. And I don't
16 know if that's something for us to look into.

17 If it's an inquiry we want to make.
18 If there's some concern out there among the
19 defense community about what they would like to
20 be capturing that they can't.

21 But I just want to throw that out
22 there for our Committee because I think it

1 relates also to the work we're doing.

2 DEAN HARRISON: I think there are two
3 different issues. One is the adequacy of the
4 support of the defense function. Which I think
5 is a legitimate issue for us in our charge.

6 But in terms of having a repository
7 that takes information from defense counsel
8 before it's filed with the court, I don't think
9 we can do that.

10 MS. CANNON: No. I'm not saying we
11 would get it.

12 DEAN HARRISON: Yeah. I don't think
13 anybody could get it. Yeah.

14 MS. CANNON: But maybe if they had a
15 systematized management, whatever system --

16 DEAN HARRISON: Right.

17 MS. CANNON: To be redundant. And
18 they said well, this is -- they get data. And
19 they say to us, we're having these problems.

20 We had X number of cases --

21 DEAN HARRISON: Oh, yeah.

22 MS. CANNON: That, you know, we're

1 relying on one side to provide everything, right?

2 DEAN HARRISON: Um-hum.

3 MS. CANNON: And it's the one that's
4 bearing the heavy load.

5 DEAN HARRISON: Right.

6 MS. CANNON: But I'm just saying, we
7 also have a big black hole here about it.

8 DEAN HARRISON: Well, I would agree
9 that it would be a -- probably a discussion item
10 for a future meeting. But if the defense bar
11 believes that it's not adequately supported in
12 doing its job under the UCMJ, we should hear
13 that.

14 But beyond that, I'm not sure what we
15 can get out of -- look, even if they had a top
16 flight case management system, I don't think we
17 could get anything from it without violating the
18 Sixth Amendment.

19 MS. CANNON: In terms of raw data, it
20 might be valuable information. I don't know.

21 DEAN HARRISON: Yeah.

22 MS. PETERS: I mean, that's something

1 that staff is happy to work on. Specifically to
2 bring that information. That would be useful to
3 the defense resourcing issue, absolutely.

4 Because we don't have enough
5 information to give you about how they collect
6 aggregate case information. What are they
7 relying on?

8 MS. CANNON: Right.

9 MS. PETERS: That is a whole in our
10 research right now.

11 MS. CANNON: Okay.

12 MS. PETERS: So the proposed
13 recommendations on page 13 are not all issues to
14 be voted on. But it is all of the ones around
15 best practices.

16 And then I understand that we have A
17 through G listed here. H would be that the
18 Services, well DoD, work towards a uniformed case
19 management system.

20 So we would add that on as something,
21 an item to vote on including today, eventually.
22 Because that's been suggested.

1 So we could vote on A through H here.
2 And then have a separate vote on when does a case
3 begin and ends. And vote on our scope in terms
4 of the offenses covered by our first statement.

5 CHAIR BASHFORD: I'm good with A
6 through G. I'm pretty agnostic as to H.

7 Chief McKinley --

8 MS. PETERS: Would you like me to read
9 it ma'am, for the group? And then take a vote?

10 CHAIR BASHFORD: Sure. Okay.

11 MS. PETERS: So these are all again,
12 this preface to all of these, this is proposed as
13 all parts of a package. And some can fall out.

14 It is presented as each of these are
15 integral components of a recommendation to use
16 best practices. And it would read something
17 again to the effect that the standards and
18 criteria developed to achieve the goals of
19 Article 140a UCMJ, should reflect the following
20 best practices for data collection:

21 A, collect information from
22 standardized source documents (legal and

1 investigative documents) that are produced in the
2 normal course of the military justice process
3 described therein. And then there are a list of
4 -- an exhaustive list of examples.

5 Would you like to take a vote on each
6 one? Or just go through them all once more?

7 CHAIR BASHFORD: I would go through
8 them all.

9 MS. PETERS: Okay. B, centralize the
10 data collection by mandating that all
11 jurisdictions provide the same documents and
12 information.

13 And the Policy Working Group had
14 recommended just scratching through, to a single
15 entity within DoD. So as not to comment on
16 assuming where it necessarily should be housed.

17 So, that centralized data collection
18 by mandating that all jurisdictions provide the
19 same documents and information.

20 C, develop an electronic database for
21 the storage and analysis of data and source
22 documents.

1 And the Policy Working Group thought
2 it would be better to say develop one electronic
3 database for the storage and analysis of data and
4 source documents to be sort of more finite. But
5 there is one overarching data collection system.

6 D, would be limit data entry to one
7 team of trained professionals whose full time
8 occupation, or primary occupation, I think that
9 was the debate we also had. Should just say
10 primary occupation as opposed to a collateral
11 duty, in data entry and analysis.

12 This team should comprise expertise in
13 the military justice process and in social
14 science research methods. Individuals would
15 transfer information directly from the source
16 documents into the electronic database.

17 And E, ensure that Article 140a is the
18 Services' and/or DoD's primary source for all
19 military justice case information. And that
20 other service and/or DoD systems that collect or
21 rely on the same information, become customers of
22 the data and analysis in the Article 140a system.

1 The group -- or Policy Working Group
2 also recommended that we specifically list the
3 Article 146 Military Justice Review Panel as a
4 customer of the data. So that is to be read into
5 letter E.

6 F, is collect and analyze data within
7 a reasonable amount of time (six months as an
8 example) from the end of the established review
9 period. And that may need to be word-smithed.
10 But I think you understand the idea.

11 G is, the military Services may retain
12 their own respective systems for case management
13 in the field, provided they are all using the
14 same standards and definitions to refer to common
15 procedures and substantive offenses under the
16 UCMJ.

17 H, which is not on your document. But
18 as discussed would be, that the military Services
19 work towards establishing a uniform case
20 management system across all Services.

21 JUDGE BRISBOIS: Does that uniform
22 mean centralized uniform?

1 MS. PETERS: Yes.

2 JUDGE BRISBOIS: That's what I
3 thought.

4 MS. PETERS: One centralized case
5 management system. Or one uniform case
6 management system to be more precise.

7 JUDGE BRISBOIS: Yes. I understand.

8 MS. PETERS: Okay. And I note that
9 General Schwenk also wanted to ensure that these
10 best practices all built around quality
11 assurance, so that these -- the data in 140a be
12 subject to a regular audit as a best practice.

13 So, I can work at it if you want to
14 take some of these other options, about producing
15 quality data. So, I don't think there would be
16 much debate around the audit function.

17 So I can add that to this list as
18 well. So that is -- those are all of the parts
19 of this recommendation around these are the best
20 practices that they should adopt.

21 CHAIR BASHFORD: Well Chief McKinley,
22 do you agree?

1 CHIEF MCKINLEY: Absolutely, ma'am.

2 CHAIR BASHFORD: Dean Harrison? Dr.

3 Markowitz?

4 DR. MARKOWITZ: I agree.

5 CHAIR BASHFORD: Ms. Cannon?

6 MS. CANNON: Yes.

7 CHAIR BASHFORD: I agree, except as I

8 said, I'm agnostic about building one case

9 management system. But, I'll --

10 JUDGE WALTON: I agree.

11 CHAIR BASHFORD: Judge Brisbois?

12 JUDGE BRISBOIS: Yeah. I agree. But,

13 with a caveat that I think the end goal for DoD

14 should be one combined data capture case

15 management system instead of separate.

16 CHAIR BASHFORD: Dr. Spohn?

17 DR. SPOHN: Agree.

18 CHAIR BASHFORD: Mr. Markey?

19 MR. MARKEY: I agree.

20 CHAIR BASHFORD: Ms. Long?

21 MS. GENTILE LONG: I agree.

22 CHAIR BASHFORD: General Schwenk?

1 BGEN SCHWENK: I agree, if you can
2 hear me.

3 MS. PETERS: Can you hear him?

4 COURT REPORTER: He says he agrees.

5 (Laughter)

6 CHAIR BASHFORD: And did we get
7 General Anderson?

8 MS. PETERS: I don't think we have
9 General Anderson on the phone.

10 CHAIR BASHFORD: Can we ask?

11 MS. PETERS: General Anderson, are you
12 on here?

13 CHAIR BASHFORD: Is he on?

14 MS. PETERS: No.

15 CHAIR BASHFORD: Okay. Then we are in
16 agreement on that. What's next?

17 MS. PETERS: Next is turning to Issue
18 One is to Options 1, 2 and 3. But for the
19 record, we -- is the Committee in favor of
20 explaining data collection in terms of sexual
21 assault cases? All other UCMJ offenses? Or
22 somewhere in between?

1 So, we could vote on each option
2 starting with the Committee speaking to data
3 collection for sexual assault cases. What does
4 the --

5 CHAIR BASHFORD: Oh, I'm just saying I
6 agree.

7 MS. PETERS: Okay.

8 CHAIR BASHFORD: Oh, I wasn't sure if
9 you were going to do it one by one or --

10 MS. PETERS: Those are the three
11 options.

12 CHAIR BASHFORD: Right.

13 MS. PETERS: But, and if the Policy
14 Working Group supported Option 1, I'd say vote on
15 that one first. Vote on each option. And vote
16 on them.

17 CHAIR BASHFORD: So, I'm in agreement
18 with Option 1.

19 JUDGE BRISBOIS: Why don't you
20 summarize the Option before you vote.

21 MS. PETERS: Oh, I'm sorry. The
22 Option -- Option 1 is to focus only on sexual

1 assault cases in terms of the data collection
2 recommendations.

3 Meaning everything the Committee is
4 speaking to, is how to do sexual assault cases.
5 And the Committee is deciding not to speak to how
6 the Services collect data or give access to
7 information about other offenses under the UCMJ.

8 That the Committee is not addressing
9 those. Not going to speak to that in its
10 recommendations.

11 The second is that the Committee says,
12 this is how you should -- it is going to address
13 all UCMJ offenses. So, if you go off we --
14 because some of the recommendations, I think,
15 that follow, are -- the Committee considered
16 offense specific. Does the Committee want to say
17 how -- how all of it should be treated in 140a.

18 Option 3 is to say, the Committee is
19 not just thinking of sexual assault. But we're
20 talking about sexual assault in a related family
21 of domestic violence, interpersonal violence
22 cases, child abuse, child victim cases. Child

1 sex cases.

2 So, Option one is sexual assault. Two:
3 we're talking about everything. Which might --
4 which when you get to when does a case begin, I
5 think that's where that decision becomes
6 important.

7 And then the other is, the third
8 option is for the Committee to focus on sexual
9 assault plus. So that you get related
10 information on related cases to facilitate the
11 study and examination of all sexual cases.

12 CHIEF MCKINLEY: And ma'am, our
13 working group, we recommended number three.

14 DR. MARKOWITZ: We did recommend
15 number three. Right. And so, I hate to this,
16 because unfortunately I have to leave to catch a
17 plane in literally like a minute.

18 But, I think the reason why we wanted
19 to expand is because we do know that there are a
20 lot of these cases where there is uncharged
21 misconduct of some type of sexual offense. And
22 it is going to be in the investigative file.

1 But it may not necessarily reach the
2 charge sheets. Or it may reach the charge sheet,
3 but not necessarily make it all the way to trial.

4 And so, the question is, do we want to
5 lose those by not necessarily having those
6 available from the very -- from the investigation
7 on?

8 CHAIR BASHFORD: Isn't that a very
9 broad net? Because you would be picking in -- up
10 then every domestic violence punch.

11 DR. MARKOWITZ: That is the question.

12 CHAIR BASHFORD: And the military
13 doesn't have the jurisdiction, if I'm correct,
14 over the child victims?

15 DR. MARKOWITZ: If it's a military
16 offender. If it's a military offender.

17 CHAIR BASHFORD: Oh, okay.

18 DR. MARKOWITZ: Yeah.

19 CHAIR BASHFORD: It just seems to me
20 that's a very wide net that's going to get -- do
21 all the domestic violence cases from the
22 inception when some of them have, you know,

1 intimate violence.

2 DR. MARKOWITZ: Yeah.

3 CHAIR BASHFORD: And a lot don't.

4 DEAN HARRISON: It's wider than sexual
5 assault alone. But not as wide as all UCMJ.

6 CHAIR BASHFORD: I'm sorry?

7 DEAN HARRISON: It's wider than sexual
8 assault cases alone. But not as wide as
9 everything in the UCMJ.

10 CHAIR BASHFORD: We are seeing a lot
11 of intimate partner sexual assault cases.

12 DR. MARKOWITZ: And we also see it in
13 prostitution cases. We see it in trafficking
14 cases.

15 We see it -- so, we know though that,
16 I think, the concern is, if we limit it only to
17 120 cases, we risk the possibility of losing
18 sexual offenses that don't necessarily make it
19 onto the charge sheet or what have you.

20 So, that's the -- that's the issue for
21 consideration for the full Committee. Is, do we,
22 you know, we have a lot of cases where the

1 uncharged misconduct is a sexual offense.

2 So, do we want to lose those cases?

3 But that I think is the question for the
4 Committee.

5 CHAIR BASHFORD: But if it's part of
6 the initial allegations or it comes out, we would
7 capture that, right?

8 Because if we get the initial reports,
9 even if it doesn't ultimately get charged, if it
10 comes up in the investigation, wouldn't we be
11 getting it?

12 MS. PETERS: Backward looking system
13 that's based on an allegation of sexual assault
14 would capture that. That said, it -- and so it
15 would capture those cases.

16 I think the additional value is, if
17 you treat a group of offenses like you treat
18 sexual assault, you can then do some comparison
19 to the domestic violence cases that don't involve
20 sexual assault.

21 There's -- I guess there's some more
22 utility to the data is the argument. But yeah,

1 so backward looking system that pulls in a case
2 once there's an allegation of sexual assault,
3 will grab all of those cases, should that include
4 domestic violence. That are in a domestic or
5 intimate partner situation.

6 So, it should address that concern
7 from a data standpoint. And that can also be
8 specified in this is what we mean and this is the
9 intent of -- this is part of the intent of
10 starting at the point of investigation.

11 Is to capture cases like these. Cases
12 that have unique circumstances around the sexual
13 assault so we can understand it better.

14 I think it is already captured if you
15 say sexual assault through investigation. I
16 mean, I don't think I -- definitely that's the
17 understanding.

18 But we could make a statement about
19 why it's important to also understand these cases
20 that have these other components to it. We're
21 going to capture them, and we want to.

22 And we want to emphasize to the

1 Secretary of Defense it's important to have data
2 on the intimate partner sexual violence cases.

3 DR. SPOHN: And so by expanding it,
4 you know, again to go back to the Chair's point,
5 we get out of our lane.

6 I mean, we haven't done anything with
7 domestic violence cases. We haven't looked at
8 them at all. We don't know how many there are.

9 We don't know -- I mean, it's sort of
10 a black hole as far as what we've been doing all
11 along.

12 MS. PETERS: Um-hum. And child cases,
13 I mean, you need data elements in all subjects.

14 CHAIR BASHFORD: Well, I certainly
15 agree. But there's a lot of sexual violence and
16 intimate partner cases.

17 I'm just not sure whether expanding
18 globally to every domestic violence incident that
19 doesn't have a sexual component, if we're going
20 to be able to pull them. Even if it ultimately
21 winds up not being charged or there's -- maybe
22 there's victim declination on the sexual assault,

1 but I want to go forward because of the physical
2 abuse.

3 But I think we've pulled that.

4 MS. PETERS: Yes. That's my sense
5 from what the Committee has recommended. You
6 would still capture those cases.

7 CHIEF MCKINLEY: Ma'am, we just didn't
8 want to dismiss Option Number 3. We felt it was
9 good for discussion in here.

10 And just so we somehow capture the
11 data.

12 MS. GENTILE LONG: Right. On Option 3
13 you have child sexual abuse there. Which I
14 thought we did say we wanted data.

15 Well, not everyone. We didn't vote on
16 this, but --

17 MS. PETERS: Right.

18 MS. GENTILE LONG: That's different.
19 So, I think if you're going sex crimes data and
20 you don't capture children or adults, or
21 juveniles or -- and based them as a sex crimes
22 charge or misdemeanor, then you're missing

1 something.

2 I'm also interested in the data you're
3 targeting. But I agree, it's beyond our charter.
4 So maybe that's it.

5 So which is what was making me lean
6 towards doing all the crimes. Because then you
7 would have that.

8 But nevertheless, I just want to make
9 sure we have another option that these people
10 don't agree it should be all related offenses.
11 It doesn't just -- it doesn't throw out all of
12 the sex crimes.

13 CHAIR BASHFORD: I think under Option
14 1 why would that not include child victims?

15 MS. GENTILE LONG: I thought it would.
16 Except when I read the factors in favor, I got
17 confused of Option 3.

18 MS. PETERS: I don't think we
19 contemplated that the child offenses were
20 included in sex assault cases when we first draft
21 this. We did -- we looked at that as a separate
22 bin, because the Committee was looking at adult

1 victim sexual assault cases.

2 Just for purposes of our adult
3 process. So you would have -- by the way this is
4 laid out, you would have to specify child victim
5 cases if you wanted to include those.

6 CHAIR BASHFORD: It's true. We
7 haven't looked at the -- we've only looked at
8 adult victims.

9 But, I don't see why we wouldn't --
10 why 140a wouldn't want to collected data on minor
11 victims.

12 MS. PETERS: Okay. So Option 1 then
13 would look like there is a larger universe of
14 data collection going on for adult victim and
15 child victim sexual assault cases.

16 The universe of data for all other
17 offenses, presumably something smaller that we
18 are leaving to DoD to determine fits their needs.
19 So we're saying not just sexual assault. We're
20 adding a little bit of depth to the universe of
21 broad data collection efforts.

22 I mean, the language of the

1 recommendation would include adult victim and
2 child victim cases. And that what it would in
3 effect do, I think, to the overall
4 recommendation.

5 MS. GENTILE LONG: I mean, am I wrong
6 that every human trafficking case should have a
7 sexual violence component. They all -- so are
8 you seeing any that don't have?

9 Because I -- that's the only other one
10 I could think of that would be a sex crime that
11 wasn't picked up. I can't imagine there are that
12 many being around here.

13 CHAIR BASHFORD: Do we have a lot of
14 military trafficking people?

15 MS. GENTILE LONG: That's what I'm
16 saying.

17 CHAIR BASHFORD: I should hope not.

18 MS. GENTILE LONG: They are seeing it.
19 But I'm thinking there's a -- it's minimal enough
20 where we're probably capturing it. I'm sure
21 they're charging a rape assault, so I'm not that
22 worried about including that.

1 MS. PETERS: Right. And any
2 allegation under the Committee's paradigm would
3 mean it -- it's on the tracking sheet so to
4 speak.

5 MS. GENTILE LONG: Um-hum. Yeah.

6 MS. PETERS: The electronic tracking
7 sheet.

8 CHAIR BASHFORD: So if we moved the
9 child portion into Number 1, because it seemed
10 like in the comments it was excluded, that -- and
11 then that should capture what we need,
12 everything?

13 MS. GENTILE LONG: And that's all --
14 mixing all types, right? Contact or penetration.

15 MS. PETERS: Right. The previous
16 discussion also said that sexual assault
17 encompasses penetrative and contact.

18 MS. GENTILE LONG: Yes.

19 MS. PETERS: If you guys want to read
20 it back, I hope. It looks like it would.

21 CHAIR BASHFORD: Sure.

22 MS. PETERS: So to be more specific,

1 Option 1 should read, the Committee focuses its
2 recommendations on both adult victim and child
3 victim sex offenses, including where the act is
4 either a penetrative act or sexual contact.

5 Pretty -- something along those lines.

6 CHAIR BASHFORD: Yes.

7 MS. PETERS: Because that leaves
8 really the only other option being -- or the
9 other options do. Again, the whole UCMJ or a
10 family of related offenses.

11 DEAN HARRISON: I would move that we
12 adopt Option 1 --

13 CHAIR BASHFORD: Yeah. As amended.

14 DEAN HARRISON: As amended.

15 CHIEF MCKINLEY: With the changes I
16 think that would be good.

17 CHAIR BASHFORD: Okay. Is there
18 anybody opposed? Anybody? General Schwenk?

19 BGEN SCHWENK: I'm fine with Option 1.

20 CHAIR BASHFORD: Okay. So we have
21 that.

22 MS. PETERS: Okay. So Option 1 is the

1 Committee's

2 CHAIR BASHFORD: Yes. Option 1 as
3 amended.

4 MS. PETERS: Okay.

5 CHAIR BASHFORD: With the amendment.

6 MS. PETERS: Option 2 is the most
7 complex. And I don't know that it needs a vote.
8 The issue, and decide if you want to -- if it's
9 just a discussion point or if it needs a vote.

10 But the issue is, what does the system
11 look like? Are we saying data collection is
12 separate from their case management system?

13 Or are we saying an overarching
14 system? I think we spoke to that in best
15 practices. So maybe this issue is moot, well,
16 not moot, but because it's been discussed in best
17 practices.

18 But that was the is -- that was where
19 issue two lies. The only addition, I would say
20 there was public access or something. We did not
21 -- the Policy Working Group felt the Committee
22 should comment on.

1 And the recommendations that aren't
2 necessarily in here are that both historical data
3 and individual case documents in pending or in
4 past cases should be accessible to the public.
5 Meaning read the public access facet of 140a to
6 include aggregate historical data.

7 The Sentencing Commission has a
8 statutory mandate to disseminate data to the
9 public. Language like that is missing from 140a.

10 That doesn't mean it's not possible to
11 implement 140a with the requirement -- or with a
12 view towards publicizing all of this data.

13 CHAIR BASHFORD: I don't know what you
14 mean when you say the public should have access
15 to case documents.

16 MS. PETERS: Oh, court file documents.
17 Pleadings filed in court from the moment, I
18 guess, a court martial is convened. You have the
19 charging documents, motions filed, result of
20 trial. Things that are already --

21 CHAIR BASHFORD: I can think of all
22 sorts of documents that could be filed in court

1 that would not be -- should not be public.

2 We call it all -- or the propensity,
3 similar crime evidence, shield, motions in limine
4 for rape shield law, --

5 DEAN HARRISON: Cooperating witnesses.

6 CHAIR BASHFORD: Exactly. For the
7 cases that don't go forward, the final document
8 that sort of says why.

9 I don't know that -- I agree there
10 should be -- we should say something to
11 encouraging public access. But I don't know that
12 we have enough to specify it right now.

13 DEAN HARRISON: Well, I think I may
14 have been the largest proponent of public access
15 in our discussions. But, from what I heard this
16 morning, I'm not sure if the Privacy Act issues
17 are irresolvable roadblocks to what I had hoped
18 for.

19 In other words, I hoped that somebody
20 who was interested in a case could, short of
21 actually attending the court martial, get
22 information about the case.

1 All of the things about, for example,
2 rape shield and all of that, could be subject to
3 judicial seal. But beyond that, even with
4 judicial seal issues resolved, the Privacy Act
5 issues are something that I had not contemplated
6 until this morning. So, I'm not sure where to go
7 with that.

8 CHAIR BASHFORD: Maybe we could just
9 have sort of a general recommendation like
10 aggregate data. Like how many cases.

11 CHIEF MCKINLEY: Yeah. Historical
12 data would be good for public access in --

13 CHAIR BASHFORD: But I don't think --
14 I'm not so sure about documents.

15 DEAN HARRISON: Right. Yeah.

16 MS. PETERS: Absolutely. I don't
17 think the groups went into detail on that. It
18 was more, okay it seems like court records are
19 being analyzed by the Services.

20 They're going to become public. What
21 beyond that? Ms. Garvin specifically spoke to
22 having data, having a sense of the conviction

1 rates.

2 And the business of military courts
3 similar to the aggregate data that goes into the
4 business of the federal courts.

5 DR. SPOHN: So, I would suggest we
6 amend F under proposed recommendations.

7 MS. PETERS: Um-hum.

8 DR. SPOHN: And this is a possibility,
9 collect and analyze data, produce reports --

10 MS. PETERS: Okay.

11 DR. SPOHN: Including descriptive data
12 and case outcomes on an annual basis. And I
13 mean, that's what the sentencing commission does.

14 MS. PETERS: Okay.

15 DR. SPOHN: Is that a friendly
16 amendment?

17 CHAIR BASHFORD: That's a friendly
18 amendment.

19 CHIEF MCKINLEY: Very good.

20 CHAIR BASHFORD: Is everybody okay
21 with that? I think that's a great solution.
22 Judge?

1 JUDGE BRISBOIS: I guess I'm not clear
2 on who's, at this point, who's going to produce
3 the report? What is the content of the report
4 going to be for?

5 I mean, isn't this for a system that's
6 going to allow any stakeholder to get this data
7 and make their own analysis? So, I'm not sure I
8 think that amendment helps much.

9 MS. PETERS: To specifically state
10 publicize?

11 JUDGE BRISBOIS: Well, to say develop
12 and produce reports. I mean, one, who's going to
13 do it? What's it going to be about?

14 And as I understood what we'd already
15 voted on for proposed recommendations, this was a
16 separate data collection system we're
17 recommending. You know, that someone's going to
18 do, a single entity.

19 It didn't allow specificity. So, you
20 know, and we get a lot of groups that are already
21 producing their own reports about their own
22 interpretation of the data.

1 So we're -- they can access this
2 information to augment what they're already
3 doing. I don't know that we need to say, we need
4 to find a new home for a new set of reports by an
5 as yet undefined entity.

6 MS. PETERS: Okay.

7 CHAIR BASHFORD: I think part of the
8 problem is that some of the reports we've been
9 seeing aren't very useful.

10 JUDGE BRISBOIS: Well sure. But
11 they're not using a data system that we're
12 proposing here that's as complete and
13 comprehensive. And unified.

14 So, it's -- you know, I'd vote
15 against the amendment. But, you know, the
16 majority is obviously going to carry the day.

17 But that's why I'm voting against it.

18 CHAIR BASHFORD: I think -- I think
19 you're right. But presumably any service could
20 access this to run their own -- although if
21 they're sending the exact same data they already
22 have, they have it in their own thing.

1 But if somebody doesn't choose to
2 write a report, wouldn't it be nice to have an
3 annual report based off of this document-based
4 system? As opposed to just leaving it up to if
5 you want to run through a report, you can.

6 JUDGE BRISBOIS: But that's the --
7 that's a result of 140a, not a requirement and
8 function of 140a. 140a is how do we create a
9 system of information that's consistent and
10 unified at all stages of trial?

11 So that then people can go and do
12 these kind of things. So to recommend that there
13 be an additional mandated report without knowing
14 what, why, who? What's its content going to be?
15 What's its purpose?

16 It creates too much confusion and
17 vagueness in our recommendation. I can't support
18 that. That's just one vote though. Everyone can
19 --

20 JUDGE WALTON: And I have concerns
21 about, you know, what data are we talking about?
22 I mean, I think we have to be really specific.

1 Because, I mean, we are experiencing
2 with the intel system a real problem with certain
3 data being made available to the public
4 specifically regarding plea agreements and
5 cooperating witnesses.

6 And that's a major problem. We've had
7 witnesses who have been killed, intimidated. And
8 it's a big problem.

9 MS. PETERS: Right.

10 CHAIR BASHFORD: Well, we can still
11 say, so we say collect and analyze data. We're
12 not telling them how to analyze it.

13 But we are recommending that they
14 analyze it. Because it doesn't make sense to
15 collect data if you don't.

16 DR. SPOHN: You know, analyze it but
17 then you just let it -- you don't disseminate it?

18 MS. GENTILE LONG: Can we ask, I mean,
19 I'm just curious of our own judges. Because I
20 don't use PACER and I don't know what's on there.

21 Are there protections on there that
22 protect the secrets?

1 JUDGE BRISBOIS: Well, again we've got
2 to -- what we're talking about PACER is not the
3 case management data collection system. CM/ECF
4 is, and CM/ECF has the ability to lock down.

5 It's still in the system. It's still
6 available.

7 MS. GENTILE LONG: Right.

8 JUDGE BRISBOIS: But depending on the
9 concerns, it can be locked down --

10 MS. GENTILE LONG: So you could lock
11 down versus everything I say.

12 JUDGE BRISBOIS: On a line by line
13 basis.

14 MS. GENTILE LONG: Okay. Yeah because
15 we -- I know for us it's very different on the DA
16 level. Some have public documents, but.

17 CHAIR BASHFORD: Well, I think we --
18 one solution would be not to have the friendlier
19 amendment. And we're still in service for some
20 time.

21 And if we -- if these -- if our
22 recommendations are adopted in some sense, we can

1 always follow it up not as a 140a request, but as
2 a simple recommendation of the DAC-IPAD that the
3 140a data be analyzed and disseminated in gross
4 statistical ways at a later time.

5 MS. PETERS: Do you want to take -- so
6 we are just --

7 CHAIR BASHFORD: I'm just suggesting.
8 I'm not saying we should do one thing or the
9 other.

10 MS. PETERS: Okay.

11 CHAIR BASHFORD: But I know our two
12 judges expressed some reservation about it, so.

13 JUDGE BRISBOIS: Well, it doesn't mean
14 that -- it doesn't mean that controls the -- I
15 mean, that's --

16 CHAIR BASHFORD: No. It doesn't. It
17 just --

18 JUDGE BRISBOIS: We're just
19 expressing. I'm frankly just trying to explain
20 why I'm going to vote against the amendment.

21 You know, that -- you all have to make
22 your own decisions.

1 MS. CANNON: Maybe it's premature.

2 DR. SPOHN: I was saying, you know, I
3 guess the amendment was an attempt to address the
4 issue of public access to the -- not the data
5 itself, but to the results of the data analysis.

6 That the public should have access to
7 the aggregate data about case outcomes. And --

8 JUDGE BRISBOIS: Well, couldn't we
9 just say we support the idea of ultimately public
10 access. But at this point we're focused only on
11 the collection and systems of data collection
12 case management?

13 Because for the reasons Dean Harrison
14 pointed out, there's a whole other round of
15 either legislation or regulation that's going to
16 have to be pursued and passed in order to allow a
17 lot of UCMJ systems information to be accessible
18 to the public.

19 And I don't think -- we can either
20 support or oppose the general notion of public
21 access. Of which I support access. Because I
22 don't think that right now we need to go beyond

1 data collection and case management issues.

2 CHAIR BASHFORD: So what if we had an
3 I that said, the DAC-IPAD suggests that the
4 Secretary of Defense consider or study public
5 access to aggregate data. Or something like
6 that.

7 Just so -- as opposed to a specific
8 thing, just state it.

9 BGEN SCHWENK: Yeah. To the extent
10 authorized by law.

11 DR. SPOHN: Meghan, do they have a
12 mandate to produce annual reports?

13 MS. PETERS: They do. And they
14 produce adjudication data annually pursuant to
15 NDAA requirements.

16 So this would be in addition to that.
17 Presumably in the past the JPP looked at this
18 issue as one of maybe 140a type information as
19 established as a gold standard. But then DoD
20 SAPRO can become a customer.

21 It hasn't happened. But that's
22 something the JPP forwarded to DoD for

1 consideration.

2 But yes, the JPP produces something
3 very similar to the aggregate data.

4 CHAIR BASHFORD: Maybe they'd use our
5 data.

6 MS. PETERS: Right.

7 CHAIR BASHFORD: So do we want to say
8 anything about potential public ac -- not access.
9 Potential reports, public reports, I guess. Or
10 do we want to just let it go for now?

11 CHIEF MCKINLEY: I think it would be a
12 good idea, ma'am, to go ahead and look at the
13 potential for public access. But we not define
14 how that is.

15 CHAIR BASHFORD: Okay. So recommend
16 --

17 BGEN SCHWENK: Why don't we say to the
18 extent authorized by law?

19 CHAIR BASHFORD: That DoD examine the
20 possibility of public --

21 CHIEF MCKINLEY: Yes, ma'am.

22 CHAIR BASHFORD: Access.

1 CHIEF MCKINLEY: Yes, ma'am.

2 CHAIR BASHFORD: To the information.

3 CHIEF MCKINLEY: Yes, ma'am.

4 DEAN HARRISON: I would say to

5 military justice information and pro --

6 proceedings and information just generally.

7 Because again, I feel -- it's an

8 important issue to me because unlike civilian

9 courts, there are no standing courts in the

10 military. And if we're concerned about the

11 perceived credibility of military proceedings,

12 making sure the public has access.

13 And again, excluding national security

14 issues, and excluding things that are held under

15 seal.

16 CHAIR BASHFORD: What I suggest then

17 is that the staff draft a sort of generic

18 statement in support of some sort of public

19 access. You can wordsmith it later and circulate

20 it around to us later.

21 And we'll see if we ultimately want it

22 or want to withdraw it. Does that make sense?

1 DEAN HARRISON: It makes sense.

2 COLONEL WEIR: If I could just add a
3 quick comment. The law as drafted under 140a
4 already is requiring the Secretary of Defense to
5 come up with a public access plan.

6 So, by saying that we support that
7 public access, we're already stating what the law
8 is already saying. But what in -- what we've
9 done in the data collection is told -- or making
10 recommendations on actually how to do that.

11 We're not telling the Secretary of
12 Defense in how to do public access. So, I'm not
13 sure that we're getting anywhere by making a
14 recommendation when it's already the law that
15 says that they must come up with a plan somewhere
16 along the line to make these type of documents
17 accessible for the public.

18 And like Dean Harrison mentioned with
19 the Privacy Act, that's going to require
20 statutory change if they're going to do some of
21 this stuff. So, I think we're saying, or the
22 recommendation of agreeing with public access,

1 it's already the law.

2 The Secretary of Defense is going to
3 be required to do it. So, we're not telling him
4 how to do it. We're just saying yeah, go ahead
5 and do it, which he's already been told to do by
6 Congress.

7 CHAIR BASHFORD: Well, we'll follow
8 the law.

9 JUDGE BRISBOIS: But and that is a
10 better way to phrase it. But, the how to do it,
11 is way beyond anything that we're going to do
12 here in the next 30 minutes.

13 Because you're talking about
14 comparative law studies. You're talking about,
15 you know, well comparing between statute and
16 regulation regarding information.

17 What is public/private data? How does
18 that change military versus nonmilitary type?
19 So, that's way beyond anything.

20 So I think we are best left with a how
21 to -- with how do we think data should be
22 collected and how should it be disseminated?

1 Which is to centralize it or not centralize it.

2 COLONEL WEIR: We can certainly add
3 something into the overall recommendation that
4 says that the DAC-IPAD fully supports the 140a.
5 And then go into specifically how the data
6 collection in sexual assault cases.

7 Which is what you all have talked
8 about and voted on today.

9 CHAIR BASHFORD: Okay. What he said.

10 (Laughter)

11 CHAIR BASHFORD: I think with that
12 clarification from our Director we should leave
13 it as is.

14 MS. PETERS: Okay. And I think I
15 could do a slightly better job answering Dr.
16 Spohn's questions since I have the report in
17 front of me.

18 But, pursuant to NDAA requirements,
19 annually SAPRO does an analysis of the --
20 aggregate analysis of the outcome of cases
21 adjudicated.

22 And whether they fall out at a courts

1 martial, and then they attempt to analyze the
2 administrative actions as well. And anything in
3 which a sexual assault charge is preferred, sort
4 of create a flow chart down to the -- whether
5 somebody's convicted or acquitted, and even the
6 types of punishment received if convicted.

7 So they've been doing that annually
8 for a little while, so.

9 CHAIR BASHFORD: Do you need us to
10 vote on anything else in particular?

11 MS. PETERS: When does a case begin?

12 CHAIR BASHFORD: I thought we had
13 consensus on that. With the initiation of the
14 charge.

15 MS. PETERS: Okay. And the end of
16 that --

17 COLONEL WEIR: Can I just --
18 initiation of the investigation.

19 CHAIR BASHFORD: I'm sorry, but when
20 somebody's come -- makes a charge that I am
21 sexually assaulted. And I should be clearer in
22 my --

1 COLONEL WEIR: To law enforcement.

2 CHAIR BASHFORD: Yes.

3 JUDGE BRISBOIS: Upon receipt of a
4 report.

5 MS. PETERS: Okay. And a --

6 CHAIR BASHFORD: Of an unrestricted
7 report.

8 MS. PETERS: And then a case ends at
9 completion of appellate review? We had an issue,
10 four said you could pick a case ends at appellate
11 review or when released for post-trial
12 confinement.

13 It seemed like there was consensus
14 around appellate review. Because there isn't a
15 value to -- for this, for 140a to track what
16 happens when someone is released.

17 JUDGE BRISBOIS: Well, depending on
18 exhaustion of appellate remedies, and when that
19 sentence is fully executed, could be 15 to 20
20 years.

21 DEAN HARRISON: Yeah. Right.

22 JUDGE BRISBOIS: You know, there's no

1 reason to keep it open that long. And you know,
2 --

3 MS. PETERS: Yes.

4 JUDGE BRISBOIS: There could always be
5 an ability to go back and reopen it for some
6 reason if there's some post-appellate habeas
7 which reopened it.

8 CHIEF MCKINLEY: So that was exactly
9 our thoughts yesterday.

10 JUDGE BRISBOIS: Yeah. I mean, to
11 continue to track it and request data on a
12 regular basis while, you know, it's like give me
13 an update on this guy or this woman every year on
14 the anniversary while they're incarcerated.

15 You know, once the appellate rights
16 have been exhausted, absent the habeas action,
17 that case is over.

18 MS. PETERS: Okay.

19 DEAN HARRISON: But, I think General
20 Schwenk wanted us to amend Option 1 to say
21 appellate review, or administrative, or Article
22 15 for those cases that did not go to trial.

1 MS. PETERS: Yes. Yes, sir. That was
2 an important caveat that by saying appellate
3 review we're assuming that any completion of a
4 case at a -- before that point in the process.

5 Or even if a case didn't receive
6 appellate review but it would bear mention to say
7 that, you know, we presuppose a case ends, you
8 know, a case ends at no action or at completion
9 of the commander's action taken. Whether that's
10 administrative or non-judicial punishment.

11 Or appellate review if there are
12 charges. So appellate -- that option does
13 include every lesser result basically.

14 CHAIR BASHFORD: Are we in agreement?

15 MR. MARKEY: Do we need to move, I
16 mean, move and vote? I move we adopt Issue 4,
17 Option 1 as described.

18 CHIEF MCKINLEY: Yes.

19 CHAIR BASHFORD: Anybody oppose?

20 (No response)

21 CHAIR BASHFORD: General Schwenk?

22 BGEN SCHWENK: Yeah. I'm good with

1 that.

2 CHIEF MCKINLEY: That's a yes.

3 (Simultaneous speaking)

4 MS. PETERS: And then the last thing
5 on the record is Issue 5. And I'm sensing that
6 we have a should or should not.

7 Should account for some federal
8 statutory requirements. The Committee didn't
9 come to any specific -- anything specific around
10 that.

11 And it seems that the issue is -- the
12 option is should, or the option is should not
13 account for any specific federal notification and
14 reporting requirements.

15 The staff hasn't, you know, given me
16 the benefit of probably having enough information
17 to fully assess this issue. Nonetheless, it was
18 part of a thought process, so we brought it to
19 you for -- the Committee for a decision, or a
20 further discussion as needed.

21 So, the issue would be, is there any -
22 - are there any specific statutory requirements,

1 examples are on page 10, that should be included
2 in 140a for sex assault cases?

3 CHAIR BASHFORD: I don't -- personally
4 don't feel that I have enough understanding of
5 how. It was just briefly mentioned this morning
6 --

7 MS. PETERS: Um-hum.

8 CHAIR BASHFORD: By the service
9 members. And I'm saying that's not our job.
10 It's either prisons or it's the investigators.

11 So, I don't feel I have enough
12 information to really make an informed decision
13 on this particular one.

14 MR. MARKEY: And I concur with that as
15 well. I don't think I have enough to make an
16 informed decision on that.

17 CHAIR BASHFORD: It strikes me that
18 we're stretching 140a a little bit to do that.

19 CHIEF MCKINLEY: Should we table this
20 then?

21 CHAIR BASHFORD: Not table it, but it
22 might be something we ought to revisit later.

1 MS. PETERS: Yeah.

2 CHIEF MCKINLEY: Yeah. We just do not
3 have enough info really.

4 CHAIR BASHFORD: Yeah. So we'll table
5 that. Are we done with our voting, Meghan?

6 MS. PETERS: Yes, ma'am.

7 CHAIR BASHFORD: I again, want to
8 really commend the Working Group. This was a
9 heavy lift. And you've done a great job. And
10 the staff for making all the pros and cons in a
11 nice tabular form.

12 And now, I think I'm going to move us
13 to the Staff Director's Report. Updates from the
14 Staff Director, Data Working Group, and the Case
15 Review Working Group.

16 MS. PETERS: Ma'am, if we could just
17 take a break in place so that we can load our
18 slides?

19 CHAIR BASHFORD: I'm sorry?

20 MS. PETERS: Can we take a break in
21 place to load our slides?

22 CHAIR BASHFORD: Of course.

1 (Whereupon, the above-entitled matter
2 went off the record at 2:44 p.m. and
3 resumed at 2:48 p.m.)

4 COLONEL WEIR: Okay. We're going to
5 go ahead and get started in just a second. We're
6 going to roll through this pretty quick.

7 So, what I wanted to talk to you about
8 today was just kind of where we're at as far as
9 the staff is, and what we're doing. And then the
10 Working Groups are going to give you the
11 briefings of what's going on in their Working
12 Groups.

13 But I think as I mentioned earlier,
14 the most important thing we're doing right now is
15 the Case Review Working Group. We're really
16 knocking out those cases.

17 That's a hot button topic right now in
18 our office.

19 So that's ongoing. And the staff is
20 really working hard to getting those case reviews
21 done.

22 And I appreciate the hard work that

1 the Case Review Working Group's done. And so
2 we'll get some more information on that as well.

3 But, I also wanted to bring to your
4 attention --

5 CHAIR BASHFORD: Sorry, just one more.
6 I forgot to say Meghan Tokash has joined us on a
7 -- telephonically.

8 MS. TOKASH: Hi. Thank you.

9 COLONEL WEIR: One item I wanted to
10 bring to your attention was that the Acting Secre
11 -- excuse me, the Acting General Counsel for the
12 Department of Defense, on June 7 drafted and sent
13 a memorandum to the Chair of the Defense Advisory
14 Committee on Investigation and Prosecution of
15 Offense of Sexual Assault in the Armed Forces.

16 And the subject of this memorandum was
17 assessment of the Judicial Proceedings since
18 Fiscal Year 2012, Amendments Panel Recommendation
19 54, 55, 57, 58, and 60. And I know that we've
20 sent these to you via email.

21 And the intent of the staff is to
22 accomplish as much as we can by submitting a

1 request for information to the services. And
2 then gather that information back.

3 And then look at what we've received.
4 And then go forward with potential panel
5 hearings.

6 The Sec -- the General Counsel has
7 requested that that information be placed in the
8 annual report that's due in March 2019. We will
9 put something in the report about that.

10 But since it -- we only received it in
11 June. And we've got a lot of stuff also going on
12 here on our plates that that will probably be a
13 follow on information that will be in the '19
14 report.

15 So, I just wanted to let you know
16 that's out there. And we'll be submitting
17 requests for information to nail down as much
18 potential facts that we can before we have panel
19 hearings.

20 We had a meeting with the Department
21 of Defense IG Auditors that came and talked to
22 us. They're looking into an issue that I know

1 the Case Review Working Group has looked into, or
2 hasn't seen it in the files that we've looked at,
3 is the requirement by law that the victim be
4 given the opportunity to select a forum for their
5 -- for their case to be heard in.

6 So, they have the option to go
7 military or the option to go civilian. So, that
8 issue has come up through the Hill somehow. And
9 got sent to DoD IG as to what the services are
10 doing about the victim getting an opportunity to
11 make that selection.

12 So, they're working on that. And the
13 services, I'm sure, will be thrilled to hear that
14 they've got to do another request for
15 information.

16 But that's all I have right now. And
17 we'll just move in right to the Working Group
18 updates.

19 MR. MASON: So, I'm going to be
20 covering the data collection process for the Data
21 Working Group. As you're aware, we are in the
22 midst of the FY 17 data collection and entry into

1 the database.

2 And what you can see from this chart
3 is, one, it's outdated because Stacey worked
4 extra hard yesterday and increased our numbers
5 already. So we are now at 100 percent for the
6 Army, Navy and Air Force with respect to cases
7 that we have received from them, are now entered
8 into the system.

9 With that being said, we have a
10 substantial number of Army cases and Navy cases
11 that are outstanding. And we provided a list to
12 them today of the cases that are outstanding.

13 And then we will hope to receive those
14 and we'll be able to get them into the database
15 at that point.

16 Next week we are turning our attention
17 to the Coast Guard and Marine Corps cases since
18 we had them in our system on the shared drive.
19 And they will be entered into the database at
20 that point.

21 But we're very pleased that we're at
22 100 percent of what we received with those three

1 services so far. As a note, we've added at least
2 12 cases now into the FY 16 that we'd previously
3 done that were provided to us in FY 17 data.

4 So, we're continuing to update our
5 database. And we've always said that it's a
6 living, breathing, organization -- organism that
7 it will, as we get more files in, will constantly
8 update. Next slide, please.

9 So for the overall project, where
10 we're heading. We are on track for the March
11 2019 report.

12 We will be doing the multivariate
13 analysis on the FY 16 data, as well as
14 descriptive statistics bivariate and multivariate
15 analysis for the FY 17 data. So, it will be a
16 data heavy contribution to the annual report.

17 Dr. Wells, Bill Wells from Sam Houston
18 State University in Texas, has come onboard as
19 our criminologist. He was here two weeks ago for
20 his training indoctrination.

21 We got him up to speed on military
22 justice. He shared some of his background with

1 criminal justice and -- on the civilian side.

2 He has received a preliminary data
3 file to work with at this point, to see what he
4 needs to do to code it correctly for entry into
5 the statistical program, SPSS. Which is what he
6 utilizes at his university.

7 WE are holding off on doing any final
8 numbers until we get the FY 17 files finished.
9 Because we will then know how many FY 16 we've
10 added to it. And we'll have accurate numbers for
11 both fiscal years.

12 And then finally, the RFI will be
13 coming probably at the -- either the August or
14 October meeting. We'll be requesting an RFI for
15 the FY 18 cases.

16 So, we're barely finishing. And we're
17 already turning our attention to the next fiscal
18 year. So that we can stay on top of it.

19 With our intent being that we possibly
20 might have a midyear report to issue, dealing
21 with FY 18 statistics.

22 CHAIR BASHFORD: The Navy is a real

1 outlier in terms of outstanding cases. Do you
2 have an explanation for that?

3 MR. MASON: Their individual that's
4 responsible for doing the data upload, has been
5 on vacation. And he will -- we've been in
6 contact. We know that he's gone for two weeks.

7 When he's back, he plans on uploading
8 it. And they will actually rather than us having
9 to go out and pull the files, they provide
10 everything electronically to us on the back end.

11 CHAIR BASHFORD: Okay. Thank you.

12 MR. MASON: So, we're not concerned at
13 all with that number at this point. Thank you.

14 CHAIR BASHFORD: Any questions for --
15 about the Data Working Group?

16 (No response)

17 CHAIR BASHFORD: Great. Are we moving
18 then to Case Review?

19 MS. TAGERT: Yes. We're going to be
20 doing an update on case review. And just
21 remember the public, the DAC-IPAD with a few
22 mandates that were in the statute that created

1 the DAC-IPAD was to do a case review.

2 And the Case Review members have taken
3 that literally. And we have started reviewing
4 1,725 investigative files.

5 And we are through 769 at this point
6 from the staff. These are the no-action cases.
7 Which are approximately 80 percent of all
8 investigations for penetrative sexual assaults.

9 And that also includes a number of
10 cases that were preferred in Fiscal Year 17. So
11 when I'm talking, we're talking about two
12 different reviews that are currently going on.

13 One is the total sample size. Which
14 is a staff and Case Review Group member from the
15 DAC-IPAD reviewing those cases.

16 And then we have our random sample.
17 Which is the pool of cases that are a subset from
18 that 1,725. And the members have been doing a
19 wonderful job in completing their cases.

20 They have only five cases left to
21 complete for the no-action. Yesterday I think
22 that -- or on Tuesday that number was in the 40s.

1 So, for the last couple of days
2 they've been working extremely hard to get that
3 number to where it is. Based on the numbers that
4 you see on the screen, we believe that with the
5 March 2019 report we will be able to deliver to
6 the DAC-IPAD, the descriptive data from those
7 cases.

8 As well as to make an overall finding
9 on whether or not the decisions in those cases
10 were reasonable based on the investigative case
11 file that we have. As well as other findings and
12 recommendations from the reviews of the case.

13 We met with Dr. Wells, as Chuck
14 mentioned earlier, who is our criminologist. And
15 he said that we will be able to do a multivariate
16 analysis to identify statistically significant,
17 predictive factors between no-action cases and
18 preferral.

19 That makes me sound smart. But it's
20 basically just comparing different factors which
21 may cause the case to go forward over another
22 one.

1 And obviously there will be obvious
2 ones, like the victim declined to participate in
3 the process. But we're hoping to figure out if
4 there are factors that we're not familiar with
5 which may be causing certain cases not to go
6 forward.

7 And we will also in the 2020 report be
8 able to provide the descriptive data for the
9 entire pool of 1,700 plus cases. But, for the
10 2019 report we believe the descriptive data will
11 be only for the subset of the random sample.

12 CHAIR BASHFORD: Great. Any
13 questions?

14 (No response)

15 CHAIR BASHFORD: Thank you for the
16 update.

17 MS. TAGERT: You're welcome, ma'am.

18 CHAIR BASHFORD: Okay. So I think
19 we're now ready for the --

20 MS. SAUNDERS: But we have, ma'am, if
21 you don't mind.

22 CHAIR BASHFORD: Oh, I'm sorry.

1 MS. SAUNDERS: We do have a Policy
2 Working Group.

3 CHAIR BASHFORD: Oh. I'm sorry.

4 MS. SAUNDERS: As though you haven't
5 heard enough about policy, the Policy Working
6 Group today.

7 So in addition to all the work that
8 the Policy Working Group's been doing and that
9 you've heard and discuss here today on the 140a,
10 they have also been continuing their work on the
11 expedited transfer policy.

12 Back in the March 2018 report, this
13 Committee conducted an overall assessment of the
14 expedited transfer policy. And also made full
15 recommendations about that.

16 But they also iden -- the Committee
17 also identified six additional areas that they
18 felt required more review. And asked the Policy
19 Working Group to do that.

20 And so those additional areas are
21 whether or not expedited transfers should be
22 available to service members who file restricted

1 reports of sexual assault.

2 Whether -- if a victim who loses the
3 ability to make a restricted report because of a
4 third party has reported the assault, or because
5 he or she has inadvertently disclosed the assault
6 to command, should that person have the ability
7 to restrict further disclosure or investigation
8 of the incident?

9 Issue number three was, does the DoD
10 expedited transfer policy need to be modified to
11 clarify the approval standard and purpose of the
12 policy?

13 Four, should the expedited transfer
14 policy include intra-installation moves as well
15 as moves to other installations or locations?

16 Issue five is, should expedited
17 transfers be available to service members whose
18 civilian spouses or children are sexual assault
19 victims?

20 And finally issue number six, should
21 those active duty victims who require it, have
22 the option to attend a transitional care program

1 away from their units? Similar to wounded
2 warrior programs, to enable them to return to
3 full duty status.

4 In addition to those six issues
5 related, there was another issue that the Policy
6 Working Group wanted to explore as well. Which
7 is, should the Department of Defense and services
8 increase the amount and types of data they
9 collect on victims of sexual assault, who receive
10 expedited transfers, and alleged offenders who
11 are transferred to different locations?

12 So, to complete all that work the
13 Policy Working Group held, in addition to the
14 meetings that were held last year, the Policy
15 Working Group held a full day meeting in May of
16 this year, in which they heard from SAPRO Program
17 Managers from all the services, the SVC and VLC
18 Program Managers, Service SARCs and certain of
19 the Defense Organization Leaders for each of the
20 services, as well as the MCIOs.

21 So based on all of that information
22 that they got from this meeting and the previous

1 meetings, as well as the RFI responses previously
2 received from the services, the Policy Working
3 Group has been putting together findings and
4 recommendations on these issues. And expect to
5 present those to you in October, at the October
6 public meeting.

7 Any questions on those?

8 CHAIR BASHFORD: Great work. Thank
9 you for that.

10 MS. SAUNDERS: Thank you.

11 COLONEL WEIR: What we're going to
12 have next is the public hearing where people from
13 the public can speak that have notified us that
14 are going to be present.

15 We're going to have two people speak
16 here today. It's going to be filmed. I'm not
17 sure what side of this the photographer is going
18 to stand on.

19 But, if you don't want to be in the
20 video, once you figure that out, you can move to
21 the other side. You shouldn't see anything from
22 the first two rows back, so.

1 CHAIR BASHFORD: We can take a break.
2 (Whereupon, the above-entitled matter
3 went off the record at 3:03 p.m. and
4 resumed at 3:16 p.m.)

5 CHAIR BASHFORD: Okay. We had two
6 requests for public comment today. From Alyssa
7 Rodriguez and Kylisha Boyd. Welcome.

8 MR. GUILDS: Thank you.

9 MS. RODRIGUEZ: Thank you.

10 MR. GUILDS: Thank you very much for
11 having us. Good afternoon everyone. Just by way
12 of very brief introduction. My name is Ryan
13 Guilds. I'm an attorney at Arnold & Porter
14 across the river in Washington, D.C.

15 As a pro bono practice I supervise a
16 group of folks at our firm that represent
17 survivors both in the military setting and on the
18 civilian side. And had a great and unique
19 opportunity to meet the two women next to me here
20 today, who I think you'll really benefit from
21 hearing.

22 So, without further ado, unless you

1 have questions for me, I'll turn it over to
2 Alyssa. Great. Thank you.

3 MS. BOYD: Good afternoon. I am
4 Retired Staff Sergeant Alyssa Rodriguez. And I'm
5 here to tell you about my experience in the Air
6 Force.

7 When you see videos or commercials on
8 the computer, on the television screen, you see
9 military members, regardless of the branch,
10 working together as a team. Recruiters come to
11 your school during your junior year of high
12 school to tell you about all the benefits you
13 could receive if you join the military.

14 When the recruiters talked to me, one
15 of the benefits -- when recruiters talked to me,
16 one benefit stood out the most. The benefit that
17 appealed to me was the camaraderie.

18 The idea of family working together
19 for the ultimate goal. That is what I craved
20 most in my life.

21 The thought of joining the military
22 made me feel so anxious, but anxious in a good

1 way. I was excited to be challenged physically
2 and mentally, and experience things I would have
3 -- and experience things I never would have done
4 had I not joined the military.

5 I decided to join the Air Force
6 because I wanted to be part of something greater
7 than myself. While that may seem cliché, it's
8 the truth.

9 I wanted my family to look at me and
10 be proud that I, Alyssa Rodriguez, was willing to
11 make sacrifices that many others were unwilling
12 or unable to make.

13 I served in the Air Force for nine
14 years in the healthcare services field supporting
15 medical providers and technicians. I remember
16 the day in technical training when we were
17 assigned our very first duty station.

18 I was originally handed notice that I
19 would be going to Guam. I was so excited to go
20 overseas.

21 But a few hours later I was told that
22 my first duty station had changed to Keesler Air

1 Force Base, Mississippi, due to the manning
2 assistance needed in the wake of Hurricane
3 Katrina. I was told that I was one of the first
4 Airmen to get stationed there after the disaster
5 struck.

6 Even though I wasn't going overseas
7 anymore, I was still excited because I was going
8 to be a part of the reconstruction of the base.
9 More specifically, one of the biggest medical
10 centers in the Air Force.

11 I accepted every job title I received
12 while at Keesler with such pride. I became an
13 admin for the life support program. And received
14 a best practice award.

15 I also became a life support
16 instructor and thrived in the instructor
17 environment. And received Airmen of the Quarter
18 awards.

19 Eventually I was seen by leadership
20 and was offered the Noncommissioned Officer in
21 charge of a squadron. Meaning that I would be in
22 charge of the unit.

1 I absolutely loved my job and felt
2 ready for the new challenge and new environment.
3 I knew I wanted to make a career out of the Air
4 Force, and this position would assist me to do
5 great things and make an impact.

6 While working as a noncommissioned
7 officer in charge, I received orders to go to
8 Aviano Air Base in Italy. This was the most
9 exciting news to the point where I physically
10 fainted when I received the news while at work.

11 The idea of going overseas meant
12 meeting new people and forming bonds with peers.
13 And possibly finding new mentors.

14 I was also excited to see what the
15 hype was about being stationed overseas. My
16 peers constantly talked about the bonds formed,
17 morale, and the camaraderie that came with being
18 out of the country and spending time with the
19 people you worked with, because everyone ends up
20 feeling a little alone in an unfamiliar place.

21 While I got to Aviano, it wasn't
22 anything like what I had expected. Everyone was

1 doing their own thing. And the morale was so
2 low, people barely talked to one another.

3 I wanted to be the change we needed as
4 a team. I wanted to form new bonds with everyone
5 in the section.

6 Some seemed interested. And others I
7 felt just needed more time. Two months after I
8 arrived in July 2012, I was sexually assaulted by
9 a fellow Airman.

10 That day we had gone to the mall and
11 window shopped. I had gelato and had dinner at a
12 fast food restaurant. We talked about movies we
13 had seen. And ones we would like to eventually
14 watch.

15 After a day of what I thought was
16 building morale and forming friendships, I was
17 taken advantage of by people I thought I could
18 trust. I wasn't drunk. I wasn't leading anyone
19 on. I didn't ask for it or change my mind.

20 But someone thought it would be fun --
21 it would be a fun game to see who could have sex
22 with me first. And the idea of being turned

1 down to them, wasn't how they wanted to play the
2 game.

3 It wasn't a game. Nor was it fun to
4 me. In the military you have the option of
5 filing unrestricted or a restricted report after
6 a sexual assault.

7 Filing unrestricted means that the
8 details are shared throughout your chain of
9 command. While you file -- when you file a
10 restrict -- when you filed a restricted report,
11 you keep your privacy. But no criminal charges
12 will be brought forward.

13 After my assault, I chose to file a
14 restricted report. I originally filed a
15 restricted report because even after just a
16 little victim advocate training and computer-
17 based trainings about sexual assault, I knew that
18 filing an unrestricted report would mean that I
19 wouldn't have any privacy during one of the most
20 difficult times of my life.

21 It would mean that I would have to
22 remember things I otherwise wanted to forget.

1 And I would have to endure things no one should
2 have to.

3 Even though I had the intention to
4 eventually change my report to unrestricted, I
5 wanted at least a little time to brace myself for
6 the events that were about to come. Regardless
7 of that fact, I still had a rape kit done at the
8 hospital.

9 Despite everything that had already
10 happened to me, I chose to go to the hospital and
11 sit in a cold, bright room. I was tired,
12 uncomfortable, completely vulnerable and
13 traumatized.

14 I did eventually change my report to
15 unrestricted so that charges could be brought
16 forth. I decided to do so when an Airman in my
17 duty section told me that the same person who had
18 assaulted me had also touched her inappropriately
19 while at work.

20 She told me how uncomfortable it made
21 her feel. In that moment I knew that this person
22 didn't deserve any sort of sympathy.

1 And would continuously assault people
2 because he didn't see anything wrong with what he
3 was doing. He didn't have any remorse, or he
4 just didn't care because he knew there was no
5 consequences.

6 Changing my report too unrestricted
7 only complicated things. I didn't have a support
8 system because I was so new to the base, nor had
9 I made any real friends.

10 My attacker was in my unit, which
11 meant I would have to see him every day. Which
12 was unbearable.

13 Because of this I requested to move to
14 a different section in my unit so I wouldn't have
15 to see my assailant on a daily basis. Leadership
16 moved him to a different unit instead.

17 But now he was physically closer in
18 proximity to my office. He was now right next
19 door.

20 In addition, my supervisor was
21 extremely unsupportive after she learned what
22 happened. And continuously made derogatory

1 comments towards me.

2 For example, she told me, it happens
3 to all of us. Don't talk about it. And suck it
4 up.

5 She also felt it was in my best
6 interest to work harder. And piled more work on
7 top of what I already had to do, knowing I
8 couldn't really get my original responsibilities
9 done.

10 I felt alienated and alone. And
11 didn't know what I could do to make things
12 better. It wasn't until after I changed my
13 report to unrestricted that I learned about other
14 options.

15 Only after I changed my report did the
16 Sexual Assault Response Coordinator inform me of
17 the possibility of transferring to another base
18 closer to my support system. Something called an
19 expedited transfer request.

20 In fact, the SARC didn't inform me
21 until after she learned that my attacker was in
22 my unit. And he went to her officer to talk to

1 her about the case.

2 I wish I had known that this was an
3 option from the very first day. I felt
4 unsupported at Aviano and decided to take
5 advantage of the expedited transfer program.

6 My original expedited transfer request
7 to Langley Air Force Base was denied due to
8 manning issues. I was sent to Joint Base
9 Anacostia-Bolling instead, which was not equipped
10 with the medical and mental health support
11 systems I needed.

12 On top of that, leadership at my
13 incoming base did little to help me settle in or
14 find the support I needed. Looking back, I feel
15 certain I would have been able to remain on
16 active duty if I would have received the medical,
17 professional, and emotional support I most
18 desperately needed at the time.

19 There is one thing that I think would
20 have made a huge difference to me while I
21 struggled with this horrific experience, and that
22 is having the qualified SVC from the very

1 beginning.

2 I didn't get one until I was already
3 transferring duty stations. I was left to
4 navigate the system on my own without fully
5 understanding my options.

6 To make matters worse, my original SVC
7 was completely incompetent. And didn't seem to
8 understand anything that was going on.

9 I would not have proceeded with my
10 case if he remained my lawyer. I was lucky in
11 one small way however, and that is because I was
12 able to find a new SVC, I'm forever grateful for
13 the SVC that I ended up with.

14 Mirabell (phonetic) was understanding.
15 She fought for what I wanted. And explained the
16 process to me until I understood what was going
17 on, and what could have happ -- and what would
18 happen based on the decisions I made.

19 She gave me all of the options and
20 informed me how they would affect the case. That
21 was the first time during the process I felt
22 represented.

1 It is truly my belief that while
2 victims are now afforded an SVC, many SVCs aren't
3 able to advocate for their client's rights
4 without fearing that they will be reprimanded if
5 their advocacy doesn't align with the military's
6 perspective.

7 After changing my report to
8 unrestricted, I endured two Article 32s, I
9 testified in both. During the first Article 32 I
10 felt the questions I was asked by the
11 investigating officer aligned more with the
12 defense than as a neutral party or anyone who had
13 my interest at heart.

14 They felt invasive. And I didn't feel
15 like he could be an unbiased decision maker. For
16 example, he repeatedly asked me questions about
17 my underwear, if I had any on? And if I did,
18 what kind of underwear were they?

19 As I expected, after the first Article
20 32, the preliminary hearing officer recommended
21 not to move forward with my case. Thanks to the
22 dedication of my SVC however, the Secretary of

1 Defense ordered that a new Article 32, which
2 eventually resulted in the preliminary hearing
3 officer recommending trial.

4 In that second Article 32 I could feel
5 a difference in the way the officer conducted
6 himself. He respected me and saw me as a human
7 being.

8 During the investigation and leading
9 up to trial, I cooperated the entire time, with
10 full knowledge that I didn't necessarily have to.
11 But it was my choice.

12 I volunteered to sit down for multiple
13 interviews with the defense. I was required to
14 testify about my sexual history. I was asked
15 questions about a prior sexual assault.

16 I had to endure interviews with a
17 forensic analyst present who analyzed my mental
18 health stability. Who analyzed my mental
19 stability.

20 I had to testify about my mental
21 health so that the judge could decide that the
22 defendant should have access to my mental health

1 records. Regardless of the fact that I did not
2 want anyone to review my mental health records,
3 the judge ordered me to turn them over so that he
4 could review them in chambers.

5 Nothing was sacred. And I had no
6 privacy. Even during the trial. I felt like
7 there was still a bias toward the defendant.

8 Members of the jury were able to ask
9 questions. Their questions grilled me on my
10 inability to recall the precise number of seconds
11 the assault took place, whether I had received
12 sufficient awards and decorations, and why I
13 wanted an expedited transfer.

14 It made me feel that the program that
15 was designed to help victims of sexual assault
16 was being used against me.

17 I wish I had been better informed
18 throughout this entire process. If I had more
19 knowledge about my options and about how the
20 process worked legally, I would have been more
21 prepared for what was about to come.

22 Even though the Air Force offers some

1 victim advocate training, I was not prepared. I
2 had -- I would have been more comfortable had I
3 received access to a competent, trained legal
4 representative from the very first moment I filed
5 my report.

6 Having knowledge of the expedited
7 transfer program earlier in the process, and
8 having a competent SVC immediately after filing
9 my restricted report, would have made a
10 significant difference to me. And I'm sure it
11 would to others.

12 Thank you for your time.

13 CHAIR BASHFORD: Thank you very much
14 for your testimony before us Ms. Rodriguez. We
15 appreciate it.

16 Ms. Boyd, do you have a statement you
17 want to make?

18 MS. BOYD: Yes.

19 CHAIR BASHFORD: Go ahead.

20 MS. BOYD: Thank you. Can I -- hello,
21 my name is Kylisha Boyd. I was raped by a United
22 States Air Force active duty member in July 2016.

1 At the time I was half way through a
2 criminal justice administration degree. I had a
3 descent understanding of court process,
4 investigation, and prosecution.

5 I was a former DoD employee and
6 raising my 12 year old son, who had lost his
7 father a few years earlier. I had not been in a
8 relationship for a while, and was living at home
9 with my parents.

10 On the night of July 6, I went out
11 with some friends and my mother to celebrate her
12 60th birthday. I met the man who would rape me
13 at the bar.

14 I ordered two drinks that night. He
15 insisted -- he insisted on buying me a drink.
16 And I always maintain that he put something in
17 that drink.

18 I was not in the habit of approaching
19 strange men. He had approached me. I assessed
20 whether he was a danger risk and his relationship
21 status.

22 Since he told me he was in the

1 military and divorced with children, I felt he
2 would be safe, because he had a lot to lose.

3 I decided to go back to his hotel room
4 after everyone else left the party for a
5 consensual sexual encounter. Before we left the
6 bar, we discussed that he would stop if I said no
7 to anything. And that he would use a condom.

8 He wanted to tie me up. And I agreed.
9 Although later I would decide this was not a good
10 idea.

11 Looking back, these were major faults
12 I held against myself, and a source of
13 embarrassment in deciding whether to come
14 forward. I still regret the poor decisions I
15 made that night. And I feel I put myself in a
16 bad situation. But I also know it was not my
17 fault.

18 When he tied me up, I felt an intense
19 fear come over me. I immediately begged and
20 pleaded with him to untie me. But it was too
21 late.

22 He gagged me with a belt and rag,

1 which I had not agreed to. And refused to let me
2 go.

3 He then began trying to drug me. As
4 he raped me, I just wanted it to be over. I was
5 afraid I would die there in that room and no one
6 would know where I was or who did it.

7 When I woke up, I was able to escape
8 because he was asleep. I will never know what he
9 intended to do to me.

10 I consider myself lucky to be alive
11 and healthy. I have remained sober from drugs
12 and alcohol since that night.

13 What I also did not know, and what was
14 never disclosed to me, was that he was HIV
15 positive. I later learned that he was required
16 to tell me he was HIV positive, and supposed to
17 use a condom.

18 I was devastated and terrified when I
19 found out the next day from the forensic nurse
20 that my rapist was HIV positive. I had already
21 refused the preventative medications.

22 He took away my right to decide

1 whether I wanted to take that risk. I had to go
2 through a rigorous medication cycle and wait a
3 full year to be assured I was negative.

4 I never intended to report this. I
5 was extremely embarrassed and hurt. I could not
6 believe this happened to me.

7 Here I was -- here I was studying
8 criminal justice and had become a victim. And I
9 knew if I reported I would have to disclose my
10 drug use and could end my career and end up in
11 prison.

12 When I finally reported, the officer
13 stressed the importance of preventing this from
14 happening to someone else. I hadn't thought
15 about that aspect.

16 This was the deciding factor for me.
17 I could not live with myself knowing he could do
18 this to someone else because I didn't tell.

19 I had to write a statement right there
20 in the parking lot in my car. I knew the
21 importance of including all the details, but I
22 honestly was still in shock.

1 I got the main information that he
2 tied -- he tried to drug me, rape me, wouldn't
3 let me go, and strangled me. However, this
4 statement dwarfed in comparison to what he did
5 and lacked details describing the entire
6 incident.

7 The next officer I spoke with
8 witnessed incoming text messages from the man who
9 raped me. During this interview I disclosed what
10 I could remember.

11 However, the case was quickly
12 transferred to the military. I did not know I
13 had the right to express a choice of
14 jurisdiction. And I did not know enough about
15 the military justice system to make an informed
16 decision.

17 The evidence in my case was very
18 compelling, including pills he tried to drug me
19 with, the chair with the belt still tied to the
20 leg, which I escaped from, the belt he choked me
21 with, HIV medication, and text messages sent to
22 me from my rapist while I was in the process of

1 filling out the police report stating, I just
2 remember not untying you as soon as you wanted to
3 go.

4 The only text messages retrieved by
5 investigators were from my own phone. Which I
6 got back over one year later.

7 I still cannot understand why they did
8 not obtain this evidence from his phone. I
9 really did not want to hand over my phone.

10 There were other people's private
11 information I would be handing over. I initially
12 refused to turn it over.

13 I went home and started to delete
14 other messages to protect the privacy of my
15 friends. I later decided to turn it over.

16 The defense made a huge point about
17 this when the prosecution could have obtained the
18 same information from his device instead of mine,
19 the victim.

20 At the time of the assault, I was
21 civilian. And thus did not have a right to an
22 appointed lawyer.

1 I was told by the military prosecutor
2 during my forensic interview that I had a right
3 to a lawyer. But that getting a lawyer
4 complicates the process.

5 And having one would likely cause bias
6 with some judges and juries. In my case this
7 definitely turned out to be true.

8 I initially agreed to proceed without
9 legal counsel. After realizing I was giving up
10 my right to privacy and not being wholly informed
11 on case progress, I found a civilian lawyer.

12 I did not receive a resource list of
13 available legal assistance. I found the lawyer
14 on my own just a few weeks before trial was
15 scheduled to begin.

16 The defense was aggressively seeking
17 my counseling and medical records. My lawyer was
18 able to prevent them from being compelled.

19 At the trial, my lawyer was not
20 formally acknowledged to the court. He was not
21 allowed to object and was prevented from full
22 participation in the trial.

1 I had questions for my lawyer during
2 cross examination. I asked procedural questions,
3 not about my testimony, during the break.

4 When this was raised by the defense
5 counsel, the judge directly questioned me on the
6 stand about what communication I had with my
7 legal counsel, despite my lawyer's objections.

8 I was completely ill prepared for this
9 trial, which took place at Wright-Patterson Air
10 Force Base. And was decided by Judge Omley.

11 I met with the prosecution one time
12 prior to the day before trial. On several
13 occasions I had answered questions from different
14 investigators.

15 These were specific questions I had
16 answered that were not discussed previously.
17 This resulted in emphasis being placed on certain
18 details, or details being missed, depending on
19 the focus of each individual investigator.

20 During trial, this was construed as me
21 changing what I reported. I never changed any
22 statements. I simply gave more detail when

1 prompted.

2 My statements were consistent. And
3 the additional details were supplemental and not
4 substantively different.

5 My character and the consistency of my
6 statements were attacked without rehabilitation
7 from prosecution, from the prosecution.

8 The process of memory recall and
9 trauma was not addressed properly by the
10 prosecution.

11 There were paid experts present for
12 the prosecution who could have testified about
13 why a trauma victim might not recall all events
14 in a normal fashion. However, they were never
15 utilized at trial for testimony.

16 By the time the prosecution realized
17 they should use the experts they had retained to
18 explain this, the judge would not allow it. It
19 was too late.

20 I can still remember the sinking
21 feeling sitting there knowing all the things the
22 prosecution should have anticipated and did not

1 prepare for.

2 It cannot be ignored that I was
3 impaired at the time of the assault. I was fully
4 aware that this information would be used against
5 me.

6 I decided to tell the truth. The
7 whole truth to stop this guy from doing this to
8 someone else.

9 I was completely honest to the point
10 of placing myself in jeopardy of my own
11 prosecution. Yet I still went forward with the
12 case, prior to any mention of immunity.

13 Being a criminal justice student at
14 the time of the assault, I felt a sense of duty
15 to see this through, even if it meant I was
16 prosecuted or cast in a negative light. The
17 prosecution had an opportunity to highlight this,
18 but remained silent.

19 I never lied to any investigator or
20 official about anything. I repeated the same
21 description over and over because it was the
22 truth.

1 Closing arguments was the most
2 difficult part of the trial. I sat and listened
3 while the defense called me a liar, drug addict
4 who had no respect for the justice process.

5 The accused was made out to be a
6 victim of someone who was cunning and knew what
7 to say. Those words cut deep and I hoped the
8 judge -- I hoped the judge understood that I had
9 no motive to willingly place my freedom and
10 career in jeopardy to accuse a complete stranger.

11 I hoped he would consider what I had
12 to lose in coming forward. Bu when the defense
13 attorney argued that this case was brought
14 because of political correctness and pressure,
15 and I saw the judge nodding along, I knew all
16 hope was lost.

17 As the verdict was being read, my
18 knees buckled when I heard the words. Not guilty
19 on all charges.

20 I could not understand the judge's
21 reasoning. I felt confused, embarrassed,
22 disappointed, and angry.

1 I requested transcripts of the case to
2 try and understand what happened. I was told
3 there would be no transcripts created because he
4 was found not guilty.

5 The lack of transcripts and acquittals
6 coupled with the lack of written or verbal
7 opinion of a judge's reasoning for findings,
8 makes this a very closed and suspect process.

9 It is my hope that this Committee will
10 look at my case and others to identify what steps
11 can lead to a better representation of justice.
12 And thank you for your time.

13 CHAIR BASHFORD: Ms. Boyd, thank you
14 for sharing your experience with us. I want to
15 again, thank you Ms. Rodriguez and Mr. Guilds.

16 MR. GUILDS: Guilds.

17 CHAIR BASHFORD: Thank you for the
18 work that you do as well.

19 MR. GUILDS: Thank you. Appreciate
20 the time today.

21 MS. RODRIGUEZ: Thank you.

22 CHAIR BASHFORD: Major King?

1 MAJOR KING: Yea ma'am. At this time,
2 the public meeting of the DAC-IPAD is officially
3 closed.

4 (Whereupon, the above-entitled matter
5 went off the record at 3:43 p.m.)

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In the matter of: DAC-IPAD Public Meeting

Before: US DOD

Date: 07-20-18

Place: Arlington, VA

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Court Reporter

NEAL R. GROSS

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