UNITED STATES DEPARTMENT OF DEFENSE

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

PUBLIC MEETING

FRIDAY, JULY 20, 2018

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.

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

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

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

The DAC-IPAD was created by the Secretary of Defense in accordance with the NDAA for fiscal year 2015, as amended. Our mandate is to advise the Secretary of Defense on the
investigation, prosecution, and defense of allegations of sexual assault and other sexual misconduct involving members of the Armed Forces.

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

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

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

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

This task ties together several issues of importance for this Committee. First, the
Committee has reviewed the findings and recommendations of the Judicial Proceedings Panel concerning the need for improvement in the sexual assault case data collection. Second, the DAC-IPAD has collected, and continues to review, court-martial case documents from 2012 to the present from each of the Military Services.

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

Article 140a provides a vehicle for understanding the effect of those changes and for obtaining valuable information about sexual assault cases prosecuted by the military. This Board's members, as practitioners and experts in the field of civilian and military criminal justice, are well-positioned to advise the Secretary regarding the sexual assault case.
information that should be available under Article 140a and how best to obtain this information.

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

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

It is very important to the members of this Committee that we offer each of the Military Services here an opportunity to voice their perspectives before we finalize our recommendations to the Secretary of Defense.
For the first section of today's meeting, we have invited representatives of each of the Services to join us for this express purpose.

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

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

MR. McCLEARY: Good morning, Madam
Chair, members of the Panel. My name is Steve McCleary. I work with the Coast Guard's Office of Military Justice. I am the senior military justice counsel. I am also the Coast Guard's service representative to the Committee.

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

MS. MANSFIELD: I'm Janet Mansfield. I'm the Chief of the Programs Branch for the Army Criminal Law Division, office of the Judge Advocate General. In that capacity, I'm the primary legal advisor to the Army SHARP Program. I'm a DSAID legal officer, and I am an administrative Army-wide user of the two databases, ACMIS, the Army Court-Martial Information System, and MJO, Military Justice Online, for use for answering external or internal RFIs.
LCDR PIETRZYK: Good morning. I'm Lieutenant Commander Jeff Pietrzyk. I'm the Deputy Director of Code 20, Military Justice Policy, Office of the Judge Advocate General. I am a former prosecutor and defense counsel as well.

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

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

CHAIR BASHFORD: Thank you all for
appearing. The Committee is aware that this is still under deliberation by the Secretary of Defense, so there are some questions you may feel you are not able to answer. We hope, though, that you will be able to tell us what sort of impacts certain changes might have on your Services.

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

CHIEF McKinley: I'll start first.

Article 140a does not require the use of an electronic database. It just says to implement the same standards and criteria for military justice across all of the services. What would the impact be on your Service if Article 140a required an electronic database for collecting and analyzing case information?

Chair Bashford: Do you want to go first?

Major Shew: Sure. So, Chief, I think the question is, you know, what impact would it have? It really depends on what the uniform
standards are. The Services, as far as I can
tell, collect similar information, but we have
slightly different ways in which we record that
information based on each Service's military
justice practice.

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

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

So an additional database would be an
additional workload for us. So if there is not
an additional benefit to that database for the Services, you know, I would ask you to take that into consideration.

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

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

LCDR PIETRZYK: The Marine Corps and the Navy share a system. We both use what is called CMS, the Case Management System, for our rudimentary case processing right now. If what
you would propose is an upgrade to that system, then, you know, the effect on our Services would be the cost to transfer the data, technical upgrades, the cost of manpower, and how to transfer the data, if not reenter the data completely.

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

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

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

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

Chief Master Sergeant in the Air
Force, you are familiar -- probably Major General
Anderson is familiar with the DIMHRS effort that
in the 1990s, by the Services, you have one
system just for human resources. Just for human
resources.

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

Two billion dollars later, they
abandoned the initiative and now they go with
individual district systems. So our systems
reflect not just our military justice exercise in
our particular Services, but also the human
resources, the structure of our Services, the way
the convening authorities work. So the Services
are idiosyncratic of ways the Services are
organized around their particular command structure.

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

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

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

And not -- I'm not just asking you --
I'm asking everybody -- so that, I mean, do we have a sense of how we could do that, if there was one system? Is there a way to be able to collect those documents, understanding that there are personnel documents such as Article 15s or separation actions?

MR. HARTSELL: Yes. That's --

DR. MARKOWITZ: Right. Yes.

MR. HARTSELL: -- always our lawyer answer.

DR. MARKOWITZ: Right.

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

So in that respect, there is an inefficiency that exists there. But one of the great limiting factors, aside from the fact that there is decades of data that is already in the
individual Services' systems, one of the great limiting factors is there are only so many fields that one can put on so many forms to capture the necessary data points that are necessary, not just for data collection but for case management.

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

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

So if there was a document-based
system, it couldn't solely be documents. There's
got to be other avenues by which you can input
data and provide information. There is an
insatiable appetite for data from Congress and
from outside organizations and through FOIAs.

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

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

So it does become problematic
technologically in ensuring that you have the
flexibility to adapt to those new needs and set
up something else.

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

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

But at least from my perspective I
think a document-based system doesn't accomplish everything that we need. And so in some -- in order to manage our cases and measure what is going on, and so a document-based system would probably end up in a situation where we would have two.

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

CHAIR BASHFORD: Anybody else?

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

And then you would need a DoD requirement that all Services use the exact same forms for every court-martial form, because currently we have a lot of DD forms that are
standard throughout the Services, but then some
of the different things, how we -- you know,
records of trial, things like that, we do
different from Service to Service. So it would
have to be directed that we all use the exact
same form for different steps of the court-
martial for the purpose of publishing some sort
of outward-facing system that the public could
look at the documents that we're using in court-
martial.

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

DR. MARKOWITZ: And do you have in
your Service an alternate source to be able to
get that information rather than the documents
themselves?

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

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

    MS. MANSFIELD:  So for the Army, data
is entered by individuals into both our databases
that allows us to run checks and answer RFIs and
all that. And the documents are then uploaded into the system for verification or for when we're asked for, you know, don't just tell us what you did; let's see what you did.

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

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

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

MR. HARTSELL: Ma'am, as the team and I were looking at, we have to be careful so we don't breach the 140a discussions. But I would anticipate that this Committee would be very pleased with the recommendations that were made amongst the Services. The Services spent
considerable time doing just that, and attempting
to create a reconciliation amongst the Services,
which is one of the great things, as I mentioned,
of 140a, it was that necessary nudge that forced
the Services to do that.

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

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

MS. MANSFIELD: So for the Army your
staff does it for us, which we're incredibly
grateful for, because we have a lot of cases.
And this is an individual pull, right? We aren't
just giving you the whole record of trial.
You're asking for four, five, six selected
documents out of each case. Some of that is
paper. Some of that is electronic.

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

CHAIR BASHFORD: Any other comments?

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

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

MAJOR SHEW: Well, I think to the DAC-
IPAD it's a little bit easier. We have an
agreement for data-sharing to other groups. I
think we have some concerns with Privacy Act
issues. We don't want to reveal certain
information that's protected. But --
MS. GENTILE LONG: From a staffing and
-- I think we're looking from a staffing and
funding issue.

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

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

And we get all of that information at
Judge Advocate Division in the Military Justice
Branch, and then try to put that together into a
OneNote workbook for your staff, so they can then
see the documents that were provided.
That usually takes us in total probably about, I'd say, a month, month and a half, to get all of that information for you.

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

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

MS. GENTILE LONG: Before proceeding, I just -- I wanted to clarify, Major Shew, is it
eight to 24 hours for the total pull or per piece?

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

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

MAJOR SHEW: Yes, ma'am.

MS. GENTILE LONG: Okay.

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

(Laughter.)

LCDR PIETRZYK: That's -- we can
certainly get that for you and don't require
anything further to do that.

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

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

That will ordinarily, a normal request
from you for the completed records of trial, I
won't say that an individual works on it nonstop,
because ordinarily what they'll do is identify
all the cases and then try to track them, and
then await the information back. But we're in a healthy battle rhythm right now because of the RSP and JPP and now the DAC-IPAD, that we'll do it, and maybe per data pull it's going -- per request it's probably going to be about maybe I guess 20 to 25 hours FTE, full-time employee, to collect the records, gather them, and put them all together and make sure they're what you want, and then get them to you. But that's a real lag.

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

So, for example, we get a similar request from the Senate, right, where we have to redact all of the documents because personal
staff are going to see them. And that process for just one installation takes months because of the redaction requirements and the Privacy Act checks by the Privacy Act lawyers.

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

MS. MANSFIELD: We generally don't have problems answering the requests, either from the media or from Congress or internal requests from senior leaders. What happens is what everyone has described is when a new issue bubbles up, and then we get asked by the media -- the most recent example would be the victim's preference for civilian or military prosecution, the statutory requirement.
And there is no requirement to track it, but we then got asked, how many people have asked for it, how many -- so it's when a new issue comes up that we don't have the ability to just hit a button and say, here you go. So that's part I think of the standardization across the Services. We're never going to be able to predict the future of what people will ask for next, but we can certainly predict what has been asked for, what is required by statute, what are typical data points collected in other systems.

CHAIR BASHFORD: Anybody else?

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

But it really depends upon what the request is. Many times we will get a request from, say, a researcher or a member of the media who is doing an expose or writing an article, and they want a dive into data. So we actually have
to figure out, okay, how exhaustive is this data
drive to actually do this inquiry and put
together all of this data and then provide it to
them, so they can do their own calculations.

That can take a while, and sometimes
it does require some programmatic SQL requests
actually put into the system, pull the data out
of the systems, and give it to the requester.

That's one kind of data request.

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

So especially if it comes from the
record of trial, we have to redact out. It takes
considerable time to pull information out from
the record of trial. So say we get a request
from a member of the media who says, I'd like to
know about all of the drug cases at a particular
base during this particular timeframe. I want all of their records of trial.

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

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

So it really kind of depends upon what the exact request is. But it's part of our standard process. We have a full-time person who does nothing but these types of requests and
trying to sort through them. We received several
hundred requests last year.

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

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

But military justice is an interest
item these days, and there are time limits
attached to all of these. So we have to turn
them -- try to turn them very quickly.

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

MS. MANSFIELD: Correct.

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

MS. MANSFIELD: Yes.

DEAN HARRISON: That's confusing.

MS. MANSFIELD: That's the Privacy Act.

(Laughter.)

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

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

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

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

DEAN HARRISON: I mean, is this under some general counsel advice, or, I mean, is -- I'm not sure that came to be.
MS. MANSFIELD: It's statutory.

DEAN HARRISON: All right. Well --

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

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

The second question I have has to do with data collection under 140a. If the Secretary of Defense decided that in order to implement this statute -- and I'm excluding all historical requests, all archival requests coming from this Committee or elsewhere, just looking forward, if the Secretary of Defense said, I want to implement -- I being the Secretary of Defense -- a uniform data collection system, an electronic system, and have all five services
enter the same data collection points going
forward -- and this can be on top of what you're
already doing or replace what you're already
doing, is there any one of the five services that
would be unable to comply with that request from
the Secretary of Defense?

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

(Laughter.)

MS. MANSFIELD: You do what SECDEF
tells you.

(Laughter.)

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

As a matter of fact, the National
Center for State Courts has currently
acknowledged that, and their recommendation is
common standards or at least the -- what they
have said is the states are moving in the
direction of common standards, but not single
monolithic systems, as a result of all of the
differences between counties, states, and various
jurisdictions.

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

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

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

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

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

So it's a very limited system in what you can do in terms of trying to pull data. It's a tremendous system in terms of being able to access pleadings. So, really, what PACER is, it's your -- it's your openness, it's your
transparency system, which allows you to
demonstrate to the public that you have a
specific system where the public can see what is going on in the court system. But it's not a
data analysis system.

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

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

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

So that's one thing about PACER, right? PACER has the wonderful advantage of
being -- as part of an Article III court, right?
Because the Privacy Act doesn't apply. So it's
the user who is required to redact sensitive
information.

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

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

But back to your initial question,
which is what we use, so we will provide the
docket information, we will provide what the outcome of the case is, and as requests come in, we will provide information, but we will redact it of course. That's what we currently provide.

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

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

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

DEAN HARRISON: Thank you.

JUDGE BRISBOIS: How often are your redactions really challenged in court filings,
and what imposition does that impose on your resources?

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

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

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

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

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

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

So that would have an impact I think on all of us. If we were going to move to that
kind of a system, we would need people to
basically -- or wherever that resided would
require staffing in order to make it happen.
And then NIBRS tends to capture data
at kind of the -- the way I would frame it, the
beat cop level. It's like law enforcement
information related to police interactions. It
has some data that it tracks into the prosecution
process, but it is more oriented towards law
enforcement, not so much prosecution.

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

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

JUDGE BRISBOIS: I just want to
doubleback on Mr. Harrison's comment about a
centralized system. You know, PACER, just to clarify things, I mean, PACER is an overlay access. A centralized system seems -- you know, the public does not have access to the entirety of CM/ECF, but the courts do. And the courts, through the AO, can run statistical analysis on all the CM/ECF. And so that would be similar to what you do in responding to FOIA requests, et cetera.

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

So it all has, over time, come to a centralized data point, common uniform practices, and into a centralized system. So it takes time. It takes effort. But it does function and it does work and it allows the research aspects and the pulling of information.
PACER creates some problems for you for public access, you know, because of the Privacy Act, but it doesn't defeat the functionality of CM/ECF that Mr. Harrison was asking you about.

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

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

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

That being so, clearly, the court administrators have greater access than the public. But in terms of the public being able to
do data pulls on their own, that is, yes, absolutely a limitation.

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

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

JUDGE BRISBOIS: Just one last point.

MR. HARTSELL: Yes, sir.

JUDGE BRISBOIS: I think the -- you know, the legislation behind Article 140a is sort of establish the policy towards which everybody is expected to move. And so right now most of the items that -- in the discussion that I have been hearing and reading about are problems with implementation.
But you said, give us an order, and we'll move forward. Don't we really have that order, and don't we have to find a way to comply with that? I mean, we're looking for the best way -- nothing is perfect, but we're looking for the best way to do that.

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

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

So we -- they are absolutely embracing the idea of whether it's an order or not, the
idea of 140a and establishing common standards
and criteria to move forward to make the systems
more transparent.

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

MR. HARTSELL: Yes, sir.

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

MR. HARTSELL: Yes, sir.

JUDGE BRISBOIS: It will, won't it?

MR. HARTSELL: Yes, sir.

MR. McCLEARY: If there's one thing I
could add just about PACER and CM/ECF, I may have
mentioned this the last time -- I may have
mentioned this the last time that I was here.
We, the Coast Guard, had approached the
administrative office of the courts about the
potential use of CM/ECF and were told by the
administrative officer, at least in part based on
their experience applying CM/ECF to the court of
appeals for veteran claims, that they would not
make it available, either to us or to the
Department of Defense; that it would take legislation before they would be willing to do that. So that kind of -- we stopped exploring that.

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

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

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

LCDR PIETRZYK: For the Navy, yes.

MR. HARTSELL: We would have to go to law enforcement. We do have a field where we
monitor whether alcohol was involved, but we do not identify whether or not it was the victim or the accused that was using alcohol.

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

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

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

MS. PETERS: Yes, ma'am.

CHIEF McKINLEY: Can I ask one?

CHAIR BASHFORD: Of course.

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

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

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

For NCIC, that is a biometrically based database. It's for fingerprints that law enforcement people take when you are a probable cause or arrest, and those get submitted to the other separate database. So that although the military justice plays a role in that we tell the law enforcement when we have a qualifying conviction, and we have sort of redundancies in
place to make sure we're capturing all of the
data that is reported directly to law
enforcement, to the FBI databases.

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

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

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

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

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

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

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

One is we're currently working with contractors, so that our AMJAMS system pushes those gates, those triggers, to I2MS, which is
our MCIO -- our AFOSI, the investigator, it
pushes that data automatically to them. So our
contractors are working on establishing that
portal.

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

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

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

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

(Laughter.)

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

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

And whether it's, you know, a
requirement that you can line through the charge
sheet, initial it, and that's sufficient to
withdraw the case, other offices have a letter
that is signifying that you can withdraw these
charges, things like that.

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

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

So part of the question would be, how
far do you want to track these cases within the
military justice process? Those documents aren't
just limited to what is contained within the code
or the UCMJ, but there is other administrative
remedies that may result. And if they're
collecting those documents, I think you're looking for a very -- they need a lot of staff and a lot of funding to track all those documents they collect.

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

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

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

MS. MANSFIELD: I would agree. So
referred cases, you know, we have about 600 a year of GCMs or specials. So probably we're giving you about a third of those cases that have an adult sexual assault charge somewhere in there. But preferred would be beyond -- that would be very difficult for us to do, because of the dispersion.

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

MS. MANSFIELD: Right. So for referred cases, we would -- the judges would be
entering that data and we'd have it. For preferred, it would be in MJO. But until it's closed, we wouldn't know it existed. Or I suppose you would put out -- it could be done, obviously, and then we could just tell everybody when you prefer charges you have to send a copy to us.

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

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

MS. CARSON: Yes.

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

(Laughter.)

MS. MANSFIELD: You know, we do our
cases, so --

MS. CARSON: Would that be --

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

So I think staff understands that those are probably I think some of the concerns you are alluding to with cases that fall short of trial after preferral, and is there anything else in terms of the scale of producing procedural case documents from a start point in the military justice system? I think we're just asking the rest of the Services to finish the comments started on this end of the table.
MR. HARTSELL: I remember as a Staff Judge Advocate when I would ask my young attorneys, oh, can you do X? It's only going to be five minutes, and it becomes death by a thousand cuts at a certain point in time, you only have so many minutes in a day. At a certain point in time, you exhaust your minutes in a day.

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

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

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

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

And we're trying to resolve this
issue, and we've got this body who can help
advise us on that. So I would -- I would hate to
see the direction kind of pointed different
directions. It's kind of like having first round
draft pick quarterbacks, and you ask the
quarterback to punt and to kick. We've got the
skill sets to do other stuff, so, yeah, we can do
that, but I'm not sure ultimately the value added
to the Services in terms of what we're trying to
accomplish with adult sexual assault and trying
to address that.

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

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

MR. HARTSELL: I think I can answer
around it. That might help. But the Joint
Service Committee has the authority to create subcommittees and working groups. And they created a subcommittee, and the Department of Defense, the General Counsel, gave that subcommittee a charge to study specifically 140a.

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

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

Now I am being careful going across -- I think it would be very productive if there were
hundreds of common points of agreement, data
points of agreement, amongst the Services. And
without saying much else, I think the Committee
would be pleased with the recommendations that
were made, allowing experts to do great data
dives into information with commonalities amongst
the Services sooner rather than later. Without
relying upon an information technology
acquisition, that may take five to 10 years to
yield any fruit.

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

And the second would be, once that is
established -- and I don't know if you can answer
this a well -- did the subcommittee look at how
that could be implemented electronically through
some sort of a database system that everybody
would agree on? And was there exploration into
looking at that IT aspect of now taking this
information and be able to go to a keyboard and
get that information at your fingertips?

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

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

(Laughter.)

MR. MARKEY: -- with that information.

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

CHAIR BASHFORD: Any last question

before we --

MS. GALLAGHER: With regards to your
command disposition documents, is there some
reason you could not attach your alternate
dispositions to the command disposition document
to preserve them? You were talking about how
difficult it was to track.

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

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

MS. MANSFIELD: So right now, that's a
law enforcement document that is just data-
populated without document-based. So the Army
is, by the end of December, going to have those
two databases -- law enforcement and the military
justice database -- talking to each other, and
prepopulating that form based on the documents
that would exist in the military justice. So I
don't know if the actual document is going to
transfer, but it will be -- the document will
exist at least in the military justice database
that prepopulates the data that then goes to --
and then goes to the FBI after that.
MS. GALLAGHER: So you will at least have the data but not necessarily the actual alternate disposition?

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

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

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

MS. GALLAGHER: And the rest of the Services?

MR. HARTSELL: On the Air Force side,
I have to take a look at that. Again, that's a form that is being coordinated through our investigative processes, so I'd have to look and make sure -- figure out how we could capture that.

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

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

Temporarily, I think it is consistent with our SORN, and I think we're okay in terms of sharing the documents with you. So I would have that limitation with respect to the question that Ms. Peters asked. But I will check on the
disposition documents for you, and I'll get back
to the staff.

MS. GALLAGHER: Thank you.

MR. HARTSELL: Okay.

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

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

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

MS. GALLAGHER: Right.

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

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

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

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

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

MAJOR SHEW: So, similarly, in the Marine Corps, we don't have a command disposition form. You know, like if there is an NJP, you guys have our paperwork. That will record it, but it's also non-judicial punishment.
That's maintained in the command files, and a copy in the Service member's personnel files. But we don't have a centralized database that can pull all of those documents from to show the alternate disposition or what was once a preferred charge.

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

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

For other types of cases, such as underage drinking, we do not have a command disposition form for that.
MS. MANSFIELD: But that would be maintained in the law enforcement databases because we're required by statute to report to DIBRS that reports to NIBRS. So every CRC reportable offense has an outcome, essentially, which might be unfounded.

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

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

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

Whereupon, the above-entitled matter
went off the record at 10:21 a.m. and resumed at 10:35 a.m.)

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

MS. PETERS: Okay. Yes, ma'am.

Members, good morning. I am here to facilitate your deliberations today on the implementation of Article 140a, Uniform Code of Military Justice.

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

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

So, to start, what is Article 140a?

It is a new article of the UCMJ that was
recommended by the Military Justice Review Group and it was passed as part of the FY17 NDAA.

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

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

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

It's to do the following: it's to collect data on military justice activities in
order to facilitate case management, to enhance
military justice decision-making. As broad a
term as that seems, that could encompass a lot of
different things.

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

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

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

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

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

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

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

CHIEF McKinley: Thank you. I'll give
a quick overview. Our committee heard from
military and civilian witnesses at its April 20,
2018 public meeting.

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

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

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

MS. PETERS: So, the first two issues
on this list, what offenses does the Committee
want to speak to and what functions under that
list of four things 140a addresses does the Committee want to address today?

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

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

Today, think about only how sexual assault offenses or cases involving those offenses should be handled in terms of data collection or other functions. You recommendations would only extend so far as sex assault cases.
Two, your recommendations, in part or in whole, could extend to all UCMJ offenses.

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

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

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

The pros and cons listed in your Guide around that really are considering only sexual assault cases. And I shouldn't say only, but
that is the Committee's charter, in effect, and
that is what it has decided to focus on, adult
victim sexual assault offenses, in its own study
of issues to comment on to the Secretary of
Defense.

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

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

And the third option, the
consideration from the Policy Working Group was
that sexual assault is the subject of this
Committee's focus, but it occurs in a variety of
contexts that are complex.
So, a lot of fact patterns can give rise to a sexual assault, but a prosecution may not involve a sexual assault on the charge sheet, necessarily.

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

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

So, just think about -- and these are again, this is just food for thought at this point. How you want to think about the scope of your own recommendations and how that influences,
I guess, how broad or how narrow you scope the
data or other facets of 140a.

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

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

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

We've spent a lot of time talking
about those things, but maybe not so much how the
military produces records of trial. So, I think
the second scope issue is, what types of
recommendations do you want to make?

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

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

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

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

And so, it doesn't derive -- since the
Commission received documents, it doesn't receive information, statistics from AO. So, there's an issue there around, does the Committee want to talk about data collection, data collection and case management?

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

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

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

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

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

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

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

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

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

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

However, those issues -- all of these issues in 140a do relate to one another and can depend on one another. So, that's just sort of food for thought, I think, on how you approach this, what offenses are we talking about and what
types of functions do you want to address in your recommendations?

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

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

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

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

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

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

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

So, again, if that's a good proportion
of all the cases, 140a would, to include all preferred cases for all offenses would obviously be much larger, but in the realm of sexual assault, that is just sort of your ballpark.

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

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

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

And so, the Committee could say that that is when we believe a case should begin, for purposes of data collection. This is also the, I think the option that the Policy Working Group recommends.
By way of the numbers, I think the
DAC-IPAD has received responses from the
investigators to show that in FY17 alone, the
number of penetrative sex assault cases closed in
FY17, and that is the metric we requested, is
roughly 2,000 cases, cases closed in a given
year.

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

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

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

This approach also would take into
account a way to document, in some form, taking
into consideration what you heard this morning,
all of the disciplinary and legal actions
potentially that could result from an
investigation of sexual assault, short of
prosecution.

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

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

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

And some of it was to better align

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

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

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

We'd also say that -- I think, Dr. Spohn, this is something that the JPP had noted
in your work, I think helped flesh this out --
the procedural case documents, like the charge
sheet, the Article 32, and the results at trial,
are very important for understanding case
outcomes.

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

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

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

But the Policy Working Group felt that
there are several issues of priority, of
importance, that can come from the investigative
stage of the case.

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

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

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

So, that is what the Policy Working
Group came up with. So, I think the launching
point for the discussion is, how does the
Committee feel about saying that a case, for purposes of 140a, begins when a report of sexual assault is made to law enforcement?

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

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

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

CHAIR BASHFORD: But that's possible?

MS. PETERS: Yes, ma'am.

CHAIR BASHFORD: Okay.

MS. GENTILE LONG: I mean, from my point of view, I think you have to start at law enforcement, or else you're really missing a whole piece of the picture.
And some of the frustrations from the civilian world have been from the disconnect between what is the universe of cases reported versus what we say? And so, I just feel like it has to start there, or else you don't know what you have.

MS. PETERS: Okay.

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

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

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

So, I think that's the gold standard
that we need to look at.

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

    CHAIR BASHFORD: I think she said --
    DR. MARKOWITZ: Oh, I'm sorry, I may
have been out of the room. I apologize.

    MR. MARKEY: Yes, she did.
    CHAIR BASHFORD: At initiation.
    DR. MARKOWITZ: Oh, I apologize, sorry.
    CHAIR BASHFORD: It was a little buried
in there, though.

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

And so, the vast majority of the cases
never get to that point. And I think it's really
important to understand why that is. And I think our review of cases over the last several months, the no-action cases, has pointed us in a couple of different directions.

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

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

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

And I -- so, having an understanding that this actually will help both sides
understand, communicate and maybe understand the
impact of practice, one practice on another, is
another important piece of it.

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

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

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

It also -- you can have expedited
transfers occurring, that aren't going to be
tracked if you don't start there and the cases
aren't preferred.
But there's a lot of important impacts
that are occurring to individual liberties and
rights that will be lost.

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

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

JUDGE BRISBOIS: Well, to just restate
briefly kind of the theme we've been hearing for
a year and a half. We've got five different
investigative recordkeeping systems. We've got
five different judicial recordkeeping systems,

And so, now, if we're going to
recommend that a centralized uniform system, but
it only applies to Article 121 offense, now we've
got ten more individuals -- a third set of
systems on top of what they're already doing.

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

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

Because now, everybody's using the same form, same terminology, same system, same platform, and starting at the same point. So, if we recommend something other than that, we're just adding fuel to the resource management hodge-podge fire.
DR. SPOHN: What about a sort of compromise position, where -- and I think this was one of the options, that it only apply to felony type offenses, as opposed to underage drinking or conduct unbecoming to an officer, those military-specific offenses?

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

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

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

I'm in complete concurrence with the Working Group that data collection for sexual assaults should occur at inception of the charge, but I don't know whether we should opine, as opposed to other people opine, on how far out that should extend.
DR. MARKOWITZ: I guess I'm also not clear on the amount of work that it would be to actually ask for data collection for all UCMJ offenses at the point of investigation, whether that's actually a greater burden, or if it's a greater burden to separate out only sexual assaults.

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

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

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

DR. MARKOWITZ: Well, yes, but --

JUDGE BRISBOIS: -- and the question is --

DR. MARKOWITZ: -- I'm just saying,
like, which is the greater burden? I'm not clear
that what you are saying is actually a lesser
burden on the Services.

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

And I think until you answer that
threshold question --

DR. MARKOWITZ: Sure.

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

DR. MARKOWITZ: Right, and I think --

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

DR. MARKOWITZ: Sure. I -- sure.

MS. PETERS: Putting -- the order of

the issues, ordering is difficult, because you

have this, what do we talk about?

What types of offenses and what types

of functions under 140a do those -- are we saying

we want to talk about sexual assault with regards

to case management and data collection?

For, I guess, a hypothetical for the

Committee's concern, if data collection were

viewed as a separate function from managing

courts-martial, if it happened like the

Sentencing Commission does, and you only wanted

to talk about sexual assault cases, in your

recommendations, are you -- would it be helpful

to view this as, this recommendation is part of a

view that the system is backward looking, it's

looking at closed cases and saying, 140a is going

to collect data on all offenses, we're going to

recommend how to do that.

But as far as the what to collect
goes, looking backwards at completed cases involving sexual assault, we wanted to start at the investigative phase.

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

So, we address it in how we collect it, in what I call best practices, in Issue 6.

So, identify an ideal up-front and then, address the resourcing and the time concerns and the logistical concerns, in the best practices section, so that that is factored into your recommendations.

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

And I'm finished, but I was hoping that that brought together a couple different thoughts about how to think about this aspect of
the recommendations.

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

MS. PETERS: Yes.

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

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

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

MS. CANNON: I agree with those
comments, as well as the Chair's comments. By
doing the work we've been doing, it seems like
that would be important everywhere.

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

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

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

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

MS. PETERS: Right.

JUDGE BRISBOIS: -- bullet-pointed the
statute. 140a is a directive to look at the entire DoD investigative and criminal justice courts-martial system, not just Article 121. Did I -- am I missing something?

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

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

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

MS. PETERS: Yes.

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

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

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

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

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

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

There are a host of practices that are done for sexual assault cases that are not done for the other cases or less -- things that are
not high visibility in their, I guess, operating
environment.

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

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

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

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

JUDGE WALTON: Well, I mean, the
outcome of all cases is going to be affected by
the quality of the investigation. So, I don't
think it makes sense to make a distinction
between you start for one type of case as
compared to another.

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

MS. PETERS: Nothing.

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

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

JUDGE WALTON: Right.

MS. PETERS: -- the rest of the Uniform

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

MS. PETERS: Yes.

MS. GENTILE LONG: Just making sure
that when we're saying sexual assault, you mean
all felonies and misdemeanors, right? You're not --

MS. PETERS: That is the next question.

MS. GENTILE LONG: Okay.

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

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

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

And I don't mean -- I'm not speaking to that all of them are Article 15, I'm saying,
relative to penetrative offenses, many more of
them are handled outside of a court-martial.
They may not be contemplated for prosecution.

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

CHAIR BASHFORD: I say all.

MS. GENTILE LONG: All.

MS. PETERS: All? Okay.

DR. MARKOWITZ: I agree with all.

DR. SPOHN: Agree.

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

CHAIR BASHFORD: Do we know what that
universe is?
MS. PETERS: No, I don't have a sense of the scope beyond what we've received in RFIs from the Services.

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

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

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

MS. PETERS: It does --

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

MS. PETERS: So, for 2015, the number of cases that we received involving a penetrative offense, accused charged with a penetrative offense, 556 cases preferred across all the Services. Charged with a sexual contact offense, 225 cases charged across all the Services.
MS. GENTILE LONG: I think the universe that we're talking about here is so small, it's manageable. I mean, 2,000 cases may seem like a lot, but in the universe of the world and in large jurisdictions, it's not that big.

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

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

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

MS. PETERS: Yes, ma'am.

CHAIR BASHFORD: Is that what that
number was?

MS. PETERS: Yes.

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

MS. PETERS: Correct.

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

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

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

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

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

MS. PETERS: Yes.

CHAIR BASHFORD: -- we just don't have that --
MS. PETERS: Right.

CHAIR BASHFORD: -- data evidence.

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

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

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

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

So, it's very complicated and I don't
think even DoD's efforts have provided a lot of clarity around those -- that information.

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

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

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

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

The other option is to have all
offenses under the UCMJ that require a report to law enforcement and that are investigated by an MCIO be a part of our recommendation, that we're not going to be specific to sexual assault, we're going to say, all offenses should be treated the same.

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

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

MS. PETERS: Okay.

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

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

So, I think there's a third, where we can say, we support the broader concepts of a
centralized uniform system, but our specific recommendations, because of our specific charges, are going to be limited to Article 121.

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

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

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

So that recommending one thing about data collection doesn't preclude the Committee
from making certain affirmative statements, that aren't necessarily a recommendation, they could be, but we could potentially work on phrasing in the letter that addresses these other concerns.

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

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

MS. PETERS: Okay.

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

Beyond that, within our stovepipe of Article 121, then we can make the recommendations however we end up coming out on it. Where does the data start collecting, where does it end, what types of things are important? And then,
that can be informative to anybody else who wants
to comment.

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

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

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

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

I just think, before we -- we have to
make a preliminary recommendation as to whether
we're recommending an additional system across
five separate branches that's directed just at
Article 121 or if our detailed recommendations
are assuming a centralized system that replaces
the current decentralized process?
So, I mean, that is necessary to put our detailed recommendations into proper context. Otherwise, someone's going to read whatever they want to read into it.

MS. PETERS: Okay.

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

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

CHAIR BASHFORD: Would the scope --

MS. PETERS: -- advisable?

CHAIR BASHFORD: Would scope be the one we should look at? Are we only going to be making recommendations about sexual assault or are we going to be making recommendations about -
- because that sort of -- that was the first
thing on the -- that was the first point. What
is the --

MS. PETERS: Yes.

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

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

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

So, Madam Chair, would you like a vote
or a further discussion on whether this really --
to decide, are we just talking about data
collection? Are we talking about data collection
and case management?

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

MS. PETERS: Okay.

CHAIR BASHFORD: We kind of went to --

MS. PETERS: Right to when --

CHAIR BASHFORD: -- when does --

MS. PETERS: -- does a case begin?

CHAIR BASHFORD: -- case begin?

MS. PETERS: Okay.

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

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

Being able to weigh in on how people
can access this information, how it can be used, that felt like a good use of our energy, our resources, along with the other components as well. So, I think, for us, that was our conversation yesterday.

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

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

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

So, that was the best avenue that we could go with a recommendation is how this would play out with sexual assault, and that's why we
said it should begin at the MCIO initiation there.

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

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

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

That's as far as that needs to go. I don't -- if that's what we want to do. And then, now, we can say, given our legislative charge, this is how we see Article 121 fitting into that
sort of platform. And so, I think that's what
we've been talking about.

                DR. MARKOWITZ: Yes.

                CHIEF McKINLEY: Yes, sir. Option

three is --

                JUDGE BRISBOIS: Yes.

                CHIEF McKINLEY: -- definitely the
direction that we recommend.

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

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

                And it sounds like, if I'm
understanding your point, you've just simply
moved that piece to the forefront --
JUDGE BRISBOIS: Yes, I mean --

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

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

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

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

So, what would that look like in a logistical implementation process, of the folks that are on the front, having to do that? So, what would that look like?
And so, I don't think we would want to
dump every UCMJ investigation to begin with from
the get-go. And I'm almost thinking of, like, a
beta test or a phasing in of this type of
collection of offenses.

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

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

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

I think if we did look at the wide
scope and say, yes, I think we need to collect
everything, which I do, but I think at this
point, the scope of our Committee would be beyond.

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

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

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

MS. PETERS: I don't have that
information for you, but I can speak to a little bit about what the discussion that the members had. And please, correct me if I'm wrong or add on to this.

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

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

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

They have PACER, an overlay for public access. And then, they have the -- I guess, AO funnels data, I think to the Federal Judiciary Center for research and analysis and aggregation.
And the Sentencing Commission is yet another system that collects aggregate data and generates reports and aggregate data, so that they -- and they specifically, Mr. Schmitt went into a lot of detail about how and why they separate their data collection and analysis function from the processing of a case in federal court.

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

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

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

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

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

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

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

MS. PETERS: Yes.

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

MS. PETERS: Okay.

JUDGE BRISBOIS: -- look through your hard paper files. I mean, it --
MS. PETERS: Right.

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

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

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

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

I just want the information coming in
to be accessible and --

    MS. CANNON: Uniform.

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

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

    MS. PETERS: Correct. So --

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

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

    We would elicit information about
that, consider it, and that that would be part of
the work of the Committee in the future, going
forward.

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

MS. PETERS: Yes. I think --

CHAIR BASHFORD: Can you be more --

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

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

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

MS. CANNON: When you're saying a data
system, are you saying one uniform data system
across five Services or are you saying everybody implements this data in whatever system, but make it accessible in a central way?

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

MS. CANNON: Okay.

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

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

And so, there is a lot of reasons to say, one data system is simple, it's efficient, and it gives you that Service-wide view, that DoD-wide view that is lacking.
MS. CANNON: And at this point, the recommendation or the thoughts of this Policy Group is that that be focused on sexual, the 121 cases that we're charged with, with thoughts that you might want to look into making this in other areas as well?

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

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

CHAIR BASHFORD: And how detailed does the Working Group think our recommendation should be? Like we think you should collect data from this point? Are we saying what data should be collected, how it should be collected, documents
or inputting -- do we get that specific on a recommendation?

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

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

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

CHAIR BASHFORD: So, I'm -- excuse me,
because I'm just slow today. So, that would be
each Service inputting the same data into their
own system or are we envisioning that plus an
overarching system that the data gets --

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

CHAIR BASHFORD: Right.

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

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

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

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

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

MS. CANNON: Yes, that clarifies something.

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

So, if I'm -- I'm trying to understand, you're saying a centralized uniform data collection system, but you're going to leave the five decentralized case management systems in
place. That's what you're recommending?

    CHIEF MCKINLEY: Yes.

    JUDGE BRISBOIS: Yes.

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

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

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

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

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

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

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

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

But this Committee seems to be very focused on what you can do with the data around
these sex assault cases to understand important issues.

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

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

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

So, by relying on a document-based system and a centralized entry point, I think we tried to get around the tension between case
management and data collection.

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

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

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

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

MS. PETERS: So --

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

MS. PETERS: No, the --

CHAIR BASHFORD: -- talking out loud.

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

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

So, yes, they would have to kind of standardize how the MCIOs summarize the initial
complaint and where their investigation led. And then, standardize the form on which the commander's action is captured.

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

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

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

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

And things like -- there are certainly
nuanced facts that would require a more in-depth reading of every case file and that might have to be obtained in a different way.

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

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

MS. PETERS: Yes, ma'am.

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

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

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

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

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

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

And maybe that's down the road, the implementation of, can we just extract or dump
this data into this, as efficient as we can, 
without using additional resources to do hand-entry, data entry on it. 

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

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

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

    So, you can make recommendations, I 
guess, irrespective of resources and everything 
else, and maybe that's effective in saying, this 
is what you should do, and it's not on the
Committee to figure out how the resources or whatever is obtained to do it.

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

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

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

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

CHAIR BASHFORD: So, that's just -- it's two different systems. One is, you've got input at every installation and shove it up electronically. Or the other is, you send the
core documents to someplace and somebody enters it, right?

MS. PETERS: Yes.

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

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

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

MR. MARKEY: Well, and I would just say, I think we definitely need to be cognizant of the recommendations we make and whether we're asking for something that, in reality, would not be feasible in any way, shape, or form.
But at the same time, I think we need to look at, what would be the gold standard of the best implementation or the best recommendation for these particular points that we're trying to establish.

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

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

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

MS. PETERS: Right.

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

CHIEF MCKINLEY: If you looked at the best thing, the best thing would be to have each Service go to one system and basically, transition from the system that they're using,
like Air Force AMJAMS, that they've been using
that since like 1975 or so, into one system, one
documentation, and everything else.

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

MR. MARKEY: Agreed.

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

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

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

MS. PETERS: Yes.

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

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

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

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

CHIEF MCKINLEY: Yes, this is what we've been using, as an example. And they can
take from it, they can add to it, but this is
what we've been using.

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

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

CHIEF MCKINLEY: Yes.

CHAIR BASHFORD: Yes.

DEAN HARRISON: -- recommendation to
the Secretary --

CHAIR BASHFORD: Yes.

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

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

CHIEF MCKINLEY: Yes, ma'am.

DEAN HARRISON: Yes.

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

MS. PETERS: Yes.

DR. SPOHN: -- are those -- those
essentialy encapsulate what the Working Group is recommending, with respect to process?

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

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

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

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

C, develop one electronic database for
the storage and analysis of data and source documents.

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

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

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

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

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

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

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

And, lastly, was to clarify that issue of what functions the Committee is addressing, let's say the Military Services may, I think your
documents says should, but I think the preferred language is, the Military Services may retain their own respective systems for case management in the field, provided they are all using the same standards and definitions to refer to common procedures and substantive offenses under the UCMJ.

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

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

MS. PETERS: Okay, as a future goal.

And uniform system of --

MS. CANNON: A uniform --

MS. PETERS: -- case management?

MS. CANNON: -- case management system, because it's true, this is all very cumbersome and difficult, but if that were the reason not to do something, we wouldn't be doing half the things we do anymore. It makes the future easier, even though getting there is hard.
MS. PETERS: I think, Major General Anderson will be joining us in the afternoon. She had provided a lot of commentary to our group and to the Committee about how even in the federal system, there are local modifications that facilitate the way a judge wants to run his courtroom.

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

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

MS. GENTILE LONG: I don't know if this is an appropriate question, but the testimony
from the Air Force, though, about the -- because
I don't know IT, that that's -- those have been
failed historically, is that -- not that his
testimony is inaccurate, but is there a different
view of that --

MS. PETERS: Of which systems?

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

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

(Laughter.)

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

CHIEF MCKINLEY: Ma'am, having spent 31
years in the Air Force, I can tell you,
experience of many new IT systems that came in
that were complete failures and a tremendous loss of money.

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

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

JUDGE BRISBOIS: I mean, it --

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

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

And so, it is doable. The State of Minnesota had 87 separately funded -- it was one
state district court system, but all funded and
operated at the 87 county-level, in the 90s and
early 80s.

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

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

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

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

MS. PETERS: So, Madam Chair, the
issues, we have identified seven and it seems
like the approach is to touch on each issue, have
some discussion, and revisit for a more -- once
we've had, I guess, a discussion around all
aspects of the recommendation.

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

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

MS. PETERS: Okay.

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

MS. PETERS: Okay.

CHAIR BASHFORD: -- have at it.

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

And the other is, should 140a function
to sort of monitor federal statutory reporting
requirements or other federal statutory
requirements that are now embedded in the system?

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

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

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

So, the issue is, if that was one of
the rationales for 140a, but it's maybe not explicit in a reading of the statute, but it could fit in, is there a particular issue, a particular statute, that you want to focus on?

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

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

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

So, does it make sense to include these elements, without listing them all out
explicitly, but make reference to these statutes
in the Committee's recommendation to the
Secretary of Defense?

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

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

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

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

And then, the difficulty lies in
pulling data that shows that they've been doing something or that they haven't. So, could 140a be the answer there? That was the big question.

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

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

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

So, those were the concerns, however, it -- the sense of the Working Group was, we should mention as examples, find ways to monitor these things mentioned by the Military Justice Review Group, like the Brady Handgun Act, in your system, because it's part of your profession and there's a value to consolidating that data.
CHAIR BASHFORD: I don't remember, when we heard from the Sentencing Commission person, do they grab -- I mean, they're subject to the same Brady Handguns, sex offenders, do they play any part, were they a part of the redundancy for notifications? I don't remember it coming up at all?

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

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

MS. PETERS: -- that data.

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

MS. PETERS: Yes.

CHAIR BASHFORD: Or on top of them?

But I'm not -- I don't think the people in the
Sentencing Commission are doing that.

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

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

JUDGE WALTON: No.

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

JUDGE WALTON: No, they do not.

DR. SPOHN: And this would be a database that would be six to 12 months behind the conclusion of the case. And so, it seems like these items are more case management than data collection issues. I mean --

MS. PETERS: Absolutely, there is a --

DR. SPOHN: -- particularly the victim --

MS. PETERS: -- there is definite --

DR. SPOHN: -- notification things. I mean --

MS. PETERS: Yes. So, there -- yes,
the time lag is an issue. I think one of the
other underlying concerns, just food for thought,
was also, one of the other justifications was
helping facilitate responding to ad hoc queries.

So, the more 140a contains, even
around administrative requirements, maybe the
easier it is, the less burdensome it is on the
Services, to find out whether someone was
notified of their right to receive the record of
trial and did, in fact, receive it, under one of
the articles of the UCMJ. If that was built in
and somebody had a question about that, you'd be
able to find out.

So, easier to think about in theory
than maybe implement in practice. But that was
one of the underlying concerns.

But it sounds like the -- without a
specific, really without a specific impetus, that
it might be beyond the scope of the purpose for
which you see the data collection function of
140a existing. It's sort of beyond it.

CHAIR BASHFORD: It would seem to me
that, although redundancy is good, the more
diffuse you make responsibility, it seems to me
the more likely things will fall through the
cracks.

MS. PETERS: Okay.

DEAN HARRISON: I don't think that we
were anticipating that the data collection of
140a, for example, would be responsible for doing
any notification regarding sexual offender
registry or handgun control issues. It would
just be a checkpoint that this had been done by
somebody else.

CHAIR BASHFORD: So, some document
saying, the sex offender reporting was done,
click, this was done, click?

DEAN HARRISON: Exactly.

MS. PETERS: Right.

DEAN HARRISON: In those cases that
require it. So, basically, 140a would collect,
at least with regard to sexual assault cases, and
maybe other cases in the UCMJ as well, all data
points from report to a law enforcement agency to
the end of process, whether that end of the
process is unfounded report, administrative
processing for discharge, or a criminal
conviction with a sentenced confinement and
release from confinement. Is that about right?

MS. PETERS: Yes --

DEAN HARRISON: Okay.

MS. PETERS: -- it was. So, what that
does effectively, though, is say, there may be --
there's requirements that are sort of very
germane to the process, like when a conviction is
obtained, that triggers requirements. And 140a
is the check.

But I think practically speaking, it
would not extend to whether sex offender
registration occurred so many years down the
line, upon release from confinement to whatever
jurisdiction.

So, there was a limit. So, we also
found difficulty in even identifying a specific
statute that extends, practically speaking,
across a greater length of time and
functionality.

But at a minimum, what does a conviction trigger, in terms of requirements?
Would 140a -- would everybody benefit if they could come to a 140a system and to this well-kept data, this good quality data that has a document behind it, so it's verified, and say, yes, this happened, these are the names you have of people who have to register and they're in the system.

It is another check. It's also awareness for the Services. Not to say that that's not -- it clearly is already going on.
So, that's the other consideration.

But, obviously, the ability to understand compliance with these statutes was the thought process for the statute too. So, where to draw the line, was I think what the Policy Group wrestled with.

CHAIR BASHFORD: How is it tracked now?

MS. PETERS: I'm sorry?

CHAIR BASHFORD: How is it tracked now?

That somebody is going to be subject to sexual
offender registration?

MS. PETERS: I think, the information the staff has to provide, is essentially what Ms. Mansfield testified to this morning, along the lines of, there is a form that encapsulates the results of the trial, the conviction, the offense of conviction.

And that has to go to the right law enforcement entities and then, get reported into the federal databases, essentially. So, it's not -- right now, a Judge Advocate doesn't necessarily follow through, but there are systems where the -- at the Service level, they're aware of those events and they transmit them, largely, usually to a law enforcement body, who transmits that information to the feds or whomever.

But it leaves the Judge Advocate's hands after the conviction. They check the box, sex offender is required.

CHAIR BASHFORD: I mean, no -- at the local level, we do those. I don't know that we've ever reported back that, yes, the person's
been registered. It's --

MS. PETERS: Right. And I don't know
that it -- we don't have the information to know, in that level of detail, what the Services do and how they account for all of that.

I think, you heard a little bit about that this morning. We didn't send an RFI for policies and practices, so I don't have that well developed for you.

DEAN HARRISON: And not all military convicts are held by the military.

MS. PETERS: Right.

DEAN HARRISON: They're sent out to civilian prisons as well.

DR. MARKOWITZ: And I think we were also thinking about Lautenberg and some of the other issues, too, not just the sex offender registry. So, some of the other things that may have a more immediate consequence.

MR. MARKEY: Can I -- are you envisioning this sexual assault module on 140a, I guess, collecting certain data fields and data
points, are you envisioning that these would be part of that, or the bigger 140a, this would be somewhere in 140a that would be captured?

Or are you thinking, that's something we want capture when we start looking at the data fields, the metrics that we're collecting for sexual assault?

DR. MARKOWITZ: I think, our conversations have always been specific to sexual assault. And then, whoever is looking at this from the broader picture can decide whether or not they also want to apply this to other offenses.

MR. MARKEY: But this -- you're considering that this would be in the sexual assault, I'll just call them module for lack of a better term? This would be data that would be dumped or transitioned to this sexual assault collection --

DR. MARKOWITZ: I think that's --

MR. MARKEY: -- entity?

DR. MARKOWITZ: I mean, I think that's
what we've --

CHIEF MCKINLEY: Yes.

DR. MARKOWITZ: -- talked -- I mean,

our --

CHIEF MCKINLEY: Yes.

MR. MARKEY: Okay.

DR. MARKOWITZ: -- conversations related to all these different things, for the most part, except where we've talked about should it be for sexual assault or for other things? But related to these very specific issues, have really been related to sexual assault.

MR. MARKEY: Okay.

DR. MARKOWITZ: With the understanding that somebody may decide, oh, it's a really good idea, and broaden the lens beyond sexual offenses. But, yes, we've been specific to the sexual offenses.

CHIEF MCKINLEY: If you look at the 72 that we've included in here, this would be in addition to that, just --

MR. MARKEY: Okay.
CHIEF MCKINLEY: -- more information.

MR. MARKEY: Okay.

JUDGE WALTON: I mean, in regards to the sexual assault registration, I mean, as I understand, there's no entity that collects that information that would then keep track of that and see whether someone is in fact registering.

While they're under supervision, the probation department, obviously, would monitor that. But once they're off of supervision, it then becomes their obligation to report.

If they don't report and it's found out, then they're prosecuted. But I don't think there's any overarching entity that is monitoring them during the course of their period when they're on supervision, which can be long after they're off supervised release.

DR. MARKOWITZ: I think it's, again, I think it's been -- I think we were considering it as sort of a quality checkpoint, was the paperwork completed? Was that part of the process post-trial completed?
Not necessarily to then follow up and follow them over the long-term, just those immediate steps post-trial, were they done, to be able to assess the consistency, the follow-through, and to be able to query that information, I think, to look at how consistently things were happening, to make sure there wasn't any kind of procedural challenges related to things falling through the cracks on a regular basis.

Because I agree, I think that what you're saying is absolutely true, that would be an enormous task that would be pretty improbable.

CHIEF MCKINLEY: And we looked at, along with when a case ends, were all these steps accomplished? And then, put that into the data system.

MR. MARKEY: And I'll go back to Chair Bashford's question, how is sex offender registration being captured now, that you'd be able to use that as a data field, to populate, yes, it was done? Is that in the files? Is that
part of the court record? Is that part of the
judicial decisions?

MS. PETERS: Well, to clarify, I think
where the thinking started was, the trigger is
the offense of conviction. And that would be
something 140a would be recording.

And that -- because you have at least
that information, regardless of the
administrative steps triggered beyond that, at
least 140a would be the source for that
information.

I think that was the idea, because
that's organic to the military justice process
already.

As you get further afield from that, I
think the Working Group is drawing a line and
saying, no, we don't in fact think we can follow
somebody through to release from corrections. I
think that was definitely a decision on the, when
does the case end?

We're not necessarily -- we don't
think that has enough value or practicality to it
to say that that's when a case ends for 140a,
even if you, in theory, wanted to track all these
requirements.

So, it was very limited. And so, I
think where you come down is, there was a desire
to assist with understanding compliance with
these things that the public and Congress and
people are constantly asking about.

At the same time, it may not have as
much value for the Service -- or for the people
who aren't performing the function, like you
said, and it's very, very difficult to monitor
across organizations.

So, I think the idea was, this kind of
-- these statutes were contemplated when 140a was
drafted, is there a way to help people out with
understanding whether they've complied to the
extent they can?

It seems that every time we get
further down into the weeds on how you implement
these statutes -- again, without knowing from the
Services what they're already doing. We haven't
brought you extensive information about what
they're already doing in their systems.

    So, that was one consideration. But
this is an important potential aspect of 140a
that we didn't want to leave off the table
either.

    DR. MARKOWITZ: And is it worth
referencing the article behind Tab 5, just as
sort of an example of --

    MS. PETERS: Yes.

    DR. MARKOWITZ: -- why we were
considering this in the first place? This is
part of why we took this on in the Policy Work
Group, because of articles like this that were
generated related to crime reporting from the
Services.

    And so, that was why this issue came
in front of us in the first place, just to give
context to how this conversation started for us.

    MS. PETERS: Right. How can we ease
the difficulty it seems --

    DR. MARKOWITZ: Right.
MS. PETERS: -- people have with obtaining this information? Five and six, those tabs deal with the reporting of a conviction of domestic violence to the FBI for purposes of prohibiting a handgun purchase.

And number six deals with child on child sex assault on military bases, over which DoD does not have jurisdiction, and Department of Justice typically does not take a juvenile case.

And when this was investigated by the media, their first issue was, we can't even get a sense of the scope of the number of cases from DoD in which this is happening. So, we were trying to say, how many -- in what ways can 140a ameliorate that issue?

CHAIR BASHFORD: If we are -- if I heard you right, the suggested, when does a case end, would be, when the appellate process is complete --

MS. PETERS: Yes.

CHAIR BASHFORD: -- and not when somebody is released from jail?
MS. PETERS: Correct.

CHAIR BASHFORD: But the release from jail is what triggers the SORA hearing.

MS. PETERS: Yes.

CHAIR BASHFORD: So, if you're not -- if you've already said the case is -- I'm not quite sure how those two things come together. It seems like we would need a little bit more information, to me.

MS. PETERS: No, absolutely. I think we needed to -- I think the Policy Group felt it was important to walk through these issues, why are they in the background, the justification for the statute?

What can we do to address these issues that keep coming up? We have the opportunity to create a military justice database with a lot of information that could be useful. So, that's --

CHAIR BASHFORD: I think it's time for our buffet lunch.

(Laughter.)

CHAIR BASHFORD: But before we break
for lunch, I just really want to thank the
Working Group and the staff for putting this
together and doing all of this work and bringing
it to us this morning. And then, for another
round in the afternoon. Thank you.

(Whereupon, the above-entitled matter
went off the record at 12:28 p.m. and resumed at
1:31 p.m.)

CHAIR BASHFORD: Just sort of like a
recap of our discussion so far.

BGEN SCHWENK: Now you're back.

CHAIR BASHFORD: We know the Services
have their own data. Just processing systems and
data systems.

And they've invested money in them and
time in them. And they seem to be happy with
them.

But I don't want us to lose sight of
the fact that we know, not just from the
sentencing commission, but we know from the DAC-
IPAD and the JPP that we can in fact have a
robust document-based, across all five Services
database, because we have it.

And our database, we'll continue to add to it. And if the Services are doing the same documents up the way that we have it, we know it works. It's worked well.

It can be housed in DoD. We're not going to house it. And eventually we'll sunset out. But DoD can handle it.

And I just -- well, what I heard missing from here this morning is that there seemed to be a lot of, it will never work. Or it will have to be really developed. Or a big long term.

If we were doing a big global thing maybe. But we know our system works. So, I think wanted to stress that.

And there maybe, my sense definitely was this morning that whatever any other group under subject to the USMJ, however they decide to do 140a, our recommendation, based on the recommendation of the Policy Working Group, should be that for sexual assault cases, we start
at the initiation of the investigation.

How the documents get up there, there
was some talk this morning when the service
members were speaking that maybe it's as simple
as a cc line on an email.

Maybe it's different. I don't know.

But it's how the documents get there can be dealt
with.

But we know it works. And we know we
can integrate the documents across all five
systems.

The only difficulty we've had is that
definitions are different. And some of the
documents are different.

If there is coming up, agreement on
all that, I think we'll have a much easier time
comparing the Army to the Navy or to the Marines
or whatever. It should work very well.

So, just I want to commend the JPP and
our staff for putting together. And I'm not a
data person. I'm not on the data group.

But what seems to be a real amazing
robust system where people from the Hill contact
our staff to get information. People from the
Services sometimes contact our staff to get
information.

So we know it's workable. I think it
-- I don't see why it wouldn't be scalable beyond
sexual assault cases to other types of cases.

We know it works for the Sentencing
Commission. Which clearly has a higher volume
then this would have.

So I think it's definitely doable.

It's definitely doable. And I again, want to
commend our Working Group.

I did not realize you were meeting
monthly. That's a heavy lift for doing a great
job on a very narrow time table.

Over to you Meghan.

MS. PETERS: Well, the Committee had
left off discussing some of those best practices.
So that we had hit the highlights there.

I think before delving into any more
specifics along any one issue, the Policy Working
Group had set up Issue Seven on the last page of the outline to say, irrespective of everything else, is there a particular issue around sexual assault cases that should drive the form or the substance of 140a?

Is it to make sure that the Services and DoD are looking at something they may not otherwise be looking at. Like the issues listed here.

    Expedited transfer requests from the victim or expedited transfer requests that result in the transfer of the accused. Issues like collateral misconduct whereby a victim in the course of the events that give rise to a sexual assault, how those are handled.

    Studying that in a 140a system, case processing time lines might maybe go without saying. And the other issue was studying mil -- studying crimes committed on military bases by civilians to the extent that Judge Advocates handle those cases in the sense they hand them off to the States or the federal entities
hopefully.

You know, hopefully there's a handoff there. So, and that's another issue that's come up in the press.

I think that really relates back to your issue of the AP story saying, crimes committed by juveniles on bases are sometimes lost in the transfer between jurisdictions.

So, without getting into the weeds on any one issue, we also said other items. Other issues that the rest of the committee members feel strongly about that's not on this list, or that you would maybe add or change to the existing -- the existing items on this list. And this isn't meant to be comprehensive.

You can end up with one of these or none of these. It is up to you all for discussion.

I know that offender and victim demographics isn't on this list per se, but it's come up in discussion.

And we left off things that I think
are already intuitive in a data and analysis process such as conviction and acquittal rates from the point of preferral/referral. Those kinds of things we kind of left off.

And we were thinking of things that go on around the system that might otherwise not be accounted for. Because this is that opportunity.

CHAIR BASHFORD: But I would -- and where we're capturing it where we can on our data. But I think victim declination.

MS. PETERS: Okay.

CHAIR BASHFORD: Would be a good data point to capture since it seems to lead directly into a lot of the no action cases.

MS. PETERS: Okay. And that's something that can occur at any point --

CHAIR BASHFORD: Um-hum.

MS. PETERS: After --

CHAIR BASHFORD: Of course.

Restricted reports going too unrestricted. If we can get a sense of the numbers of those. It would be useful.
MS. PETERS: Okay.

CHAIR BASHFORD: I don't want to be doing all the talking. And just again, was it the Working Group's thought that in our recommendation we would share -- in our recommendation to the Secretary of Defense we would share the data points we are currently collecting?

CHIEF MCKINLEY: Yes.

CHAIR BASHFORD: Not necessarily saying you have to collect all of these. But it would be useful for them to see.

DR. MARKOWITZ: Yes.

MS. CANNON: You know, we haven't looked at what happens in the adjudications in terms of content that might have some pattern that would enlighten us about acquittal rates, conviction rates and such.

So, I just say this off the top of my head based on a little bit of knowledge. And that is, the issue of experts.

MS. PETERS: Um-hum.
MS. CANNON: There's been a continuing concern that experts are more readily accessible to the prosecution and not the defense. But the defense has to go through the prosecution and then through the court.

So, I -- that would be a variable that I would find interesting in terms of the effect, if any.

MS. PETERS: Um-hum.

MS. CANNON: So, whether experts were used and by which sides they were used in a courts martial or other adjudication.

MS. PETERS: And is that for sexual assault cases specifically? Or any case?

MS. CANNON: Well --

MS. PETERS: We are speaking of sexual assault, so that would be.

MS. CANNON: I feel that I'm coming from this sexual assault committee.

MS. PETERS: Um-hum.

MS. CANNON: And -- but it might be something worthwhile if there generally an issue
about it. But certainly from our standpoint.

MS. PETERS: Okay. And that would include requests in --

MS. CANNON: Yes.

MS. PETERS: In approvals and denials.

MS. CANNON: Yes. That's a good point. Yes.

MS. PETERS: The DoD will at some point respond to the JPP recommendation that expert funding be housed in the service defense organizations and that defense investigators be appointed.

Those things are pending. But I think around the discussion of what the committee looks at in the future, separate and apart from 140a, you could always specifically request -- we'll ask for a timetable on that response.

And ask is something in the works along those lines. You would still want this data. So this is a separate issue.

MS. CANNON: Yeah, so --

MS. PETERS: But, you could
potentially get more feedback from DoD over if
you plan to do about defense resources in
response to the JPP's recommendations.

While you all are -- if you don't have
any other ideas, if -- and we can --

CHAIR BASHFORD: Well, that sounds
harsh.

(Laughter)

CHAIR BASHFORD: Sorry though.

MS. PETERS: No, I mean, I could talk
while you think.

(Laughter)

MS. PETERS: One of the issues that
came up, that was actually -- there is not a
consensus around civilians committing misdemeanor
and felony crimes on military bases.

In particular, sex crimes. There
wasn't a consensus around that necessarily. No,
I think several people said that sounds good.

But the other idea was that this isn't
a crime over which the military has jurisdiction.
It's just something that JAGs handle in their
function as temporary Special Assistant U.S. 
Attorneys.

And there's been concern and media
attention around how well the transfer is
happening to the Federal systems or to the State
systems. And if cases are getting lost in the
process.

And again, bringing out data from the
investigative files for cases that are closed, or
prosecutors' files, has been proven difficult.

So --

DEAN HARRISON: Excuse me.

MS. PETERS: The Staff said, would
this be a place to record that information?

DEAN HARRISON: Could you explain the
issue a bit more? Because I was not aware of it
until we talked about it yesterday.

Could you explain it to the Committee
a bit then?

MS. PETERS: The issue is explained in
part in Tab Six. With that child on child sex
assault cases languish on U.S. bases.
It's that juveniles -- Civilians, whether they're DoD family members, civilian contractors, and juveniles as parts of families are on the base. And they are the offenders against somebody on the military installation.

For the most part, we're talking about a place of Federal jurisdiction. Not the military's jurisdiction, but it's on the military's footprint.

What typically happens is, there's a report made to the law enforcement. They should connect with Federal law enforcement, or State depending.

And hand off the investigation or hand off the prosecution of the case. But it just -- there's a decision point there that the receiving jurisdiction take it or not. Take the investigation or take the case.

There's a concern that those cases either are not handed off or that in the hand off they are dropped. Because they're no one's priority because it's on a military base.
It's really in a different place.
It's a different kind of offense or occurrence.
And there's different interests around those cases.

DEAN HARRISON: Right.

MS. PETERS: So the issue is, are they falling off everybody's radar screen because no one's tracking how often this is happening?
And if the hand off was successful, what was the end result of the investigation or prosecution?

DEAN HARRISON: So in the case of a Federal exclusive -- enclave, --

MS. PETERS: Right.

DEAN HARRISON: The victim could be a military dependent or military member. The suspect is a civilian. The U.S. Attorney would have jurisdiction.

But the U.S. Attorney has designated a JAG officer as a Special Assistant U.S. Attorney.

MS. PETERS: Um-hum.

DEAN HARRISON: But the case goes
nowhere essentially.

MS. PETERS: It could. In some cases
the Department of Justice may decline to take it.
They often decline to take a juvenile case.
And if there isn't a concurrent State
jurisdiction on that case then, is there an
agreement or how would this -- how would a
juvenile offender get into the juvenile
adjudication system in that State locality?

Different jurisdictions have different
solutions that they maybe crafting or may not be
crafting based on whether the place is exclusive
Federal or concurrent State and Federal
jurisdiction. It's a subject that has come up.

I think it grabbed Congress' attention
because it's in one of the NDAAAs, I think to look
at this issue. And they've been studying this
idea of retrocession.

I mean, DoD has. And it's an idea
that's out there where at least jurisdiction over
juvenile offenses could be retroceded to State
authorities.
So these transfers don't have to happen like it's the first time this has ever occurred to anybody. And when you have different people coming in and out of a system, there's already a process outlined so a case doesn't get dropped.

And the idea behind putting it in 140a, is that the Judge Advocate who's designated on every installation to be that Special Assistant U.S. Attorney, he may not be prosecuting the case, but they are part of that hand off.

They're part of the transfer. And the point at which information about that case could be collected.

So the concern is that right now we're looking at juvenile offenses on bases. Is there also a concern about civilians who are not being prosecuted because DoD doesn't have jurisdiction?

And we're not saying that that -- anyone is saying that it is a particular problem.

I think the issue has been -- is could 140a
provide comprehensive awareness of the numbers?

And we didn't ask the Services, you know, we didn't do an RFI to the Services to say how many are there? We're just saying, is this one of those cases that it comes up in the media first, and then everyone looks for data later?

Could we build that into 140a to say -- to try to get ahead of these kind of issues?

Not that -- again, not that there is a fundamental problem, but that it would be easy to access data to give you a sense of this -- the number of times these issues arise about transferring, about handling these kinds of crimes on bases.

DEAN HARRISON: And there are some --

CHAIR BASHFORD: Who does the investigation though? Isn't it either the State police or the FBI?

MS. PETERS: Depending on who has jurisdiction. Yes, ma'am. I mean, they might notify the MPs on base or the MCIO.

And then they have to pick up the
phone typically to the FBI or somebody to let them know.

CHAIR BASHFORD: Right. I just don't know that DoD could get the same kind of data from a U.S. Attorney's office or a local prosecutor that you can get when the military does it.

I know when we started out, we said we were going to look at military subjects only.

MS. PETERS: Um-hum.

CHAIR BASHFORD: I think it could be useful to do an RFI --

MS. PETERS: Right.

CHAIR BASHFORD: To find out, you know, in fiscal year whatever, how many times did this occur? And so we can have a sense if it's ten or six hundred.

MS. PETERS: Um-hum.

CHAIR BASHFORD: You know, I just don't have any idea.

DEAN HARRISON: But that was the concern of putting this in 140a, since we're
dealing with people who even if they are guilty
of a crime, are not subject to the UCMJ.

CHAIR BASHFORD: Yeah.

DEAN HARRISON: Which is what 140a is.

Yeah.

CHAIR BASHFORD: Yeah. I don't -- I
think it's an interesting thing to find out. But
I think we should do an RFI probably, instead of
trying to put it under this.

MS. PETERS: Okay.

CHAIR BASHFORD: I don't know what
other people think, but.

MS. PETERS: These issues, I think,
are something that the -- between now and when we
finalize the letter as well, we can collect that
after the meeting from members via email or
subsequent phone conversation or whatever the
case maybe.

So, I wouldn't say that this is their
only opportunity. Certainly to communicate to
the staff an issue that should be highlighted in
the recommendations.
Or even in the letter generally. So, and I think some of the things that we had just put down there as -- had issues are already encompassed in the DAC-IPAD's case review checklist that we -- that you have agreed to enclose alongside the letter to the Secretary of Defense.

CHAIR BASHFORD: I think your proposed -- I can't count that fast, seven recommendations on page 13, --

MS. PETERS: Um-hum.

CHAIR BASHFORD: Are all good. I think we -- well, as somebody said, instead of on G, the military Services should retain their own systems. That we were going to switch that to may.

MS. PETERS: Yes, ma'am, we are.

CHAIR BASHFORD: Just what I -- and again, I just -- it shouldn't be that heavy of a lift to develop an electronic database. Because the JPP and DAC-IPAD with fairly limited resources have been able to develop it and
maintain it.

The documents go back to 2012.

That's, you know, pretty impressive. I think DoD has the capability of doing what our staff does.

At least they never say they don't.

MR. MARKEY: And I would just -- I'm going back to Issue Seven. I'm trying to think, you know, and I'm hoping I might have some time, maybe not today but later on to get an idea of what other data elements might be important.

Because I think the purpose is kind of twofold. One is a snapshot of what is occurring as far as the demographics involved? Who's involved?

Where are they occurring? Was there, you know, declination, no declin -- you know, what -- that kind of technical data that you're collecting.

And then there's -- I think there is the idea that what does the response look like, right? Is it following best practices?

Are there gaps or opportunities in the
response that we're seeing? Not just the
numbers, but say for instance, so I'm trying to
think of some questions to identify whether best
practices are being followed.

You know, are -- you know, do the
investigations appear to be, you know, trauma
informed as far as interaction with the victim?

When you look at declination, you
could look at that number, and then you'd have to
say, is -- you know, is there a rationale? Was
there a reason why, you know, we had a 50 to 60
percent declination rate?

So you look at the number. And then
you want to break it down to say, is there
something within the process that's causing that
to occur?

And so I'm trying to think of data
elements to collect that would focus not just on
the, you know, what we're looking at as far as
where they're -- who's involved? Where they're
occurring? The numbers?

But, is the response, you know,
following generally accepted best practices for sexual assault across the board? And I'm thinking, you know, are there elements that perhaps the Services would like to see collected.

Not just these four, but is there something that they would like to look at to identify anything within their organization that might help them improve that response too?

And I don't know how we would, you know, what's your wish list? If you need -- if you wanted to collect data and look at things, what are some things you'd like to see or know about?

CHAIR BASHFORD: I think they did that in their -- in the Committee, right?

MR. MARKEY: Well, --

CHAIR BASHFORD: We think.

MR. MARKEY: We think.

CHAIR BASHFORD: Yeah. We think so.

MR. MARKEY: Yeah. So, that --

CHAIR BASHFORD: So we'll know August 1, right?
MR. MARKEY: Absolutely. And the question is, will we -- will that be released where we would be able to --

CHAIR BASHFORD: We'll find out.

MR. MARKEY: Okay.

MS. PETERS: We're going to have to ask --

CHAIR BASHFORD: I mean, we'll find out if we -- if it will be released. I'm not saying we will find it out.

MR. MARKEY: Oh, okay.

MS. PETERS: At a minimum when -- well, when they promulgate a proposed regulation in the Federal Register for public -- for comment.

But hopefully before then, before that point in the process.

MR. MARKEY: Okay.

CHAIR BASHFORD: I just want to follow up on what Mr. Markey said too. Is I don't think the collecting data gives you answers particularly as to why things happen.
I think it gives you areas to then look at to explore. Is this a training issue? Is there something about the pleadings, the charging, is it a member?

You know, it just gives you areas to look at. I just don't want people to think that we think that if we collect the data that we have all the answers.

MR. MARKEY: Um-hum. Right.

DR. SPOHN: Meghan, just as a point of clarification, could you explain what we need to do by some deadline? I'm a little confused.

We as a committee?

MS. PETERS: The goal is to transmit a letter containing the Committee's thoughts and recommendations, we said around 1 September. Right around the beginning of September.

With the expectation that the statutory deadline to implement anything, to know what's implemented is 1 January 2019, or the very end of December. The Secretary of Defense should have to decide what these standards and criteria
There's an additional time built into the statute to implement those standards and criteria. But the general timeline the Services and DoD are working on, is by the end of the year, the decision is made regarding standards and criteria.

The staff's projected goal then would be to transmit the Committee's information at the latest in early September. So, a little over a month from today.

CHAIR BASHFORD: But before that you will circulate amongst us a draft letter, --

MS. PETERS: Yes.

CHAIR BASHFORD: For our comments, changes, and -- correct?

MS. PETERS: Yes, ma'am.

DR. SPOHN: And do we need to vote on these recommendations?

COLONEL WEIR: Yes.

MS. PETERS: I think the issues that I see, there are still some, I think, areas of
disagreement. Or places where we would need, I think, more of a decision on what to put in the letter in terms of recommendations.

I think the things that are most set up for that are the proposed recommendations on page 13 around best practices. And we've amended -- we have amended these a little bit in our discussion yesterday and today.

So, when you were sent this two weeks ago, it didn't have the benefit of everybody's thoughts. So, Madam Chair we could vote on these sort with the verbal amendments discussed today.

And I could express those as each of these come up. Or, I could produce a draft based on today's discussion, and we could vote at a later meeting date.

CHAIR BASHFORD: I think we can -- I think we can vote on the substance, not necessarily the word-smithing of these in case that's changed.

MS. PETERS: Okay.

CHAIR BASHFORD: The only thing I
would add in there that I don't see, is that it
seems like we were all in consensus that our
recommendation for at least sexual assault cases
would be that they start collecting the data when
the charge is filed.

MS. PETERS: Right. So, then separate
from this issue, it was the type of cases and
when a case begins.

CHAIR BASHFORD: Right.

COLONEL WEIR: Um-hum.

MS. PETERS: Were the two other issues
to vote on outside of this page. So we can take
those -- we can do those first and then get to
this page.

CHAIR BASHFORD: Correct.

COLONEL WEIR: But Ms. Cannon, you had
-- you had something you wanted to add right now,
an addition to that?

CHAIR BASHFORD: On G she thought
instead of should retain, I think it was may
retain, wasn't it?

MS. CANNON: Yeah. And there was an
issue. And work toward developing a uniform --

MS. PETERS: Case management system.

MS. CANNON: Case management system.

MS. PETERS: Right. I had that down as sort of an H.

MS. CANNON: And with that -- thank you. With that, it's my understanding that the defense does not have a case management system.

Which, I think is a big problem if my information is accurate.

MS. PETERS: I can't speak to every system off the top of my head. It would be limited if any.

In that at the last meeting the Army said, we're serving documents on defense via the Military Justice Online system. With that said it was largely it seemed the emphasis was on prosecutors and managers getting their case loads straight, and judges understanding their docket.

DR. MARKOWITZ: Can these guys speak to it?

LT. COLONEL VERGONA: So, for the
Army, the defense does have access to Military Justice Online. Consider though it's usually the government who's preparing documents.

And so there isn't a need for defense to prepare as many documents. But the defense is served with the government documents through Military Justice Online, the MJO program.

There are some preloaded documents for defense to respond. So when I have a client come in and he's going to do his election of rights, I can do it on MJO as well.

I can gather the templated document and use MJO. So, in the Army the defense does have access to it.

MS. CANNON: But you don't have your own system --

LT. COLONEL VERGONA: No, ma'am.

MS. CANNON: Where you maintain where this case is? Who has it once it -- in other words --

LT. COLONEL VERGONA: So, I would certainly -- each of our regions, we would have a
shared drive. And it's a secure shared drive so that only my defense counsel and I have access to that.

Because you've got to keep it, make sure that it's not on the government's server.

MS. CANNON: Right.

LT. COLONEL VERGONA: You have your own share drive. It might be the government's server, but we have our own share drive.

But not -- if you're thinking, is there a system that the defense uses to input data, no ma'am.

MS. CANNON: And to get data from.

LT. COLONEL VERGONA: I'm sorry?

MS. CANNON: And to obtain data from.

In other words, all these management systems we're talking about and data, are coming from the prosecution.

LT. COLONEL VERGONA: Yes, ma'am. I would say yes.

LCDR PEITRZYK: It that -- it's -- I will tell you, I haven't looked at the defense
case management system that's used here since I'm not a defense counsel. So, I'll probably have to supplement my answer to the staff.

But, from my knowledge, we do have a system. It's more of a case load management system.

So, as a defense counsel, I put all of my clients -- the various stages that our case is in there. How much information or how that was utilized varies from defense counsel to defense counsel.

Your point though regarding queries into the system, and where data comes from, that largely comes directly from the government system. Merely because the government can't be querying, right, from a defense case management system. That would cause all kinds of problems.

I do know the defense system that we have does pull some information from the government system. So, as a defense counsel if I've got a client, I could input their name and some information would pull to me.
But of course, it doesn't work the other way around. If that helps.

MS. CANNON: Well, I understand that there are privacy issues, confidentiality issues, all the privileges. But the concern I have is that there may be information we could glean from the defense if it was systematized that would be valuable.

Not only that, but anecdotally I received information that they don't have a system where they really -- it's consistent in terms of where cases are. Attorneys change, things happen.

It just doesn't seem to be systematized even in a small sense. And I don't know if that's something for us to look into. If it's an inquiry we want to make.

If there's some concern out there among the defense community about what they would like to be capturing that they can't.

But I just want to throw that out there for our Committee because I think it
relates also to the work we're doing.

DEAN HARRISON: I think there are two different issues. One is the adequacy of the support of the defense function. Which I think is a legitimate issue for us in our charge.

But in terms of having a repository that takes information from defense counsel before it's filed with the court, I don't think we can do that.

MS. CANNON: No. I'm not saying we would get it.

DEAN HARRISON: Yeah. I don't think anybody could get it. Yeah.

MS. CANNON: But maybe if they had a systematized management, whatever system --

DEAN HARRISON: Right.

MS. CANNON: To be redundant. And they said well, this is -- they get data. And they say to us, we're having these problems.

We had X number of cases --

DEAN HARRISON: Oh, yeah.

MS. CANNON: That, you know, we're
relying on one side to provide everything, right?

DEAN HARRISON: Um-hum.

MS. CANNON: And it's the one that's bearing the heavy load.

DEAN HARRISON: Right.

MS. CANNON: But I'm just saying, we also have a big black hole here about it.

DEAN HARRISON: Well, I would agree that it would be a -- probably a discussion item for a future meeting. But if the defense bar believes that it's not adequately supported in doing its job under the UCMJ, we should hear that.

But beyond that, I'm not sure what we can get out of -- look, even if they had a top flight case management system, I don't think we could get anything from it without violating the Sixth Amendment.

MS. CANNON: In terms of raw data, it might be valuable information. I don't know.

DEAN HARRISON: Yeah.

MS. PETERS: I mean, that's something
that staff is happy to work on. Specifically to
bring that information. That would be useful to
the defense resourcing issue, absolutely.

Because we don't have enough
information to give you about how they collect
aggregate case information. What are they
relying on?

MS. CANNON: Right.

MS. PETERS: That is a whole in our
research right now.

MS. CANNON: Okay.

MS. PETERS: So the proposed
recommendations on page 13 are not all issues to
be voted on. But it is all of the ones around
best practices.

And then I understand that we have A
through G listed here. H would be that the
Services, well DoD, work towards a uniformed case
management system.

So we would add that on as something,
an item to vote on including today, eventually.

Because that's been suggested.
So we could vote on A through H here.
And then have a separate vote on when does a case
begin and ends. And vote on our scope in terms
of the offenses covered by our first statement.

CHAIR BASHFORD: I'm good with A
through G. I'm pretty agnostic as to H.

Chief McKinley --

MS. PETERS: Would you like me to read
it ma'am, for the group? And then take a vote?

CHAIR BASHFORD: Sure. Okay.

MS. PETERS: So these are all again,
this preface to all of these, this is proposed as
all parts of a package. And some can fall out.

It is presented as each of these are
integral components of a recommendation to use
best practices. And it would read something
again to the effect that the standards and
criteria developed to achieve the goals of
Article 140a UCMJ, should reflect the following
best practices for data collection:

A, collect information from
standardized source documents (legal and
investigative documents) that are produced in the normal course of the military justice process described therein. And then there are a list of -- an exhaustive list of examples.

Would you like to take a vote on each one? Or just go through them all once more?

CHAIR BASHFORD: I would go through them all.

MS. PETERS: Okay. B, centralize the data collection by mandating that all jurisdictions provide the same documents and information.

And the Policy Working Group had recommended just scratching through, to a single entity within DoD. So as not to comment on assuming where it necessarily should be housed.

So, that centralized data collection by mandating that all jurisdictions provide the same documents and information.

C, develop an electronic database for the storage and analysis of data and source documents.
And the Policy Working Group thought it would be better to say develop one electronic database for the storage and analysis of data and source documents to be sort of more finite. But there is one overarching data collection system.

D, would be limit data entry to one team of trained professionals whose full time occupation, or primary occupation, I think that was the debate we also had. Should just say primary occupation as opposed to a collateral duty, in data entry and analysis.

This team should comprise expertise in the military justice process and in social science research methods. Individuals would transfer information directly from the source documents into the electronic database.

And E, ensure that Article 140a is the Services' and/or DoD's primary source for all military justice case information. And that other service and/or DoD systems that collect or rely on the same information, become customers of the data and analysis in the Article 140a system.
The group -- or Policy Working Group also recommended that we specifically list the Article 146 Military Justice Review Panel as a customer of the data. So that is to be read into letter E.

F, is collect and analyze data within a reasonable amount of time (six months as an example) from the end of the established review period. And that may need to be word-smithed. But I think you understand the idea.

G is, the military Services may retain their own respective systems for case management in the field, provided they are all using the same standards and definitions to refer to common procedures and substantive offenses under the UCMJ.

H, which is not on your document. But as discussed would be, that the military Services work towards establishing a uniform case management system across all Services.

JUDGE BRISBOIS: Does that uniform mean centralized uniform?
MS. PETERS: Yes.

JUDGE BRISBOIS: That's what I thought.

MS. PETERS: One centralized case management system. Or one uniform case management system to be more precise.

JUDGE BRISBOIS: Yes. I understand.

MS. PETERS: Okay. And I note that General Schwenk also wanted to ensure that these best practices all built around quality assurance, so that these -- the data in 140a be subject to a regular audit as a best practice.

So, I can work at it if you want to take some of these other options, about producing quality data. So, I don't think there would be much debate around the audit function.

So I can add that to this list as well. So that is -- those are all of the parts of this recommendation around these are the best practices that they should adopt.

CHAIR BASHFORD: Well Chief McKinley, do you agree?
CHIEF MCKINLEY: Absolutely, ma'am.

CHAIR BASHFORD: Dean Harrison? Dr. Markowitz?

DR. MARKOWITZ: I agree.

CHAIR BASHFORD: Ms. Cannon?

MS. CANNON: Yes.

CHAIR BASHFORD: I agree, except as I said, I'm agnostic about building one case management system. But, I'll --

JUDGE WALTON: I agree.

CHAIR BASHFORD: Judge Brisbois?

JUDGE BRISBOIS: Yeah. I agree. But, with a caveat that I think the end goal for DoD should be one combined data capture case management system instead of separate.

CHAIR BASHFORD: Dr. Spohn?

DR. SPOHN: Agree.

CHAIR BASHFORD: Mr. Markey?

MR. MARKEY: I agree.

CHAIR BASHFORD: Ms. Long?

MS. GENTILE LONG: I agree.

CHAIR BASHFORD: General Schwenk?
BGEN SCHWENK: I agree, if you can hear me.

MS. PETERS: Can you hear him?

COURT REPORTER: He says he agrees.

(Laughter)

CHAIR BASHFORD: And did we get General Anderson?

MS. PETERS: I don't think we have General Anderson on the phone.

CHAIR BASHFORD: Can we ask?

MS. PETERS: General Anderson, are you on here?

CHAIR BASHFORD: Is he on?

MS. PETERS: No.

CHAIR BASHFORD: Okay. Then we are in agreement on that. What's next?

MS. PETERS: Next is turning to Issue One is to Options 1, 2 and 3. But for the record, we -- is the Committee in favor of explaining data collection in terms of sexual assault cases? All other UCMJ offenses? Or somewhere in between?
So, we could vote on each option starting with the Committee speaking to data collection for sexual assault cases. What does the --

CHAIR BASHFORD: Oh, I'm just saying I agree.

MS. PETERS: Okay.

CHAIR BASHFORD: Oh, I wasn't sure if you were going to do it one by one or --

MS. PETERS: Those are the three options.

CHAIR BASHFORD: Right.

MS. PETERS: But, and if the Policy Working Group supported Option 1, I'd say vote on that one first. Vote on each option. And vote on them.

CHAIR BASHFORD: So, I'm in agreement with Option 1.

JUDGE BRISBOIS: Why don't you summarize the Option before you vote.

MS. PETERS: Oh, I'm sorry. The Option -- Option 1 is to focus only on sexual
assault cases in terms of the data collection
recommendations.

Meaning everything the Committee is
speaking to, is how to do sexual assault cases.
And the Committee is deciding not to speak to how
the Services collect data or give access to
information about other offenses under the UCMJ.

That the Committee is not addressing
those. Not going to speak to that in its
recommendations.

The second is that the Committee says,
this is how you should -- it is going to address
all UCMJ offenses. So, if you go off we --
because some of the recommendations, I think,
that follow, are -- the Committee considered
offense specific. Does the Committee want to say
how -- how all of it should be treated in 140a.

Option 3 is to say, the Committee is
not just thinking of sexual assault. But we're
talking about sexual assault in a related family
of domestic violence, interpersonal violence
cases, child abuse, child victim cases. Child
sex cases.

So, Option one is sexual assault. Two: we're talking about everything. Which might -- which when you get to when does a case begin, I think that's where that decision becomes important.

And then the other is, the third option is for the Committee to focus on sexual assault plus. So that you get related information on related cases to facilitate the study and examination of all sexual cases.

CHIEF MCKINLEY: And ma'am, our working group, we recommended number three.

DR. MARKOWITZ: We did recommend number three. Right. And so, I hate to this, because unfortunately I have to leave to catch a plane in literally like a minute.

But, I think the reason why we wanted to expand is because we do know that there are a lot of these cases where there is uncharged misconduct of some type of sexual offense. And it is going to be in the investigative file.
But it may not necessarily reach the charge sheets. Or it may reach the charge sheet, but not necessarily make it all the way to trial.

And so, the question is, do we want to lose those by not necessarily having those available from the very -- from the investigation on?

CHAIR BASHFORD: Isn't that a very broad net? Because you would be picking in -- up then every domestic violence punch.

DR. MARKOWITZ: That is the question.

CHAIR BASHFORD: And the military doesn't have the jurisdiction, if I'm correct, over the child victims?

DR. MARKOWITZ: If it's a military offender. If it's a military offender.

CHAIR BASHFORD: Oh, okay.

DR. MARKOWITZ: Yeah.

CHAIR BASHFORD: It just seems to me that's a very wide net that's going to get -- do all the domestic violence cases from the inception when some of them have, you know,
intimate violence.

DR. MARKOWITZ: Yeah.

CHAIR BASHFORD: And a lot don't.

DEAN HARRISON: It's wider than sexual assault alone. But not as wide as all UCMJ.

CHAIR BASHFORD: I'm sorry?

DEAN HARRISON: It's wider than sexual assault cases alone. But not as wide as everything in the UCMJ.

CHAIR BASHFORD: We are seeing a lot of intimate partner sexual assault cases.

DR. MARKOWITZ: And we also see it in prostitution cases. We see it in trafficking cases.

We see it -- so, we know though that, I think, the concern is, if we limit it only to 120 cases, we risk the possibility of losing sexual offenses that don't necessarily make it onto the charge sheet or what have you.

So, that's the -- that's the issue for consideration for the full Committee. Is, do we, you know, we have a lot of cases where the
uncharged misconduct is a sexual offense.

   So, do we want to lose those cases?

   But that I think is the question for the
   Committee.

   CHAIR BASHFORD: But if it's part of
   the initial allegations or it comes out, we would
   capture that, right?

   Because if we get the initial reports,
   even if it doesn't ultimately get charged, if it
   comes up in the investigation, wouldn't we be
   getting it?

   MS. PETERS: Backward looking system
   that's based on an allegation of sexual assault
   would capture that. That said, it -- and so it
   would capture those cases.

   I think the additional value is, if
   you treat a group of offenses like you treat
   sexual assault, you can then do some comparison
   to the domestic violence cases that don't involve
   sexual assault.

   There's -- I guess there's some more
   utility to the data is the argument. But yeah,
so backward looking system that pulls in a case
once there's an allegation of sexual assault,
will grab all of those cases, should that include
domestic violence. That are in a domestic or
intimate partner situation.

So, it should address that concern
from a data standpoint. And that can also be
specified in this is what we mean and this is the
intent of -- this is part of the intent of
starting at the point of investigation.

Is to capture cases like these. Cases
that have unique circumstances around the sexual
assault so we can understand it better.

I think it is already captured if you
say sexual assault through investigation. I
mean, I don't think I -- definitely that's the
understanding.

But we could make a statement about
why it's important to also understand these cases
that have these other components to it. We're
going to capture them, and we want to.

And we want to emphasize to the
Secretary of Defense it's important to have data on the intimate partner sexual violence cases.

DR. SPOHN: And so by expanding it, you know, again to go back to the Chair's point, we get out of our lane.

I mean, we haven't done anything with domestic violence cases. We haven't looked at them at all. We don't know how many there are.

We don't know -- I mean, it's sort of a black hole as far as what we've been doing all along.

MS. PETERS: Um-hum. And child cases, I mean, you need data elements in all subjects.

CHAIR BASHFORD: Well, I certainly agree. But there's a lot of sexual violence and intimate partner cases.

I'm just not sure whether expanding globally to every domestic violence incident that doesn't have a sexual component, if we're going to be able to pull them. Even if it ultimately winds up not being charged or there's -- maybe there's victim declination on the sexual assault,
but I want to go forward because of the physical abuse.

But I think we've pulled that.

MS. PETERS: Yes. That's my sense from what the Committee has recommended. You would still capture those cases.

CHIEF MCKINLEY: Ma'am, we just didn't want to dismiss Option Number 3. We felt it was good for discussion in here.

And just so we somehow capture the data.

MS. GENTILE LONG: Right. On Option 3 you have child sexual abuse there. Which I thought we did say we wanted data.

Well, not everyone. We didn't vote on this, but --

MS. PETERS: Right.

MS. GENTILE LONG: That's different.

So, I think if you're going sex crimes data and you don't capture children or adults, or juveniles or -- and based them as a sex crimes charge or misdemeanor, then you're missing
something.

I'm also interested in the data you're targeting. But I agree, it's beyond our charter. So maybe that's it.

So which is what was making me lean towards doing all the crimes. Because then you would have that.

But nevertheless, I just want to make sure we have another option that these people don't agree it should be all related offenses. It doesn't just -- it doesn't throw out all of the sex crimes.

CHAIR BASHFORD: I think under Option 1 why would that not include child victims?

MS. GENTILE LONG: I thought it would.

Except when I read the factors in favor, I got confused of Option 3.

MS. PETERS: I don't think we contemplated that the child offenses were included in sex assault cases when we first draft this. We did -- we looked at that as a separate bin, because the Committee was looking at adult
victim sexual assault cases.

    Just for purposes of our adult
process. So you would have -- by the way this is
laid out, you would have to specify child victim
cases if you wanted to include those.

    CHAIR BASHFORD: It's true. We
haven't looked at the -- we've only looked at
adult victims.

    But, I don't see why we wouldn't --
why 140a wouldn't want to collected data on minor
victims.

    MS. PETERS: Okay. So Option 1 then
would look like there is a larger universe of
data collection going on for adult victim and
child victim sexual assault cases.

    The universe of data for all other
offenses, presumably something smaller that we
are leaving to DoD to determine fits their needs.
So we're saying not just sexual assault. We're
adding a little bit of depth to the universe of
broad data collection efforts.

    I mean, the language of the
recommendation would include adult victim and child victim cases. And that what it would in effect do, I think, to the overall recommendation.

MS. GENTILE LONG: I mean, am I wrong that every human trafficking case should have a sexual violence component. They all -- so are you seeing any that don't have?

Because I -- that's the only other one I could think of that would be a sex crime that wasn't picked up. I can't imagine there are that many being around here.

CHAIR BASHFORD: Do we have a lot of military trafficking people?

MS. GENTILE LONG: That's what I'm saying.

CHAIR BASHFORD: I should hope not.

MS. GENTILE LONG: They are seeing it. But I'm thinking there's a -- it's minimal enough where we're probably capturing it. I'm sure they're charging a rape assault, so I'm not that worried about including that.
MS. PETERS: Right. And any allegation under the Committee's paradigm would mean it -- it's on the tracking sheet so to speak.

MS. GENTILE LONG: Um-hum. Yeah.

MS. PETERS: The electronic tracking sheet.

CHAIR BASHFORD: So if we moved the child portion into Number 1, because it seemed like in the comments it was excluded, that -- and then that should capture what we need, everything?

MS. GENTILE LONG: And that's all -- mixing all types, right? Contact or penetration.

MS. PETERS: Right. The previous discussion also said that sexual assault encompasses penetrative and contact.

MS. GENTILE LONG: Yes.

MS. PETERS: If you guys want to read it back, I hope. It looks like it would.

CHAIR BASHFORD: Sure.

MS. PETERS: So to be more specific,
Option 1 should read, the Committee focuses its recommendations on both adult victim and child victim sex offenses, including where the act is either a penetrative act or sexual contact.

Pretty -- something along those lines.

CHAIR BASHFORD: Yes.

MS. PETERS: Because that leaves really the only other option being -- or the other options do. Again, the whole UCMJ or a family of related offenses.

DEAN HARRISON: I would move that we adopt Option 1 --

CHAIR BASHFORD: Yeah. As amended.

DEAN HARRISON: As amended.

CHIEF MCKINLEY: With the changes I think that would be good.

CHAIR BASHFORD: Okay. Is there anybody opposed? Anybody? General Schwenk?

BGEN SCHWENK: I'm fine with Option 1.

CHAIR BASHFORD: Okay. So we have that.

MS. PETERS: Okay. So Option 1 is the
Committee's

CHAIR BASHFORD: Yes. Option 1 as amended.

MS. PETERS: Okay.

CHAIR BASHFORD: With the amendment.

MS. PETERS: Option 2 is the most complex. And I don't know that it needs a vote.

The issue, and decide if you want to -- if it's just a discussion point or if it needs a vote.

But the issue is, what does the system look like? Are we saying data collection is separate from their case management system?

Or are we saying an overarching system? I think we spoke to that in best practices. So maybe this issue is moot, well, not moot, but because it's been discussed in best practices.

But that was the is -- that was where issue two lies. The only addition, I would say there was public access or something. We did not -- the Policy Working Group felt the Committee should comment on.
And the recommendations that aren't necessarily in here are that both historical data and individual case documents in pending or in past cases should be accessible to the public. Meaning read the public access facet of 140a to include aggregate historical data.

The Sentencing Commission has a statutory mandate to disseminate data to the public. Language like that is missing from 140a.

That doesn't mean it's not possible to implement 140a with the requirement -- or with a view towards publicizing all of this data.

CHAIR BASHFORD: I don't know what you mean when you say the public should have access to case documents.

MS. PETERS: Oh, court file documents. Pleadings filed in court from the moment, I guess, a court martial is convened. You have the charging documents, motions filed, result of trial. Things that are already --

CHAIR BASHFORD: I can think of all sorts of documents that could be filed in court
that would not be -- should not be public.

We call it all -- or the propensity,

similar crime evidence, shield, motions in limine

for rape shield law, --

DEAN HARRISON: Cooperating witnesses.

CHAIR BASHFORD: Exactly. For the

cases that don't go forward, the final document

that sort of says why.

I don't know that -- I agree there

should be -- we should say something to

encouraging public access. But I don't know that

we have enough to specify it right now.

DEAN HARRISON: Well, I think I may

have been the largest proponent of public access

in our discussions. But, from what I heard this

morning, I'm not sure if the Privacy Act issues

are irresolvable roadblocks to what I had hoped

for.

In other words, I hoped that somebody

who was interested in a case could, short of

actually attending the court martial, get

information about the case.
All of the things about, for example, rape shield and all of that, could be subject to judicial seal. But beyond that, even with judicial seal issues resolved, the Privacy Act issues are something that I had not contemplated until this morning. So, I'm not sure where to go with that.

CHAIR BASHFORD: Maybe we could just have sort of a general recommendation like aggregate data. Like how many cases.

CHIEF MCKINLEY: Yeah. Historical data would be good for public access in --

CHAIR BASHFORD: But I don't think -- I'm not so sure about documents.

DEAN HARRISON: Right. Yeah.

MS. PETERS: Absolutely. I don't think the groups went into detail on that. It was more, okay it seems like court records are being analyzed by the Services. They're going to become public. What beyond that? Ms. Garvin specifically spoke to having data, having a sense of the conviction
rates.

And the business of military courts similar to the aggregate data that goes into the business of the federal courts.

DR. SPOHN: So, I would suggest we amend F under proposed recommendations.

MS. PETERS: Um-hum.

DR. SPOHN: And this is a possibility, collect and analyze data, produce reports --

MS. PETERS: Okay.

DR. SPOHN: Including descriptive data and case outcomes on an annual basis. And I mean, that's what the sentencing commission does.

MS. PETERS: Okay.

DR. SPOHN: Is that a friendly amendment?

CHAIR BASHFORD: That's a friendly amendment.

CHIEF MCKINLEY: Very good.

CHAIR BASHFORD: Is everybody okay with that? I think that's a great solution.

Judge?
JUDGE BRISBOIS: I guess I'm not clear on who's, at this point, who's going to produce the report? What is the content of the report going to be for?

I mean, isn't this for a system that's going to allow any stakeholder to get this data and make their own analysis? So, I'm not sure I think that amendment helps much.

MS. PETERS: To specifically state publicize?

JUDGE BRISBOIS: Well, to say develop and produce reports. I mean, one, who's going to do it? What's it going to be about?

And as I understood what we'd already voted on for proposed recommendations, this was a separate data collection system we're recommending. You know, that someone's going to do, a single entity.

It didn't allow specificity. So, you know, and we get a lot of groups that are already producing their own reports about their own interpretation of the data.
So we're -- they can access this information to augment what they're already doing. I don't know that we need to say, we need to find a new home for a new set of reports by an as yet undefined entity.

MS. PETERS: Okay.

CHAIR BASHFORD: I think part of the problem is that some of the reports we've been seeing aren't very useful.

JUDGE BRISBOIS: Well sure. But they're not using a data system that we're proposing here that's as complete and comprehensive. And unified.

So, it's -- you know, I'd vote against the amendment. But, you know, the majority is obviously going to carry the day.

But that's why I'm voting against it.

CHAIR BASHFORD: I think -- I think you're right. But presumably any service could access this to run their own -- although if they're sending the exact same data they already have, they have it in their own thing.
But if somebody doesn't choose to write a report, wouldn't it be nice to have an annual report based off of this document-based system? As opposed to just leaving it up to if you want to run through a report, you can.

JUDGE BRISBOIS: But that's the -- that's a result of 140a, not a requirement and function of 140a. 140a is how do we create a system of information that's consistent and unified at all stages of trial?

So that then people can go and do these kind of things. So to recommend that there be an additional mandated report without knowing what, why, who? What's its content going to be? What's its purpose?

It creates too much confusion and vagueness in our recommendation. I can't support that. That's just one vote though. Everyone can --

JUDGE WALTON: And I have concerns about, you know, what data are we talking about? I mean, I think we have to be really specific.
Because, I mean, we are experiencing with the intel system a real problem with certain data being made available to the public specifically regarding plea agreements and cooperating witnesses.

And that's a major problem. We've had witnesses who have been killed, intimidated. And it's a big problem.

MS. PETERS: Right.

CHAIR BASHFORD: Well, we can still say, so we say collect and analyze data. We're not telling them how to analyze it.

But we are recommending that they analyze it. Because it doesn't make sense to collect data if you don't.

DR. SPOHN: You know, analyze it but then you just let it -- you don't disseminate it?

MS. GENTILE LONG: Can we ask, I mean, I'm just curious of our own judges. Because I don't use PACER and I don't know what's on there. Are there protections on there that protect the secrets?
JUDGE BRISBOIS: Well, again we've got to -- what we're talking about PACER is not the case management data collection system. CM/ECF is, and CM/ECF has the ability to lock down. It's still in the system. It's still available.

MS. GENTILE LONG: Right.

JUDGE BRISBOIS: But depending on the concerns, it can be locked down --

MS. GENTILE LONG: So you could lock down versus everything I say.

JUDGE BRISBOIS: On a line by line basis.

MS. GENTILE LONG: Okay. Yeah because we -- I know for us it's very different on the DA level. Some have public documents, but.

CHAIR BASHFORD: Well, I think we -- one solution would be not to have the friendlier amendment. And we're still in service for some time.

And if we -- if these -- if our recommendations are adopted in some sense, we can
always follow it up not as a 140a request, but as a simple recommendation of the DAC-IPAD that the 140a data be analyzed and disseminated in gross statistical ways at a later time.

MS. PETERS: Do you want to take -- so we are just --

CHAIR BASHFORD: I'm just suggesting.

I'm not saying we should do one thing or the other.

MS. PETERS: Okay.

CHAIR BASHFORD: But I know our two judges expressed some reservation about it, so.

JUDGE BRISBOIS: Well, it doesn't mean that -- it doesn't mean that controls the -- I mean, that's --

CHAIR BASHFORD: No. It doesn't. It just --

JUDGE BRISBOIS: We're just expressing. I'm frankly just trying to explain why I'm going to vote against the amendment.

You know, that -- you all have to make your own decisions.
MS. CANNON: Maybe it's premature.

DR. SPOHN: I was saying, you know, I guess the amendment was an attempt to address the issue of public access to the -- not the data itself, but to the results of the data analysis. That the public should have access to the aggregate data about case outcomes. And --

JUDGE BRISBOIS: Well, couldn't we just say we support the idea of ultimately public access. But at this point we're focused only on the collection and systems of data collection case management?

Because for the reasons Dean Harrison pointed out, there's a whole other round of either legislation or regulation that's going to have to be pursued and passed in order to allow a lot of UCMJ systems information to be accessible to the public.

And I don't think -- we can either support or oppose the general notion of public access. Of which I support access. Because I don't think that right now we need to go beyond
data collection and case management issues.

CHAIR BASHFORD: So what if we had an

I that said, the DAC-IPAD suggests that the

Secretary of Defense consider or study public

access to aggregate data. Or something like

that.

Just so -- as opposed to a specific

thing, just state it.

BGEN SCHWENK: Yeah. To the extent

authorized by law.

DR. SPOHN: Meghan, do they have a

mandate to produce annual reports?

MS. PETERS: They do. And they

produce adjudication data annually pursuant to

NDAA requirements.

So this would be in addition to that.

Presumably in the past the JPP looked at this

issue as one of maybe 140a type information as

established as a gold standard. But then DoD

SAPRO can become a customer.

It hasn't happened. But that's

something the JPP forwarded to DoD for
consideration.

But yes, the JPP produces something very similar to the aggregate data.

CHAIR BASHFORD: Maybe they'd use our data.

MS. PETERS: Right.

CHAIR BASHFORD: So do we want to say anything about potential public access -- not access. Potential reports, public reports, I guess. Or do we want to just let it go for now?

CHIEF McKINLEY: I think it would be a good idea, ma'am, to go ahead and look at the potential for public access. But we not define how that is.

CHAIR BASHFORD: Okay. So recommend --

BGEN SCHWENK: Why don't we say to the extent authorized by law?

CHAIR BASHFORD: That DoD examine the possibility of public --

CHIEF McKINLEY: Yes, ma'am.

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 military justice information and pro -- proceedings and information just generally.

5 Because again, I feel -- it's an important issue to me because unlike civilian courts, there are no standing courts in the military. And if we're concerned about the perceived credibility of military proceedings, making sure the public has access.

6 And again, excluding national security issues, and excluding things that are held under seal.

7 CHAIR BASHFORD: What I suggest then is that the staff draft a sort of generic statement in support of some sort of public access. You can wordsmith it later and circulate it around to us later.

8 And we'll see if we ultimately want it or want to withdraw it. Does that make sense?
DEAN HARRISON: It makes sense.

COLONEL WEIR: If I could just add a quick comment. The law as drafted under 140a already is requiring the Secretary of Defense to come up with a public access plan.

So, by saying that we support that public access, we're already stating what the law is already saying. But what in -- what we've done in the data collection is told -- or making recommendations on actually how to do that.

We're not telling the Secretary of Defense in how to do public access. So, I'm not sure that we're getting anywhere by making a recommendation when it's already the law that says that they must come up with a plan somewhere along the line to make these type of documents accessible for the public.

And like Dean Harrison mentioned with the Privacy Act, that's going to require statutory change if they're going to do some of this stuff. So, I think we're saying, or the recommendation of agreeing with public access,
it's already the law.

The Secretary of Defense is going to be required to do it. So, we're not telling him how to do it. We're just saying yeah, go ahead and do it, which he's already been told to do by Congress.

CHAIR BASHFORD: Well, we'll follow the law.

JUDGE BRISBOIS: But and that is a better way to phrase it. But, the how to do it, is way beyond anything that we're going to do here in the next 30 minutes.

Because you're talking about comparative law studies. You're talking about, you know, well comparing between statute and regulation regarding information.

What is public/private data? How does that change military versus nonmilitary type? So, that's way beyond anything.

So I think we are best left with a how to -- with how do we think data should be collected and how should it be disseminated?
Which is to centralize it or not centralize it.

COLONEL WEIR: We can certainly add something into the overall recommendation that says that the DAC-IPAD fully supports the 140a. And then go into specifically how the data collection in sexual assault cases.

Which is what you all have talked about and voted on today.

CHAIR BASHFORD: Okay. What he said.

(Laughter)

CHAIR BASHFORD: I think with that clarification from our Director we should leave it as is.

MS. PETERS: Okay. And I think I could do a slightly better job answering Dr. Spohn's questions since I have the report in front of me.

But, pursuant to NDAA requirements, annually SAPRO does an analysis of the aggregate analysis of the outcome of cases adjudicated.

And whether they fall out at a courts
martial, and then they attempt to analyze the administrative actions as well. And anything in which a sexual assault charge is preferred, sort of create a flow chart down to the -- whether somebody's convicted or acquitted, and even the types of punishment received if convicted.

So they've been doing that annually for a little while, so.

CHAIR BASHFORD: Do you need us to vote on anything else in particular?

MS. PETERS: When does a case begin?

CHAIR BASHFORD: I thought we had consensus on that. With the initiation of the charge.

MS. PETERS: Okay. And the end of that --

COLONEL WEIR: Can I just -- initiation of the investigation.

CHAIR BASHFORD: I'm sorry, but when somebody's come -- makes a charge that I am sexually assaulted. And I should be clearer in my --
COLONEL WEIR: To law enforcement.

CHAIR BASHFORD: Yes.

JUDGE BRISBOIS: Upon receipt of a report.

MS. PETERS: Okay. And a --

CHAIR BASHFORD: Of an unrestricted report.

MS. PETERS: And then a case ends at completion of appellate review? We had an issue, four said you could pick a case ends at appellate review or when released for post-trial confinement.

It seemed like there was consensus around appellate review. Because there isn't a value to -- for this, for 140a to track what happens when someone is released.

JUDGE BRISBOIS: Well, depending on exhaustion of appellate remedies, and when that sentence is fully executed, could be 15 to 20 years.

DEAN HARRISON: Yeah. Right.

JUDGE BRISBOIS: You know, there's no
reason to keep it open that long. And you know, --

MS. PETERS: Yes.

JUDGE BRISBOIS: There could always be an ability to go back and reopen it for some reason if there's some post-appellate habeas which reopened it.

CHIEF MCKINLEY: So that was exactly our thoughts yesterday.

JUDGE BRISBOIS: Yeah. I mean, to continue to track it and request data on a regular basis while, you know, it's like give me an update on this guy or this woman every year on the anniversary while they're incarcerated.

You know, once the appellate rights have been exhausted, absent the habeas action, that case is over.

MS. PETERS: Okay.

DEAN HARRISON: But, I think General Schwenk wanted us to amend Option 1 to say appellate review, or administrative, or Article 15 for those cases that did not go to trial.
MS. PETERS: Yes. Yes, sir. That was an important caveat that by saying appellate review we're assuming that any completion of a case at a -- before that point in the process.

Or even if a case didn't receive appellate review but it would bear mention to say that, you know, we presuppose a case ends, you know, a case ends at no action or at completion of the commander's action taken. Whether that's administrative or non-judicial punishment.

Or appellate review if there are charges. So appellate -- that option does include every lesser result basically.

CHAIR BASHFORD: Are we in agreement?

MR. MARKEY: Do we need to move, I mean, move and vote? I move we adopt Issue 4, Option 1 as described.

CHIEF MCKINLEY: Yes.

CHAIR BASHFORD: Anybody oppose?

(No response)

CHAIR BASHFORD: General Schwenk?

BGEN SCHWENK: Yeah. I'm good with
that.

CHIEF MCKINLEY: That's a yes.

(Simultaneous speaking)

MS. PETERS: And then the last thing on the record is Issue 5. And I'm sensing that we have a should or should not.

Should account for some federal statutory requirements. The Committee didn't come to any specific -- anything specific around that.

And it seems that the issue is -- the option is should, or the option is should not account for any specific federal notification and reporting requirements.

The staff hasn't, you know, given me the benefit of probably having enough information to fully assess this issue. Nonetheless, it was part of a thought process, so we brought it to you for -- the Committee for a decision, or a further discussion as needed.

So, the issue would be, is there any -- are there any specific statutory requirements,
examples are on page 10, that should be included
in 140a for sex assault cases?

    CHAIR BASHFORD: I don't -- personally
don't feel that I have enough understanding of
how. It was just briefly mentioned this morning
--

    MS. PETERS: Um-hum.

    CHAIR BASHFORD: By the service
members. And I'm saying that's not our job.
It's either prisons or it's the investigators.
    So, I don't feel I have enough
information to really make an informed decision
on this particular one.

    MR. MARKEY: And I concur with that as
well. I don't think I have enough to make an
informed decision on that.

    CHAIR BASHFORD: It strikes me that
we're stretching 140a a little bit to do that.

    CHIEF McKINLEY: Should we table this
then?

    CHAIR BASHFORD: Not table it, but it
might be something we ought to revisit later.
MS. PETERS: Yeah.

CHIEF McKINLEY: Yeah. We just do not have enough info really.

CHAIR BASHFORD: Yeah. So we'll table that. Are we done with our voting, Meghan?

MS. PETERS: Yes, ma'am.

CHAIR BASHFORD: I again, want to really commend the Working Group. This was a heavy lift. And you've done a great job. And the staff for making all the pros and cons in a nice tabular form.

And now, I think I'm going to move us to the Staff Director's Report. Updates from the Staff Director, Data Working Group, and the Case Review Working Group.

MS. PETERS: Ma'am, if we could just take a break in place so that we can load our slides?

CHAIR BASHFORD: I'm sorry?

MS. PETERS: Can we take a break in place to load our slides?

CHAIR BASHFORD: Of course.
(Whereupon, the above-entitled matter went off the record at 2:44 p.m. and resumed at 2:48 p.m.)

COLONEL WEIR: Okay. We're going to go ahead and get started in just a second. We're going to roll through this pretty quick.

So, what I wanted to talk to you about today was just kind of where we're at as far as the staff is, and what we're doing. And then the Working Groups are going to give you the briefings of what's going on in their Working Groups.

But I think as I mentioned earlier, the most important thing we're doing right now is the Case Review Working Group. We're really knocking out those cases.

That's a hot button topic right now in our office.

So that's ongoing. And the staff is really working hard to getting those case reviews done.

And I appreciate the hard work that
the Case Review Working Group's done. And so
we'll get some more information on that as well.

But, I also wanted to bring to your
attention --

CHAIR BASHFORD: Sorry, just one more.

I forgot to say Meghan Tokash has joined us on a
-- telephonically.

MS. TOKASH: Hi. Thank you.

COLONEL WEIR: One item I wanted to
bring to your attention was that the Acting Secre
-- excuse me, the Acting General Counsel for the
Department of Defense, on June 7 drafted and sent
a memorandum to the Chair of the Defense Advisory
Committee on Investigation and Prosecution of
Offense of Sexual Assault in the Armed Forces.

And the subject of this memorandum was
assessment of the Judicial Proceedings since
Fiscal Year 2012, Amendments Panel Recommendation
54, 55, 57, 58, and 60. And I know that we've
sent these to you via email.

And the intent of the staff is to
accomplish as much as we can by submitting a
request for information to the services. And then gather that information back.

And then look at what we've received. And then go forward with potential panel hearings.

The Sec -- the General Counsel has requested that that information be placed in the annual report that's due in March 2019. We will put something in the report about that.

But since it -- we only received it in June. And we've got a lot of stuff also going on here on our plates that that will probably be a follow on information that will be in the '19 report.

So, I just wanted to let you know that's out there. And we'll be submitting requests for information to nail down as much potential facts that we can before we have panel hearings.

We had a meeting with the Department of Defense IG Auditors that came and talked to us. They're looking into an issue that I know
the Case Review Working Group has looked into, or hasn't seen it in the files that we've looked at, is the requirement by law that the victim be given the opportunity to select a forum for their -- for their case to be heard in.

So, they have the option to go military or the option to go civilian. So, that issue has come up through the Hill somehow. And got sent to DoD IG as to what the services are doing about the victim getting an opportunity to make that selection.

So, they're working on that. And the services, I'm sure, will be thrilled to hear that they've got to do another request for information.

But that's all I have right now. And we'll just move in right to the Working Group updates.

MR. MASON: So, I'm going to be covering the data collection process for the Data Working Group. As you're aware, we are in the midst of the FY 17 data collection and entry into
the database.

And what you can see from this chart is, one, it's outdated because Stacey worked extra hard yesterday and increased our numbers already. So we are now at 100 percent for the Army, Navy and Air Force with respect to cases that we have received from them, are now entered into the system.

With that being said, we have a substantial number of Army cases and Navy cases that are outstanding. And we provided a list to them today of the cases that are outstanding.

And then we will hope to receive those and we'll be able to get them into the database at that point.

Next week we are turning our attention to the Coast Guard and Marine Corps cases since we had them in our system on the shared drive. And they will be entered into the database at that point.

But we're very pleased that we're at 100 percent of what we received with those three
services so far. As a note, we've added at least
12 cases now into the FY 16 that we'd previously
done that were provided to us in FY 17 data.

So, we're continuing to update our
database. And we've always said that it's a
living, breathing, organization -- organism that
it will, as we get more files in, will constantly
update. Next slide, please.

So for the overall project, where
we're heading. We are on track for the March
2019 report.

We will be doing the multivariate
analysis on the FY 16 data, as well as
descriptive statistics bivariate and multivariate
analysis for the FY 17 data. So, it will be a
data heavy contribution to the annual report.

Dr. Wells, Bill Wells from Sam Houston
State University in Texas, has come onboard as
our criminologist. He was here two weeks ago for
his training indoctrination.

We got him up to speed on military
justice. He shared some of his background with
criminal justice and -- on the civilian side.

He has received a preliminary data
file to work with at this point, to see what he
needs to do to code it correctly for entry into
the statistical program, SPSS. Which is what he
utilizes at his university.

WE are holding off on doing any final
numbers until we get the FY 17 files finished.
Because we will then know how many FY 16 we've
added to it. And we'll have accurate numbers for
both fiscal years.

And then finally, the RFI will be
coming probably at the -- either the August or
October meeting. We'll be requesting an RFI for
the FY 18 cases.

So, we're barely finishing. And we're
already turning our attention to the next fiscal
year. So that we can stay on top of it.

With our intent being that we possibly
might have a midyear report to issue, dealing
with FY 18 statistics.

CHAIR BASHFORD: The Navy is a real
outlier in terms of outstanding cases. Do you have an explanation for that?

MR. MASON: Their individual that's responsible for doing the data upload, has been on vacation. And he will -- we've been in contact. We know that he's gone for two weeks.

When he's back, he plans on uploading it. And they will actually rather than us having to go out and pull the files, they provide everything electronically to us on the back end.

CHAIR BASHFORD: Okay. Thank you.

MR. MASON: So, we're not concerned at all with that number at this point. Thank you.

CHAIR BASHFORD: Any questions for -- about the Data Working Group?

(No response)

CHAIR BASHFORD: Great. Are we moving then to Case Review?

MS. TAGERT: Yes. We're going to be doing an update on case review. And just remember the public, the DAC-IPAD with a few mandates that were in the statute that created
the DAC-IPAD was to do a case review.

And the Case Review members have taken that literally. And we have started reviewing 1,725 investigative files.

And we are through 769 at this point from the staff. These are the no-action cases. Which are approximately 80 percent of all investigations for penetrative sexual assaults.

And that also includes a number of cases that were preferred in Fiscal Year 17. So when I'm talking, we're talking about two different reviews that are currently going on.

One is the total sample size. Which is a staff and Case Review Group member from the DAC-IPAD reviewing those cases.

And then we have our random sample. Which is the pool of cases that are a subset from that 1,725. And the members have been doing a wonderful job in completing their cases.

They have only five cases left to complete for the no-action. Yesterday I think that -- or on Tuesday that number was in the 40s.
So, for the last couple of days they've been working extremely hard to get that number to where it is. Based on the numbers that you see on the screen, we believe that with the March 2019 report we will be able to deliver to the DAC-IPAD, the descriptive data from those cases.

As well as to make an overall finding on whether or not the decisions in those cases were reasonable based on the investigative case file that we have. As well as other findings and recommendations from the reviews of the case.

We met with Dr. Wells, as Chuck mentioned earlier, who is our criminologist. And he said that we will be able to do a multivariate analysis to identify statistically significant, predictive factors between no-action cases and preferral.

That makes me sound smart. But it's basically just comparing different factors which may cause the case to go forward over another one.
And obviously there will be obvious ones, like the victim declined to participate in the process. But we're hoping to figure out if there are factors that we're not familiar with which may be causing certain cases not to go forward.

And we will also in the 2020 report be able to provide the descriptive data for the entire pool of 1,700 plus cases. But, for the 2019 report we believe the descriptive data will be only for the subset of the random sample.

CHAIR BASHFORD: Great. Any questions?

(No response)

CHAIR BASHFORD: Thank you for the update.

MS. TAGERT: You're welcome, ma'am.

CHAIR BASHFORD: Okay. So I think we're now ready for the --

MS. SAUNDERS: But we have, ma'am, if you don't mind.

CHAIR BASHFORD: Oh, I'm sorry.
MS. SAUNDERS: We do have a Policy Working Group.

CHAIR BASHFORD: Oh. I'm sorry.

MS. SAUNDERS: As though you haven't heard enough about policy, the Policy Working Group today.

So in addition to all the work that the Policy Working Group's been doing and that you've heard and discuss here today on the 140a, they have also been continuing their work on the expedited transfer policy.

Back in the March 2018 report, this Committee conducted an overall assessment of the expedited transfer policy. And also made full recommendations about that.

But they also iden -- the Committee also identified six additional areas that they felt required more review. And asked the Policy Working Group to do that.

And so those additional areas are whether or not expedited transfers should be available to service members who file restricted
reports of sexual assault.

Whether -- if a victim who loses the ability to make a restricted report because of a third party has reported the assault, or because he or she has inadvertently disclosed the assault to command, should that person have the ability to restrict further disclosure or investigation of the incident?

Issue number three was, does the DoD expedited transfer policy need to be modified to clarify the approval standard and purpose of the policy?

Four, should the expedited transfer policy include intra-installation moves as well as moves to other installations or locations?

Issue five is, should expedited transfers be available to service members whose civilian spouses or children are sexual assault victims?

And finally issue number six, should those active duty victims who require it, have the option to attend a transitional care program
away from their units? Similar to wounded
warrior programs, to enable them to return to
full duty status.

In addition to those six issues
related, there was another issue that the Policy
Working Group wanted to explore as well. Which
is, should the Department of Defense and services
increase the amount and types of data they
collect on victims of sexual assault, who receive
expedited transfers, and alleged offenders who
are transferred to different locations?

So, to complete all that work the
Policy Working Group held, in addition to the
meetings that were held last year, the Policy
Working Group held a full day meeting in May of
this year, in which they heard from SAPRO Program
Managers from all the services, the SVC and VLC
Program Managers, Service SARCs and certain of
the Defense Organization Leaders for each of the
services, as well as the MCIOs.

So based on all of that information
that they got from this meeting and the previous
meetings, as well as the RFI responses previously received from the services, the Policy Working Group has been putting together findings and recommendations on these issues. And expect to present those to you in October, at the October public meeting.

Any questions on those?

CHAIR BASHFORD: Great work. Thank you for that.

MS. SAUNDERS: Thank you.

COLONEL WEIR: What we're going to have next is the public hearing where people from the public can speak that have notified us that are going to be present.

We're going to have two people speak here today. It's going to be filmed. I'm not sure what side of this the photographer is going to stand on.

But, if you don't want to be in the video, once you figure that out, you can move to the other side. You shouldn't see anything from the first two rows back, so.
CHAIR BASHFORD: We can take a break.

(Whereupon, the above-entitled matter went off the record at 3:03 p.m. and resumed at 3:16 p.m.)

CHAIR BASHFORD: Okay. We had two requests for public comment today. From Alyssa Rodriguez and Kylisha Boyd. Welcome.

MR. GUILDS: Thank you.

MS. RODRIGUEZ: Thank you.

MR. GUILDS: Thank you very much for having us. Good afternoon everyone. Just by way of very brief introduction. My name is Ryan Guilds. I'm an attorney at Arnold & Porter across the river in Washington, D.C.

As a pro bono practice I supervise a group of folks at our firm that represent survivors both in the military setting and on the civilian side. And had a great and unique opportunity to meet the two women next to me here today, who I think you'll really benefit from hearing.

So, without further ado, unless you
have questions for me, I'll turn it over to
Alyssa. Great. Thank you.

MS. BOYD: Good afternoon. I am
Retired Staff Sergeant Alyssa Rodriguez. And I'm
here to tell you about my experience in the Air
Force.

When you see videos or commercials on
the computer, on the television screen, you see
military members, regardless of the branch,
working together as a team. Recruiters come to
your school during your junior year of high
school to tell you about all the benefits you
could receive if you join the military.

When the recruiters talked to me, one
of the benefits -- when recruiters talked to me,
one benefit stood out the most. The benefit that
appealed to me was the camaraderie.

The idea of family working together
for the ultimate goal. That is what I craved
most in my life.

The thought of joining the military
made me feel so anxious, but anxious in a good
way. I was excited to be challenged physically and mentally, and experience things I would have -- and experience things I never would have done had I not joined the military.

I decided to join the Air Force because I wanted to be part of something greater then myself. While that may seem cliche, it's the truth.

I wanted my family to look at me and be proud that I, Alyssa Rodriguez, was willing to make sacrifices that many others were unwilling or unable to make.

I served in the Air Force for nine years in the healthcare services field supporting medical providers and technicians. I remember the day in technical training when we were assigned our very first duty station.

I was originally handed notice that I would be going to Guam. I was so excited to go overseas.

But a few hours later I was told that my first duty station had changed to Keesler Air
Force Base, Mississippi, due to the manning assistance needed in the wake of Hurricane Katrina. I was told that I was one of the first Airmen to get stationed there after the disaster struck.

Even though I wasn't going overseas anymore, I was still excited because I was going to be a part of the reconstruction of the base. More specifically, one of the biggest medical centers in the Air Force.

I accepted every job title I received while at Keesler with such pride. I became an admin for the life support program. And received a best practice award.

I also became a life support instructor and thrived in the instructor environment. And received Airmen of the Quarter awards.

Eventually I was seen by leadership and was offered the Noncommissioned Officer in charge of a squadron. Meaning that I would be in charge of the unit.
I absolutely loved my job and felt ready for the new challenge and new environment. I knew I wanted to make a career out of the Air Force, and this position would assist me to do great things and make an impact.

While working as a noncommissioned officer in charge, I received orders to go to Aviano Air Base in Italy. This was the most exciting news to the point where I physically fainted when I received the news while at work.

The idea of going overseas meant meeting new people and forming bonds with peers. And possibly finding new mentors.

I was also excited to see what the hype was about being stationed overseas. My peers constantly talked about the bonds formed, morale, and the camaraderie that came with being out of the country and spending time with the people you worked with, because everyone ends up feeling a little alone in an unfamiliar place.

While I got to Aviano, it wasn't anything like what I had expected. Everyone was
doing their own thing. And the morale was so low, people barely talked to one another.

I wanted to be the change we needed as a team. I wanted to form new bonds with everyone in the section.

Some seemed interested. And others I felt just needed more time. Two months after I arrived in July 2012, I was sexually assaulted by a fellow Airman.

That day we had gone to the mall and window shopped. I had gelato and had dinner at a fast food restaurant. We talked about movies we had seen. And ones we would like to eventually watch.

After a day of what I thought was building morale and forming friendships, I was taken advantage of by people I thought I could trust. I wasn't drunk. I wasn't leading anyone on. I didn't ask for it or change my mind.

But someone thought it would be fun -- it would be a fun game to see who could have sex with me first. And the idea of being turned
down to them, wasn't how they wanted to play the
game.

It wasn't a game. Nor was it fun to
me. In the military you have the option of
filing unrestricted or a restricted report after
a sexual assault.

Filing unrestricted means that the
details are shared throughout your chain of
command. While you file -- when you file a
restrict -- when you filed a restricted report,
you keep your privacy. But no criminal charges
will be brought forward.

After my assault, I chose to file a
restricted report. I originally filed a
restricted report because even after just a
little victim advocate training and computer-
based trainings about sexual assault, I knew that
filing an unrestricted report would mean that I
wouldn't have any privacy during one of the most
difficult times of my life.

It would mean that I would have to
remember things I otherwise wanted to forget.
And I would have to endure things no one should have to.

Even though I had the intention to eventually change my report to unrestricted, I wanted at least a little time to brace myself for the events that were about to come. Regardless of that fact, I still had a rape kit done at the hospital.

Despite everything that had already happened to me, I chose to go to the hospital and sit in a cold, bright room. I was tired, uncomfortable, completely vulnerable and traumatized.

I did eventually change my report to unrestricted so that charges could be brought forth. I decided to do so when an Airman in my duty section told me that the same person who had assaulted me had also touched her inappropriately while at work.

She told me how uncomfortable it made her feel. In that moment I knew that this person didn't deserve any sort of sympathy.
And would continuously assault people because he didn't see anything wrong with what he was doing. He didn't have any remorse, or he just didn't care because he knew there was no consequences.

Changing my report too unrestricted only complicated things. I didn't have a support system because I was so new to the base, nor had I made any real friends.

My attacker was in my unit, which meant I would have to see him every day. Which was unbearable.

Because of this I requested to move to a different section in my unit so I wouldn't have to see my assailant on a daily basis. Leadership moved him to a different unit instead.

But now he was physically closer in proximity to my office. He was now right next door.

In addition, my supervisor was extremely unsupportive after she learned what happened. And continuously made derogatory
comments towards me.

For example, she told me, it happens to all of us. Don't talk about it. And suck it up.

She also felt it was in my best interest to work harder. And piled more work on top of what I already had to do, knowing I couldn't really get my original responsibilities done.

I felt alienated and alone. And didn't know what I could do to make things better. It wasn't until after I changed my report to unrestricted that I learned about other options.

Only after I changed my report did the Sexual Assault Response Coordinator inform me of the possibility of transferring to another base closer to my support system. Something called an expedited transfer request.

In fact, the SARC didn't inform me until after she learned that my attacker was in my unit. And he went to her officer to talk to
her about the case.

I wish I had known that this was an option from the very first day. I felt unsupported at Aviano and decided to take advantage of the expedited transfer program.

My original expedited transfer request to Langley Air Force Base was denied due to manning issues. I was sent to Joint Base Anacostia-Bolling instead, which was not equipped with the medical and mental health support systems I needed.

On top of that, leadership at my incoming base did little to help me settle in or find the support I needed. Looking back, I feel certain I would have been able to remain on active duty if I would have received the medical, professional, and emotional support I most desperately needed at the time.

There is one thing that I think would have made a huge difference to me while I struggled with this horrific experience, and that is having the qualified SVC from the very
beginning.

I didn't get one until I was already transferring duty stations. I was left to navigate the system on my own without fully understanding my options.

To make matters worse, my original SVC was completely incompetent. And didn't seem to understand anything that was going on.

I would not have proceeded with my case if he remained my lawyer. I was lucky in one small way however, and that is because I was able to find a new SVC, I'm forever grateful for the SVC that I ended up with.

Mirabell (phonetic) was understanding. She fought for what I wanted. And explained the process to me until I understood what was going on, and what could have happ -- and what would happen based on the decisions I made.

She gave me all of the options and informed me how they would affect the case. That was the first time during the process I felt represented.
It is truly my belief that while
victims are now afforded an SVC, many SVCs aren't
able to advocate for their client's rights
without fearing that they will be reprimanded if
their advocacy doesn't align with the military's
perspective.

After changing my report to
unrestricted, I endured two Article 32s, I
testified in both. During the first Article 32 I
felt the questions I was asked by the
investigating officer aligned more with the
defense then as a neutral party or anyone who had
my interest at heart.

They felt invasive. And I didn't feel
like he could be an unbiased decision maker. For
example, he repeatedly asked me questions about
my underwear, if I had any on? And if I did,
what kind of underwear were they?

As I expected, after the first Article
32, the preliminary hearing officer recommended
not to move forward with my case. Thanks to the
dedication of my SVC however, the Secretary of
Defense ordered that a new Article 32, which
eventually resulted in the preliminary hearing
officer recommending trial.

In that second Article 32 I could feel
a difference in the way the officer conducted
himself. He respected me and saw me as a human
being.

During the investigation and leading
up to trial, I cooperated the entire time, with
full knowledge that I didn't necessarily have to.
But it was my choice.

I volunteered to sit down for multiple
interviews with the defense. I was required to
testify about my sexual history. I was asked
questions about a prior sexual assault.

I had to endure interviews with a
forensic analyst present who analyzed my mental
health stability. Who analyzed my mental
stability.

I had to testify about my mental
health so that the judge could decide that the
defendant should have access to my mental health
records. Regardless of the fact that I did not want anyone to review my mental health records, the judge ordered me to turn them over so that he could review them in chambers.

Nothing was sacred. And I had no privacy. Even during the trial. I felt like there was still a bias toward the defendant.

Members of the jury were able to ask questions. Their questions grilled me on my inability to recall the precise number of seconds the assault took place, whether I had received sufficient awards and decorations, and why I wanted an expedited transfer.

It made me feel that the program that was designed to help victims of sexual assault was being used against me.

I wish I had been better informed throughout this entire process. If I had more knowledge about my options and about how the process worked legally, I would have been more prepared for what was about to come.

Even though the Air Force offers some
victim advocate training, I was not prepared. I
had -- I would have been more comfortable had I
received access to a competent, trained legal
representative from the very first moment I filed
my report.

Having knowledge of the expedited
transfer program earlier in the process, and
having a competent SVC immediately after filing
my restricted report, would have made a
significant difference to me. And I'm sure it
would to others.

Thank you for your time.

CHAIR BASHFORD: Thank you very much
for your testimony before us Ms. Rodriguez. We
appreciate it.

Ms. Boyd, do you have a statement you
want to make?

MS. BOYD: Yes.

CHAIR BASHFORD: Go ahead.

MS. BOYD: Thank you. Can I -- hello,
my name is Kylisha Boyd. I was raped by a United
States Air Force active duty member in July 2016.
At the time I was half way through a criminal justice administration degree. I had a descent understanding of court process, investigation, and prosecution.

I was a former DoD employee and raising my 12 year old son, who had lost his father a few years earlier. I had not been in a relationship for a while, and was living at home with my parents.

On the night of July 6, I went out with some friends and my mother to celebrate her 60th birthday. I met the man who would rape me at the bar.

I ordered two drinks that night. He insisted -- he insisted on buying me a drink. And I always maintain that he put something in that drink.

I was not in the habit of approaching strange men. He had approached me. I assessed whether he was a danger risk and his relationship status.

Since he told me he was in the
military and divorced with children, I felt he
would be safe, because he had a lot to lose.

I decided to go back to his hotel room
after everyone else left the party for a
consensual sexual encounter. Before we left the
bar, we discussed that he would stop if I said no
to anything. And that he would use a condom.

He wanted to tie me up. And I agreed.
Although later I would decide this was not a good
idea.

Looking back, these were major faults
I held against myself, and a source of
embarrassment in deciding whether to come
forward. I still regret the poor decisions I
made that night. And I feel I put myself in a
bad situation. But I also know it was not my
fault.

When he tied me up, I felt an intense
fear come over me. I immediately begged and
pleaded with him to untie me. But it was too
late.

He gagged me with a belt and rag,
which I had not agreed to. And refused to let me go.

He then began trying to drug me. As he raped me, I just wanted it to be over. I was afraid I would die there in that room and no one would know where I was or who did it.

When I woke up, I was able to escape because he was asleep. I will never know what he intended to do to me.

I consider myself lucky to be alive and healthy. I have remained sober from drugs and alcohol since that night.

What I also did not know, and what was never disclosed to me, was that he was HIV positive. I later learned that he was required to tell me he was HIV positive, and supposed to use a condom.

I was devastated and terrified when I found out the next day from the forensic nurse that my rapist was HIV positive. I had already refused the preventative medications.

He took away my right to decide
whether I wanted to take that risk. I had to go through a rigorous medication cycle and wait a full year to be assured I was negative.

I never intended to report this. I was extremely embarrassed and hurt. I could not believe this happened to me.

Here I was -- here I was studying criminal justice and had become a victim. And I knew if I reported I would have to disclose my drug use and could end my career and end up in prison.

When I finally reported, the officer stressed the importance of preventing this from happening to someone else. I hadn't thought about that aspect.

This was the deciding factor for me. I could not live with myself knowing he could do this to someone else because I didn't tell.

I had to write a statement right there in the parking lot in my car. I knew the importance of including all the details, but I honestly was still in shock.
I got the main information that he tied -- he tried to drug me, rape me, wouldn't let me go, and strangled me. However, this statement dwarfed in comparison to what he did and lacked details describing the entire incident.

The next officer I spoke with witnessed incoming text messages from the man who raped me. During this interview I disclosed what I could remember.

However, the case was quickly transferred to the military. I did not know I had the right to express a choice of jurisdiction. And I did not know enough about the military justice system to make an informed decision.

The evidence in my case was very compelling, including pills he tried to drug me with, the chair with the belt still tied to the leg, which I escaped from, the belt he choked me with, HIV medication, and text messages sent to me from my rapist while I was in the process of
filling out the police report stating, I just remember not untying you as soon as you wanted to go.

The only text messages retrieved by investigators were from my own phone. Which I got back over one year later.

I still cannot understand why they did not obtain this evidence from his phone. I really did not want to hand over my phone.

There were other people's private information I would be handing over. I initially refused to turn it over.

I went home and started to delete other messages to protect the privacy of my friends. I later decided to turn it over.

The defense made a huge point about this when the prosecution could have obtained the same information from his device instead of mine, the victim.

At the time of the assault, I was civilian. And thus did not have a right to an appointed lawyer.
I was told by the military prosecutor during my forensic interview that I had a right to a lawyer. But that getting a lawyer complicates the process. And having one would likely cause bias with some judges and juries. In my case this definitely turned out to be true.

I initially agreed to proceed without legal counsel. After realizing I was giving up my right to privacy and not being wholly informed on case progress, I found a civilian lawyer.

I did not receive a resource list of available legal assistance. I found the lawyer on my own just a few weeks before trial was scheduled to begin.

The defense was aggressively seeking my counseling and medical records. My lawyer was able to prevent them from being compelled.

At the trial, my lawyer was not formally acknowledged to the court. He was not allowed to object and was prevented from full participation in the trial.
I had questions for my lawyer during cross examination. I asked procedural questions, not about my testimony, during the break.

When this was raised by the defense counsel, the judge directly questioned me on the stand about what communication I had with my legal counsel, despite my lawyer's objections.

I was completely ill prepared for this trial, which took place at Wright-Patterson Air Force Base. And was decided by Judge Omley.

I met with the prosecution one time prior to the day before trial. On several occasions I had answered questions from different investigators.

These were specific questions I had answered that were not discussed previously. This resulted in emphasis being placed on certain details, or details being missed, depending on the focus of each individual investigator.

During trial, this was construed as me changing what I reported. I never changed any statements. I simply gave more detail when
prompted.

My statements were consistent. And the additional details were supplemental and not substantively different.

My character and the consistency of my statements were attacked without rehabilitation from prosecution, from the prosecution. The process of memory recall and trauma was not addressed properly by the prosecution.

There were paid experts present for the prosecution who could have testified about why a trauma victim might not recall all events in a normal fashion. However, they were never utilized at trial for testimony.

By the time the prosecution realized they should use the experts they had retained to explain this, the judge would not allow it. It was too late.

I can still remember the sinking feeling sitting there knowing all the things the prosecution should have anticipated and did not
prepare for.

   It cannot be ignored that I was
impaired at the time of the assault. I was fully
aware that this information would be used against
me.

   I decided to tell the truth. The
whole truth to stop this guy from doing this to
someone else.

   I was completely honest to the point
of placing myself in jeopardy of my own
prosecution. Yet I still went forward with the
case, prior to any mention of immunity.

   Being a criminal justice student at
the time of the assault, I felt a sense of duty
to see this through, even if it meant I was
prosecuted or cast in a negative light. The
prosecution had an opportunity to highlight this,
but remained silent.

   I never lied to any investigator or
official about anything. I repeated the same
description over and over because it was the
truth.
Closing arguments was the most difficult part of the trial. I sat and listened while the defense called me a liar, drug addict who had no respect for the justice process.

The accused was made out to be a victim of someone who was cunning and knew what to say. Those words cut deep and I hoped the judge -- I hoped the judge understood that I had no motive to willingly place my freedom and career in jeopardy to accuse a complete stranger.

I hoped he would consider what I had to lose in coming forward. But when the defense attorney argued that this case was brought because of political correctness and pressure, and I saw the judge nodding along, I knew all hope was lost.

As the verdict was being read, my knees buckled when I heard the words. Not guilty on all charges. I could not understand the judge's reasoning. I felt confused, embarrassed, disappointed, and angry.
I requested transcripts of the case to try and understand what happened. I was told there would be no transcripts created because he was found not guilty.

The lack of transcripts and acquittals coupled with the lack of written or verbal opinion of a judge’s reasoning for findings, makes this a very closed and suspect process.

It is my hope that this Committee will look at my case and others to identify what steps can lead to a better representation of justice.

And thank you for your time.

CHAIR BASHFORD: Ms. Boyd, thank you for sharing your experience with us. I want to again, thank you Ms. Rodriguez and Mr. Guilds.

MR. GUILDS: Guilds.

CHAIR BASHFORD: Thank you for the work that you do as well.

MR. GUILDS: Thank you. Appreciate the time today.

MS. RODRIGUEZ: Thank you.

CHAIR BASHFORD: Major King?
MAJOR KING: Yea ma'am. At this time, the public meeting of the DAC-IPAD is officially closed.

(Whereupon, the above-entitled matter went off the record at 3:43 p.m.)
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CERTIFICATE

This is to certify that the foregoing transcript

In the matter of: DAC-IPAD Public Meeting

Before: US DOD

Date: 07-20-18

Place: Arlington, VA

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

[Signature]

Court Reporter