UNITED STATES DEPARTMENT OF DEFENSE

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

PUBLIC MEETING

FRIDAY
OCTOBER 19, 2018

The Committee met at One Liberty
Center, Suite 1432, 875 North Randolph Street,
Arlington, Virginia, at 9:30 a.m., Ms. Martha
Bashford, Chair, presiding.

PRESENT:

MS. MARTHA S. BASHFORD, Chair
HON. LEO I. BRISBOIS
MS. KATHLEEN CANNON
MS. MEG GARVIN
HON. PAUL W. GRIMM
MR. A.J. KRAMER
MS. JENNIFER GENTILE LONG
SGT. JAMES "JIM" MARKEY, Ret.
DR. JENIFER MARKOWITZ
CMSAF RODNEY J. MCKINLEY, Ret.
BGEN JAMES R. SCHWENK, USMC, Ret.
DR. CASSIA C. SPOHN
MS. MEGHAN A. TOKASH *
HON. REGGIE B. WALTON
STAFF:

COL. STEVEN WEIR, USA, Staff Director
MS. JULIE CARSON, Deputy Staff Director
MR. DALE TREXLER, Chief of Staff
MAJ. ISRAEL KING, USAF, Alternate Designated Federal Officer (ADFO)
DR. JANICE CHAYT, Investigator
MS. NALINI GUPTA, Attorney-Advisor
MR. CHUCK MASON, Attorney-Advisor
MS. MEGHAN PETERS, Attorney-Advisor
MS. STAYCE ROZELL, Senior Paralegal
MS. TERRI SAUNDERS, Attorney-Advisor
MS. KATE TAGERT, Attorney-Advisor

PRESENTERS:

MS. KATHLEEN COYNE, U.S. Marine Corps Defense
  Highly Qualified Expert
MAJ. STEVE HOHMAN, Baltimore Police Department
SERGEANT DETECTIVE KELLEY O'CONNELL, Boston
  Police Department
SERGEANT AMANDA WILD, Albuquerque Police
  Department

ALSO PRESENT:

MAJ. JOY HEWITT, USAF, Service Representative
MS. JANET MANSFIELD, U.S. Army Representative
MR. STEPHEN McCLEARY, USCG, Service
  Representative
MAJ. BLAKE PELTZ, USMC, Service Representative

*Present via teleconference
<table>
<thead>
<tr>
<th>C-O-N-T-E-N-T-S</th>
</tr>
</thead>
<tbody>
<tr>
<td>Welcome and Introductions. .......... 4</td>
</tr>
<tr>
<td>Effects of Sexual Assault Investigators on Accused Service Members. .......... 8</td>
</tr>
<tr>
<td>Perspectives of Civilian Sexual Assault Investigators. .......... 56</td>
</tr>
<tr>
<td>Case Review Working Group Presentation and Committee Deliberations on Initial Findings and Recommendations Related to Sexual Assault Investigative Case File Reviews .......... 176</td>
</tr>
<tr>
<td>Brief and Committee Deliberations on Judicial Proceedings Panel Recommendations Related to Articles 32, 33, and 34 of the Uniform Code of Military Justice Referred to the DAC-IPAD for Examination .......... 255</td>
</tr>
<tr>
<td>Committee Deliberations on Expedited Transfer - Final Assessment .......... 289</td>
</tr>
<tr>
<td>Data Working Group Update. .......... 328</td>
</tr>
<tr>
<td>Briefing and Committee Deliberations on Fiscal Year 2019 NDAA Required Collateral .......... 329</td>
</tr>
<tr>
<td>Misconduct Study</td>
</tr>
<tr>
<td>Adjourn .......... 333</td>
</tr>
</tbody>
</table>
MAJ. KING: Good morning everybody.

As Acting DFO, I officially open this public meeting of the DAC-IPAD. I do note that the agenda has recently changed from what it originally began with a testimony from an individual whose sexual assault testimony our committee will hear later today.

MS. BASHFORD: Thank you, Major King.

Good morning. I would like to welcome the members and everyone in attendance today to the 10th meeting of the Defense Advisory Committee on Investigation, Prosecution and Defense of Sexual Assault in the Armed Forces, or DAC-IPAD.

The Secretary of Defense appointed 16 members to the committee, 13 of whom are physically present today. Two committee members are not able to attend, Major General Marcia Anderson and Ms. Meghan Tokash.

Ms. Tokash will be joining us telephonically later this morning. And it is
with a very heavy heart and great sadness that a
report that the third committee member not with
us today, Savannah Law School associate dean and
professor of law, Keith Harrison passed away on
August 15th, 2018 after a brief illness.

Dean Harrison was a beloved member of
this committee, as well as a dear friend,
colleague, leader, father and husband, with a
distinguished career of over 30 years in legal
education as both a teacher and an administrator.

He was especially proud of his service
as a judge advocate in the U.S. Coast Guard
before beginning his academic career.

Dean Harrison's kindness, wisdom and
contagious enthusiasm will be deeply missed by
all of us at the DAC-IPAD and we hold his family
in our thoughts and prayers as we meet 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 website.

We will begin the meeting with testimony from a Marine Corps civilian defense expert, who will speak about the effects of sexual assault investigations on accused service members in cases where no charges are preferred.

This will be followed by testimony from a panel of civilian investigators from Boston, Baltimore and Albuquerque.

After a break for lunch, the committee will resume with a presentation from the DAC-IPAD's case review working group on its review of 166 investigative case files and the working group's initial findings and recommendations.

This will be followed by the committee's final deliberations, on the Department of Defense expedited transfer program and a briefing from DAC-IPAD staff on three
recommendations from the judicial proceedings
panel that the DOD general counsel has asked the
DAC-IPAD to examine for its March 2019 report.

After that, the committee will receive
a briefing on a provision from fiscal year 2019
NDAA, that tasks the DAC-IPAD to report on victim
collateral misconduct related to sexual assault.

For its last session, the committee
will receive an update from the DAC-IPAD's data
working group. Each public meeting of the DAC-
IPAD includes a period of time for public
comment.

We've received no requests for public
comment at today's meeting. If a member of the
audience would like to comment on an issue before
the committee, please direct your request to the
DAC-IPAD's staff director Colonel Steven Weir.

All public comments will be heard at
the end of the meeting and at the discretion of
the chair. Written public comments may always be
submitted for committee consideration.

The DCA IPAD recognizing that we are
advising not only on the investigation and
prosecution on sexual assault in the military but
also on the defense of sexual assault, remains
committed to hearing testimony from individual
who have been accused of sexual assault where no
charges were ultimately brought. And the impact
that these accusations have had on personal lives
and their military careers. Such testimony will
be heard by the full DAC-IPAD at future meeting
or meetings.

Thank you all for being here. Ms.
Coyne, you have the chair and you may begin
whenever you're ready. Thank you for coming.

MS. COYNE: Thank you, Madame Chair.
Good morning members of the committee.

My name is Kathleen Coyne. I'm one of
two civilian attorney advisors, formally called
HQEs, which is how they've been referred to in
your prior reports for the Marine Corps Defense
Services organization.

I'm a career defense attorney. I
spent 32 years of my professional life as a
public defender. For the last five years, I've been privileged to train, assist and consult with Marine defense counsel.

Thank you for the opportunity to address the impact of charges which were preferred or referred but ultimately withdrawn or dismissed.

These views are based on my personal observations. They don't necessarily reflect the views of the Marine Corps, the Department of the Navy or the Department of Defense.

DoD initiatives over the past several years to address sexual assault have led to an unprecedented increase in sex crimes charging within the military. Many of those charged are later acquitted.

For example, in the Marine Corps, in fiscal year 2018, out of a total of 45 contested general court-martials, there were 12 complete acquittals and 23 partial acquittals.

Many partial acquittals were for -- or many partial convictions rather were for minor
misconduct like barracks violations or under aged drinking. Significant numbers of those accused of sex offenses ultimately have their charges dismissed.

For example, DoD wide in 2017, the last year for which we have records from SAPRO, 776 sexual offenses were preferred, of these 105 cases or 13.5 percent were dismissed. And I've had the opportunity to check with your staff and the number that you have is 13.8 percent. So, the numbers do correlate.

A sex crime accusation alone causes irreparable harm. At a minimum, service members are put on legal hold for months, frequently over six months.

Legal holds delay or cancel duty station transfers, which is especially onerous in places like Okinawa or Japan where individuals are separated from their family and will not be allowed to return to the U.S. to reunify while there is a case pending.

If scheduled for a competitive school
or a special duty assignment, they will lose that billet. That causes loss of competitiveness for promotion or reenlistment. If selected for promotion, that will be held up, frozen during the case and sometimes even after a dismissal.

They are frequently publicly singled out by the command as a sex offender and the accused's reputation within the unit and on the base as a whole is in tatters.

As a side note, this is particularly problematic in jury selection where our members are selected from the same command as the accused.

Other do not work or associate with the accused. If he seeks a transfer after the dismissal, his reputation will often proceed him.

Many exonerated clients decide that the career that they had envisioned in the military is no longer for them and that results in the loss of training and experience on the part of the services who have invested in these service members.
Others who would like to remain are denied the opportunity to do so by being refused a reenlistment approval. They've lost years of retirement that they have worked hard and diligently towards acquiring.

Military protective orders are routinely imposed, which cause severe limits on socializing and even the ability to interact with work colleagues.

In at least one case that resulted in a young Marine who lived in a barracks being unable to eat in the chow hall. On the personal side it prevents the accused from living actively until the case is resolved.

It forces him to explain to a wife, to parents, to siblings or children that they've been accused of a heinous crime. It may limit their ability to participate in a child's sporting or extracurricular activities.

It may destroy marriages. It has resulted in the loss of child custody. The mere charges will put the individual in a DNA database
and it is extremely difficult, if not impossible to be removed from that DNA database once you're entered.

A seizure of personal property, like phones, computers and other electronic devices is very common and is almost impossible to have returned.

I put together a few real-world examples of where charges were withdrawn but lasting harm was done to the exonerated Marine. I want to say that although I'm here on behalf of the Marine Corps, I do have experience talking with many members of all branches of the services.

In fact, we train all branches of the service at our annual training on defending sexual assault cases. So, I've had an opportunity to ask and inquire about what's going on in the other services, and I believe this is pervasive. In one case, charges were dismissed after motion.

So, the case had been preferred. It
was referred. And trial management order was issued, motions filings, deadlines were met and there was a litigated 39a.

So, we're talking about a significant period of time into the case. And the charges were dismissed when the motions revealed serious credibility issues about the complainant. After dismissing the charges, headquarters' battalion refused to take him off non-recommended status for promotion for months.

Finally headquarters battalion attempted to NJP the marine for having sex in the barracks, but they charged a violation of an order that wasn't even in effect at the time of the incident.

Ultimately, he received a 6105 counseling. His overseas orders were cancelled and never reinstated. To date his promotion has not been back dated. On top of all of this, a reporter from the San Diego Union Tribune did a story in the paper based only on the charge sheet and any time you Google this young Marine, that
story comes up.

In another case, after a young PFC had his case dismissed post-Article 32, he was given a 6105 counseling that stated that after the command had opened a sexual assault investigation it found that he had entered a female student Marine's room without permission.

However, this case was specifically dismissed after the Article 32 preliminary hearing officer found that there was no forensic evidence whatsoever tying the accused to that room.

The barracks duty officer testified that no one had been in the hallway that morning and the complainant said, it could have been another individual who entered her room.

The mere use of the word "sexual assault" in a 6105-counseling form is probably going to prevent this young marine from reenlisting.

MS. BASHFORD: Ms. Coyne, can I interrupt you?
MS. COYNE: Sure.

MS. BASHFORD: You mentioned a 6105 counseling three times. What is that?

MS. COYNE: Oh, I apologize. That is a written formal counseling that is entered into the military -- at least in the Marine Corps -- in the military service member's record and remains there for the pendency of their career.

MS. BASHFORD: Thank you.

MS. COYNE: In another case, a Marine who was placed on legal hold, actually lost a seat in medical school because he was delayed before the case was dismissed.

Under ABA standards, as I'm sure all the prosecutors in the room know, prosecutors have an ethical duty not to bring charges where there is little likelihood of conviction beyond a reasonable doubt.

Yet in the military, even a hearing officer's finding of no probable cause at the preliminary hearing, at the Article 32, frequently has no impact on the convening
authority, a non-lawyer, who may choose to prefer charges

-- I'm sorry -- refer charges nevertheless.

In one case, an O5, lieutenant colonel preliminary hearing officer, so a relatively experienced, in fact for military purposes, a very experienced judge advocate found no probable cause.

I've read the preliminary hearing officer's report. I've also read the response of the convening authority, which said, my -- sent the case to trial specifically and the reason was, quote "My recommendation is consistent with your sexual assault policy."

That was the justification for pushing the case beyond a finding of no probable cause. The Marine was acquitted but not before his life was completely in tatters.

I'm not saying that sexual assault allegations should not be fully investigated and if appropriate referred to a court-martial. But fear of looking weak on sexual assault must not
permanently take the reputation of a service
member with an unprovable but explosive
accusation.

The accusation alone permanently
impacts the innocent accused. It's readily
apparent I believe that some reform of the system
is imperative. These consequences cannot be
erased once the charges are brought.

But the sooner an innocent client
exits the system, the better and less damaging
will the accusation be. I've been asked to offer
some specific suggestions to address the
imbalance towards the innocent accused.

One, my advice would be to reinstitute
the Article 32 preliminary hearing as a rebuts
tool for defense discovery and investigation. As
you all may be aware, the only branch right now
who has defense investigators is the Navy.

One of the justifications for the
original robust Article 32, was that, that was
where the defense would conduct much of its
investigation. We now no longer have access to
that.

Most Article 32s are a paper shuffle and coming -- as an aside from my prepared remarks -- coming from a background of California, when we moved from a hearsay preliminary hearing -- or from a non-hearsay preliminary to a hearsay preliminary hearing, we found that there was a significant increase in acquittals when prosecutors did not have access -- did not choose to put the witness on the witness stand.

And I believe that, that is also happening in the military now. So, I believe that the Article 32 should be a robust investigative tool and it should include the right to call defense witnesses and liberally grant a request for defense witnesses, particularly where they're co-located at the site of the hearing.

We have situations in which we have asked individuals who are on the base where the preliminary hearing is being held and have not
been allowed to call those witnesses at the Article 32 because of the very narrow vision on the part of the preliminary hearing officer that only issues related to probable cause would be relevant.

To the affect that the credibility of the complainant is not an issue related to probable cause. Something we take great issue with. We believe that you can never predicate probable cause on a witness testimony if that witness has impeaching material that the hearing officer has not heard.

BGEN SCHWENK: May I interject? How do you reconcile that -- I understand. How do you reconcile that with the federal grand jury system?

I mean there's no defense opportunity to cross or call witnesses in the probable cause determinations, like those system are not generally seen to be sort of lacking merit?

They get a, you know, the conviction rates aren't appreciable to the word, then you're
saying without -- that you're saying they are in
the military system?

MS. COYNE: I have an answer for that, sir.

BGEN SCHWENK: Well that's why I asked
the question.

MS. COYNE: Okay. Every federal
defender in this country has dedicated defense
investigators and I've actually done the
research. I've cold-called every federal
defender in the country.

The average numbers are about one
investigator to four attorneys. We have zero
investigators. Our attorneys are right out of
law school by in large. If you combine -- for
the last time we did the calculation, if you
combine senior defense counsel and defense
counsel's experience, their combined average
experience was 14 months.

They have no training in
investigation. The first case that they may
receive assigned to them is maybe, it will be a
sex offense, and it may be a life taught sex
offense.

They have no, they have no subpoena
power, which is also very common in the federal
system, so that they can obtain investigative
materials by way of subpoena and using a skilled
and trained investigator, with appropriate
investigative tools and a database.

BGEN SCHWENK: Thank you. Okay. Go.

HON. GRIMM: Okay. I wonder if I
could ask you -- I'd like to you have fly up
about 50,000 feet and look down on the landscape.
You spent 30 years as a public defender in a
criminal justice system.

As one of the challenges is to the
function of the military justice system is
distinctly different than the criminal justice
system in that we understand that it has the
promotion of order, an order of discipline and it
has a disciplinary purpose for the force itself.

That has been the explanation given as
to why the military does not want to have this
function taken away and given to career
prosecutors and defense attorneys, along the line
of the systems that would happen in the civilian
criminal justice system.

And inherent in that is the ability
for example to have a convening authority make
decisions that are not being driven by the
prosecutor who has to prosecute the case, his
evaluation and the evidence, the judge
advocate's, the staff judge advocate's opinion as
to whether or not the case should go forward or
not in an independent way.

And that in and of itself is affected
by how that commander may view the function of
the prosecution investigation of the cases, as
part of the broader function of the military.

As long as that duality exists, are
you ever going to have reforms that address the
core of what you're talking about, or are you
just essentially putting Band-Aids on a problem
that will resurface in some other way if you have
the command involved in these decisions in terms
of the charges?

    MS. COYNE: First of all, I don't
think good order and discipline is ever achieved
by conviction of an innocent person.

    HON. GRIMM: I'm not disagreeing with
that. I'm saying, though, as the system where
those who make the decisions, who as to whether
it is referred are not bound to follow the
recommendation of the prosecutor.

    MS. COYNE: Well that --

    HON. GRIMM: If the prosecutor in the
civilian system does not believe that there's
probable cause, they don't take it to the grand
jury to begin with.

    This is why we don't get the kinds of
concerns, at least in the federal system, with
regard to bringing charges to the grand jury
whereas judge, my judicial colleague has pointed
out, there's no right to cross examine.

    But what you have, is you have a
system where the prosecutors with their ethical
responsibilities and guidance as to what is, what
has to be present before you bring a charge may
define the decision.

That doesn't happen in your pre-
structured environment, the way in which the
structure is created. So as long as you have
that, how are you going to address the problems
fundamentally?

Of course, I'm not undermining the
concern that you have. I share that concern.

But how are you going to fix it within the
current structure?

MS. COYNE: Well I believe, and I have
a suggestion that anytime there is a finding of
no probable cause made at the Article 32 hearing,
that, that decision should be binding on the
convening authority unless he chooses to appeal
the decision to a magistrate or military judge or
present new evidence to increase the level of
probable cause.

So, I believe that the commander has
a role in the process. I do not believe that the
current system, where there is inordinate
pressure, social pressure, often unacknowledged upon commanders, that they're never going to get in trouble by referring a case to a jury or a court-martial and allowing the members to sort it out.

Absent increased intestinal fortitude on the part of our commanders, I think what we need to do is allow them the, if you will --

HON. GRIMM: Coverage.

MS. COYNE: That is a word. Top cover is what they say in the Marine Corps of saying, okay, well I disagree with this finding, but I want -- my gut says go forward.

I want a gut check with somebody with more experience. Now right now, PHOs are -- I mean unless the case is extraordinarily serious, the PHOs tend to be first to our captains or reservists, sometimes reservists with a family court practice or a, you know, wills and trust practice, so they're not that conversant with criminal law.

If we instead say, okay, you feel
strongly about that, commander. Let's run this
up the flag pole and see what a very experienced
military judge says. And then allow that to be
the failsafe. And I believe that, that is, would
answer the problem.

HON. GRIMM: Does that create in your
mind problems with being now you're involving the
judiciary into decisions about charging?

That's a concern that I have. I don't
disagree with an experience prosecutor. I also
understand that there could be merit saying that
the Article 32 has to be, if it finds no probable
cause, that's binding absent additional evidence,
or some other change in the underlying factual
posture of what was that the --

MS. COYNE: So heard.

HON. GRIMM: (Simultaneous speaking).

And I also agree with the notion that you want to
have experience at the preliminary hearing
officer level that has the, more than your 14-
month example with combined experience. But is
there concern that you have about involving the
judiciary?

I mean we've taken in the military
great pains to take the military judges away from
the ordinary command structure.

Are we throwing them into doing
something in terms of the charging sufficiency
outside the context in which they usually get it,
which a motion to dismiss the charges or some
other relief in the context in the charges going
forward?

MS. COYNE: I don't believe so. And
that is informed by my experience in California
with the hearsay prelim. When a prelim finds no
probable cause, the prosecutor's entitled to re-
file those charges. And that is subject to a
motion to a judge to review. We call it a 995
motion because it's Penal Code Section 995.

And the question then to the judge is
a dual one. Was the preliminary hearing
magistrate correct in his legal assessment? Or,
has the prosecutor submitted additional
sufficient evidence to overcome that?
HON. GRIMM: Like a motion to dismiss or to suppress on the base, unlike a probable cause as a basis?

MS. COYNE: Right, right. And judges do that every day. They are uniquely trained to do that. He's not -- the military judge is not saying, yes, convening authority, good order and discipline. Go forward.

He is strictly making a legal decision. And that's what we train judges to do. That's what we expect judges to do. That's what they do every day. We've already got this.

We've got a paradigm in at least one state that I practiced in for 25 years, 24 years after a hearsay prelim was instituted and it worked, you know, as a defense counsel, not always as well as I would have liked it to, but it did work.

HON. GRIMM: That's very helpful.

Thank you.

MS. BASHFORD: I want to make sure we get through your recommendations before we do too
many more questions. I think --

MS. GARVIN: I'm sorry, chair. I have a question about this recommendation, about the 32, the one you started with?

MS. COYNE: Yes.

MS. GARVIN: If there were investigators assigned to defense, does that mitigate your request for the 32 to go to a different iteration?

MS. COYNE: Well the answer is yes. However, we would need sufficient -- and this was my final recommendation. So, can I --

MS. GARVIN: Of course.

MS. COYNE: -- run through and then I get there and then we can talk about it?

So, the other option I believe is we can require the PHO to evaluate not just probable cause but whether or not there is sufficient evidence, admissible, likely to be admissible to prove the case beyond a reasonable doubt.

And that the PHO should have to make that finding and report on it. I believe that if
the PHO said, yes, there's probable cause.

No, there's not likely to be sufficient admissible evidence to secure a conviction, I think that also ought to be subject to judicial review in the same way that I just described.

The other thing is a question of training NCIS, CID investigative agents in sex crimes. We've spent a lot of time over the past decade at least in training them to, in victim led investigations.

And look, as somebody's who's worked in the criminal justice system for many, many years, whose clients are often victims of sexual assaults, I will say to you that I think it's good that we have victim led investigations.

But I also know that we are being told by agents on the witness stand that they're being trained not to seek evidence that will contradict the complainant. Simply to accept the complainant's story.

So, if you want to effectuate a change
a level before a case is ever preferred, you
train CID and NCIS investigators to respectfully
investigate and seek evidence that will confirm
or disprove allegations.

And, you know, I just want to lay out
my bona fides. I'm a long-time public defender.
My younger sister and brother were both police
officers. My brother is -- just retired as a
decorated detective. My sister also was a police
officer.

They do a hard job and they try to do
it well. This is a failure of our training them.
And I believe that if we train them, they will
follow their training.

I don't think however that is ever
only the answer to just train our law enforcement
better because as the Supreme Court has described
it, law enforcement is often a competitive
business.

So, we want to move more towards an
objective investigation, but that alone will
never solve the problem. Finally, every service
branch utilizing the Navy model, which is currently in effect, should have access to independent, dedicated, trained defense investigators in sufficient numbers to assist the early investigation and development of factors, which weigh on charging decisions.

And create a mechanism to share that information confidentially with the convening authority before he makes the preferral decision. And the reason for that is, right now we can share evidence that we may have been able to cobble together as the defense counsel that bears on the charging function.

And we may share that with the convening authority but when we do that, that's a direct pipeline to the prosecutor. So, any -- and remember investigations, defense investigations are almost always driven by confidential, privileged client communications.

So we're in a very -- we're not in equipoise but we're in tension with representing our client in the hopes of having him exit the
system as soon as possible and, you know, trying
to knock out the charge before it gets filed and
the realization, there are very real social
pressures which may lead to the case being
charged and giving up this information to the
prosecution may enable them to prosecute our
clients.

So, I think that there has to be a
mechanism for that confidential sharing of
information. So, in terms, to address your
issue, Ms. -- is it Garvin?

MS. GARVIN: It is, yes.

MS. COYNE: Okay. Ms. Garvin, here's
the situation. In my opinion, defense
investigators might obviate the need for as
robust a preliminary hearing.

But it will never solve the problem if
the way out of this -- alone -- if the way out of
the system is in order to convince the FO that
there's no probable cause, if we're not allowed
to call witnesses to establish that.

So, I think that -- I understand right
now -- and to veer off topic just a little bit.

There's a very strong commitment that
complainants will not be required to testify at
the preliminary hearing. Complainants are not
even required to speak to prosecutors.

I can tell you, the prosecutors are as
frustrated with that as defense counsel in many
cases. You know, the military justice, indeed
any criminal justice system is like a three-
legged stool.

If you make one leg longer than the
other, the whole situation will topple over. And
if for example, in California we have the hearsay
prelim. After the first couple of years it were
in effect, prosecutors saw a dramatic decrease in
convictions from when they did the hearsay
prelim.

So now routinely, prosecutors in child
abuse, sexual abuse and domestic violence cases
routinely take every case to a preliminary
hearing, so that the witness can be tested.

But more importantly, in California
there is a hearsay prelim, the hearsay complainant is always permitted to be impeached by anything that they would have been impeached with if the witness had testified live. We do not have that provision.

Now when the Article 32 changes were being proposed, I was tasked by our then CDC, Colonel Steve Newman to look at the hearsay prelim and, you know, compare it with my experience.

I believe Senator Boxer was actively involved in drafting that and it tracked at that time pretty well the hearsay preliminary hearing in effect in California.

By the time it made it out of committee and into the law, every defense leaning protection of the preliminary hearing had been stripped out. So, the problem is that we have, in many ways, over balanced the system. And that does not advantage complainants.

It does not advantage victims because if victims are shielded from meeting with
prosecutors, from meeting with defense attorneys, which they can always refuse to do that in the civilian side.

But if they have no exposure to that and they step into the courtroom arena without having been exposed to that, they have unreasonable expectations of what is likely to occur in the courtroom.

And as one chief or senior -- I'm sorry -- regional VLC had to write to a convening authority that the client, all the client wanted was a conviction of which she could give her victim impact statement. That was what she wanted.

The convening authority was refusing a settlement that both the trial counsel, defense counsel -- oh, I'm sorry -- and VLC had approved. And Major Minikus, who was the western regional VLC, wrote a letter explaining that to force a complainant to go to trial under those circumstances with unreal expectations of what would happen could only serve to retraumatize
her.

In that particular case, it was undisputed that something happened. But the question was, as it often is in these cases where both parties have taken, have some alcohol onboard.

And I will tell you quite frankly, I have not seen more than one or two sexual assaults in the military in the five years I've been doing this where alcohol was not a major factor in the case.

So, I think that under those circumstances in allowing a better early vetting of the case will actually improve the outcome for everyone.

HON. GRIMM: Could I ask a question about one of your recommendations? I just want to flush it out a little bit.

You mentioned that particularly and for example we could combine the dedicated, qualified defense investigators for the defense as well as for the prosecution and develop
defense information, you suggested that there
should be some thought the committee should give
to recommending that there be a mechanism of any
confidential defense information brought to the
attention of the convening authority without
having to share that with the prosecutor.

Here's the question that I have. If
the convening authority has to make the ultimate
decision and is, has to justify that to the
command structure and is going to consider
information that was, as we would say in the
legal community, ex parte, can I think then, how
is that convening authority to explain the basis
for a decision for example not to move forward
that is influenced by a defense investigative
information that was confidentially shared that
the government was not aware of, had no ability
to try and to do a read of -- I don't know how
that could proceed in a way. I understand why
the ability to make sure that where there is
defense information that ought to be considered
as to whether or not the charges go forward,
having that be available is a commendable goal.

But I don't see how it can operate if it was confidential and was going to influence a decision, when the decision itself is subject to a requirement to be explained and review by evidence. How would that operate?

MS. COYNE: Well I think it operates like submitting a declaration under seal. When he says, I'm predicating this in part on confidential defense information, see attached sealed envelope of said information.

HON. GRIMM: And then that act gets seen by who upon review?

MS. COYNE: Well whoever the convening authority has to justify it to in order to not to go forward on the 120. I mean if he's the ultimate deciding authority, I mean, you know, if it's the CG, then that's the person who would ultimately receive it.

My concern is this, that mechanism ought to exist at the, at the defense discretion. Obviously not every case can it be required of
the defense that they do that. Sometimes that
information may not exist early enough.
Sometimes there'll be a tactical decision that
they should not share that information.

However, I think that you are looking
at a system driven by a commander, who's not a
lawyer and when you do that, you're going to have
to come up with unique and innovative ways to
deal with information. And that's the one that I
think works.

Now would we have to, you know, spend
some time creating that mechanism, consciously
think about it? Absolutely, sir. But do I think
that because something is initially seen as
difficult, that it is not worthwhile to pursue?

No, I do not. I think that one of the
things that I see every day is people's lives
being destroyed by these accusations. When you
talk about 13 percent, more than one out of ten
referred charges -- I'm sorry, strike that --
preferred or referred charges is later dismissed.

One out of ten, that is a huge number
I believe, an unacceptably large number. And the sooner that we can exit those, usually young men, almost overwhelming young men out of the system, the more just our system will be.

And whatever else has happened, and I am the daughter of a career Marine, and I am the sister of a Marine, and I will tell you that the one thing that you have to say about every single person who is a member of the armed services, is they have taken an oath to defend us at peril of their life.

I think the least we can do is give them the same level of due process that any civilian expects in any courthouse in the land.

MS. CANNON: Ms. Coyne, you've indicated that investigation is an area that is needed earlier in the process. Two questions about that. When is an investigator available to the defense? And two, how many investigators are available?

In other words, if there's one for -- tell us how the investigation works?
MS. COYNE: Well right now, I've been with the DSO for five years. During that time, we've had two investigators granted. We had to go to court to get it and in both of them they involved individuals who were having to be investigated in a foreign language.

So, in one case we had a Vietnamese client. It was a homicide case, a child homicide. And in order to develop information relevant for sentencing mitigation, we had to go to her home community where virtually everyone was Vietnamese-only speaking. We were authorized 20 hours of an investigator for that homicide investigation.

In another case, also a homicide that occurred in the Caribbean, almost all the parties were Creole-speaking. So, we needed to obtain it, and this was a military prosecution of a military service member for a homicide committed while on leave. And ultimately that case resulted in a plead to a firearms charge.

But again, we were given a very
limited number. In my five years with the Marine
court, those are the only two cases we've ever
had an investigator in.

So, we have no investigators. And
we're frequently given the idea that a military
judge can order them where necessary as a, quite
frankly anodyne to our request, when reality does
not match that.

There is a lack of -- even if we have
our young people, our young defense counsel
trained in how to do investigations, something
which is, defense investigations are unique from
law enforcement investigations, just in the terms
of mitigation and extenuation, which the
standards of care requires that we do an active
investigation on sentencing issues as well as
guilt.

So just in extenuation and mitigation,
frequently investigators need to have social
science backgrounds and things of that nature,
which our folks don't have. They don't know that
background. So, while they're trying to learn
how to try a case and the military law and run motions, they are having to try to figure out, how do I interview this witness?

We have to take our 4421, legal men, our legal services support specialists, clerks and use them as provers. By in large, these are PFCs to lance corporals or corporals who have also no training, who may only be in the defense billet for 12 months.

And we are asking them to act as provers because to interview a witness without a prover puts us in violation, a likely violation of our cannons of ethics, including the Navy rules of professional responsibility.

MS. BASHFORD: When you do your next question though I want, just for some prospective, in addition to the assistance of the special victim's detectives that we have and have had as prosecutors, I was just trying to count, I have six dedicated, full-time investigators to supplement the police work just for Manhattan.

So, it's six full-time, with sex
crimes experience.

MS. COYNE: And what I would point out is, not only does the prosecution have prosecution NCIS, CID, sometimes state or federal law enforcement, they have dedicated CID agents within the complex trial teams to execute just those, what we used to call DA investigator functions.

I have spoken with the CID agents in the CTT, and they have both told me, yeah, you've guys got to have investigators. And, you know, my response was, from your lips to God's ears. Please.

One of the things is that it takes an extraordinarily long period of time sometimes in the military to investigate a case before the referral decision is made. So, the NCIS, CID, the law enforcement folks may have had the case for a year to a year-and-a-half. The case was referred. We have no investigators.

They want to do an Article 32 hearing within a week or two, and then they want to set a
due course trial date so that they're -- I mean we're on a rocket docket. They're trying to get us to trial on a case they spent a year-and-a-half investigating, in three to six months in a situation where we have no investigators.

And a shop, one of the largest shops in the Marine Corps is at Pendleton. We have, I think right now 14 attorneys but one of them, we're going to end up with 15 in a minute.

We have two support staff, a corporal and a lance corporal. And they have to open files, handle discovery, do everything administrative in the office and be available as provers for an investigation.

So, you have this lance corporal who has files piling up behind him, getting called in by attorneys saying, come in here quick. I have to do an interview. I need you to make, to be my prover, to make my notes, to do what I have to do and be available to testify.

It is, it is, it is an unacceptable situation in any public defender's office in the
country. And I have worked in the Philadelphia
defender's office. I've worked in Binghamton,
New York. I've been a federal public defender
and I was a San Diego County public defender for
26 years. And nobody, nobody does what we do.

MS. CANNON: Let me just follow up on
your question about experts.

MS. COYNE: Okay.

MS. CANNON: Is there a disparity in
being able to obtain experts in these cases?

MS. COYNE: Absolutely. Military --
the rules for court-martial, 703(d), provides
that whenever anyone wants to use an expert in
their case -- it says any party -- they have to
give notice to the other party with a complete
description of the reasons for doing that.

In practice, only the defense does
that. In five years, I've never seen the
prosecution serve such a notice on the party. We
have to ask the prosecutors, please, sir, may I
have an investigator? I mean I feel like Oliver
Twist. And then we go to the convening
authority.

So, the prosecutor gets to say, yes, I think they need this expert or no, I don't think they need the expert. Now of course, the prosecutor only has the information we give them. We've got to give them our entire case to justify getting an expert.

If the convening authority says no, which is routine, I've very -- unless the case is a homicide, I've never seen a convening authority pony up with an expert at the first request. Then we have to go into the court and we have to litigate.

And the three things that we have to prove in a military system is, we have to prove what the expert will do for us, why they're necessary and why the attorney can't do it for themselves. And that last one has me completely baffled. Right?

Why can't I be a pediatric forensic neurologist? Because my undergraduate degree is in history and English, and I have a law degree.
I haven't been a neurologist. I don't know anything about neurology. I mean I'm being -- it is somewhat humorous. But I mean we see that.

And then we go in and for example -- and this is a real-world case that has happened. We go in and we say, we need this expert. And this expert has agreed to do all of the pretrial work, review the discovery, review medical records, write a report, consult with counsel -- everything short of testimony, $10,000.

Now anybody practicing in the civilian world would think, wow, that's a deal. I mean, $10,000 for that kind of an expert. We will go in and the prosecutor will unilaterally, for no reason, consulting nothing say, no. You can have $5,000.

The convening authority will say, okay, $5,000. You can't buy half the car, okay? $5,000 will not answer the mail. So, we have that problem.

Then we have the problem of the -- we sought an expert. The expert has given us an
opinion that is consistent with our defense. We go in and ask for the expert. The judge orders the expert.

Now the prosecution is given time to obtain a so-called adequate government substitute. We laughingly call this the inadequate government substitute because what happens is, the prosecutor's thinking, I don't want Dr. Expert coming in. I'd rather have master's degree, not-so-expert coming in. And then we're forced to litigate that.

So, one of the problems and the way the expert problem feeds into the investigative problem is, our attorneys are having to spend so much time litigating for resources that they don't have time to prepare their case or to investigate the case in the way that they should.

MS. BASHFORD: We have time for just one more question. And Jennifer, I saw your hand your hand up. Do you want to go, too? The clock is ticking.

MS. LONG: All right. And my question
was, and of the many things I wanted to ask you, you had made a statement that the investigators are being trained not to seek contradictory evidence in these cases, in sexual assault cases, which I would just posit is not in the terms of prosecution perspective.

But it's not a victim -- that's not what we teach when we teach investigations, which we feel is common-formed and victim-centered.

But I'm wondering if you could expand on who is teaching investigators that they should not? Basically, what you're saying is they're being taught not to conduct thorough investigations in these cases. Is that correct?

MS. COYNE: Well when we get an NCIS agent -- when I say we, obviously I'm a civilian. I'm not sitting at counsel table.

I'm sitting in the spectators, wishing I could throw a pencil at my attorney's head sometimes because, you know, I'm like, you're missing it, you're missing it. Not because they're unprepared in the sense of, they've done
everything they can to get prepared, but we just haven't been given enough time.

So, I'm sitting in the spectators, but I am hearing the testimony. And the testimony is, when asking the NCIS agents, did you do this? No. Why didn't you do it? Well because, you know, we're not trained to do that. We are trained to do this.

So, I've heard that answer over and over again. As to who's training them? I don't know. We can't get copies of their -- they fight us on getting copies of their training manuals so that we can see what the rules are given to them for conducting investigations.

But over and over again, what we see are leads, which are clearly within the text of the statement given by the complainant, which are simple not investigated. It's like we have the complainant's statement. We're done now.

And that is terribly unfair, and I think it's unfair to the victim and the accused.

MS. BASHFORD: I'm going to let Mr.
Markey have one final.

MR. MARKEY: Thank you for being here today. And your presentation has been very helpful. You went through some logistical side effects of QC and somebody that's been the target of a sexual assault investigation.

MS. COYNE: Yes.

MR. MARKEY: One of the things that was concerning to me that you said, and hopefully you can explain a little bit is when somebody has been identified as a target, as the suspect in a sexual assault investigation, they are singled out as a sex offender by command. Can you describe what that looks like?

MS. COYNE: Well that looks like a PMB, you know, a professional military brief is called together. And it may be at the senior NCO level will call a crowd together and say, you know, we've had this happen.

Now remember, these are small groups of people and they understand -- even if the client is not named -- the facts that they're
talking about.

In other situations, we've had guys who are taken out of their assignment and who are basically sat at a desk on a quarter deck and do nothing all day long. We have our attorneys -- or sorry -- our clients who are in legal hold are transferred to headquarters battalion where everybody, you know, all the broken toys go.

So, it's a public acknowledgement that these people have been accused. So, it runs the gamut from how it happens.

We've seen commanders, when something happens send out a written notice, basically, I will not tolerate sexual assault within the command, but it's triggered by an incident, which is being actively investigated. So, in all those ways that's what happens.

MS. BASHFORD: Ms. Coyne, thank you so much for coming. We appreciate your testimony. We'll be on break until 10:40 when we'll be hearing from some civilian sexual assault investigators. Thank you again.
(Whereupon, the above-entitled matter went off the record at 10:33 p.m. and resumed at 10:43 a.m.)

MS. BASHFORD: Okay, we're now being joined by Sergeant O'Connell, Sergeant Wild, and Major Hohman.

If you could just briefly introduce yourself before your remarks, keeping in mind we do have your bios? Sergeant O'Connell, let me start with you.

SGT. O'CONNELL: Good morning, my name is Kelly O'Connell I'm the detective assigned to the Boston Sexual Assault Unit. I've been with the Department 32 years since November.

I've been assigned over to sexual assault for nine years. Previous to that, I coordinated the Human Trafficking Taskforce in Boston in developing a trafficking unit in Boston over in the sexual assault unit.

MS. BASHFORD: Sergeant Wild?

SGT. WILD: Thank you, I'm from the Albuquerque Police Department. I have had about
six years of investigation specializing in sexual assault.

I've been over at the SASCRANS unit, which is actually active and our cold case. So we have approximately 5000 cases that we're revisiting, getting tested on the sexual assault backlog, and going forward and revisiting, we've been able to identify a lot of issues on how these cases fall through the cracks and how we're actually progressing through the actual system at this time.

MAJ. HOHMAN: Good morning, my name is Steve Hohman, I'm the Major Commanding Officer of the Baltimore Police Department special investigation Section.

SIS is comprised of about 13 different units of which our sexual assault investigators and our child abuse detectives are assigned. I've been with the BPD and in about 10 days I'll start with my 20th year with the BPD.

Most of that time has been in criminal investigations. I've spent about eight years in
the homicide unit as a Detective, a Sergeant, and
a Lieutenant, commanded a couple of district-
level detective squads, and I've been in SIS
since 2015.

I look forward to talking about this
important topic with everyone here. One of the I
think unique aspects about the BPD right now is
that we are currently under a Federal consent
agreement with the Department of Justice of which
the sex offense investigations are a big part.
So I think that'll be helpful here.

Thank you.

MS. BASHFORD: Do you have remarks?
Why don't we start with you, Sergeant O'Connell?

SGT. O'CONNELL: As I stated, I've
been with the Sexual Assault Unit for over nine
years and conducting investigations as a
supervisor. I supervise the cases we are
assigned.

We co-located and have a family
justice center in Boston, which co-located out of
domestic violence and the crimes in the human
trafficking unit. We have some crossover investigations.

Coupled with that, we also have advocate-based programs which are also in a building which also enhances our ability in our investigations and working with victims providing assistance through advocate-based programs out of our office, with the victims.

Our unit primarily handles 500 cases a year. Of those cases, they are either 911 calls or walk-in calls to our Districts or walk-ins for our hospitals, or referral by advocate programs that work with the City.

As well as coordinating, we handle a large college component with the City. We have over 35 either colleges or community colleges in the greater Boston area.

So on average, we have a population of 650,000 and you could probably add another 150,000 students coming into our city every year. So, we have a high population of young adults who are out in the college experience.
Primarily, luckily for us, our colleges and for the most part the large universities, have sexual assault trained investigators and primarily they run the investigations unless the jurisdictional issues occur in Boston jurisdictions, where we take the lead in the investigations.

How we do our investigations, direct in terms of trial-informed and evidence-based, in terms of how we go forward on our investigations. Detectives primarily conduct our interviews with the supervisor or the C-level investigation.

And it starts from an initial interview and then forwarded into an investigation where we follow that and present that to our District's Attorney's Office and really hands-on directly coordinates with our District Attorneys in terms of charging mechanisms, whether the case comes forward immediately if it's an arrest.

For example, one direct patrol can make an arrest on scene. Typically, if that is
not the case, the case is coming to our office.

A majority of the cases come in through referrals of our investigation and that is much more efficient in terms of whether they're going to do it in the District Court or a grand jury indictment in the Superior Court. So that is procedurally how we do it.

In terms of our training with our detectives, they receive 40 hours of investigative school training initially when they do come in our office and we focus in, as I stated, on trauma-informed approaches in terms of how people are interviewing.

This is an area that we're going to use in terms of the most difficult cases to do because it's a very grey area. And we are a paramilitary organization so similar to our military in terms of procedures around how we handle cases based on probable cause and internal to the criminal process.

We have rules of how we do that within the world of sexual assault. I have a retired
clerk who's Ms. Cheap. We don't know sexual assault because we don't know the crime and if you can understand what that means in terms of violation of someone's body then you have to treat it as unlike any other crime in terms of how you investigate.

And that goes from the moment that you meet a victim and how you handle that victim to through the investigation into the prosecutorial mode and how we treat victims, and also how we handle the investigations in terms of looking objectively at the evidence and bringing the evidence-based approach in terms of our investigation, bringing the best case forward for our determination as to whether we charge or not charge a case through the District Attorney's office.

So in terms of looking at the questions that we received in terms of what questions were raised, there were many and hopefully, we can help you in terms of answering whatever questions you do have for us.
SGT. WILD: Hello. Again, Amanda Wild. Our investigations are very similar, we do have a family advocacy center where all of our violent crimes are housed as far as homicide, robbery, domestic violence, and sex crimes.

It's all in one building and then it's a very non-police atmosphere, which I think that's pretty much the standard that you have. And it's a one-stop place for victims of sexual assault.

Right across the hall, we have our SANE, we have our rape crisis, we have adult protective services, we have CYFD. We have advocates that can get restraining orders. Part of our unit is split so we have active cases that we're dealing with.

And one thing that I always make known when we come out and we do outreach is the fear of the blue suit. Victims of sexual assaults do not want to report to that blue suit or whatever uniform it is. It's an intimidation factor.

So we always allow them to know
there's other ways to report a sexual assault. The reality is crimes don't get reported just like a robbery, they don't call 911 when somebody's still in the actual facility.

They don't know where to place, they ran, they don't know where they were, and it's delayed. They're processing that, did that really just happen to me? What just happened to me? And it takes time for that processing and that reality to kick in.

Once they are safe, now it's where do we go? It's embarrassing to have a police car standing out or parked in front of your house. Victims don't want to have to report that.

Our stats show that a majority of our victims are not who actually called 911, it's a third-party friend, a family member. Or if it is an acute where it's just happened, it's somebody who's witnessing the actual assault.

So we're getting calls in many different ways because our family advocacy center is our big place where victims can feel free to
come in and speak to a trained investigator.

We walk in, and I always call it my Mr. Rogers sweater, we cover our backs then, we make sure that it is a non-confrontational -- they're not the ones who are being interrogated. We make sure that they understand what their rights are.

I'm a big advocate for victim's rights. I believe that empowering the victim who has just been sexually assaulted, giving them the information they need to determine how the best process is for them to handle this.

I am a tool to be used. If they want justice, it is their determination on how they get justice. If they want to go through the legal system, I am there to assist them. So any information that I can provide to them before they're willing to come forward is my duty.

I always advise everybody come in, sit down, and talk with us, understand how we're going to do this investigation, where we're going to go. If they understand it, we can retain that
victim throughout the actual process.

   The criminal justice system is not for
everyone. It is not the right process for
everyone. Somebody may be able to come in and
just need that validation that, yes, this did
happen, yes, this was wrong, but I do not want to
go stand in front of a jury. So how do we help
them get there?

   Our unit is there to assist and help
them, and we believe in the victim's rights. We
believe in empowering the victim to go through.
One of the big things that we have on our sexual
assault backlog is with almost 5000 cases that
were not investigated, we were able to identify
some key issues.

   Where did we let the victim down? A
lot of that is from the original standpoint. We
did not believe the victim when they came in,
whether that was the blue suit, whether that was
the second conversation of why were you drunk?

   Whatever it is, we lost that victim so
the case did not continue. We're revisiting, we
have a victim notification process, we also
created a case review counsel. This isn't just a
Police Department issue, it's the stakeholders'
issue.

We bring in a rape crisis advocate, we
bring in SANE nurses, the crime lab, the DA's
office, the investigators, and we're discussing
these old cases and how do we move this case
forward through a case review?

Before we make contact with that
victim, we want to know all the evidence, we want
to know what the questions from the District
attorney's office, and then what is the best
approach to notify that victim?

So in Albuquerque we have a lot of
diversity, we have the colleges, we have Kirtland
Air Force Base, and we've had to learn with a
multidisciplinary team that we all have to be
united.

If they go to the campus, they have
the same practices as they do at Albuquerque for
Bernalillo County. So we meet once a month as a
multidisciplinary team to discuss consistencies, best practices, and how we're going to keep and retain the victim throughout the process.

Thank you.

MAJ. HOHMAN: Thanks, and good morning again. I want to start by thanking the Committee for inviting me to speak about this important topic.

As we all know through recent events, the topic of sexual assault has been at the forefront of our national conversations. While some of the information and reaction to that information have been at times troubling, I am encouraged that people are willing to talk about it and have conversations about it.

One thing that I have learned through investigating sexual assault is that outcomes are better when you work together, investigators, medical professionals, prosecutors, and advocates.

If the national attention facilitates people partnering and working together, then I
say that's a good thing. As I mentioned, I'm about to begin my 20th year with the BPD, most of that time has been working robberies, murders, shootings, drugs.

If you had told me I was going to end up working in sexual assault investigations, I wouldn't have believed you but I could tell you that the last few years of my career have probably been some of the most rewarding.

Unlike robberies and shootings and homicides, sex offense investigators have an opportunity to work with multidisciplinary teams. You have heard some mention of that earlier.

Again, it's partnerships and prosecutors, medical professionals, and advocates that really make this type of investigation unique and very rewarding. As I mentioned, in 2015 I took command of the special investigations section.

We're responsible for investigating roughly 12,000 to 19,000 criminal investigations a year for the BPD. The sex offense and child
sex offense units are a small part of that.

At the time that I took command, the Department of Justice was just finishing a review of the sex offense and the cases as part of its investigation of the patterns and practices within the BPD.

Unfortunately, the DOJ, where there was not an official finding, did find there was evidence to suggest that there was bias in the way that we investigate sexual assaults in Baltimore. And there really was a lack of Federal investigations.

To make matters worse, at the time, the clearance rate for rape in Baltimore was a dismal eight percent. Unfortunately, this was not the first time that the BPD had made the news for the wrong reason.

Around the year 2000, the Baltimore Sun published a series of articles that reveal that sexual assault victims were not being treated properly by BPD officers and detectives.

They found the BPD unfounded rate was
well over 30 percent of reported sex offenses,
many times over the national average.

The Department then undertook a major
overhaul of the sex offense unit, we tripled the
staffing, and created a cold case unit and
revamped Baltimore SART, which is our sexual
assault response team.

The Mayor's Office for the first time
established a coordinator at her Office of
Criminal Justice, at the time, his office of
Criminal Justice. They were tasked with
spearheading and coordinating SART and also
overseeing some of the BPD reforms.

At that time, it appeared the BPD had
learned its lessons and we were dedicated to
showing best practices and investigating
incidents thoroughly in a trauma-informed manner.

Unfortunately, as time passed,
however, the urgency to maintain those new high
standards, began to wane. As detectives retired,
got promoted or reassigned, they were not
replaced and command leadership changed often
during that time.

When the DOJ finding report was issued, it was clear that we had dropped the ball. That is not to say that we are not and still are not talented, dedicated pros still working in the unit.

The failure was not of the individual investigators but a failure by the Agency in general. We failed to prioritize sex offense investigations. That said, I'm happy to say that since that time in the last three years, we have made tremendous strides towards improving our response to sexual assault.

As I mentioned, we're currently under that Federal consent agreement that has been signed, and there's many, many mandates specific to the way we conduct sexual assault investigations.

That said, we didn't wait for the signing of the official consent decree to get started. We started to implement some of the changes prior. We implemented an investigative
checklist of over 30 key investigative tasks that must be completed for every investigation.

This ensures a thorough, timely, and the most importantly, unbiased investigation. We made a more robust supervisor review, Sergeants now have to submit reports outlining case reviews at regular intervals, 48 hours, 7 days, 14 days, 28 days, and 60 days.

Supervisors and commanders audit those reports on a regular basis to ensure compliance. We have a weekly case review with myself with the commander and the unit commander of the unit to scope cases for investigative thoroughness and administrative thoroughness.

And then we also meet monthly with our SART partners to go over best practices and protocol. We created a soft, trauma-informed family friendly waiting room and interview room, the first of its kind in a major police department.

We also are in the process of rewriting our entire sexual assault policy and
our unit SOPS. As a result over the last year, we sustained clearance rates of at least 50 percent, up from 30 a few years ago, almost 15 points above the national average of 36 percent.

Our unfounded rate has dropped between five and eight percent over those last few years. We test nearly 90 percent of all of our rape kits and we have a zero backlog for testing.

DNA testing recently helped us solve decades-old cases which resulted in sentences of 109 years in one case and life in another, just to name a few examples.

We've made great progress but there's still a lot of work to be done. We will be under the consent agreement for many years to come and continue to improve as a result.

The truth is that there's so many sexual assault survivors that do not wish to report and we must do better to provide a system that allows survivors to feel safe, have confidence in the system, so that we hold perpetrators accountable.
It is clear by convening this committee that each of you are committed to making this a priority.

Just in closing, my overarching recommendation would be that you continue to stay the course, make it a priority, use the resources of the professionals that are tasked with the response.

I want to thank you again for being here. On behalf of the Baltimore Police Department, we're honored to be a part of this process. I look forward to answering any questions you may have.

MS. BASHFORD: I'm going to start it out and then I'll go to Dr. Spohn.

As people on the very front line, where everything gets initiated, particularly Sergeant Wild, you talked about empowering victims to see they get justice, but are you also looking to see if you can either corroborate or find evidence that contradicts?

I know you said you don't want to
interrogate them but sometimes hard questions have to be asked. I'm going to start with you but then see what the rest of you think as well.

SGT. WILD: Absolutely. As an investigator, you're determined to find the facts, which if you're doing the investigation and there is something that contradicts, then that's a second interview.

And this also working with your advocate. Anytime that you're going to have go back in working with an advocate and letting them know, look, the evidence is supporting something else.

We always suggest the advocate is right, let them know, hey, look, there's been a fork in the investigation, I have to revisit this interview.

And advise the advocate of, yes, we're going to have to ask, and I've always told the victims I would much rather get that answer here with the two, three of us, versus leaving you up for a defense attorney later.
And doing a thorough investigation.

So absolutely, I believe that you have to find the facts of the case, the complete case, and find out what actually took place. And that's a full investigation.

MS. BASHFORD: Sergeant O'Connell?

SGT. O'CONNELL: I think that I can certainly agree with Amanda in terms of how our investigations are conducted in this.

Definitely, when we say it's an objective approach but also an informed approach and working with victims and with advocates and as well as with our District attorneys in terms of approaching the victim when we are identifying if an investigation if an investigation has brought up some inconsistencies, and spanning ahead of that and getting ahead of that information that has been brought to our attention so that we can sit down with the victim and see what's an explanation for that.

And a lot of times there is. We have to realize that when we're dealing with a trauma
assault, there's multiple things that are going on with that victim in terms of their neurobiology and if they've had training with trauma-informed neurobiology, other trauma, that's a used component of the victimization, and trying to understand that.

We have to train our investigators not so much on the patrol side and that could be an issue that we run into a lot of times.

But in terms of having a consistent investigation, we are looking at every aspect whether it consists with what the person was telling or what we've seen, that has to be brought forward so that if they're going through a criminal process, the victim is aware and is either able to talk that over with us or we identify an issue that we just close that case down at that point versus just letting it ride and getting to a point where it's a court process and it falls apart completely.

MS. BASHFORD: Major Hohman, given that you're under a consent decree, do your
investigators feel able or empowered to ask
difficult questions when necessary?

MAJ. HOHMAN: Yes, so we've actually
taken great lengths to really spell it out in our
SOP, even suggesting certain lines of
questioning.

As they mentioned as well, I think
it's very important to involve advocates early on
in the process to explain how the interview's
going to go, that a detective may have to ask
certain questions because we are preferring a
criminal procedure eventually.

I had an old homicide sergeant that
used to tell us that when you develop a suspect,
you should try to prove that they didn't do it,
right? So, if you can't do it, you have the
right person, right?

So I think it's kind of that larger
big-picture that not only do we have a duty to
the victim, we have a duty to the entire system
to conduct a thorough investigation, follow the
evidence where it goes, so if that means
exonerating a person of interest or suspect, then
that's what it means.

But I think transparency and open
conversations with the victims and their
advocates is really important to lay out the lay
of the land, if you will, this is how it's going
to work.

And truthfully, in the past we've felt
unsure of that, not just from a Police Department
standpoint but an advocacy standpoint because I
think there's this notion to provide services,
therapy, things of that nature, but not so much
explain the criminal justice system to survivors
that are navigating uncharted territory.

DR. SPOHN: Major Hohman, you
mentioned the issue of unfounding which is
something that a number of Police Departments
have been subjected to some pretty negative
attention, Baltimore, New Orleans, and others
over the past couple of decades.

So I'm wondering whether, and if so,
how you brought your unfounding rate down and I'd
like to ask each of you how you define unfounding and what decision rules or SOPs you use for deciding whether those should be unfounded or not.

MAJ. HOHMAN: So, after the 2000 articles appeared in the Baltimore Sun, again, national average is between 5, maybe as high as 10 some years, right?

We were only 32 percent, that's obviously an astounding number, and what we found, actually was that patrol officers were -- we kind of have two options when you get a call for service.

You can write a written report or get an oral code and there's about six or seven different options for the oral coding, and what we had found was many of our patrol officers were coding the calls prior to involving investigators.

It's very common for a sex worker to report a sexual assault and the patrol officer, who is basically making an assumption that since
you're sex worker, this can't be a founded rape case, and coding the call before even involving the investigators.

So in 2000, we created a policy that patrol officers are not allowed to unfound a case on the scene so, essentially, they have to write a report and call a detective for, every single sexual assault call for service.

The only exception to that is if they arrive and it's abundantly obvious that the call was originally coded in error, meaning the 911 dispatcher made an error and the call came out for a sexual assault but they showed up and it's a hold-up at a 7/11.

Obviously, that's not a sexual assault and they can code that out. But short of that, every other incident is reported to a detective. I want to say the last year there were roughly 880 sexual assault calls for service; of those, 760 plus had a report or investigation conducted as a result.

Truthfully, the unfounded issue was
not much of a concern with the consent decree. I think that part of why our investigations fell off in between that time period was that we were really, really focused on the unfounded and we had some really good policies on the unfounded, but the thoroughness of the rest of investigations kind of fell off.

So, now for us to unfound the case, it has to be presented to our SART prior to officially unfounding it. So, all of those 34-plus checklist items on the investigation have to be conducted.

It's not to say that every item is applicable, but they have to at least take a look or give an answer as to why it's not applicable. And at the end of the day, it's really about meeting the elements of our UCR, uniform crime report.

So if those elements aren't met, we're not saying something didn't happen, what we're saying is that for the purposes of UCR, for the purposes of a reported rape, the elements of the
crime had to be met so we would unfound that

Once the detective makes those

findings, their immediate supervisor or sergeant

reviews that and either approves or sends it

back, then the unit lieutenant, and then it would

go to me as the Commander, and then we would

present that to our SART.

While the SART's findings aren't

binding, the ultimate decision lies with the

Police Department. There have been instances

where questions have been raised.

Let's go back and follow up on that so

we can see what the interest of that is before we

make a final decision.

GEN. SCHWENK: Would you say that

unfounded to Baltimore Police Department means

more like false or baseless, or something

happened but not enough for probable cause, or

something else?

MAJ. HOHMANN: So the first threshold

would be whether the elements of the crime were
met for the purposes of the UCR.

GEN. SCHWENK: Just some evidence, no matter how minimal?

MAJ. HOHMAN: Correct.

GEN. SCHWENK: So it probably is even below probable cause.

MAJ. HOHMAN: And quite frankly, we are on the side of caution.

If it's questionable, we're going to keep the case even if it means keeping it open and we don't get the clearance, we're going to keep it open rather than unfounded.

GEN. SCHWENK: So you're close to almost false or baseless because there's enough evidence, or if there's any evidence, on any case, you'll go forward. It's only if there's a gap.

MAJ. HOHMAN: And in very few cases do we have where a victim survivor will come in and completely recant the story. The only time that we really would say this is a false report is if we had video evidence --
GEN. SCHWENK: More baseless than false.

MAJ. HOHMAN: Absolutely.

SGT. WILD: I think Albuquerque Police Department are very similar to what the Major said.

GEN. SCHWENK: Except for getting a consent decree soon?

SGT. WILD: We are under DOJ but it's for use of force, separate subject. However, we actually spend more time in investigating our unfounded than we do to prove that there is no evidence to support that crime.

We have a very low percentage. We're probably about four percent, four to five percent. The majority of those we have evidence to support that the crime did not happen. Hence surveillance videos, witnesses, alibis that deplace.

And those ones we typically find with mental health issues so we look back over the mental health and they may have been a victim in
their youth and certain things are retriggering, and those are the ones that we're seeing more of the unfounded due to the fact that there is some instability as far as that.

And the reason why we spend the most time investigating those is we've also found out that those with mental health are the perfect victim, those are the ones the perpetrators are looking for.

So we never want to have to assume, oh, yes, it's just this person. We do the full investigation and we have to make sure that if we're going to put that stamp of unfounded, there is no evidence and we have evidence to support it did not happen versus the other way.

If we're not able to find probable cause, then we close the case out pending further lead, and then we go and reopen it any time new additional leads come forward.

SGT. O'CONNELL: In terms of unfounded in, let's say, Boston's jurisdiction, first off, in terms of case law in terms of cases that we
have to backlog of our sexual assault kits, we do
have a backlog.

We have had that issued without
jurisdiction. We test all reported cases that
are reported to our Department. What we've seen
is a bump-up in unreported cases, where the kits
is done but they're not reported to the police,
and we take evidence jurisdiction by collecting
those cases as follows.

Those kits are not counted unless that
person comes forward. They may come forward a
week or month or typically, you hold the kit for
a year or six months of keeping it.

We've just had a statutory change in
Massachusetts with the kits but in terms of the
cases unfounded, in my time here, you can argue
that we rarely unfound.

We don't really have a lot of
unfounded cases, we have cases that are brought
initially to our investigators where in terms of
patrol, in terms of a 911 call, patrol would be
response.
They respond as well as the patrol supervisor and who goes along with them in response to that scene, it's a determination to see, number one, is it an actual sexual assault that we're going to be notified on.

Sometimes, typically, it will just send a notification to us so there's different levels in terms of how cases are referred to us. So once we do get a case, it's already been locally triaged by patrol if it's through a patrol or if it comes into a hospital or to the victim themselves.

Our investigation is based on evidence collection and in terms of identifying once it's back in the system, so how to corroborate and that's where the evidence-based approach and corroborations to assist a case moving forward.

As far as the victims, we're well aware in terms of how these cases can be difficult. When you're dealing with cases like domestic where they know each other as an acquaintance or contacts which primarily the
military has, they know who the victims are.

And most of our cases are those types
of cases. Our police cases they do not know
their assailant, though those are certainly
lower. So we have to objectively identify the
evidence to help corroborate a case going
forward.

MR. KRAMER: Thank you. First of all,
Sergeant O'Connell, great game by the Red Sox
last night. I have a question first for you but
for everyone.

You talked about the number of
colleges in Boston and universities, and there's
two parts.

I didn't understand, are they allowed
to do their own investigations and are they ever
referred to you? Or they're just handled in the
university disciplinary system?

SGT. O'CONNELL: As I stated, some of
the larger universities have their own sexual
assault investigators so they're trained and they
conduct their own investigations.
We are currently in the process with the larger schools we have, it's developing an MOU with them. We have one currently in the Southeast and that is actually in effect, but the other schools we are working between our legal and their legal in terms of how you share information.

Particularly because of the jurisdictional issues where if they have the investigation, if it's on their property, they handle the investigation and if they do not have the training to investigate, it's the smaller schools where we're the lead investigators on that.

But the MOU was helpful in terms of exchanging information, particularly for public safety matters if there are assailants out there that certainly everyone should be well aware of in terms of public safety.

So it's an MOU approach that we're working with our college staff, and also, we have our SART teams that we meet with regularly in
terms of working with our own college.

MR. KRAMER: So this is the second
part which is for everyone, and both you and
Sergeant Wild talked about the number of
universities in your cities and Johns Hopkins is
involved right now obviously.

And you talked about people being away
from home and young kids being away from home.
And we've heard testimony and new materials about
the number of sexual assault cases that involve
alcohol.

And I wonder if that's true when
you're talking about especially the cases
involving maybe university students or in
general, and the particular problems that present
when there's alcohol or excessive alcohol,
especially excessive alcohol use involved.

SGT. O'CONNELL: I'm sure that my
colleagues can back this but alcohol is probably
one of the key problems in terms of dealing with
particularly younger students and even our
millennial population out there is the nuances of
social media and in terms of what they are
constantly bombarded with.

There's multiple factors in terms of
what goes on with their lives, but alcohol is
certainly a major problem that we see,
particularly with case intakes. And when it
comes to sexual assault, there aren't witnesses.

It's usually two people and two people
only, and it's going to be a matter of what each
of those individuals are employed.

And so that's why these are difficult
cases to investigate because unless we have
information from their cell phones, unless we
have social media that we're able to investigate
into making identification as to what's going on
with the relationship, these are difficult cases
to do.

MAJ. HOHMAN: So I would just echo
that. Baltimore is kind of unique in that only
the BPD is allowed to investigate and follow up
on felony crimes so many of the colleges in the
Baltimore area have a sworn Police Department,
others have a security office.

Regardless of whether their police are sworn or civilian, the BPD still investigates sexual assault investigations. Now, they will essentially act as first responders or the equivalent to what our patrol officers would do.

And we have MOUs I think with 13 of the area colleges, including some that are in the surrounding jurisdictions because we find that many come to Baltimore for the clubs or the sporting events and the assaults that take place.

We also work really closely with each of the universities' Title IX investigators to make sure that both the college and BPD are in compliance with the Title IX reporting.

In fact, we just finished up some training that was provided through a DOJ grant with about 13 different colleges where we all trained together. That said, a lot of our cases involving colleges are drug or alcohol facilitated.

It's one of the things that we have
begun to start the track as a result of the consent agreement.

We didn't necessarily track the numbers so we still don't have really accurate numbers on how many cases are drug or alcohol facilitated, but we do test for that as part of our state exams and I would say that we do not unfound those cases.

Typically, it's a matter of consulting with the prosecutor to determine the level of incapacitation.

SGT. WILD: So with Albuquerque, we also have police in the full schools. So Albuquerque Public School has their own so we have all the way from the middle school, high school, and community colleges as well as the university.

So, it is not just one Agency. We work hand in hand with multiple Agencies and again, as I stated before, we want to be consistent due to the fact that we are the largest Agency in New Mexico and that is what we
We deal with over 500 of our cases a year. We do get called and asked to assist, to shadow, or even take the lead, especially when we're processing crime scenes.

If there's beverages and they want to test for any kind of drug-facilitated sexual assault, we're there to assist with the interviews and so forth.

About 80 percent of our cases do involve alcohol or drugs in one way or another. It is our responsibility to determine what the level was on one or both sides and, yes, the sexual assault usually only takes place between two people.

There might be an animal or two in the room, we're not that skilled to interview. But we do know that we can lead up to the actual moment so was there a party? Did somebody see the individual walk into the bathroom? Was that individual bonding?

So there's a lot of evidence that we
can still determine based upon the before. Were they able to consent? Did we have somebody who watched them do shot after shot and was staggering down the hall and they fell over four times?

That's the evidence that we're going to be looking for when they say I don't know what happened. I woke up and this was the state of my dress or this is what I believe happened. We work the case backwards.

What is the last memory? Let's go from there and we start looking at what the evidence can produce. Was there any kind of explanation for the blackout? A lot of times when we're dealing with the kids at the parties, there may be antidepressants on board.

Were they a contributor with the alcohol because one anti-depressant and two beers, now we're dealing with somebody who maybe had a drug intoxication of six, seven beers. Did they eat?

We start going through and
establishing the actual verification of how much alcohol, how much did you have to eat? And then we piece it back together. So, yes, alcohol is a big part of every one of our investigations, whether we're eliminating it as a factor or confirming that, yes, there was.

Working with each of the Agencies, especially the colleges, we have to have that relationship, we have to have that support and be able to give them.

The University of New Mexico, they do have the SART team, we do have them as part of our monthly meetings where we have that relationship and at a moment's noticed we can call and chat with them whenever we need to.

DR. MARKOWITZ: Major Hohman, I just wanted to get a little bit of clarification on one point and I'll try to keep this pretty brief. You mentioned in your response about unfounded cases that you take those unfounded cases back to your SART before you will actually unfound them.

So I just want to clarify, am I to
understand that you actually will run unfounded cases by the full SART and get the opinion of victim advocates, your medical folks, on sort of the direction of the investigation before you will unfound the case?

MAJ. HOHMAN: So typically, the case will be presented once the investigation has concluded. The detectives conducting the investigation, he or she will report their findings to their Sergeant, the Sergeant will review and make a determination.

So as it goes through the process, assuming that everyone in the Police Department agrees this is an unfounded case, it does not reach the elements of the crime. During that process, they'll also confer interview the state's attorney's office.

So we call them 24-hour Boards but it's essentially a summary of the preliminary reporting and investigation. Every morning we send those reports to our counterparts at SAFE. So they're aware of every case.
As it evolves throughout the process, there's some consultation with the attorney that's assigned to that case and the primary investigator.

That said, it goes to the SART meeting which is comprised of that coordinator from the Mayor's Office, the Police Department, our SAFE nursing program, which is a nursing hospital for us, our primary advocacy center, its turnaround, and then we also have an additional group called an MCASA, and they also provide legal advice and do a lot of lobbying for legislation.

So they're also involved in that process as well, and then finally, the state's attorney. So we essentially will present a summary of the case with the victim information redacted, suspect information redacted.

And essentially have a conversation about it. Again, it's not binding because the Police Department ultimately has the responsibility to report whether it's UCR or not but again, there's been multiple incidents where
we've said this looks unfounded to us and maybe
an advocate will chime in and say maybe I'll take
a look at this, or the prosecutor will say I'll
look at that.

Medical may provide some information
that we haven't thought about and we'll go back
and reinvestigate that. In terms of once we
report that through our UCR process, we don't
send it officially to be unfounded until we have
that SART review.

HON. WALTON: You may have already
provided some insight on what I'm going to ask
you, but the first issue you talked about was the
fact that an allegation is made within the
military about a sexual assault and it frequently
does, it adversely impacts a member's career.

In your experience, once someone comes
forward and makes an allegation of sexual
assault, how prevalent is it that that is a
totally fabricated or false report?

MAJ. HOHMAN: So I don't have the
exact numbers so, again, it's somewhere around
that five to eight percent total that are unfounded.

So it's a smaller portion of that where we said this is completely baseless. As my colleague pointed to, a lot of those cases involved survivors with some sort of mental health issue.

And that's where we mostly see the cases where it's a complete fabrication. Obviously, there's something going on with the mental health. So I don't have an exact number on that.

Quite frankly, it's not made for us.

SGT. WILD: As I mentioned, most of it is the mental health and when we stop and ask when we review those ones, a lot of those ones don't actually have the offender named or if they do it's the same offender over and over again.

So the ones that we're actually seeing fault allegations with an offender who has been named in them are very minimal. Those are the ones that they're very few and far between.
SGT. O'CONNELL: I would also to confirm with that with municipal with jurisdiction in terms of maybe allegations on the homeless population and our opioid situation that we're currently dealing with.

But it's matters where those allegations that have come forward. But in the triage that are typically handed to our patrol, we also show our -- we can certainly clarify what that was that this investigation was going to handle or if it's a matter of just primarily an ETP who's had multiple issues.

Our first priority is to handle it in that matter and handle a mental health portion of those kinds of cases that are coming to our office.

Handling that first and triaging that aspect of those cases, we then go back at that and if we need to report or get involved in that case to make any kind of determination that in fact this kind of case had happened in terms of those types of cases.
MS. CANNON: Thank you for being here.

I wondered as to each of your Agencies what the process is to go to a prosecutor with a case or choose not to go to a prosecutor and make a decision in house what the standard is to go or not go.

And then what happens if it goes to the prosecutor? Does it end up coming back to you?

SGT. O'CONNELL: The are cases that we do intake to our office, typically we have a 24-hour follow up with that victim.

If we don't interview that victim within a timeframe of the immediate notification to our unit, we do a follow up with that victim and we have it to be processed with them and start an investigation.

From that moment, we usually send up our initial report and follow up to our District Attorney. All of our cases are referred, if there is an identified suspect, typically they are assigned.
If there's no identified suspect, that case is not assigned until that investigation identifies a suspect.

If they don't, then more than likely, it will probably just become inactive in our office and the DA's office typically will not assign those cases.

But we have a very quick turnaround in terms of getting our District attorney's office on board. Particularly on cases where we see that it's going to go to a grand jury or indictment phase, we use their experts and assistance in terms of triaging in terms of whether it's a crime scene or if it's affidavits.

As investigators we do our own affidavits for search warrants but also have our people to review in the decision-making process in terms of making sure we do a proper investigation and that it goes smoothly in terms of a grand jury indictment.

SGT. WILD: Again, very similar.

We do our own investigations. Once
we've established probable cause in that there's any questions as far as what the District Attorney is wanting from us, we have a close relationship with them.

    We meet with the District Attorneys in our office twice a month and review our cases.

    And to ensure that we're sending the cases with the crime scene photos with whatever else the District Attorney is wanting, whether it's an Uber receipt to verify that there was a movement to it, we meet with them to determine, okay, this is our pace, this is where we're at, and is there anything else that you're wanting as far as the investigation before we release the full case?

    Anytime that we have a case with no offender information, that case is closed until we are able to identify. So those cases we do not turnover.

    MS. CANNON: So just to clarify, are you saying that as with the Sergeant that you send all cases to the District Attorney and you
don't make a call in closing them?

SGT. WILD:  If we have probable cause

and an offender identified, yes, the case gets

sent to the prosecution.

GEN. SCHWENK:  Who makes the
determination of probable cause?

SGT. WILD:  The detectives.

GEN. SCHWENK:  So the detective says

I have a suspect but I don't think I have

probable cause, then what happens?

SGT. WILD:  We review that case with

the District Attorney's office and we'll sit down

and that will be a case that we present at the

case review and determine right now the detective
does not feel there's enough evidence, what does

the District Attorney's office need to be able to

prosecute this case?

And that's when we sit down and we
discuss what other evidence may help establish

the probable cause for us to move this case

forward?  Otherwise, the case is closed pending

further leads.
MS. BASHFORD: So who's actually making the decision, though? The detective says I don't have probable cause and you take it to the DA, is the DA saying I agree or is the DA saying I disagree?

SGT. WILD: The District Attorney has the right to assist us. We will forward the case to the District Attorney's office. It's law enforcement's responsibility to establish that probable cause.

And then we release it to the District attorney's office. If they review the case and determine there's not enough for them to take forward to a grand jury, they will dismiss it on their site.

DR. SPOHN: Does it only occur after arrest?

SGT. WILD: No, we have a case law where we have ten days to actually submit our case once we actually make an arrest. The reality is, there's times when we're not able to complete our investigation within that ten days,
especially if there's a party.

If we're interviewing 32 people, it's impossible for us to do justice to that case under that circumstance, especially if it's a consent issue.

So, we would at that time, even though we had an offender identified and was in custody, we may at that time do a restraining order and tell them no contact, release, and continue our investigation to ensure it's completed upon the release to the District Attorney's office.

DR. SPOHN: The question is do you take cases to the District Attorney's office prior to making an arrest, and if the District Attorney says we wouldn't file this case even clarified exceptional needs and not make an arrest?

SGT. WILD: Yes, we do send over cases that we will send for a grand jury, and if at that time it comes back as a true bill, we will get an indictment and do a warrant arrest on that.
MAJ. HOHMAN: So the BPD has kind of a multi-layered approach to that so if it's a child case we're required by law to issue a report within 10 days to Child Protective Services and 30 days to our state's attorney.

Our sexual assault investigators are split. Our child sex assault detectives are co-located at Baltimore child abuse center with an attorney from the State's attorney's office embedded with them.

So they're really talking on a daily basis, each new case they're briefed an every morning. If it's a child sex trafficking case within 24 hours we could be at a conference that includes the state's attorney so they're briefed from the very beginning.

And then finally on the adult cases, as I mentioned before, we're sending those reports to the state's attorney on a daily basis.

Now, in terms of when we start to think about whether we're going to charge or not, that process, as my colleagues mentioned, the
minimum is probable cause.

If the detective feels that there's probable cause, then we need to have a conversation on charging. Our policy is that we consult with the state's attorney prior to charging any case, any felony.

That said, the Police Department still retains the authority to seek charges even if the state's attorney doesn't approve per se. But in practice, it's mostly these cases, and I think what we're really kind of getting at here are the cases where there's likely probable cause but not enough to prove beyond a reasonable doubt.

Your first speaker talked about that a lot within the system and the detectives and the supervisors really have a feel for those types of cases where typically they're acquaintance cases, the victim survivor will articulate the crime.

And essentially, once you have that victim/witness articulate a crime, essentially, it reaches the threshold of probable cause.
But again, how do you prove that beyond a reasonable doubt? And attorneys have an obligation not to charge those cases if they think they can't prove that.

HON. GRIMM: Major, let me follow up with that. I'm in the District of Maryland where the court has that executive leave that you've been referring to.

As you know in the Maryland system, anyone can walk into a District Court Commissioner who is not an attorney but who is a judicial officer, they're there 24 hours a day, 7 days a week and swear out of a criminal complaint.

Often times, those are domestic connected, when I was in the State's Attorney's office in Baltimore County we would get those a lot. and that is a charging document that is now a charge.

Where do you all come in when that occurs? It's initiated by someone who has gone through a Commissioner and the Commissioner has
made a determination of probable cause of the
charge or issue.

Now we have a Maryland District Court
criminal case pending. Where does the Police
Department come in in those cases?

MAJ. HOHMAN: So fortunately, we have
a really good working relationship with the Court
Commissioners in Baltimore. If a citizen applies
for charges for sexual assault, they'll contact
us.

HON. GRIMM: Before the Commissioner
allows the charge to be issued?

MAJ. HOHMAN: Correct.

HON. GRIMM: And so you're in there
from the very beginning of events?

MAJ. HOHMAN: Yes, so we're involved.
obviously, a few slip through the cracks every
now and again, right? But then again, that's
ultimately up to the State's Attorney whether or
not they're going to continue with the charges.

And more likely than not, if that
scenario were to occur, it was an incident that
we weren't aware of so they would likely call us in to do an investigation.

So really at the end of the day, it kind of comes down to that UCR exception of clearance versus charges so we have a large portion of cases where, again, a crime is articulated, we have met the burden for UCR, we have met the burden for probable cause, but we're not there on a reasonable doubt they're taking it to trial.

So we will present those to the State's Attorney knowing that it is very unlikely that charges are going to be filed and we need to get an official declaration for us to exceptionally clear that case, essentially for the purposes that it can't be proven beyond a reasonable doubt.

MR. MARKEY: Thank you so much for being here and for the service to your community. I want to investigate the roles and responsibilities of the investigators. This is my question, the first one is we're talking about
probable cause.

Are we talking about a probable cause decision that it sounds like all of your ADTs allow your investigators to make that determination sometimes independently and sometimes with the assistance of your prosecutorial office.

And is that a probable cause determination to make an arrest?

MAJ. HOHMAN: So our investigators are authorized to make arrests, however, by law they can do that, right? The rules within our Police Department, they can't seek charges without a supervisor.

So they make a determination that there's probable cause but it's going to go through several layers of review at the Sergeant level and the Lieutenant's level.

And then for policy, we consult with the State's Attorney. Again, we can override the State Attorney's decision. They may agree they may feel the case isn't there, we want more.
And at the end of the day, we may say, no, we think we're there and we're going to charge the case anyway. That's rare.

Typically, we're all on the same page but it would be a very rare situation where a detective would go out on their own and get charges without talking to a Sergeant, Lieutenant, and consulting the State's Attorney's office.

That would be against our policies.

SGT. O'CONNELL: In terms of patrol, if a 911 call comes in, just in terms of clarifying, if it's pertaining to a 911 response so they arrive on scene and they have a scene and they have a victim, a criminal victim, and they have corroboration in terms of a senior assailant and the identification process has been done.

And typically these are on the low-end numbers of cases where we get these cases coming into our units because it's a response by patrol and they have the type of situation where they have probable cause to make an arrest.
And if it's a rape situation or a domestic violence situation, typically they're going to go with the PC and they're going to charge. More so than not with domestic cases from the statute of domestic laws in Massachusetts, they shall arrest and if there's a charge, then that will get charged.

But that is typically not the norm for cases that we get referred to us. Usually, it's either working or a response to a hospital or it's a call into our office in terms of us doing the investigation and determining do we have a case that's going to go forward?

And if there's probable cause to go and charge it in the District Court, we handle other than just rapes and attempted rapes, we have dealt with assault and battery.

We've either tried that in the District Court, but the rapes which will end up in the Superior Court is more of a process of going through a grand jury process, including the District Attorney's in terms of making decisions
in terms of going to the grand jury.

MR. MARKEY: I had one follow up along with prosecutorial discretion and that's the third-party report.

And your initial information is the victim that's reported to somebody else is unable or does not want to proceed with a formal investigation. How do you handle that particular type of case?

SGT. O'CONNELL: Typically, most of the reports, we get a lot dealing with children and those reports are processed and handled differently, they go through a different process either with the Department of Children and Families or if it comes into the schools.

Typically, we don't normally take third party reports but in order for us to move forward, we need a victim. We're going to need a victim to go to a court proceeding and to go to trial, the accuser has the right to meet their accuser in a court proceeding.

So, understanding all that but keeping
and trying to focus these cases in terms of
giving victims options and them not wanting to
come directly to us and working with advocates
and establish a conversation with them.

It may take a week or two before we
get the victim to come to our office but working
with an advocate-based approach to do give that
victim an option in terms of how and when they
want to come forward is the method that we try to
handle in these cases.

SGT. WILD: As far as third-party
reporting, no, we don't take third-party but we
would say who is the victim, can we reach out,
and we'd have an advocate reach out or I would
actually make a phone call as I've done with
previous military.

They referred to me saying it's a
third party wanting me to go ahead and open up a
case. I explain to them we have to have the
victim. We begin our investigations by the
victim's statement and that's the critical piece.

If we have a victim who's not wanting
to proceed and is not wanting me to go through, the limited information that the third party is getting leaves a very open investigation.

There are many different types of criminal sexual penetration and if we walk in and interview a suspect on a criminal sexual penetration without knowing the allegations, without interviewing the victim, without doing the background, checking with the witnesses, checking surveillances, looking at all the evidence, you're walking into an interrogation or an interview with a suspect without all your facts.

Then basically, you're asking somebody, well, did you do this? They say no and you're stuck. Your investigation is very limited and it's incomplete. In New Mexico, the old saying is no victim, no crime.

So first and foremost, we go right back to the empowerment of the victim. Is the victim safe? A lot of the victims as we stated know their offender.
This is somebody who they thought they could trust, whether it was an acquaintance or somebody who they've been in a relationship with.

So, first and foremost, if it's a third party we want to make contact with that victim to say, okay, why the hesitation? Why are you not wanting to report?

That's my first concern, getting through that part.

MS. BASHFORD: Would you reach out to somebody, if you get a phone call that says adult victim was the victim of a sexual assault, you would reach out to that person?

SGT. WILD: Absolutely, we have CPS, Child Protective Services, where we get referrals regardless of --

MS. BASHFORD: For adults?

SGT. WILD: They're adults. We'll say a 21-year-old was drunk the other night and reported a sexual assault.

We'll reach out to them and let them know that, hey, look, we've got a third party,
there's no report documenting. It is basically
are you safe, are you okay, are you aware of the
services that are available for you? If they
tell us I don't want to speak to you, thank you,
have a nice day.

We don't go any further, however, if
they want to come in and sit down and talk to us,
we tell them you have the right to come in, tell
us what's going on, discuss it, and still have
the option to never put it in black and white
into a police report.

You are not obligated to report it but
you should before you make that decision to not
report, have all your facts. Know what may
happen or may not happen and here are the
resources and the availability for you.

And if they come in and talk and say,
you know what, I want to go the counseling
approach, I don't want to do the criminal
justice, we respect that and we close the
communication with them.

SGT. O'CONNELL: Just to confirm that,
I could tell you that what we would do with a finding report and make a phone call into our office, we would report that third-party person to do that outreach to that victim.

I would not want to make a cold call to a person about an alleged allegation that they may or may not have done. It puts law enforcement in a situation that you're outing somebody when they're not ready to come forward to law enforcement.

So we would work with that third party to say we do need that victim to come and report to us. That's the only way we could go forward on a case.

To make those calls, it puts you in a precarious situation that in Massachusetts we have a rape shield law that covers that victims come forward to us.

We see this a lot with colleges, you get roommates and RAs who think that they're going to do the reporting for that victim and it's understandable, they're making the right
decision, they're trying to engage that victim, but it's ultimately the victim's decision to come forward.

So we've got to be careful on how we handle those cases.

MAJ. HOHMAN: I would just echo that really is the nuance of sexual assault investigations. You want to be trauma-informed but as a Police Department, you also have an obligation to investigate crimes that are brought to your attention, right?

So for us at BPD, we're required to follow up on any felony allegation, whether it's third party or not. The vast majority of our third parties are there's mandatory reporters, whether it's a therapist that reports a child abuse years later or CPS worker.

But in the same situation, we would open an investigation, and again, most cases don't involve witnesses but perhaps there is a witness so maybe you can collaborate the case with the evidence through witnesses or maybe
other evidence collected.

You don't necessarily need the victim to make the case.

Obviously, it's very difficult to move forward without the victim but typically, we would take the same approach as perhaps having an advocate reach out or that third party reporter provide them with information and say if you want to report, this is how you do it, these are the services that are available to you.

And then for us, we have John and Jane Doe rape kit reporting so you can anonymously submit for a rape kit. The legislation passed just two years ago which requires us to keep those rape kits for 20 years.

So, we keep those in evidence.

CMSAF McKINLEY: The number of cases that come to you, do you actually know the percentage of those cases that actually go to trial?

And once they go to trial, do you know the conviction rate?
MAJ. HOHMAN: So we don't track the conviction rate, the State's Attorney's office tracks their conviction rates, so our clearance rate is about 50 percent currently.

Of those, it's almost 50/50 in terms of criminal charges and exceptional. It's about 55 percent cleared by arrest, 45 cleared by exception. So there's exceptional clearances that obviously don't go to trial.

We don't track the reason for the exceptional so it can be any of the approved reasons -- the suspect's died, the suspect's in a non-extradition state, things like that.

But the vast majority of our exceptions are cases that are declined for prosecution. So we have identified a suspect, we felt that probable cause has been reached but the state's attorney can't prove it beyond a reasonable doubt.

So that's not going to trial. Of the remaining case where a suspect is charged, the vast majority who do go to trial, I would say
just anecdotally, the conviction rate is probably
somewhere in the 80s so pretty successful.

Maryland also just passed a law where
you can enter prior bad acts that you're not
necessarily convicted of.

So we had, essentially, a serial
rapist that had beat us five or six times at
trial because he claimed that the encounter was
consensual.

Laws have been passed that you can now
enter these prior charges into evidence. So
that's great for us.

MS. LONG: I think I have a brief
question and it's not one that's been testified
to. I'm wondering if you received any special
training to handle intimate partner sexual
violence and if you think that's important in
being able to do your job?

SGT. WILD: I think it is critical.
Like I said, the majority of the offender's
victims, the relationship is somebody they've
dated or an acquaintance or something.
So having that additional training,
yes, there are classes out there and there's
conferences out there to give us a better
understanding of getting through.

Again, when you're dealing with a
domestic violence situation, the very first
things that we look at is, is this individual
going to feel safe reporting?

If I don't tackle that issue first and
foremost, the victim is going to sit there with
their arms crossed and look at me and say nothing
happened. So, the first thing we do when we walk
in is, first, you have these rights and first,
let's make sure you feel safe.

Do you have a place to go afterwards?
Do you need a restraining order? We've
established that net groundwork first when we're
dealing with the domestic violence and we are
honest.

We're not going to walk in there and
say he's going to be, or she, under arrest and
we're going to put them away and they're never
going to go out. We establish that baseline and communication from the first part.

And that training is critical to understand the dynamics, especially with domestic violence.

Looking back at the history of some of these cases where it's like we've been to that place multiple times reference a domestic violence, and now we have a third party or a 911 call that now a sexual assault took place, those are things that we have to take a look at and review.

If we make that arrest that night, that's a phone call to the District Attorney's the next morning and saying we have a duty to protect and we cannot in good faith release this individual as we continue our investigation, and this is why.

This is the totality of this. We've been to this house numerous times, there's been reports of domestic violence, but it's again, training is critical when it comes to dealing
with intimate partners.

SGT. O'CONNELL: I could also say Boston has been trained, particularly the beauty of having us all in one location is the ability that we can actually train together. So that's in terms of what the relationships are.

Typically, in domestic situations it goes hand in hand, their investigations with our investigations and we know that typically, victims within domestic violence situations the first thing on their mind is not that sexual assault, it's their safety and the safety of typically children in that household.

That's what their priority is and responding to these investigations is primarily safety factors. We consider what their rights are, we show you some protective orders and making sure they feel safe. Maybe the next step should be, okay, let's do a home story.

MAJ. HOHMAN: So our domestic violence unit is also under special investigation command so they cross-train with each other and our
sexual assault policy and SOPs reference how to deal with domestic violence-related cases.

To touch on the Court Commissioner issues, that's a potential gap where victims of domestic violence can go to the Court Commissioner and seek charges.

But if there's a mention of sexual assault, they still give us a class. In terms of the domestic violence case, we may charge the domestic assault more quickly than the sexual assault just because we do have a preferred arrest policy as well.

So we may charge a domestic-related assault and continue to work a sexual assault investigation.

MS. BASHFORD: I just have one last quick question before we break, what percentage of your victims drop out of the process or stop cooperating during the investigatory stage?

MAJ. HOHMAN: So for us, that's not something that we've historically tracked. It's again part of the consent decree that we're going
to begin to start tracking that.

   Again, anecdotally speaking, we have found that the victims that are involved in sex working often times fall out early on in the process.

   Once we are able to get a survivor in for an interview and start that process, it seems that they continue in the process. Often times, where they drop off will be in the very early stages, reporting into a patrol officer, maybe getting a safe exam.

   I think there's that safety factor when they get checked out medically, when they get a safe exam.

   And then after that, I think if they're going to drop off, it's at a very early stage. Once we get them in and kind of explain the process and bring the advocates on board, I feel like we're going to keep them involved in the process.

   SGT. WILD: Ours are very similar, it's that first contact and it's the first
approach. Who contacted the police? Will they make a big issue?

If the victim is not the one who made the original phone call or are the ones who have reached out to law enforcement, we see a higher rate of dropping off.

So these ones are the ones that maybe the neighbor heard the screaming and yelling, we get there and they didn't want our involvement to begin with.

And so the detectives are we have difficulties following up with them. Or the younger ones where mom or dad may be in the influence of saying, no, you've got to come forward.

Once we get them into the interview room, they're not wanting to participate. Again, it's all about is the victim ready to move through and to what level do we need to make them a survivor?

We do see at 60 percent, victims not wanting to participate.
MS. BASHFORD: 60?

SGT. WILD: 60. And it really depends on which avenue they're wanting to go.

And that is all up to the victim as far as communicating but as my colleague over here said, once we get them in, we explain to them and we empower them, that's when we retain them.

It's when they don't trust law enforcement or they don't trust the system, they don't get past their original reporting. And it's usually not them who are doing the reporting, which is another factor that we have that's fallen off.

SGT. O'CONNELL: I want to say that in Boston we do a very good job in terms of data collection with our DB.

In terms of data collection or in terms of cases going forward and demographics, unfortunately, we don't have the staff in terms of we have clerical staff to actually help with data collection in capturing the questions that
you're asking.

So in terms of generalities, I have to concur with my colleagues in terms of probably close to half 50 percent ranking in terms of cases from -- and that's from the beginning parts in terms of our investigation in terms of them dropping off.

That we're able to get involved in cooperating and moving forward, it remains less trickle down depending on the investigation as moved forward in terms of if we're able to go forward to the criminal process.

Those numbers would be lesser but I'd say it's fairly high in terms of the unique drop-off.

HON. GRIMM: To follow up on that point, I take it that you're talking about the victim dropping out prior to the time that the prosecutor gets it and takes it into court?

I know that in Maryland where I am familiar, and the Major will confirm this, once it gets to court, there can be instances, this is
one of the frustrations as a state's attorney,
was that they could refuse to testify.

Now, there's a limited number of
instances under Maryland law when a spouse can
refuse to testify after they've gone the domestic
violence, and that could be just violence whether
it's sexual assault or not, do you have any sense
of when the prosecutor takes it from you, they're
going forward with it and they get into the
trial, the frequency with which the victim then
decides I'm exiting the process here?

Because that could be an additional
population of ones where they do notwithstanding
the fact that they have cooperated throughout the
time that you have all processed the case.

MAJ. HOHMAN: So I would say with
Baltimore, it's not unique to sexual assault
victims, it's every victim. It is a pain in the
backside to deal with the criminal justice system
in Baltimore, whether you're a witness, a victim,
you're going to have multiple postponements.

And again, it could wear out and
that's really any victim. A robbery victim, I just want the report so I can get a new iPhone, right?

I'm not looking to spend a year and a half of my life talking about this specific robbery.

So that's kind of the general consensus across the board and it's really just the system is overwhelmed, staffing, and I would just say that's where it's really important to have the advocates explain that.

I think our advocates are very, very good with therapy and services but explaining that is huge.

SGT. WILD: I'd have to agree. A lot of it is we're spending two, three years down the line and we have pre-trial interviews where a victim is subjected to a defense attorney before. And I think once we hit that pre-trial where they're getting the you did this, you did that, that's where we're losing the victims.

This is just the beginning and I think
a lot of it is the court's intimidating and being upfront when we have that victim from the get-go and having the advocates explain this isn't going to be done in two weeks, this is something that this is a process and once we get those to the DA's office, then you may have to go into a grand jury.

From there, you're going to have to do pre-trial, the different steps. And again, from the very get-go, if the victim is aware of that, we maintain it but if you don't have that understanding from the get-go, two years down the line, I don't want to do this anymore and that's where they finally say, no more, I need to move on.

SGT. O'CONNELL: In Boston we see that as well. That's why we have them informed from the very beginning in terms of what they're going to be dealing with.

Unfortunately, we cannot control what goes on administratively within our jurisdiction in terms of backlogs and push-offs. It kills the
case when two or three times we have
postponements because there's a homicide trial
that has to get done first and someone is
incarcerated and those issues.

So those are factors that are beyond
the control of anybody in terms of trying to have
the victims on the stand understand that.

Thank you all for coming and sharing
your experiences with us. We appreciate it and
we'll be resuming at 1:10 p.m. with General
Schwenk and Ms. Taggart's presentation on the
Case Review Working Group. Thank you so much.

(Whereupon, the above-entitled matter
went off the record at 12:12 p.m. and
resumed at 1:15 p.m.)

BGEN SCHWENK: I will be going through
a number of slides that will be an overview of
what we've been doing and how, and they'll also
read one bit of data as sort of a, I don't know,
tantalizing information about what may be coming
out of our case reviews. And then I will talk to
you about some findings that the Case Review
Working has made and three recommendations for your consideration.

So, Kate, it's all yours.

MS. TAGERT: All right. Good afternoon. As General Schwenk said, we're just going to be updating you on our progress, as well as going over the initial findings and recommendations.

In October of last year, the DAC-IPAD sent a request for information to the military investigative offices for all penetrative sexual assault investigations that were closed in fiscal year 17. The RFI requested that the data of these cases include the reason or result for closure, for example refer to court-martial or no action taken because no probable cause. And I just want to publicly thank the military investigators. Some of them are here today. We've requested over 2,000 physical cases. Some of those cases were out in the field across the globe, so, administratively, that was a huge pull for them and we thank them.
Once the data was received, Jan, our investigator, culled through and removed cases that were not responsive to the RFI itself, meaning that the military never had jurisdiction over that potential defendant or the subject or victim were deceased. At the same time, during the lead-up to us actually receiving the cases in early 2018, the case review working group was creating a checklist. The checklist is in your read-ahead materials, and I believe that you've seen it before when you were discussing 140a, but it captures demographic data, evidentiary factors that may be relevant at trial in sexual assault cases, as well as case complexity factors. All of that information is currently being placed into our database.

The database itself has been a very time-consuming endeavor. Justin Coughlin is here today, as well, and he has really been helpful in actually creating the database and working through the many issues that Stacy and I have had when we're figuring out how the data needs to be
put into the system. So thank you, Justin.

Stacy, in addition to helping create the database, is the person that puts the data in it. In just one case, there are 231 data points that are put into this database. And, on average, she can input four to five cases. Sometimes, they take her 30 minutes. If there are multiple subjects and multiple victims, it can take up to two hours.

Finally, in order to ensure that the demographic data is correct between reviewers and a staff attorney, each checklist has been reconciled. So, for example, if one of the reviewers has put that a safe was done in a military hospital and another reviewer on the same case said that it was done in a civilian hospital, there's a quality review check that someone actually goes into the case file to reconcile that answer based on what was factually correct. That is only done on factual and demographic questions. No answers are changed for the subjective ones, such as whether or not
the case was decided properly or whether or not
the reviewer felt that the victim's statement
established probable case.

BGEN SCHWENK: Stacy, I want to
apologize for all my errors in my case reviews.

MS. POWELL: It's all right, sir.

It's all right.

MS. TAGERT: Last week, we finished
inputting our initial case reviews into our
database. The staff is still working out the
kinks to ensure that the information is as
accurate for the criminologist so that Dr. Wells,
who is also here today, can actually decipher
what the data means. He doesn't -- although he's
up to speed on military justice, a lot of the
information that we put into the database we need
to explain to him what it is.

Once the data is ready for his review,
it will be given to him and he will have to code
the data himself and later provide an analysis.

I'm going to have Ms. Powell explain
the numbers of case reviews that your colleagues
have completed. For purposes of the database, as well as the case review, keep in mind that, even though you may have one physical investigative file, the reviews are based on victim and subject so that for every subject and victim combination there are those specific facts, as well as whether or not the commander made a reasonable decision in deciding whether or not to take no action or preferral. So you probably don't remember, but the numbers will be different than what we read previously. They've actually increased based on that analysis.

MS. POWELL: Thank you, Kate. Good afternoon, Chair Bashford, Committee members. Thank you for allowing me this time to brief you on the record what your fellow colleagues have been doing.

This is a representation of Case Review Working Group members' investigative case file reviews on no action taken and preferred case categories. What you may notice here is that there are a difference in numbers, and Kate
has already alluded to what fact that this results was, so when you look at, there was a difference between the number reported by the services versus how many cases were reviewed and then totals being what we reviewed as physical investigative case files and then, in turn, what ends up into the database. So that does result from the multi-suspect and the multi-victim cases. So they may have reviewed 152 investigative hard-copy files, but, with those combinations, you end up with more numbers into the database. So, for example, if you have one accused and two victims, then we have three total cases out of that into the database, which then increases our numbers which Kate has already spoken about. So then the 152 investigative case files that have been reviewed here is now 166 cases within the database for those specific reasons.

In looking towards the March 2019 report, we will be analyzing and discussing those 166 cases that are within the database that, of
course, were reviewed by one member and one
staff. And I've already spoke about the no
action taken, preferred, equaling the 166.

Looking then to the March 2020 report,
the complete universe of cases is 2,069, which
includes no action taken, preferred,
administrative action, and non-judicial
punishment, so those other two categories that we
were not focusing on earlier. Right now, we have
851 cases left remaining for the staff to review,
and it is our goal as of now to be complete with
those reviews by the summer of 2019.

And if nobody has any questions, I'll
turn it back over to Kate.

MS. TAGERT: All right. So as we're
going through our objectives that we've had in
the 2018 report, I just want to make sure that we
understand that we're only talking about no
action cases and preferred cases. We're not
looking at NJP, administrative actions.

And the first objective that we have
is that we want to see whether or not the data
that we've captured can predict disposition outcome between no action and preferral. After speaking with Dr. Wells, the sample size that we have, 166, although we could produce a DoD analysis that would be representative of the whole, we could not do a service-specific analysis to answer that question. We feel it's important to do a service-specific analysis because the testimony that the DAC-IPAD has received, as well as in the Case Review Working Group, is that there are different, across the services there are very different standards in preferring and referring cases and, therefore, to lump them altogether, you may not be getting as accurate information as if we're able to look at are they separate from the Air Force, separate from the Navy and the Marines and I won't forget the Coast Guard.

So, unfortunately, we're not going to be able to produce that in 2019, but we will be able to give you that study for our 2020 report after all the cases have been reviewed.
One of the things that we've been discussing, you certainly heard from the investigators this morning, is the idea of the different service disposition categorizations. For the 2019 report, analysis we will be able to do is the discrepancy that we've seen in our case reviews between what the commander has assessed why the case was closed, what the JAG has stated the closure was based on, what the MCIOs have inputted into their system, as compared to what has been cleared in DIBRS. And what we've seen is that the source documentation for these types of decisions are supposed to be on what's known as a commander's action report. Again, those aren't uniform across the services, and we see a lot of ambiguous information between the case file and that document. Also, there are issues with the documents themselves not being filled out, and there just seems to be confusion as to why cases are closed and for what reason. For example, a commander might cite insufficient evidence as to why no action was taken, a judge
advocate might find there was probable cause but
the case is cleared as unfounded. So just on its
face, it's difficult to determine why that
particular case was closed. And General Schwenk
is going to be talking to you about our findings
and recommendations on that issue.

Objective three, we will be able to
provide the demographic information in the 2019
report from the set of cases that the Committee
members have reviewed. However, that will not be
service specific for the same reasons that I
spoke about earlier. That will be based on a
DoD-wide comparison.

General Schwenk will be talking to you
in a few moments about some of the things that
the Case Review members have issue spotted on the
investigations. And our objective five has
always been the subjective question. The DAC-
IPAD members have been chosen based on their
expertise and professional experiences, and,
although the data itself will be interesting,
they have answered the subjective question of
whether or not the command's action to take no action was reasonable based on the investigative case file alone.

So I don't want to bore you about the minutia of the methodology that the Case Review Working Group members used. That's going to be for the report in January when we go over that. But what's important for when we get to our findings is that, for all 166 cases, all of them have been reviewed by a member and a staff member. If either one of those parties stated that that case was unreasonably decided, it went to a third attorney for review, so it was never just one person looking at the cases. What was interesting about that is, even though it's an eclectic and diverse group from a criminologist, a defense counsel, an investigator, and prosecutors, staff member or committee member, for the most part, the decisions were the same. So that was interesting.

Also, when we're talking about the preferred cases, the reviewers not only looked at
the investigative case file but they were able to
look at the data that the data group has, which
are the 32 reports and the judge advocate's
advice if it was available. So anything that was
in that file, and some of them included victim
declinations, that was reviewed, as well, for the
preferred cases when making the decision of
whether or not the preferral was reasonable.

And your colleagues, beyond just
reading cases, which was time consuming, they
also held over ten hours of deliberations.
During that time, they spoke to MCIO
investigators, military prosecutors, military
defense counsel and now civilians, FBI analysts,
and an assistant United States attorney out of
Minnesota.

On the screen here and in your
PowerPoint slides is the DoD initial assessment
of the reasonableness of command action. So in
purple, you will see that that is the DoD
combined, so out of 166 cases, 86 percent of
those 166 there was a unanimous agreement that
the decision was reasonable. In 8 percent of those cases there was at least one member out of the three that determined that it was unreasonable. And in 2 percent, it was two out of three - four unreasonable. And the reason that we have broken it down to show kind of where there's a mixed opinion is because you don't want to discount potentially the minority that said that it wasn't reasonable, but you also don't want to lump those altogether as unreasonable. So we've given a mixed opinion so that everyone's voice was heard as to who reviewed that case.

So for the no action cases, only 8 percent of cases was it unanimously -- sorry -- 4 percent unanimously held to be unreasonable that there wasn't even a preferral on the case, keeping in mind that preferral is a probable cause determination. And for the preferred cases, it was 5 percent, meaning that 5 percent of the cases that were reviewed it was found that it was unreasonable to even prefer the case. But for the rest of the decisions, it seems to be,
you know, in the 80-percent range of
reasonableness for either decision.

So if anyone has any questions on how
those numbers were created, I'm open to
questions. Otherwise, I'll pass it on to General
Schwenk.

BGEN SCHWENK: Let me just say that a
lot of the data that you'll be hearing from us in
the future will be the predictive, of whether
this factor is predictive of a certain outcome,
and that's going to be objective. But this one
that Kate just briefed on the reasonableness, we
could find no way to do as an objective matter.
It had to be inherently subjective. And we
figured, as the DAC-IPAD has said in the past on
other issues, one of the reasons there is a DAC-
IPAD is to bring people in with certain expertise
and experience and let them exercise their
independent professional judgment, which is what
we did with the members of the working group in
reaching that conclusion.

In my personal opinion, the reason
we're not lumping things together and saying if it's two to one reasonable we're going to call it reasonable or two to one unreasonable we're going to call it unreasonable is just the let the numbers speak for themselves. Each person had a vote, the vote is there, draw your own conclusions and we'll let everybody draw whatever conclusion they want.

Okay. Now what I want to do is talk --

MS. GARVIN: General, I'm sorry. I have a process question just to make sure I'm understanding the methodology. So a staff member and a committee member on all of them and only if one of those two marked it it went to a third?

MS. TAGERT: Yes.

BGEN SCHWENK: Unreasonable, marked it unreasonable, right.

MS. GARVIN: So how many went to the third person?

MS. TAGERT: How many went to the third --
BGEN SCHWENK: All the ones in the -- 10 percent, so 16 or 17 or something.

MS. GARVIN: Okay. I just wanted to make sure I was reading that right.

BGEN SCHWENK: Right. Eight and two, ten percent. I guess it's possible some of the four percent went to a third person if all three people said --

MS. TAGERT: Do you want the actual number of cases?

MS. GARVIN: Yes.

MS. TAGERT: For the no actions, there were five unanimous unreasonable cases. For the preferred, there were two unanimous unreasonable. For the reasonable majority for no action, there were ten. For the reasonable majority for preferred, there were three. For the unreasonable majority for no action, there were three. And for the unreasonable majority for preferred, there was one.

BGEN SCHWENK: Twenty-four, right?

Something. Okay. So while I tried my very best
to keep the members to the grindstone in
reviewing cases, they insisted to think and,
therefore, we couldn't resist from coming up with
findings and recommendations for the whole DAC-
IPAD to consider. All of them stem from our
independent judgment on our case reviews and what
we saw during the case reviews and the people
that on the previous slide you saw were witnesses
before the CRWG and people we heard from at the
DAC-IPAD meetings.

So the first issue, there's three
issues that we thought were important and you
should be aware of, but we're not ready to go
anywhere with it. So I just wanted to give you a
heads-up and tell you we're going to continue to
monitor and assess those issues.

So the first issue is investigative
case closure classifications. So that's when a
military criminal investigative organization says
we're ready to close this case out, what
classifications are we going to use to describe
the case when we input it into the federal
system?

So our first finding is there's a DoD manual that sets forth what standards, what classifications to use, and the second sentence is the important one, the CRWG found during its case reviews that these classifications are confusing and applied inaccurately and inconsistently by investigators. Okay. I think Kate was mentioning about inconsistencies between source documents and ultimate decisions on classification types. And so we're going to continue to monitor that as we go through the remaining 800 cases and we'll get back to you on that.

Okay. Second finding is investigators use the information from command disposition action reports to determine appropriate case closure classifications. Issue of whether they should and how is something we're going to continue to monitor, but this tells us that command disposition action reports are actually important for reasons beyond just saying what
happened and that leads into one of the issues
that I'm going to talk about in a few minutes.
Okay. That's the first issue.

Second issue, the probable cause
determination, the decision to unfound a case,
and the submission of fingerprints to federal
databases. So there's a DoD instruction that
tells us when, tells DoD when fingerprints will
be submitted electronically to the FBI, when
things are supposed to go to the FBI, when to
make a probable cause determination, defining
probable cause, and putting other information of
when this is supposed to be done. In no case is
it supposed to be before apprehension, etcetera.
So that tells us where the information comes
from.

The next finding, finding four, the
CRWG received testimony and found during its case
reviews that the point during the investigative
process of which a subject's fingerprints and DNA
are taken the probable cause determination is
made and the subject's fingerprints and DNA are
submitted to federal databases vary widely in the military, whether it's because the DoD standards are broad enough that you can drive a truck through them and so there's room for different ways or they're just not followed all the time, but we noted there are sufficient inconsistencies to warrant making a finding and alerting you that that's an issue we'll continue to look at.

Okay. Finding number five. From the testimony received -- this is, again, on probable cause determinations, etcetera. From the testimony received by the CRWG and its review of the files, we find that there is significant confusion among investigators, judge advocates, and commanders as to the meaning of the terms probable cause and unfounded, even though they're defined as the slide shows, when and by whom probable cause and unfounded determinations are made and how they are documented throughout the investigative process. Okay. That's just from looking at the case files. There's inconsistencies within the case file and from one
case to the next. So we're going to continue to
look at that.

Next finding, military investigators
testified they're required to follow a checklist
of investigative actions, regardless of the facts
of a particular case, and that they have little
discretion to determine which investigative
actions provide value in a case. We got started
on this one because we found, in talking with one
another, one member would say, man, I just
reviewed a case and you can't believe all the
work that MCIO did on a case that was going
nowhere to begin with, and the other person would
say, well, I had one of those, too. And we
started talking, and we realized we thought we
were running into quite a few of those. So we
asked the investigators how much discretion do
you have, and the investigators said, well, we
have discretion but we don't really think we have
discretion, we think that there's certain
investigative, like the Baltimore major told us
this morning, there's certain things that we're
supposed to do on a checklist and so we do them. Even when taking the photos of the motel where the incident occurred eight years ago may or may not be particularly helpful, all 42 photos will be in the file so that you can review them. So we're going to continue to work on that.

Okay. That takes care of the first part of investigator discretion.

Next one, finding seven, in the course of conducting case reviews, the CRWG found that nearly all case files include the same series of investigative actions, including photographs of incident locations and extensive interviews with co-workers and other character witnesses, whether relevant to the case or not. It goes in with the previous one about how much discretion do they have, so we'll continue to look at that.

Our finding number eight, it's problematic in some cases in which appropriately no action is taken against accused service member investigations are taking over six months to complete. Lengthy investigations often have
significant negative consequences for accused
service members, as well as victims, as we heard
this morning. So whether we'll come up with any
magic thing to try to make investigations be kind
of accomplished in a more timely manner, I don't
know, but we're going to continue to look at it
and come back and talk to you.

Okay. The last issue is the issue of
command disposition actions, the documents we use
to designate what the command disposition
decision was. And this one we not only came up
with the issue, we also came up with what we
think are some recommendations for your
consideration. So when I'm finished, you all can
discuss it and debate it and, if the Chair
allows, you vote on it.

So, anyway, here we go. Based on
slide number 20, if you're counting, based on our
review of penetrative sexual assault
investigative files for cases closed in 2017 and
testimony received during various meetings, we
make the following findings and recommendations.
Okay. Finding number nine, accurate and uniform documentation of a commander's disposition decision, the reason for the decision, and any discipline action taken is essential to, A, create complete reviewable military justice records and, B, enable military justice federal advisory committees, such as us and the future Article 146 military justice review panel, to conduct statutory sexual assault and other military justice reviews and assessments. We made that finding to depict how important we think this issue is.

Okay. It's also important because, C, ensure military criminal investigative agencies accurately report crime to federal law enforcement databases, which we talked about earlier and this completes that connection. And, D, ensure the federal criminal databases routinely searched by employers and others required to conduct criminal background checks, reflect accurate and timely information about the disposition of allegations on service members.
Okay. So if it's important, then we go on to CRWG finding ten. The DoDI which promulgates the sexual assault investigation policies requires the commander of the service member who's the suspect to provide the MCIO in writing all disposition data within five business days, and that includes -- I will take it by the laughter from the peanut gallery that there is a perception, undoubtedly incorrect, that commanders are not timely in their reporting of commander disposition decisions. Okay. At any rate, any administrative non-judicial punishment or judicial action or declining to take action, that's important that that also be included.

Our finding 11, the law just recently signed, the National Defense Authorization Act for FY 2019, has a section 535 that requires SECDEF to establish a unified command action form. And on one of our read-aheads in our binder is a copy of the law. It's sort of short and sweet, but it's there. So SECDEF is going to have to establish a uniform command action form
applicable across the armed forces for reporting
the final disposition of cases of sexual assault
in which the alleged, you know, we have
jurisdiction and there's an unrestricted report
so there's actually something to work off of.

Okay. That's a finding. Next
finding, finding 12, military investigators and
judge advocates testified that documentation of
command action is required to officially close a
case and the investigators -- no more laughter,
please -- investigators reported they often have
difficulty obtaining this documentation in a
timely manner.

Next finding, the command disposition
action reports that are found in investigative
files are often unclear, incomplete, inaccurate,
and inconsistent within and across the services.
And if we ever get to the point, we'd be happy to
bring you examples because it happens frequently.

Okay. Finding 14, command disposition
action reports that are found in investigative
files frequently include terms that are defined
within sexual assault prevention and response
office regulations, such as command action
precluded, which don't have a counterpart in
criminal justice. And so it's another term that
has to somehow fit with criminal legal terms, and
we found that the fit is not very good and,
therefore, it ends up being confusing.

Finding 15, it's unclear from the
command disposition action documentation found in
investigative files what source documents or
other written information is used by commanders
in filling out their disposition reports. And
the command disposition reports sometimes
conflict with source documents that were in the
investigative files we looked at. The command
report said one thing, and we had a document from
a judge advocate that said something different.

Okay. The last finding, finding
number 16, staff judge advocates testified they
do not routinely assist commanders in completing
command disposition action reports. Okay. So at
that point, we hope, the CRWG hoped that the rest
of you would feel like this is a problem that ought to be addressed, so here are three recommended actions.

CRWG recommendation number one, CRWG recommendation one: in developing a uniform command action form in accordance with Section 535 of the NDAA for FY 19, the Secretary of Defense should establish a standard set of options for documenting command disposition decisions and require the rationale for those actions, including declinations to take action. We found a number of, not to harp on one particular service, but a number of Marine cases that were really well done in the command disposition reports because not only were they accurate with any source documents we found, but they also had a couple of sentences explaining the rational for the decision, which made reviewing those cases a heck of a lot easier than the ones where I just check a box and that's all you knew. So that's our first recommendation.

Second recommendation: the Secretary
of Defense should ensure that the standard set of options for documenting command disposition decisions are based on recognized legal and investigative standards that are uniformly defined across the services and accurately reflect command source documents. Okay. So this is sort of like what we said on 140a when we did the report on 140a, have a standard form, have standard terms, define the terms clearly. So that's what the first two recommendations goes.

The third recommendation: the Secretary of Defense should ensure judge advocates or equivalents of attorneys review and provide advice to commanders in completing command disposition action reports in order to ensure accuracy and completeness of the documentation. That should probably say in order to help ensure because judge advocates aren't perfect either, but the team on disciplinary actions of judge advocate and command should work together all the way through, which includes the final command disposition report.
So those are our three recommendations. And just as a summary, we're going to continue to look at, number one, investigative case closure classifications; number two, the probable cause and unfounding determinations and fingerprint submission standards; and number three, investigator discretion.

And that is that.

CHAIR BASHFORD: Okay. So the CRWG has made three recommendations to the DAC-IPAD as a whole. We have some time, not a lot, if there's any issues to discuss or questions for General Schwenk who is what? Leaving? But then, ultimately, we have to vote whether to adopt these recommendations or not.

So as to recommendation one, establishing a standard set of options for documenting the disposition and the rationale, is there any discussion anybody would like to have about that? Are people --

MS. GARVIN: I actually have a
potentially remedial afternoon question. So Section 535 of the FY 19 NDAA that this is kind of building off of uses the vocabulary on the second prong of the victim files an unrestricted report, that's the language that comes out of that. Is that literal or is that cumulative, meaning is it literally when the victim, him, her, their self, has initiated the unrestricted action or is it any time that an unrestricted report exists?

MS. TAGERT: I doubt Congress has thought about that.

MS. GARVIN: I know. And so since our recommendation is based on that, I'm just wondering if that's something that should be considered now or if maybe the case review should go back and, not go back but continue to think about that.

MS. TAGERT: So the recommendation from case review only pertains to unrestricted reports.

MS. GARVIN: But all or -- the reason
I'm asking is because the recommendation number one says "in developing the uniform command action in accordance with 535 of the NDAA 19," which has what I believe is language out of Congress with regard to unrestricted reports because it says victim filed the unrestricted report, which might only be a portion of the unrestricted reports if it went unrestricted because someone in the command chain. Am I making sense? So are we making a recommendation on all unrestricted reports? Is that what the working group is recommending with this --

BGEN SCHWENK: Yes, I think that's what the working group was all -- and we'll clarify that. If you guys vote in favor, when we write it up we will write it up.

MS. GARVIN: Congress has, I believe --

BGEN SCHWENK: Narrowed it to the third party --

MS. GARVIN: Or inadvertently used a lack of clarity in their vocabulary.
CHAIR BASHFORD: A number of the cases that we've reviewed start where the victim tells, wants it reported but doesn't go directly to the MCIO.

Any further discussion? Okay. Then I would put CRWG recommendation one to a vote by the DAC-IPAD. In favor?

(Chorus of ayes.)

CHAIR BASHFORD: Megan Tokash?

MS. TOKASH: Yes.

CHAIR BASHFORD: Okay. So that was unanimous. Okay. Recommendation number two, standard set of options for documenting disposition decisions based on recognized standards that are uniformly defined and accurately reflect the source documents.

Any discussion as to any aspect of that? Then I would put that to a vote. Does the DAC-IPAD, as a whole, vote to adopt recommendation number two? In favor? Megan?

MS. TOKASH: Yes.

CHAIR BASHFORD: Unanimously passes
again. General Schwenk, you're cooking here.

BGEN SCHWENK: I was against both of those.

(Laughter.)

CHAIR BASHFORD: And, finally, number three, that judge advocates or civilian attorneys review and provide advice to commanders in completing these reports to assure accuracy and completeness. Any discussion?

BGEN SCHWENK: Let me just say that we did consider whether judge advocates should be required to submit the forms, and we felt, after some discussion, the commanders still ought to do it, just the judge advocates ought to do their role of advice and work with the command.

CHAIR BASHFORD: In favor of adopting recommendation number three?

MS. TOKASH: Yes.

CHAIR BASHFORD: Ms. Garvin?

MS. GARVIN: Can I ask -- I'm sorry. I had a question before --

BGEN SCHWENK: Go ahead.
MS. GARVIN: So the recommendation doesn't detail this. I'm just curious if that's part of it or not, which is would this advice be documented anywhere or is this, like, informal advice and could --

BGEN SCHWENK: Ours doesn't address whether it's formal or informal. Our purpose was just to make sure a judge advocate or civilian equivalent attorney had eyes on the document and helped the command in preparing this. You know, whether in implementing guidance, DoD wants to say there needs to be a record of that, you know, that I was advised by a judge advocate, you know, or something, I don't know. We didn't go there.

MS. GARVIN: Okay. I'm fine then.

CHAIR BASHFORD: So that was passed unanimously. And I just, from looking at some of these, whether they were saying command action precluded and command action is only really precluded if the accused isn't a military member or is dead. That was being used sort of way too much because he wasn't dead and was, in fact, a
1 member of the military.

2 Okay. So we've adopted those three
3 recommendations. Thank you, General Schwenk.
4
5 BGEN SCHWENK: Let me thank the
6 members and the staff. Each case takes two to
7 three hours, and the members kept flying in on
8 their own to sit there and go through these
9 cases, which, for those of you who have done case
10 reviews, can be really long and boring. So the
11 staff was great at coming up with skits. But if
12 we thought we had it bad doing 166 cases, how
13 about 1200 cases by the staff already and nearly
14 800 more to go of which the members will help
15 with none, you know. So my hat is off to all the
16 staff that have done the work thus far and will
17 continue to do it.
18
19 Just to give you a heads-up, our goal
20 is to be done by next summer so that it will
21 make, this first crunch will make the 2020 report
22 with Dr. Wells's analysis. I told Dr. Wells we'd
23 try to give him at least a week to work on it, so
24 he needs to get up to speed.
CHAIR BASHFORD: Okay. So Ms. Saunders, we're going to now, we're going to start with the expedited transfer final assessment, which means we need to get a different PowerPoint up there.

MS. SAUNDERS: Chair Bashford and Committee members, I'll be presenting the Policy Working Group's update on the expedited transfer policy. And while we're waiting for the slides to come up, let me just orient you to your materials briefly.

CHAIR BASHFORD: Could you move your microphone a little bit closer?

MS. SAUNDERS: Is this a little bit better? Okay. Tabs 21 through 25 of your materials relate to this topic. However, we're only going to be going, we're not going to be going through all of those materials right now. Tab 22, for example, has the more full report on expedited transfer and, from that report, we have pulled the findings and recommendations for the issues, which is actually at Tab 21. However, we
did meet yesterday and made some changes to that document, so in your blue folder you should have an updated version of that which is called "The Department of Defense Expedited Transfer Policy and Related Issues" and it has a blue box on the top. Also, there's a set of slides in there for you. And just so you know, the slides really are just the recommendations with a little bit of an intro, so, primarily, we'll be going through this document.

So it looks like they're up now.

Okay.

Just to go to provide some background, as you recall, in the last DAC-IPAD annual report this committee made the initial assessment of the expedited transfer policy. And, essentially, you found that the policy itself was an important sexual assault response initiative and strongly recommended it be continued and further improved.

Additionally, you made four recommendations related to the expedited transfer policy in that report. You also identified six
additional issues that you would ask the Policy Working Group to continue reviewing. And in the course of reviewing that, of course, the Policy Working Group found an additional issue that they also wanted to take a look at, making a total of seven.

In looking at these additional issues, which we'll get to in just a minute, the Policy Working Group talked to a wide variety of groups of people from the services and DoD. They talked to commanders, special victims' counsel, SAPR personnel, SARCs, special victim prosecutors and defense counsel, and investigators. And, importantly, the Policy Working Group also talked to a panel of sexual assault victims who had received expedited transfers, and they told us about their experiences with that.

Additionally, in addition to speaking with all of those witnesses, the Policy Working Group also provided a request for information to the services and DoD requesting data and information on expedited transfers of victims and
those accused of sexual assault. And so that is also in your materials that you have today.

So moving right into the issues and the assessments and recommendations, issue A is the expedited transfer option is not available to service members who make restricted sexual assault reports. And in the DAC-IPAD's interim assessment that you made back in the March 2018 report, the DAC-IPAD believed that there was a workable option that would allow service members who do file restricted reports to request and receive expedited transfers, and you asked the Policy Working Group to continue looking at that. I will say up-front that the Policy Working Group did put some of the harder, more difficult to tackle issues right up-front here, so, hopefully, you will find that they get easier as we go along. But this is one of the tougher ones, I think, that the working group found.

To give you some background on this, the statute for expedited transfer does not differentiate between service victims who file
restricted or unrestricted reports in granting expedited transfers. However, the DoD policy does. The DoD policy currently only allows expedited transfers for those victims who file unrestricted reports.

So, essentially, the status right now is if a victim wants to remain anonymous, wants to maintain her privacy, she can do so and either file a restricted report or file no report at all. However, then she may be in that situation where she has to see the alleged offender on a day-to-day basis, if they work together. She would also not have the option to try to move to a location where she might be closer to a support network.

Alternatively, that victim may choose to file an unrestricted report where she can then request an expedited transfer. That would automatically initiate an investigation which that victim may not want.

What we heard from a lot of special victims' counsel and other victim support
personnel is what they typically see in these cases is a victim who files an unrestricted report and then immediately requests or states that she does not want to cooperate with the investigation and does not want to make a statement. So that allows that victim to request an expedited transfer but also not continue to engage with the investigation.

However, the downside of that that we have heard is, under the MCIOs, under the investigator's policy, they're required to continue investigating that. They can't just say we're going to stop at this point. So that investigation may include interviewing the victim's co-workers, family, friends, things that the victim just may not want to have happen.

The response system panel, which was two panels before this one, actually made a similar recommendation in their 2014 report. And in response, the DoD did put out a policy letter to the services telling the services that they could request an exception to policy if they
wanted to pursue that. So far, that has not happened. So we're essentially in the same position that they were at four years ago.

Of all of the witnesses that the Policy Working Group heard from on this issue, there was no consensus of opinion, as you might imagine. There were really great arguments for allowing those who file restricted reports to request expedited transfers. Some of the main arguments that they made were it's always good to give victims more options, it will allow that victim to move to a situation where she might be more comfortable and, perhaps in doing so, may then choose to file an unrestricted report.

Some of the arguments that the Policy Working Group heard against that were that they want to hold offenders accountable. There is a, the DoD policy does state a preference for victims filing unrestricted reports of sexual assault, and that is so that they can hold offenders accountable.

Also, what was brought up by several
witnesses is in the last report the DAC-IPAD discussed trying to mitigate this perception that there's an abuse of the expedited transfer policy. The argument was if we now open this up to members who file restricted reports, you're only going to increase that perception. So there were arguments on both sides, and I don't think there was any one consensus from the victims or, excuse me, from the witnesses on that.

Having heard all that testimony, the Policy Working Group makes the following recommendation, Policy Working Group recommendation one: the Secretary of Defense expand the expedited transfer policy to include victims who file restricted reports of sexual assault. The victim's report would remain restricted, and there would be no resulting investigation.

The DAC-IPAD further recommends the following requirements: Number one, the decision authority in such cases should be an 06 or flag officer at the service headquarters organization
in charge of military assignments, rather than the victim's commander. Number two, the victim's commander and senior enlisted leader both at the gaining and losing installations should be informed of the sexual assault and the fact that the victim has requested an expedited transfer without being given the alleged offender's identity or other facts of the case, enabling them to appropriately advise the victim on career impacts of an expedited transfer request and ensure that the victim is receiving appropriate medical or mental healthcare. And number three, a sexual assault response coordinator, victim advocate, or special victims' counsel or victims' legal counsel must advise the victim of the potential consequences of filing a restricted report and requesting an expedited transfer, such as the alleged perpetrator not being held accountable for his or her actions or the loss of evidence should the victim later decide to unrestrict his or her report.

Would any of the Policy Working Group
members like to chime in on your thoughts on this issue?

BGEN SCHWENK: Yes, I think this is clearly the most controversial of the recommendations. Interestingly, when Terri said that witnesses split on the issue, they also split within each panel. So, you know, victim advocates would say one thing and the other victim advocate would think something different. Trial counsel would say, the other trial counsel something different. So it really is a split.

From my personal point of view, the purpose of the expedited transfer program is to help the victim recover. And we have a group of victims who file restricted reports, and the purpose of that was to help people recover and, yet, they're precluded from expedited transfer where they could get better help. And the restricted report becomes a sort of unrestricted report, let's be honest, because the likelihood of the word getting out increases the more people that know. That's got to be part of the advice
that they get on our number three, you know, when
ey they get advice ahead of time and do you really
want to do this. So that's important for them to
know and for us to admit in making this
recommendation.

But, nonetheless, I think that it's
the right thing to do for the victims, for the
restricted report people, and the military
clearly can do it. DoD has recognized that by
allowing it to be an exception to policy. It's
just a matter of doing it.

And so, rather than leaving the status
quo, I thought it was important to try to nudge
them along by making a recommendation, just do
it.

CHAIR BASHFORD: Could you achieve the
same aim if somebody who filed an unrestricted
report but immediately declined, if rather than
launching the full-bore investigation where they
talked to everybody, you know, and get everybody
talking the way they do, if they simply followed
that I do not want to cooperate with this, I do
not want any investigation to happen? Which would be easier to achieve?

BGEN SCHWENK: Administratively, I think the latter would be easier because you wouldn't worry about people knowing about it. It's an unrestricted report where everybody can talk about it and everybody can know it. Plus, the expedited transfer program could then run the way it currently runs. Go to the immediate commander, you know, do the appeal process. You wouldn't have to change any of that.

The downside is everybody knows and it all goes out. We've completely removed any restricted nature. If we do it the way we recommend it, then you do retain, I think, in most cases, a good amount of restricted so that fewer people would know and it would help the victim.

DR. MARKOWITZ: One of the things that at least I see from my perspective is that the expedited transfer program is used potentially as motive to fabricate at trial. And so if we have
the potential for expedited transfer in a restricted case, we take some of that off the table. If you have the ability to get an expedited transfer without having to go unrestricted, that takes some of that issue off the table. It is not one of those things that can then be used as a hammer potentially in cases where you have a victim at trial who has received an expedited transfer to be closer to family or to end up at an installation that may have a perception of being a more favorable assignment or what have you.

So I think that there are a variety of reasons why having expedited transfer for restricted cases ends up being beneficial. And so I second what General Schwenk was saying about this, I think, being a positive thing.

CMSAF McKinley: You may also have a situation where, because of the atmosphere of where that person resides in installation X, that they don't want to file an unrestricted and so they'll go restricted, but they want to get away
from that situation. And this gives them the
ability to go through a situation at another
installation where they have more support and
maybe at that installation, if they want to go
ahead and file an unrestricted report and go
ahead after the perpetrator. So there's many
positives that we see.

MS. SAUNDERS: And I will say, Chair
Bashford, too, your suggestion, that's getting
into a little bit of the next issue and some of
the arguments we heard against allowing the
victim to unrestrict and then curtailing the
investigation. Some of the MCIO witnesses that
we had speak to us were against that idea. I
think their idea was, one of the things we heard
is, you know, I don't know that I want my 24-
year-old investigator out there in the field to
have that much discretion. That was one thing we
heard. There was also the concern about having,
about potential liability. If my commander
knows, you know, who that perpetrator is, if we
have a named perpetrator, then what happens if
that person re-offends? What happens if we do not investigate this case and that perpetrator re-offends. So that was just one argument that came up.

CHAIR BASHFORD: Any other comments?

Are you asking us then to vote on your recommendation one?

MS. SAUNDERS: Yes, ma'am, if you're ready to. If you would like to have more discussion or if you have any additional questions, I'm happy to answer them.

MS. LONG: I have a question. Did you consider having the command -- if I missed this, I'm sorry. I thought I understood that the commander of the place where the victim would be moving would know, but the perpetrator would remain where they are under the command. So is there something then that if that perpetrator ended up moving before the report was unrestricted that information then follows that? I say perpetrator. The accused follows to counter the concern that you may have a
perpetrator who could re-offend without someone knowing?

MS. SAUNDERS: I don't know that we really talked about that in our working group.

MS. LONG: I mean, I see problems with it. I'm just trying to think of how to solve the issue that you raised, which was one I was just trying to balance, having heard this. I mean, I think it should be available. Obviously, I'm just trying to think of what you do.

BGEN SCHWENK: One of the good things about -- this isn't perfect, but I think it's a step forward. But one of the things is, I think it's number two, if I have it there somewhere, letting the gaining installation commander and senior enlisted know. So if I'm the victim and I move over there and I'm over there and my suspect or alleged perpetrator shows up, I know they know I can go to my command to get help about this is a problem. And then, working together, they can decide whether it's appropriate to go try to do something to keep the person away, you know,
maneuver where we're stationed on the
installation, whatever they can do. So at least
there's, we really thought it was important that
the gaining people know what's going on so they
can administer to the person.

MS. LONG: That was my question. I
thought that that person wasn't going to know.

BGEN SCHWENK: No, they are going to
know, so there's a place to go for help besides
the SARC, somebody with some authority.

MS. LONG: So then what do you mean
then --

BGEN SCHWENK: The victim, the victim,
I can go to my commander because the commander
knows I'm a victim. I'm not spilling beans. And
I can say you're not going to believe who I just
ran into at the PX, you know, he's here or she's
here. And then they can work with me, I have
somebody to work with. So it's not a perfect
solution, but at least it gives them assistance
at a commander level to try to work through that
kind of a problem.
MS. SAUNDERS: And I think, in addition, there would be somebody at the headquarters level who would know that the identity of the perpetrator, the person who is actually acting on the expedited transfer because they would be working at the assignments branch. That might be an additional check on that issue to make sure that you're not transferring an accused to the same place as a victim.

MS. LONG: Does that have a negative impact on that accused then in some way?

BGEN SCHWENK: Yes. I mean, the hard part on that is the administration of having that because if you're suddenly flagging somebody's file so that, you know, do not transfer to X, pretty soon everybody is going to know what that means, you know. And so I'm not sure -- but we didn't go there.

MS. GARVIN: And if I may, I mean, what we were looking at is the articulated purpose of expedited transfer not for safety reasons but health and recovery of the victim.
That's what's already articulated. It's already on why it's supposed to exist, and it is already, by law, available to restricted and unrestricted. We just have policy right now that says, oh, we're not going to give it to you unless you ask for an exception. And so we've made it really hard to get that which is actually available by law, and so let's be true to our word, let's make it available, and let's focus on health, recovery, and setting up a survivor to access what he, she, or they might need.

HON. BRISBOIS: So I guess I just need to be clear about this, the information that's being provided because this is a restricted report transfer that we're talking about. So the leaving and gaining commanders are told that the person asking for the transfer is a victim, but that's all they're told.

MS. SAUNDERS: That's correct.

HON. BRISBOIS: Okay. So I was a little confused as to them knowing or not knowing the identity to the perpetrator alleged. That
would require at the gaining facility for the victim then to make their own determination whether to ID that person, which, at that point, it would become an unrestricted report.

   BGEN SCHWENK: Well, it can still be restricted because if you did it this way, the gaining, your new commander and senior enlisted leader know you're a victim. So now I can decide when I see whoever at the PX, I can decide am I going to handle this myself, talk to my friends, or am I going to go to my commander or my senior enlisted and say I got a problem, can you help me. They already know I'm a victim. Now I can tell them the perpetrator is here.

   HON. BRISBOIS: Yes, and that's what I meant. That's when it becomes a --

   BGEN SCHWENK: But it's the victim's decision to tell them anymore.

   HON. BRISBOIS: That's right. And that's what I was getting at.

   BGEN SCHWENK: Right. And that's where we kept it, in the victim's hands.
HON. BRISBOIS: So it doesn't change current practice in terms of who controls reporting or not reporting the alleged offender.

BGEN SCHWENK: The MCIO --

HON. BRISBOIS: That's still a victim's determination.

BGEN SCHWENK: Yes.

CHAIR BASHFORD: I don't see where it says that the 06 or flag officer in charge of military assignments would know the accused's name. Did I understand you to say that they would know who the accused was?

HON. BRISBOIS: Well, that was my purpose of my question. They will not know unless and until the victim changes their mind about making it an unrestricted report.

BGEN SCHWENK: Whether the people at the personnel unit know the facts of the case, I don't think we ever talked about them knowing that. They just know there's a restricted report, period, end of discussion, and a request for an expedited transfer.
MS. SAUNDERS: I think there are a
number of details that I think --

BGEN SCHWENK: Sure.

MS. SAUNDERS: -- any kind of working
group that would sit down and put this together
would have to work through.

BGEN SCHWENK: A lot more than we
thought of, I'm sure. But these are the bare
bones.

CMSAF McKINLEY: There's also, later
on we'll introduce another recommendation that
will kind of marry up with this and weave into
this also.

CHAIR BASHFORD: Is there any further
discussion on this? Then I'm going to ask the
panel to vote as to whether to accept the Policy
Working Group recommendation number one about
expedited transfers for restricted report people.
In favor? Megan? I didn't hear. Megan, are you
there?

MS. TOKASH: Can you hear me?

CHAIR BASHFORD: Now I can, yes.
MS. TOKASH: Okay, good.

CHAIR BASHFORD: Are you in favor --

MS. TOKASH: Yes.

CHAIR BASHFORD: -- that? Okay, good.

So I believe that passed then unanimously. Well, if that was the hardest one, we're going to float right through the rest. Okay. Ms. Saunders.

MS. SAUNDERS: Moving on to the next issue, this is issue b, inadvertent disclosures by victims to their commands of sexual assaults and reports of sexual assault made by third parties denies service members the opportunity to make a restricted report and protect their privacy if they so desire. The DAC-IPAD's interim assessment in your last report was that you believe there should be a workable solution to allow victims who are in this situation who did not want to have the sexual assault reported be able to restrict the additional investigation of the sexual assault, and then you asked the Policy Working Group to continue looking at this.

The background on this, if you recall
last October, we had a group of commanders who appeared before the DAC-IPAD and one of the commanders in that group said if I have one recommendation that I could make to this panel it would be to have some kind of mechanism where a victim could say I did not intend for my sexual assault to be unrestricted. A third party reported it or I inadvertently told a mandatory reporter, but I did not mean for this to go forward as an unrestricted report, to have some kind of mechanism for that victim to be able to pull that back, to be able to, I think the term was re-restrict that report.

So that's where that came from, and several other commanders echoed that initial commander in saying that that should be a policy that should go forward.

Some of the victims or, excuse me, some of the witnesses who, just like the last issue, there was a split of opinion on the witnesses who came and spoke to the Policy Working Group on this with, you know, kind of
evenly split with a number of them who supported this idea. Again, it gives victims more options, and maybe, if that victim is in a more comfortable situation in the future, she would then choose to un-restrict the report. Also, if the victim chooses, if the report is inadvertently sent to investigation and now the investigators go out and they begin interviewing all these people, often against the victim's wishes, many people were concerned that that was traumatic to that victim, that you may be re-victimizing that victim by doing that. And, ultimately, it's difficult, if not impossible, to take any kind of criminal action when you have an uncooperative victim.

Arguments against the policy, similar to the last one, are if you have a named perpetrator in this case, in this case you would have an investigator who would probably know, who would likely know the identity of that perpetrator to say we're not going to investigate this, you are potentially opening up that command
to liability. You potentially have a perpetrator out there who could re-offend.

    And also another argument that was brought forward is if that victim later, maybe a year later or some period of time later decides to un-restrict their report, now you have lost the potential to gather all of this evidence because it's stale.

    So those were generally the arguments both for and against this recommendation, which leads to Policy Working Group recommendation two, "The Secretary of Defense establish a working group to review whether victims should have the option to request further disclosure or investigation of a sexual assault report be restricted in situations in which the member loses the ability to file a restricted report whether because a third party has reported the sexual assault or because he or she discloses the assault to a member of the chain of command or military law enforcement. The working group's goal should be to find a workable solution that
would, in appropriate circumstances, allow the victim to request the investigation be terminated. The working group should consider under what circumstances, such as in the interest of justice and safety, a case may merit further investigation, regardless of the victim's wishes, and should also consider whether existing safeguards are sufficient to ensure victims are not improperly pressured by the alleged offenders or others to request termination of the investigation.

This working group should consider implementing the following requirements in such a policy. Number one, the victim be required to meet with an SVC or VLC before signing a statement requesting that the investigation be discontinued so that the SVC or VLC can advise the victim of the potential consequences of closing the investigation. Number two, the investigative agent be required to get supervisory or MCIO headquarters-level approval to close a case in those circumstances. Number
three, the MCIOs be aware of and take steps to mitigate a potential perception by third-party reporters that allegations are being ignored when they see no investigation is taking place, such as notifying the third-party reporter of the MCIO's decision to honor the victim's request.

Number four, cases in which the alleged offender is in a position of authority over the victim be excluded from such a policy. Number five, if the MCIO terminates the investigation at the request of the victim, no adverse administrative or disciplinary action may be taken against the alleged offender based solely on the reporting witness's sexual assault allegation."

Are there any members of the working group that want to speak to this?

BGEN SCHWENK: I consider this one harder than the first one but easier for the DAC-IPAD because we basically punt it to a working group rather than making a direct recommendation that SECDEF do this. The reason I think it's harder is because I really see the adverse
consequences of doing this is hard. You know, the adverse consequences can be significant, the administration of doing it is harder, and I was not convinced in my own mind that we were ready to make a full recommendation that SECDEF do this unless we did a lot more work. And rather than do that, we decided we're still probably going to miss something because this is complex and it involves lots of people, and so then someone had the idea why don't we say this is important, Mr. Secretary, and it's so important you ought to put a working group together and look at, which then allowed us to say what things should they look at that worried us, and we put those things in to the recommendation. So that's my thought.

MS. CANNON: Why not do that yourselves instead of having another group look at it? You would have looked at it and you've seen some problems that are starting to show flags. Rather than have somebody else pick up this and maybe have to go back a ways to catch up, why not, since we're still going on with
other things, why wouldn't the Policy Working 
Group maybe take a further look at it, rather 
than set up another group?

BGEN SCHWENK: Well, somebody said 
that at the Policy Working Group meeting and the 
answer was, one, this is really complex and we're 
going to miss something anyway, and so better to 
have the people with the most vested interest in 
it, DoD, and the expertise sit down and do it 
than us on something that's this complicated. So 
there may be other --

MS. CANNON: So just to clarify, 
you're not talking about setting up another group 
like this.

BGEN SCHWENK: No.

MS. CANNON: You're talking about 
going back inside and finding out who are the 
people who are going to be the players and let 
them work this out?

BGEN SCHWENK: Yes, yes, get the MCIOs 
involved and the services and have them all get 
together and say, okay, how would we do this and
does that make any sense, and see what they come up with. And then we can monitor whatever they come up with.

CHAIR BASHFORD: Two questions. One, it seems as though this recommendation is really only involving sort of inadvertent disclosures.

BGEN SCHWENK: Yes.

CHAIR BASHFORD: What about if somebody simply changes their mind? It's like three days into an unrestricted report and they're like, whoa, this is not what I wanted to have happen, why exclude them from being able to restrict the report?

DR. MARKOWITZ: I'm not entirely certain we are. I think that's part of the calculus in all of this, and I think that's part of why, as General Schwenk said, this requires, I think, some significant analysis internally in terms of how this goes about. I think we initially did start out by talking about these as inadvertent disclosures, but I think part of the conversation has morphed into an understanding
that people don't always recognize what investigations entail as they get into this and what disclosing something, what reporting something actually means fully in the process of the military justice system.

So I don't know that we've closed the door to the possibility that that exists, but, again, it's an enormous process issue and I don't know that an outside advisory committee can fully vet this in a way that makes sense. I don't know if --

MS. GARVIN: Well, I was just going to, it's like the issue came to us from the larger group as the inadvertent disclosure. But in ours, we ended up talking about those a little bit and not precluding it. So in our assessment, it's not limited specifically to --

CHAIR BASHFORD: And then your sub five, it says no administrative or disciplinary could be taken based solely on the reporting witness's allegation. Does that leave open during that period of time when it was
inadvertently unrestricted, that even if it then becomes restricted adverse action could be taken?

BGEN SCHWENK: Yes, I think that one comes from if it takes a couple of days and in that time some witness comes forward and says I actually saw this happen, here's what happened, the MCIO is now going to think I can make a case just with the witness, I don't even need the victim anymore. And we didn't think we wanted to preclude that from happening, necessarily, no. DoD obviously can do what they want, but we limited it to we didn't want to preclude that situation from being permissible.

CHAIR BASHFORD: So this recommendation would be from the DAC-IPAD to DoD to take a look at this?

BGEN SCHWENK: Yes.

MS. LONG: Can I ask another process question that I should probably know? If you were to just recommend to DoD that they do this, would the ultimate outcome be that they put together a working group to see if they did it?
BGEN SCHWENK: Yes.

MS. LONG: So then going back to Kathleen's, is there a reason not to just recommend this outright since we'll get the same result, they'll figure out if they can actually do it or if you think this is the best thing but other people who are more expert to figure out? Is that sort of why --

MS. GARVIN: The latter part, yes.

MS. LONG: Okay. That makes sense.

BGEN SCHWENK: Yes, I'm not sure it's the best thing, but I think it's important enough that it needs to be looked at. But I'm not sure it's the best, so somebody --

CMSAF McKINLEY: This was not an easy thing. We wanted to be able to handle it ourselves but, because of the complexity and the importance of this, we thought it best to move it forward.

DR. SPOHN: I think this is important because, in the context of reviewing the case files, the Case Review Working Group in which the
victim is approached and said, whoa, I wasn't
sexually assaulted and, yet, there's a full-blown
investigation nonetheless, including interviewing
people who perhaps does not want to be
interviewed and it's a waste of resources and
it's also, in some ways, a violation of privacy.
We did see a lot of those cases in our case
review.

HON. BRISBOIS: What are the chances
that, you know, DoD, SECDEF and his advisors,
kind of adopt in part and reject in part and kick
it back to us?

BGEN SCHWENK: I don't know that they
would kick it back to us. I think, if an
advisory committee recommends SECDEF take a look
at something, they're going to put together a
memo put together a working group and they're
going to look at it. So we know we'll get an
honest look from within the department.

You know, coming out the other end,
they could put out a policy, sort of like what we
say but better because they've thought about it
more. They could do, well, we're not ready to go
there yet but, on a case by case exception to
policy basis, you know, like the last issue we
talked about, we're willing to look at it or they
can do anything. But I don't think they're
likely to send it back to us since we sent it to
them, you know, so . . .

MS. SAUNDERS: Of course, I suppose
it's possible they could send a part of it back.
Later on this afternoon, we'll be talking about
the recommendations from the JPP that were -- but
it's a little bit of a different situation.

HON. BRISBOIS: It's a little
different, but that's what triggered it in --

BGEN SCHWENK: Yes, but there it was
a JPP saying give it to those guys, you know.

MS. SAUNDERS: Right. But it's a
different situation, though.

CHAIR BASHFORD: Well, are there any
further comments, questions? All right. Then
I'm going to ask the Committee to vote on Policy
Working Group recommendation two, advice to DoD
to set up a working group to implement sort of a claw-back policy. In favor? Megan? Megan, can you hear us?

MS. TOKASH: Can you hear me?

CHAIR BASHFORD: Yes, I can hear you now.

MS. TOKASH: Yes.

CHAIR BASHFORD: Okay.

MS. TOKASH: Thank you.

CHAIR BASHFORD: So Judge Grimm was not -- are you in favor?

HON. GRIMM: Yes.

CHAIR BASHFORD: A unanimous.

BGEN SCHWENK: Megan, are we keeping you awake wherever you are?

MS. TOKASH: Yes, you are. It's a very invigorating conversation.

MS. SAUNDERS: Sometimes on the phone there's a little bit of a delay.

MS. TOKASH: Yes, I think maybe this is a delay, but I can hear you all okay.

CHAIR BASHFORD: Okay, great. Ms.
Saunders, moving along.

MS. SAUNDERS: Moving along to the next issue, issue C, the approval standard and purpose of DoD's expedited transfer policy are not sufficiently clear or comprehensive. The DAC-IPAD's interim assessment in the last report basically just says that it should be further evaluated and clarified, certain aspects of the report.

In looking at the DoD expedited transfer policy, the Policy Working Group, you know, again, spoke to many witnesses on this issue, and some of the things that came up were the current DoD policy identifies two intents, which is to address situations in which a victim feels safe but uncomfortable and also to assist in the victim's recovery by moving them to a new location. Many of the presenters also testified that really the primary purpose of this is to assist victims in their recovery, and that should really be the overriding purpose of the program.

Another issue that came up is this
issue of the credible report. Under the existing policy, the commander, in order to grant the expedited transfer -- first of all, within the policy, there is a presumption for granting it, so that's one unique aspect of this policy to begin with. But then, on the other hand, the commander, in order to grant it, must find credible information in order to grant it. Often, what will happen is these reports will come in or these requests will come in at the very beginning of an investigation, so that commander may not have very much, if any, information at all about the sexual assault. They can try to get with the investigators. That victim may or may not have made a statement at that point. So now this commander, within 72 hours because that's the statutory time period that they have to make a decision, that commander is now being forced into this situation where there's a presumption to grant it but I don't really have the information that is being required by this policy to do so. So that kind
of puts them in a quandary.

    What we're finding and what we're
seeing through some of the data that was sent to
us by the services and the DoD was that 97
percent of these requests were granted. So, you
know, in terms of having this credible report,
many of the witnesses wondered is this even
really necessary to have this standard when we're
granting the vast majority of these anyway?

    One of the issues that also came up
was this 72-hour time period. That is statutory.
Many of the witnesses felt this is, in fact the
majority of the witnesses felt this is just too
short of a time. The main reason of that is not
to find out new information about the case but
because, as a commander or a senior enlisted
leader in that unit, if a victim is requesting an
expedited transfer, they want to have the
opportunity to talk to that victim, to be able to
talk to the assignments personnel to determine
what is the best thing for this victim in terms
of staying in their career field, going to a
different career field, what location would be
best for this person and to be able to counsel
that victim on those options.

For example, if a request comes in on
a Friday afternoon, now, you know, they're
probably not going to be able to reach the
personnel they need to be able to reach at the
headquarters level. So the recommendation would
be to increase that time period, and that was
pretty unanimous across all of the witnesses that
the Policy Working Group spoke to.

Another point that got brought up was,
well, the time period to grant or disapprove the
request is 72 hours. Once it's granted, it
typically takes a month and a half to two months
before that victim is actually able to move. So
granting a little more time in the beginning is
probably not going to make a very big difference
in the overall length of time.

So having considered all of that
information, the Policy Working Group makes two
recommendations on this issue. The first is
Policy Working Group recommendation three. The Secretary of Defense revise the DoD expedited transfer policy to include or clarify the following points: Number one, the primary goal of the DoD expedited transfer policy is to act in the best interest of the victim. Commanders should make decisions regarding such requests based upon that goal. Number two, the single overriding purpose of the expedited transfer policy is to assist in the victim's mental, physical, and emotional recovery from the trauma of sexual assault. This purpose statement should be followed by examples of reasons why a victim might request an expedited transfer and how such a transfer would assist in a victim's recovery, e.g. proximity of the alleged offender or to the site of the assault at the current location, ostracism or retaliation at the current location, proximity to a support network of family or friends at the requested location, and the victim's desire for a fresh start following the assault.
Number three, eliminate the requirement that a commander determine that a report be credible and instead add to the criteria commanders must consider in making a decision on an expedited transfer request "any evidence that the victim's report is not credible."

And the next recommendation, Policy Working Group recommendation four is that Congress increase the amount of time allotted to a commander to process an expedited transfer request from 72 hours to no more than five workdays.

Any comments from the Policy Working Group?

BGEN SCHWENK: As to the latter first, the 72 hours and five days, one of the things that somebody pointed out in one of our discussions was the transfer doesn't take effect for four to six to eight weeks anyway, so the difference of two days in the long term doesn't make that big a difference but it makes a lot of
difference in the quality of advice that the
individual, the victim, is going to get from the
command in making the decision. So that's
something to throw out on that.

I think I have to bear responsibility,
I guess, for the recommendation three issues
because when the JPP went out and talked to the
commanders in the field and one of the questions
was what standard do you use in deciding these
things, the commander said, well, I have to
consider all these factors and then the answer
is, yes, that's what the instruction says,
consider all these factors, but what's your
standard? Your normal standard as a commander is
best interest of the command, but this is all
about the victim, so do you do best interest of
the victim or command? And there was a lot of
silence, and then there was confusion and
disagreement.

So that sort of got me thinking, gee
whiz, if they ever rewrite this policy, maybe
they ought to just take that on and, hence, the
recommendations that you see flowing from that.

The credibility one, almost every commander to a person said they really hated having to make a credibility determination based on an allegation and an investigation that just started and, you know, how the heck am I supposed to do that? It puts me in a terrible situation. I don't want to be there. So our recommendation is it's still a good idea to consider credibility but not in the sense the commander has to determine whether it's credible. It's is there any evidence that it's not? You know, so if somebody comes in and says it's all a lie, that's something you ought to consider. But in the vast majority of the cases, like I never even saw one in our reviews, but in the vast majority of the cases that's not the case. There's an allegation and an investigation. There's nothing quickly that comes in and says that that allegation is not credible. So we tried to keep it but spin it the other way to make it easier on commanders but still leave it as an issue that's potential in a
case, potentially available in a case. My thoughts.

CHAIR BASHFORD: I think if you're going to have difficulty when you're saying the purpose statement followed by examples of reasons, and you said, you know, for example, retaliation at the current location. I can't imagine somebody saying that we took that, if there's retaliation at your location, then the commander should deal with that issue, as opposed to, well, let's push this someplace else. I just don't see -- people are concerned about retaliation already, and so to add that as a reason for an expedited transfer seems to say we'll, instead of dealing with a problem, we'll just push it aside kind of.

MS. SAUNDERS: Although that is actually in the statute.


MS. SAUNDERS: That's actually the only one that's listed in the statute so as to reduce the possibility of retaliation against a
member for reporting a sexual assault. I think they're looking at it from the victim's perspective. The commander would still probably would certainly investigate that retaliation but . . .

CHAIR BASHFORD: Any other comments from anybody? Yes?

MS. CANNON: What did you mean by clarify? What is it specifically that you want them to clarify? Because it's in the top and then you have three points. Was there something in particular that you really wanted them to clarify?

BGEN SCHWENK: Well, clarify the policy. I mean, that, again, could be read, could be read the Secretary of Defense revise the DoD expedited, revise DoD instruction whatever and clarify the expedited transfer policy on the following points or to make the following points. It's the policy that needs to be clarified. It doesn't say whether the commander is supposed to say or make a decision based on the interests of
the victim or in the interest of the command.

MS. CANNON: I was just wondering if
you need it clarified at all and just say . . .

BGEN SCHWENK: Oh, okay, sure. That
works.

MS. CANNON: That was easy.

BGEN SCHWENK: I'm in charge of your
group, and I'm an impediment to progress. At
least that's what my wife says, I don't know.

CHAIR BASHFORD: So that would then
read SECDEF revise DoD expedited transfer policy
to include the following points?

BGEN SCHWENK: Yes.

CHAIR BASHFORD: Any further
discussion? All right. Then with that friendly
amendment, I ask that we vote as to whether or
not we're going to adopt recommendation three,
which has how many points? Three points. All in
favor?

MS. TOKASH: Yes.

CHAIR BASHFORD: Unanimous.

MS. SAUNDERS: We heard you, Megan.
CHAIR BASHFORD: We heard you beautifully that time. Ms. Saunders, continuing.

MS. SAUNDERS: Do you want to vote on recommendation four?

CHAIR BASHFORD: Oh, I'm sorry, I didn't realize that was the second one. Yes, four. All in favor. That's the extending the time. Ms. Tokash?

MS. TOKASH: You cut out at the last part there.

CHAIR BASHFORD: That is extending the processing request from 72 hours to no more than five workdays.

MS. TOKASH: Yes.

CHAIR BASHFORD: Okay. Unanimous.

MS. TOKASH: Thank you.

CHAIR BASHFORD: Thank you.

MS. SAUNDERS: Moving on to Issue D, the expedited transfer policy includes temporary or permanent intra-installation moves as well as moves to new installations or locations.

And the DAC-IPAD's interim assessment
was -- there was concern that was brought up by a witness at a previous panel that, if you have a victim who takes a transfer within the installation and then, thinking that that will revolve the problems but then perhaps continues to run into the alleged perpetrator or has additional issues -- if she then requests another expedited transfer to a different location, that that might be problematic for her or it may not be granted.

She may be looked at negatively for making that additional recommendation or request.

Having spoken to numerous witnesses on this issue, it appears that that is really just not an issue. We heard from a lot of victim service personnel -- SVCs, SARCs -- and basically they said, you know, we've encountered these situations and they're dealt with on face value. So we really don't see that this is a big issue.

So the policy working group's recommended assessment on this is, "Having spoken to numerous presenters" from services -- "from
the services and DoD, SVCs, VLCs, SARCs, SAPR personnel, assignments personnel, prosecutors and defense counsel, the committee has determined that the current expedited transfer policy is working for both the victims and command."

Is that any -- are there any objections to that language?

MS. TOKASH: No.

MS. SAUNDERS: Okay.

CHAIR BASHFORD: That's with respect to the --

MS. SAUNDERS: No. Oh, right.

CHAIR BASHFORD: -- intra-installation only? Because you are making recommendations -- you've made recommendations to change the policy to some extent.

MS. SAUNDERS: Right.

BGEN SCHWENK: Yes, and we state, it's overly broad, at the end.

CHAIR BASHFORD: Just --

BGEN SCHWENK: The current expedited transfer policy regarding this issue.
CHAIR BASHFORD: Yes.

BGEN SCHWENK: So just to narrow it to this issue.

CHAIR BASHFORD: Oh, this issue being the end --

BGEN SCHWENK: When we write it up the --

CHAIR BASHFORD: -- the repetitive --

BGEN SCHWENK: -- versus interim.

CHAIR BASHFORD: -- request?

MS. SAUNDERS: Okay, yes, we're up to Issue E. And I thank the working group for looking at that and coming back with an assessment, and things are good.

BGEN SCHWENK: Well, we have to find something might be there. But there was no there to --

MS. GARVIN: There was no -- right.

MS. SAUNDERS: Okay. Moving on to Issue E, the expedited transfer policy is limited to service members who are victims of sexual assault and does not include service members
whose civilian spouses or children are sexual assault victims, even though all may face exactly the same difficult situations at the installation or may equally benefit from moves to a new location.

The DAC-IPAD's initial assessment of this was that the policy working group should see if there's a way to expand the policy to include this. However, before the policy working group was able to get too far along on this issue, the 2019 NDAA came out with this exact provision in it.

So, the assessment would be, since the DAC-IPAD's initial review of this issue in the March 2018 annual report, Congress enacted a provision in the National Defense Authorization Act for fiscal year 2019 which expands the expedited transfer policy to include service members whose dependents are victims of sexual assault by other service members, thus effectively resolving this issue.

This section states -- and this is
from the statute -- "The Secretary of Defense shall establish a policy to allow the transfer of a member of the Army, Navy, Air Force or Marine Corps whose dependent is the victim of sexual assault perpetrated by a member of the Armed Forces who is not related to the victim."

I'll open it up to the Committee, whether you feel that this goes far enough or that this resolves the issue.

MS. GARVIN: I think, reassessed, it resolves the issue.

CHAIR BASHFORD: I think we should claim credit for it, from our --

(Simultaneously speaking)

MS. SAUNDERS: Well, interestingly, this provision was in the same provision of the NDAA that expanded the expedited transfer program to include those who go to the family advocacy program, which was this panel's previous recommendation.

So I think it's a fair thing. I think it's fair to say that it was probably because of
this committee.

CHAIR BASHFORD: Well, I thought so --

BGEN SCHWENK: And even if it wasn't, we should take credit for it.

MS. SAUNDERS: Exactly, exactly.

Okay, Issue F. The Department of Defense and military services collect only limited expedited transfer data on victims of sexual assault and collect no data on transfers of alleged offenders.

And the background on this is -- especially with regard to the alleged offenders -- is that, you know, within the DoD policy itself, one of the options that the commander can consider is, rather than bringing the expedited transfer to the victim, would be to move the accused.

So this group went out and requested some information from all the services and from DoD on, you know, expedited transfer information on both victims and the accused for 2016. That information is in your materials at Tabs 24 and
25.

The information that -- we were able to get most of the information that we requested for victims. It was not easy to come by, and I think that we heard that they had to go to multiple sources within each service to try to gather this information. It was not something that they were keeping track of, most of it, necessarily. So it was kind of a heavy lift for the services to be able to produce that.

With regard to the accused, only a couple of the services were able to produce, really, any information on how many accused service members were being transferred.

And even when we spoke with representatives from the Defense Services for the services, they do not track it either. So right now, that is just information that is not being tracked by, it appears, anyone.

And only very limited information is being tracked by the DoD and its services with regard to victims, such as the numbers, the
percent that's granted and the percent that's denied.

One instance where we have already seen where this information or gathering additional information could be useful, in the DAC-IPAD, in its last report, made an assessment that there's not widespread abuse of the expedited transfer policy.

One of the pieces of information that the DAC-IPAD used to come up with that assessment was information provided by the services. Back -- and in the JPP, when the JPP went out on these site visits, they heard from numerous people -- prosecutors, defense counsel, a lot of different people that -- this is -- this program is, you know, there's definitely a perception that this is being abused.

Many people have this perception. They think all these victims are filing false reports so that they can to go Hawaii or, you know, California or somewhere that they really want to go to.
Looking at the information which is at your tabs, you know, you see that not everyone is going to, you know, Hawaii or California and that many, you know, a lot of people are coming from Fort Hood; a lot of people are going to Fort Hood.

So there's no -- it appears that assignments are being, are based on the victim's wishes, but also where a geographically available location for that person to go.

So that's, perhaps, some information that the services can take back to show people to say, no, you know, we've looked at this. It's not really being abused, as you might have thought.

So this led to the policy working group Recommendation 5, and this is a long one. I apologize. It reads, "The military services track and report the following data in order to best evaluate the expedited transfer program:

"Data on the number of expedited transfer requests by victims; the grade and job title of the requester; the gender and race of
the requester; the origin installation, whether
the requester was represented by an SVC or VLC;
the requested transfer locations; the actual
transfer locations, whether the transfer was
permanent or temporary, the grade and title of
the decision maker and appeal authority, if
applicable; the dates of the sexual assault
report, transfer request, approval or disapproval
decision and appeal decision and transfer and the
disposition of the sexual assault case, if
final."

The next bullet is -- there we go.

"Data on the number of accused transferred; the
grade and job title of the accused; the gender
and race of the accused; the origin installation,
the transfer installation; the grade and title of
the decision maker; the dates of the sexual
assault report and transfer; whether the transfer
was permanent or temporary and the disposition of
the sexual case, if final.

"Data on victim participation in the
investigation and prosecution before and after an
expedited transfer; data on the marital status and/or the number of dependents of victims of sexual assault who request expedited transfers; data on the type of sexual assault offense, penetrative or contact alleged by victims requesting expedited transfers; data on service retention rates for sexual assault victims who receive expedited transfers compared with sexual assault victims who did not receive expedited transfers and with service members of similar rank and years of service.

"Data on the career progression for sexual assault victims who receive expedited transfers compared with sexual assault victims who did not receive expedited transfers and with service members of similar rank and years of service.

"Data on victim satisfaction with the expedited transfer program and, finally, data on the expedited transfer request rate of service members who make unrestricted reports of sexual assault."
Chief, I know you had a lot of thoughts on this.

CMSAF McKinley: On the expedited transfer of the accused, I really found it quite puzzling how little information we have on that. We don't know how long it takes for the reprocessing to get approved.

We don't know how long it takes to PCS that person. And two branches of service don't track one single bit of what happens to the accused. And, you know, so we'd like to find out more about that.

But at the end of the day, I think getting more information on really what happens on the expedited transfer approval will make it better as far as how long we retain those valuable members of our military, both the victim and the accused, and how successful the expedited transfer program is on the gain end. So all this information, I think, will make us a whole lot smarter on the program.

MS. SAUNDERS: And I think they heard
from -- a number of the witnesses said, well, you know, some of the SARC's said, once the victim transfers, we don't know whether she's receiving the services she should be receiving.

You know, what's happening with her career. Whether she stays in the military -- there were, you know, there was one report that had said, I think it was like 40 percent of sexual assault victims separate from the service shortly thereafter.

And so, being -- right now, I don't think the services are really tracking this information, so being able to track career progression and separation rate of victims would be -- many people thought would be very helpful.

DR. SPOHN: So some of the data elements that were recommended to be selected seem to be selected seem to be irrelevant if the victim filed a restricted report. You need to specify that in the --- I mean, for example, data on the accuser -- I'm assuming that you'll not --

MS. SAUNDERS: Oh, right.
MS. SPOHN: -- expect that to be.

CMSAF McKINLEY: That's a great point.

MS. SAUNDERS: No, that is. That is a good point. So if this program were -- if expedited transfers were expanded to those that filed a restricted report, that would have a huge investment

(Simultaneously speaking)

DR. SPOHN: Well, you're transferring the accused of a restricted report.

PARTICIPANT: Because would know who it was, right?

MS. SAUNDERS: No, but the victim would.

CHAIR BASHFORD: Yes, and what's the rationale between and asking for marital status and dependents of victims and not asking for similar data for -- if the accused are the ones being transferred?

MS. SAUNDERS: I think that might have related to -- I'm trying to remember what somebody said. It might have relate going back
to the family advocacy program because that
program was not available to them in terms of the
victim being married to the accused and also how
easy or difficult it is for that victim to
transfer when they have children, especially if
they have children with the accused.

But we could certainly add that in.

CMSAF McKINLEY: I've already gone,
added it in.

MS. SAUNDERS: Added it?

CMSAF McKINLEY: It may have been --

CHAIR BASHFORD: It just wasn't clear
to me if this was -- is -- if this is for the
marital, you know --

MS. SAUNDERS: I think it was --

CMSAF McKINLEY: Yeah.

CHAIR BASHFORD: -- the dependent
spouse or something or if this is just generally
for victims.

MS. SAUNDERS: I can certainly add
that in.

CHIEF MCKINLEY: We have no problem
adding that in.

    MS. SAUNDERS: Yes.

    CHAIR BASHFORD: It would be victims
    of sexual assault who request expedited transfers
    or same data for accused transfer because they're
    not requesting it.

    MS. SAUNDERS: Right, accused service
    members who are connected or --

    CHAIR BASHFORD: You had a comment
    before?

    MR. MARKEY: I did. So I'm thinking
    of the execution of this recommendation. So I
    guess I'm curious to where this rests right now
    and then, logistically, who would be responsible
    for the collection, reporting of this information
    and what sort of resources would be required to
    move this recommendation.

    MS. SAUNDERS: Well this is basically
    information we did request for fiscal year 2016
    from the services. And it was not easy for them.
    It did require kind of a heavy lift because they
    were not already tracking it.
And I don't think there was one location that they were able to go to to get all of this information. Some, you know, the special victim counsel might have some information.

I'm actually not even entirely sure where all of the different locations within each service had to go to get the information. So I think that would be something that, you know, the services would have to work out if they were going to do that.

MR. MARKEY: I'm not opposed to what information they had to look at. I'm just curious if they did -- if anybody did or provided information as to what this would look like with their service. What sort of resources are they going to have to use in order to complete this or to comply with this.

MS. SAUNDERS: I don't -- we did not do any kind of study with that. I'm sure there will be a fair amount of resources and personnel that would be required. Perhaps it could be done in association with the 140-Alpha project that
you all discussed at the last meeting. But I
think that --

   CHAIR BASHFORD: It seems like a lot
   of this is being collected, just not centralized,
   right?

   MS. SAUNDERS: I think so. I think
   they were, you know, they were able to, for the
   most part, answer questions that we asked. It's
   -- I'm sure there was a lot of behind-the-scenes
   work that went into getting that, so. And the
   services were very responsive in providing this
   information.

   MS. BASHFORD: Kathleen?

   MS. CANNON: I have, with regards to
   Number -- well, it's not numbered -- data on
   career progression.

   MS. SAUNDERS: Yes.

   MS. CANNON: That seemed like a
   complicated one to figure out in comparison to
   somebody else, because who knows what different
   factors might be playing into it. And how can
   you compare a sexual assault victim who has
expedited transfer and one who wasn't?

And that presumes they're in the same position. So I think that's a complicated one.

MS. SAUNDERS: Absolutely.

MS. CANNON: But it would be interesting to see what the progression was. I don't know about the comparison, if you're able to do that.

MS. SAUNDERS: And that may not be -- you're right. That would be very complex.

MS. CANNON: And my Part 2 of that is, what about seeing what happens with the accused and the progression he or she had as a -- well, I don't know, as a result, but just kind of a -- I don't know if you can say as a result -- and that's what that kind of implies.

MS. SAUNDERS: Right.

MS. CANNON: Right?

MS. SAUNDERS: But you're --

CMSAF MCKINLEY: We've actually talked about that also because, you know, you can have -- be an accused for, say, a period of two years,
you know. And during that period of two years, you can't get promoted. You can't have PCS, no security clearance, et cetera, et cetera.

So if the person comes back and they're found innocent or at the end of two years, they've missed those promotional opportunities.

Well, for the most part, it's the same as the victim because the victim, depending on which branch of service and which promotion system each branch of the service has, they may be passed over because of going back and forth to mental health, not able to study, not able to perform the job at the optimum level or whatever.

So they're -- they miss the promotional opportunity too. And so looking at the effects of both the victim and the accused during a sexual assault, I think, is an important piece that our military has skipped over, you know.

And I think it's important that, you know, we go back and look and, you know -- and
what can we do for that person. If a person is a
victim of sexual assault/rape and it turns out
they are a victim, then that takes two years.

In that period of time, they've missed
out on so many boards and everything else. Are
we just going to say, too bad? Or should we go
back and look at that and say, what can we do for
that victim?

And it's about taking care of our
people that serve our country. And, you know,
and for no fault of their own, they've been
victimized and continue to be victimized. You
know, we've got to look at how we can take care
of them.

MS. CANNON: I agree. I just don't
know that that's what this asks for.

CHAIR BASHFORD: Because this is tied
to the expedited transfer only.

MS. SAUNDERS: Right.

CHAIR BASHFORD: Not long-term effects
of what does being accused in terms of --

CMSAF McKINLEY: And with the 140-
Alpha, we're asking for those retention type things and so some extra data in 140-Alph that we've been using it to load information on public data.

MS. SAUNDERS: And in terms of the accused, that was one of the pieces of information, I think, that the working group wanted to know, was what was the ultimate disposition?

So if you're moving the accused, what, ultimately, happened with that case? Are we seeing a lot of cases where nothing happens and, yet, maybe this person is still suffering all those effects of having been moved.

We really know nothing at all about transfers of the accused.

CHAIR BASHFORD: I'd say it's a good recommendation for policy working group to take up.

MS. SAUNDERS: To take -- what's going on with that?

MR. MARKEY: I just have one more
question. So maybe I'm missing it, so the goal
of collecting this data is to assess an expedited
transfer --

MS. SAUNDERS: To assess --

MR. MARKEY: -- program or to --

MS. SAUNDERS: Yes.

MR. MARKEY: -- identify what's
happening with people that have expedited
transfers. I guess I don't know what the
ultimate goal --

CMSAF McKINLEY: I'd say it's both.

MR. MARKEY: -- of collecting this
data is.

CMSAF McKINLEY: It's absolutely both
because one of the things we don't know is, on an
expedited transfer, I mean, we transfer a person
from this base to the next base -- we don't know
if, long-term, about the success of that.

Is the person separated for the first
six months and -- or are we, as a military, as a
country, taking care of that person to the point
where they want to stay in and have a career?
And until you start tracking that and evaluating that, we can't make that determination.

MR. MARKEY: So who would crunch that at the end? Who would be responsibility to assess and analyze that data and then --

MS. SAUNDERS: You know, I -- right now we're suggesting that services collect this data. They could use that for their own, you know, benefit. It could be something that, in the future, the 140-Alpha would be collected through that and the 146 panel that follows this one would look at.

But I think that the point was, as the chief said, you're looking at the policy itself. What is the -- how effective is the policy? Are there changes that need to be made to the policy?

Maybe some of this data could help them take a look at that. But also to individual victims or the accused in terms of their long-term, how are -- you know, what is happening with them long-term.
MS. GARVIN: One of the things, I think, that we heard was, right, the 140-Alpha's starting to collect. We're starting to get lots of data points. None of these were really in there.

And so just start to process anything about this program and some others. These were additional data points that can be useful. Not laying out how you would ever think about causation, right, we're like what would data points that need to be, start to be collected so that program could be evaluated at some point in a much more rigorous fashion than -- right now what we have is semi-anecdotal.

CHAIR BASHFORD: I think we're recommending we collect this -- if we doubt that they collect this data, and then I suppose we can take a look down the road and see if it's actually useful data that's being collected.

But we're in a little bit of a time crunch, so unless there's any other discussion of this recommendation, Number 5, the data
collection and both for the victim and the accused.

In favor? Ms. Tokash?

MS. TOKASH: Yes.

CHAIR BASHFORD: Okay, that's unanimous. So, Ms. Markowitz had stepped away, so absent Ms. Markowitz.

MS. SAUNDERS: Final issue is Issue G. Some active duty service members who are sexually assaulted are not able to successfully return to duty even after an expedited transfer because their need for transitional assistance is not met.

And the background for this is the policy working group did hear from several victims who had received expedited transfers and also from other witnesses who talked about this issue.

And, in fact, the mother of a sexual assault victim talked about her daughter's experiences, which was very compelling, to the working group. The issue that came out was that,
for some victims, existing outpatient mental health treatment may not be enough, even with an expedited transfer, to be able to fully recover and return to duty.

So there should be some mechanism or some other option for those victims who request it to be able to get additional, either in-patient treatment or go to a Wounded Warriors Center or something like that, you know, in order to fully recover or to be able to return to a fully functional member of the unit.

And then this would be regardless of -- this is not directly just for those who get expedited transfers. It could be for victims who do not get expedited transfers.

And so the recommendation is the Secretaries of the military departments incorporate into policy, for those sexual assault victims who request it, an option to attend a transitional care program at a military medical facility, Wounded Warrior Center or other facility in order to allow those victims
sufficient time and resources to heal from the
trauma of sexual assault.

And we did hear from some witnesses
who said they had heard of this happening.
They've known a victim who has gone to inpatient
treatment and gotten additional care. It just
doesn't seem to be in, you know, in the expedited
transfer policy or other policy that this is a,
you know, something to consider.

CMSAF McKINLEY: For Wounded Warriors
out there suffering from PTSD, we offer them the
transition center for Wounded Warriors to be able
to recover before they're expected to go back to
full duty.

Someone who is filing sexual
assault/rape, we offer nothing like that.
They're put back into duty, but no one knows,
really, what happened to them, and they're
expected to be full duty.

And to offer this, you know, and
especially, if it's an expedited transfer,
Imagine someone comes in, sexually assaulted.
They wanted expedited transfer, but in the process, they go to a transition center and they get real assistance before they arrive at their new duty location.

So they need more follow-up round as a troop to be able to perform their duties. And that's at the request, probably, based upon a mental health evaluation and that person requested some type of transition center.

That transition center could be, you know, basically on-duty, just -- or it could be in-place for the military placement, maybe, for four to six weeks, you know. But to offer that, we already have transition centers out there that work with PTSD and all this other stuff.

To offer that to sexual assault victims, I think, would be a home run for them and also and to retain them, so keeping those people in the service because now we have better taken care of them.

CHAIR BASHFORD: Anyone else? I now would ask that we vote whether or not to accept
Recommendation 6. In favor?

FEMALE PARTICIPANT: Yes.

CHAIR BASHFORD: I think that was unanimous. Let me -- yes? Okay. Thank you very much for all the hard work that the policy working group has done. And thanks for your exposition of this, so.

MS. SAUNDERS: Thank you.

CHAIR BASHFORD: And now we have -- you're not going any place.

MS. SAUNDERS: No, I know.


(Off microphone discussion)

CHAIR BASHFORD: Just for my understanding, for the upcoming afternoon, are there any more things that need to be voted on by the DAC-IPAD or just -- we're just getting information?

MS. SAUNDERS: Just receiving information.

CHAIR BASHFORD: Thank you. Okay,
because we're starting to shrink a little bit.

MS. PETERS: Yes, I'm still here.

CHAIR BASHFORD: Excellent.

MS. PETERS: Sorry.

CMSAF McKINLEY: Aren't we supposed to be deciding how we're going to proceed on this? I mean, there -- I'm not voting, but I guess you make the decision -- and I'll let you handle it, on how we proceed.

CHAIR BASHFORD: In terms of -- I think there will be a decision point of -- go about this.

(Off record discussion)

MS. PETERS: Okay. Good afternoon.

If I can get us started, this briefing is about the memorandum that the committee received from the Department of Defense Office of General Counsel in June of this year asking that we examine some recommendations from the Judicial Proceedings Panel.

And Tab 2 of your read-ahead materials is where that memorandum exists. I think we've
briefly run it by you all, I think, in a previous session. But, for your reference, it's there at Tab 2.

And the copy of the recommendations are in there, and I'm going to go through some of them in this presentation. The goal today is, again, to give you an overview of these recommendations that you are being asked to analyze.

Give you a little bit of background information and, just initially, for the staff to propose a way ahead to examine these issues. So, can I get the -- thanks -- on to the next slide.

There are five total JPP recommendations that were forwarded by the DoD Office of General Counsel. We received these in June of this year. The full proposal for analyzing these, just for reference, are in Tabs 5 and 6 of these read-ahead materials.

And it's from Tabs 5 and 6 that I developed the briefing. Two of the recommendations that we received asked for
analysis of data that's already contained in the DAC-IPAD's court-martial database. So those issues are already being incorporated into the analysis that will be in the DAC-IPAD's reports.

So today we want to address the three remaining recommendations. They really concern UCMJ provisions around how cases are selected for prosecution in the military.

And at this point, again, just for background, the JPP has issued a number of recommendations. We're not aware of DoD's formal response to a lot of them, but the memorandum we received says that at least OGC has reviewed the JPP's recommendations.

So there may also be more to follow from OGC in the future or from DoD in regards to other JPP recommendations. But they at least want us to look at these.

So before I get into the three recommendations, they're about process. And this is a slide meant to just capture where we are in the process when we talk about the
recommendations that you've been asked to look at.

The recommendations primarily concern Articles 32, 33 and 34 of the UCMJ. So at the Article 32 stage, you're dealing with charges that have been preferred, so sexual assault charges, a penetrative or contact offense has been preferred.

Under the UCMJ, you have to have an Article 32 preliminary hearing, or the accused has a right to one, before any charge can be referred to a general court-martial.

Once an Article 32 hearing is held or it's waived, the staff judge advocate has to advise the convening authority of certain parameters so that there's probable cause, there's jurisdiction and advises to the disposition that should be made of the case.

Then the convening authority, armed with a charge sheet, an Article 32 hearing result, and the staff judge advocate's advice can decide whether or not to refer some or all of
those charges to trial. And that's going to be
based on a number of factors.

I think Melanie's going to discuss the
issues around those factors and the complications
around the -- or the complexities of the referral
decision in just a bit.

So to move us along, the
recommendations that came to us from the JPP
derived from information the JPP received from
its subcommittee. So the Judicial Proceedings
Panel tasked its subcommittee to conduct site
visits to various military installations across
all of the military services back in the summer
of 2016.

They asked the subcommittee to address
a number of issues in the JPP's charter, which
spanned, I guess, everything around
investigation, prosecution and defense,
consequently, of sexual assault in the Armed
Forces.

So the members went around to a number
of installations. They talked to prosecutors,
defense counsel, special victims counsel, commanders, staff judge advocates, Victim Services personnel. And they brought the information back and looked for common threads and common trends.

The themes that stood out across whatever area you're practicing in, whatever service you're in or whatever location you're in, the themes they kept hearing, generally, were that the Article 32 preliminary hearing, as of that time, was less robust than it had been in the past; that people commonly perceived there's pressure on convening authorities to refer sexual assault charges to court-martial.

There was pervasive concern about a low standard of probable cause for referring charges to court-martial and that there was a relatively high acquittal rate for sexual assault offenses.

So with that background, the Judicial Proceedings Panel made Recommendation 55 regarding the Article 32 preliminary hearing.
And this has been charged to you all to analyze.

And the recommendation is as follows:

"The Secretary of Defense and the DAC-IPAD continue the review of the new Article 32 preliminary hearing process which, in the view of many counsel interviewed during military installation site visits and according to information presented to the JPP, no longer serves a useful discovery purpose.

This review should look at whether the preliminary hearing officers in sexual assault cases should be military judges or other senior judge advocates with military justice experience and whether a recommendation of such a preliminary hearing officer against referral, based on lack of probable cause, should be given more weight by the convening authority.

This review should evaluate data on how often the recommendations of preliminary hearing officers regarding case disposition are followed by convening authorities and determine whether further analysis of or changes to the
process are required.

In addition, because the Article 32 hearing no longer serves as a discovery mechanism for the defense, the JPP reiterates its recommendation presented in its report on military defense counsel resources and experience in sexual assault cases; that the military services provide the defense with independent investigators."

The next recommendation for you to analyze is JPP Recommendation 57. That concerns Article 33 of the UCMJ, non-binding disposition guidance to judge advocates and commanders.

It says, as follows: "After case disposition guidance under Article 33 UCMJ is promulgated, the Secretary of Defense and DAC-IPAD conduct both military installation site visits and further research to determine whether convening authorities and staff judge advocates are making effective use of this guidance in deciding case dispositions.

They should also determine what
effect, if any, this guidance has had on the
number of sexual assault cases being referred to
courts martial and on the acquittal rate in such
cases.

And, finally, the JPP made a
recommendation 58 concerning Article 34, the
staff judge advocate's pretrial advice, and they
recommended that the Secretary of Defense and the
DAC-IPAD review whether Article 34 of the UCMJ
and Rule for Court-martial 406 should be amended
to remove the requirement that the staff judge
advocate's advice to the convening authority,
expect for exculpatory information contained in
that advice, be released to the defense upon
referral of charges to courts martial.

This review should determine whether
any memorandum from trial counsel that is
appended to the file should also be shielded from
disclosure to defense.

This review should also consider
whether such a change would encourage the staff
judge advocate to provide more fully developed
and candid written advice to the convening authority regarding the strengths and weaknesses of the charges so that the convening authority can make a better-informed disposition decision.

The lettering and the formatting on these slides is something we did to make it more readable for ourselves as well as for you all. But, obviously, they aren't really in paragraph form.

If I can give you some background on the articles that were examined in these recommendations -- I'm going to just review Article 32. My colleagues will handle Article 33 and 34 and place them in better context.

So the Article 32 changes occurred around what -- or went into effect in the beginning of 2015, really the end of 2014. I think it was December 26, 2014. It was a pivotal moment of change for the Article 32.

Up until that point, it has, historically, been a thorough and impartial investigation into the truth and form of the
charges. A military victim could be compelled to testify -- as could any military member.

An Article 32 investigation served as a means of discovery. That wasn't in the statute, but it's in the discussion, as sort of a discussion in guidance paragraph in the manual.

That was the system that judge advocates lived with for a time. Come 2015, we have what is still the current version that Congress changed -- again, in the FY-14 and in the NDAA.

They said that this is now a preliminary hearing. So, I'm sorry, we -- I think I've been using preliminary hearing throughout. It used the Article 32 investigation. As of 2015, it's now a preliminary hearing.

It's specifically not an investigation, and it actually says that it's not intended to serve as a means of discovery, so they've made that purpose clear.

They also limited the inquiry at the
32 to the following: whether each specification alleges an offense, whether there's probable cause to believe that the accused committed the offense; whether there's jurisdiction and what disposition should be made of the case.

Previously, the Article 32 investigation asked whether there were reasonable grounds to go forward to court-martial and to what type of court-martial. So, but this is a little bit more specific, and it's now specifically a probable cause determination.

Of note, just to make things a little bit more challenging for us, come 1 January 2019, we'll have more changes to the Article 32.

These are not necessarily structural changes or all that drastic. What will go into effect in 2019 is language in the Article 32 statute and in the implementing rules that are just more consistent with the other articles in UCMJ.

So they're more consistently seen that this is a probable cause. And previously, there
was some variation around that.

The other major change is that the statute now requires a more robust written analysis of the charges and the evidence supporting the charges.

I think this is really a codification of good practice. I think you might survey the field and find that a lot of this was going on pretty frequently. But now they've actually made specific requirements for what the Article 32 preliminary hearing officer needs to do and write up about the evidence.

This is intended to give the staff judge advocate and the convening authority a more informed analysis to ensure that there's a robust analysis of the evidence available at the Article 32.

Arguably, there's some verbiage changes in the implementing rules that may, depending on how practitioners implement this, expand the scope of the evidence allowed at this probable cause hearing.
I think the language said previously
evidence necessary to hit those four purposes I
read. And now it's information relevant to
making a probable cause determination. And
there's some other slight tweaks that can also
maybe provide legal room to bring in more
evidence.

There's also a post-hearing sort of
written submission that's allowed now that wasn't
allowed previously. And that's something that
can be developed with further research.

So that's the historical background on
Article 32. And just to be a little bit more
specific about what the JPP found, not just from
the site visits broadly, but from the site visits
with respect to Article 32 and what they then
heard in evidence because they had follow-on
meetings after those installation site visits by
the subcommittee.

Generally, there was widespread
concern among practitioners. The Article 32 is
now a paper drill. They're not just not hearing
from the military victim anymore. They're not hearing from any witnesses in a lot of these hearings.

The subcommittee heard about a 15-minute Article 32. There was -- it was raised as an issue that the preliminary hearing Officer recommendations are not necessarily followed. They don't have to be, and they may not be followed even when they recommend or find that no probable cause exists.

So the JPP was concerned with whether any additional changes to the process are needed. And they reiterated the issue about defense investigators and the need for them.

That brings us back to an issue that I think our witness this morning mentioned, but the Article 32 concerned the JPP in two respects. One, there was a discovery function to it that is no longer there.

But, two, they did understand that the Article 32 was functioning to provide less information to the convening authority. Or at
least, that was the concern and that was the perception they have based on the information they received.

So that was the reason behind their recommendations. So with regard to the issue of defense investigators, we have, fortunately, I think, heard that some of the, I think, JPP and the RSP addressed this issue of defense investigators.

Some of those recommendations -- while we haven't received a formal response from DoD, as I noted before, Congress in the FY-18 NDAA, or I should say the House of Representatives asked for a briefing.

The House Armed Services Committee asked to specifically receive from the services information pertaining to recommendations of the JPP concerning defense counsel. So that defense investigator recommendation from the JPP came from a report.

There were other recommendations around resourcing, defense counsel, expert
witness assistance. And, let me see the last one
was the experience and training of defense
counsel.

So the JPP raised a number of issues,
one of which was defense investigators. Congress
asked for a briefing, and we found out DoD
responded this summer. The update from that
response, from DoD to Congress is, one, the Navy
has defense investigators. I think we already
heard that anecdotally.

The Air Force is in the process of
producing or employing defense investigators.
And we've also heard the staff has received
information subsequent to this report the Army is
hiring defense investigators.

What form that takes, how many, how
that's working out, we don't know. But this is
the progress on that issue. Separately, the
services briefed Congress on the remaining issues
raised about resourcing, the funding of experts
for defense and the training and experience of
defense, which we can go into in the future to
the extent the committee wants to look into that
and understand the follow-up on that, that issue
raised by the JPP.

  CHAIR BASHFORD: But according to this
DoD's involved with that, right?

  MS. PETERS: Yes, ma'am.

  CHAIR BASHFORD: Okay.

  Ms. PETERS: So with that, I'll turn
it over to Terri Saunders.

  MS. SAUNDERS: Thank you. So
following the Article 32 hearing or the waiver,
if that's what happens, the next step in the
process would be that that Article 32 report
would go up to the general court-martial
convening authority for a disposition decision.

  One, Article 34 of the UCMJ requires
that before that convening authority can refer
charges to a general court-martial, the convening
authority must receive written pre-trial advice
from the staff judge advocate.

  The -- yes, here we go. The Article
34 specifically says that the convening authority
may not refer charges to a general court-martial
unless the SJA advises that the specification
alleges an offense of the UCMJ, there's probable
cause to believe the accused committed the
offense and a court-martial would have
jurisdiction over the offense and the accused.

    And the staff judge advocate also
provides a recommendation to the convening
authority as to disposition. One piece of this,
too, is that if the convening authority refers
charges to a general court-martial, the staff
judge advocate's pretrial advice must be provided
to the defense.

    Where -- this was raised in the JPP as
an issue going back to what Meghan just spoke to
you about, with the Article 32 hearings now being
less robust, the concern of the JPP was that less
information is now being provided to the
convening authority.

    So that convening authority does not
have, perhaps, all the victim testimony or some
of the other eye witness testimony to consider
that they might previously have had under the old style Article 32 investigation.

So now, to supplement that, what many of the Services are doing are providing a prosecution merits memo or similar type document where the trial counsel, in that case, briefs the staff judge advocate, provides strengths and weaknesses of the case, credibility issues, evidentiary issues -- all those types of things that would typically be at issue in a case like this.

And, however, if the staff judge advocate is now limited in the ability to provide that information in writing to the convening authority, because if the case is referred to trial, that would then be a part of the staff judge advocate's advice and would then have to be sent to the defense.

So they would, obviously, have this information regarding the strengths and weaknesses of the case. So this was obviously of a concern to the JPP and they made the
recommendation to -- that it should be considered
whether or not that should be withheld from the
defense in those circumstances.

   I'm going to turn it over to Nalini to
talk about the types of advice and the
information the convening authority must
consider.

   MS. GUPTA: Thank you, Terri. Good
afternoon, everyone. So I will discuss
specifically Article 33 and the recommendation
from the JPP around that.

   So one of the issues that's already
been alluded to is that during these site visits,
the JPP subcommittee heard time and time again
that main council believed that the standard in
the military for referral of charges, which is
probable cause, is too low.

   And based on this information in the
site visits as well as further research and based
on further witnesses heard up on the JPP, the JPP
recommended that the following standard be
considered for referral to court-martial.
"The charges are supported by probable cause and there's reasonable likelihood of proving the elements of each offense beyond reasonable doubt using all only evidence likely to be found admissible at trial."

The JPP was not the only entity looking at the referral standard. The military justice JSC group was also looking at this. That was another DoD entity. And they recommended a new Article 33 on disposition guidance.

And when Congress passed the Military Justice Act of 2016, one of the articles included was the new Article 33 disposition guidance. But this article states that the president shall direct the Secretary of Defense to issue non-binding guidance regarding factors that commanders, convening authorities, staff judge advocates and judge advocates should take into account when exercising their duties with respect to disposition of charges and specifications in the interest of justice and discipline under Articles 30 and 34.
Such guidance shall take into account
the appropriate consideration of military
requirements when principles contained in
official guidance of attorney general to
attorneys for the government with respect to
disposition of federal criminal cases in
accordance with the principle of fair and even-
handed administrative of federal criminal law.

So the part that's highlighted on the
slides, the principles contained in official
guidance of the attorney general, is more
commonly referred to as the U.S. attorney's
manual, and I know many of you are very familiar
with this manual.

Section 927.220 of this manual
contains a standard for when a U.S. attorney
should commence or recommend federal prosecution.
And specifically, the manual states, "The
attorney for the government should commence or
recommend federal prosecution if he or she
believes that the person's conduct constitutes a
federal offense and that the admissible evidence
will probably be sufficient to obtain and sustain a conviction."

There are three escape hatches, the first being that no substantial federal interests would be served by prosecution. The second would be -- the second is that the person is subject to effective prosecution in another jurisdiction. And the third is that there is this inadequate non-criminal alternative to prosecution.

So pursuant to the new Article 33, the Joint Service Committee published for public comment draft disposition guidance in the Federal Register. That is contained in Tab 7 of your read-aheads.

And I wanted to emphasize that this is still a draft. It's not final. But whatever the JSC decides and is signed-off by the president will go into effect on January 1st, 2019.

There's a seven-page document, and I included a couple slides to highlight some interesting issues in this disposition guidance. So the disposition, that guidance, contains
factors to consider in making disposition
decisions. And there are 14, which are included
on this slide as well as the next slide.

The first one I want to highlight is
H -- the -- it's the one in blue. So one of the
factors to consider is the admissible evidence
will likely be sufficient to obtain and sustain a
conviction in a trial like a court-martial.

So this is language very similar to
what you just heard about in the U.S. attorney's
manual. What's significant is, unlike the U.S.
attorneys manual, this is not the standard used
to determine whether or not prosecution should be
commenced, but it is one of 14 factors.

The standard for referral in the
military remains probably cause. So this may be
an issue that the DAC-IPAD chooses to pursue
whether on site visits -- and we'll talk more
about it probably again later.

And this is a significant departure
from the U.S. Attorneys manual. Just to
highlight -- I won't name all 14 factors, but to
highlight a couple other factors, the first three are very military-specific factors -- commission-related responsibilities of the command whether the offense occurred during wartime, combat or contingency operations and the effect of the offense on the moral, health, safety, welfare and good order and discipline of the command.

And the last factor I'll highlight is Factor E. In cases involving an individual who's a victim under Article 16, the use of a victim as to the situation.

Those are the remaining factors and another aspect of the disposition guidance is that it impedes five inappropriate considerations. I won't read all five of them, but I do want to highlight D and E.

D is the possible effect of the disposition determination on the commander or convening authority's multi-career, or other professional or personal circumstances. E, political pressure to take or not to take specific actions in the case.
So this is obviously addressing issues you've heard about throughout the day about political pressure being a concern in military justice.

With that, I will turn it back to Meghan to speak about project plan for addressing these recommendations.

MS. PETERS: So you know that means we're nearing the end of the presentation. We propose that the committee form a working group to look at these issues. Something small we think that -- smaller numbers because I think some of our working groups now have maybe 7 members, 6 members.

And we could probably continue working with something like two to four members and look at these issues sequentially rather than all at once. And a couple reasons for that are the Article 32 recommendations have multiple parts to it.

But some of those can at least be analyzed right now because there's not -- they've
been persisting, so those issues will likely still persist and not be too much affected by the changes come January 2019.

Whereas, issues with regard to Article 33 disposition guidance and Article 34 really might need time to take effect before you can fully analyze them. So we would need time well beyond January 2019 to really fully analyze those.

And of course, Article 32, that committee, could continue to look at them. This working group would work closely with the staff to really determine which presenter is the full committee you should hear from. And something might be handled better in a working group setting.

But this primarily, we envision, would be a -- the working group coming up with what witnesses and what information should go before the full committee on these topics. But the working group members could also help the staff prepare, you know, requests for information to
send to DoD and the services.

And this working group could really sort of dig down into these issues and decide in the future are things like installation site visits advisable. It's certainly mentioned in one of these recommendations, but the working group could be the ones to come up with a specific proposal and bring that to the full committee for discussion after it's been developed in a small group.

So we think that's the way the working group could work with the staff from this point going forward or whenever you all decide to do that. And, again, as to when this working group is formed, that is up to you all.

I think this is the first time that we are proposing this. We leave it to you. We can work with you all as an administrative matter after the meeting to determine the way forward if a working group is advisable and who would be on that.

But beyond just the formation of a
working group, I just wanted to note that the
staff has access to other types of information
and other ways to move forward, and that is
through a request for information and things like
that, for the Article 32.

We have documents. We have documents
from the court-martial database. We have Article
32 reports and the disposition of those cases.
So what the staff can undertake is a document
review of every Article 32 for cases tried in
2017 because that's what we currently have on
hand.

And that information would bring to
light things about the rank of the hearing
officer, whether the recommendations were
followed by the SJA, the ultimate result of the
case and maybe some other issues that go along
with a detailed document review.

So that's information we already have
on hand. And the staff proposes making that part
of the research and analysis. And I think some
of that could be accomplished in advance of the
March '19 report because that's staff work that we can do on our end.

So to look at the near-term and long-term goals, the staff notes that the recommendations or the OGC member says, could you please comment on these recommendations in your next annual report, which is coming up quickly.

What we propose is that in that report the committee does a background and overview of the recommendations and the underlying UCMJ articles, identifies some key issues of concern — those highlighted by the JPP. Of course, any concerns you may have in addition to that from this and any subsequent work or on the issues.

We provide analysis available from our existing Article 32 documents. And any requests for information that we get responses on before the report. And then, of course, we can lay out the plan for future analysis of these issues.

And so it's like whether the DAC-IPAD intends to conduct site visits in 2020. So because we're looking at -- we propose that
Article 32 is the issue that's ripe for review, this is an example of proposed questions for analysis from the staff.

And, of course, the staff can work with any of you all offline or offline outside of the meeting session to develop these issues if a working group to form. But these are just a few because they bear on things mentioned in the recommendations, such as should the finding of the Article 32 preliminary hearing officer be binding if they find no probable cause exists?

That's something mentioned, by the way, just this morning. By binding, I mean, should it bar referral to court-martial.

Are there other ways to give the hearing officer's report more weight and that borrows from the raising of the JPP uses or to say do we want it to be a hard line, bright line, black and white or is there something that we can just do to give this more weight, like make the hearing officers have -- be judges, have higher rank.
And is there an issue with the scope of the Article 32 that the committee could look at? So, again, we can work with you all to develop these and other issues, some more specific questions in your read-aheads. But that's where we propose starting this topic.

So the first issue is, ma'am, whether you would like to consider forming a working group for this and the other issues and how you want to proceed from here.

And this is something we, again, could just discuss today; decide another day. But I just leave it to you for your initial thoughts.

CHAIR BASHFORD: I think a small-scale working group would be good. I know one person has already said they would be interested to participate. And so that's good.

I think we should authorize a working group. And if we can get people to do it, great. If not, we'll figure out some other way to address the issues.

People in favor of referring these and
these questions to a small working group, if we can do it?

    BGEN SCHWENK: I think we ought to do 32, 33 and 34 small working groups except for the part about defense investigators. And I think either give it to the policy working group or have a defense working group or rechange -- rename the policy working group as the defense working group and let people get off the thing they want to get off and new people get on.

    Because then they can look at all the defense issues, the many issues we heard today we've heard in previous testimony; the ones that they just mentioned that, besides the defense investigators.

    And then that group, when they think they've got stuff for us to consider, can come back to us and say, all right, here's a bunch of issues and here's where things stand. And we think this is -- we monitor, just like we've been doing -- monitor, needs to change and go from there.
But I really think the defense needs
to focus and that's a way to give them a focus
and to give that other working group something to
do now that they've finally gotten under -- I
mean, out from underneath the expedited transfer.

MS. CANNON: My concern about one of
the things in here, the defense investigators in
particular, it seems the JPP has already made a
recommendation. We're still two years down the
road and that's not being -- it's being
implemented in part and not totally.

I'm not -- I mean, there are some
things that are a given and then there's some --
it seems like there should be some prioritizing
right now. Yes, do this. Do this now and have
us say, as a united panel, we recommend that this
be implemented immediately, that they get the
defense investigators.

I don't know how much more
inquiry/research needs to be done when they've
already made that recommendation. Two years down
the road, we see it's still popping up. So
that's one of my thoughts.

My other thought is, I concur.

CHAIR BASHFORD: I wouldn't know that we would need to rename the policy working group, but it is a --

BGEN SCHWENK: Well, no -- a policy.

CHAIR BASHFORD: -- a good area to explore. I think several of the JPP recommendations are similar recommendations we've made to it. They just are all -- we only can recommend. I don't know that we're really in a position, as a body, to say it based on a little bit of testimony we've heard, but like do it now.

BGEN SCHWENK: I took Kathleen's comments to mean that if the defense issue goes to the policy working group, all defense issues, they should feel free to come up and prioritize what they have instead of waiting, like we normally do, till we have a bundle of things to bring up.

They should feel like if there's one they think has been looked at, studied and
they're ready to roll, they can roll that one up
and then continue with the other ones later.

    MS. CANNON: Well, also, the point
about the investigations, no, we haven't had a
thorough discussion about it. But they've
already recommended it. Why are we even -- if
they recommended it, what are we supposed to do
with that except say it's popping up here, too,
and it sounds like a good recommendation. Why
don't you do it?

    Well, I don't want to keep doing what
the JPP did, and I already came to a
recommendation. So it doesn't seem like that's
our job.

    DR. MARKOWITZ: And we did hear from
the defense that they --

    MS. CANNON: Yes.

    DR. MARKOWITZ: -- they do -- I mean,
we have had affirmative testimony that that is
something that they need. We heard it again
today. This wasn't the first time we've heard
that that is something that they need, and why.
This reinforced other testimony that we've heard, so I don't think it was introduced to us today. I do think we've had testimony that enforces the need for that. So I would agree with Kathleen that we are at a place where I think we can say JPP's recommended it.

We've heard it as well in testimony where we weren't actually even eliciting that information. But it's spilling over in the work that we're doing. We feel pretty comfortable in saying that this -- it's still a priority for us.

And on top of that, we're going to tackle these other things that folks have punched it on, and we're going to put it back on the radar. So I would second the prioritization and focus on that.

BGEN SCHWENK: Somebody on the staff was mentioning to me that the RSP made a recommendation -- no action. The JPP made a recommendation -- no action. And then, towards the end of its life, it made the same recommendation that's been made twice and
something happened.

    So sometimes there may be benefit of keeping -- I mean, it may seem redundant, but there can be a benefit to repeating -- we're a new group of 17 or 16 people and we think the same thing as those other guys.

    COL. WEIR: It appears to me the way, reading general counsel's memorandum, that if this committee looks at the recommendations and then says, you know what, the JPP recommendations were spot-on. We concur with their recommendations.

    That's the kind of sense I get about now, is they're looking for further verification that the JPP was on target. And just like the stars created JPP defense investigators, you know, apparently, if three people say it's a good idea, three different committees, maybe it's three strikes and you're out -- we're going to implement it.

    But it feels like we're kind of faced with the approach where we can actually take the
Article 32. We have the data that we can come up with that will be -- talk about how many 32s were waived; how many 32 officers recommended not going forward; how many times that recommendation was not followed; which followed an acquittal and then provide that data.

But the other two we're going to have to take some time because it's not implemented yet. So we could send out an RFI and ask for more information, but really, since the implementation is not happening, and what would take us a good year for us to figure out the practitioners were working out how it's going to be applied in practice.

Looking at the other two issues, maybe one is premature at this time, but we have nothing to look at. And that's been part of the problem. And Congress keeps rolling out the law, and it changes, we don't know -- because we don't have a body of data to look at to see if this change was significant in the practice, in the sexual assault/rape.
So I think we just plug away with Article 32. And we have the other two in the back of our minds. As those roll out, start going to site visits. Six months down the road maybe next summer after, you know, say, hey, how is this working.

That seems to me to be a small group of people, but the best way to employ the people.

CHAIR BASHFORD: So what do you need the panel to offer on this? A small working group to look at these and the policy working group to turn to include defense matters in their portfolio?

MS. PETERS: Yes, that would be good. And then if you want the working group to begin Article 32 now, accomplish what's possible before the report -- the next report comes out.

CHAIR BASHFORD: Goes out, yes.

MS. PETERS: Right.

BGEN SCHWENK: That working group should come back to us with a plan of action of what they're going to do so that we can see what
they intend to do with 32 and later with 33, 34.

And they're going to have to wait some
on 32, also, because if part of the data is how
often -- how is it accepted by the GCMCA and the
GCMCA suddenly does look at the likelihood of
success of trial, you know, we're not going to
know that until a year from now -- or maybe not
even a year from now, but we can get started.

COL. WEIR: And then part of this --
part of what you do in the military, you should
never leave a meeting early because when you do,
like Chief McKinley, you get assigned to things.

And so the policy area --

BGEN SCHWENK: You mean Chief Defense?

CHAIR BASHFORD: Well, I think it
would be a good idea if everybody agrees or if
the majority agrees, to authorize a small working
group, if you can pull it together, to look at
these issues; report back to us, have Policy take
on some of these defense issues, prioritize them
with the idea, if possible, that by our next
meeting we might be able to have enough
information to include a recommendation on
defense investigators for our report.

    I don't know, but if that's clear

each to vote, in favor?

    MS. PETERS: Yes.

    CHAIR BASHFORD: Thanks. That was

    unanimous, for those who are here? Great.

    (Off microphone conversation)

    CHAIR BASHFORD: It sounds right.

    He's just passed. Anything else?

    MS. PETERS: No, ma'am. That's it.

    CHAIR BASHFORD: Okay, great.

    MS. PETERS: So thanks for your

    understanding.

    CHAIR BASHFORD: I think we're

scheduled for a brief break. We've gone over a

little bit, but we'll start just 4:00 or just

after with Ms. Carson.

    (Whereupon, the above-entitled matter

went off the record at 3:55 p.m. and resumed at

4:03 p.m.)

    CHAIR BASHFORD: Senator Gillebran
has asked for -- I'm not quite sure what to it called because I don't go to FACA jail -- a update, an unofficial reason on what we've been up to.

And if there's any other member of the committee scheduled for the afternoon of October 31st, if there's any other member of the committee who would be interested in participating, please let our staff know. Thank you.

MS. CARSON: Thank you. Okay, I know everybody's tired so I'm just going to run through this very quickly, and it's not going to take much thinking at all.

I'm Julie Carson, the deputy staff director for the DAC-IPAD. And thank you all for listening to me today. What I take as high praise for the DAC-IPAD, you all have proved so diligent and interested in the data and military justice collection of data that the FY19 and NDAA has tasked the DAC-PAD with another data collection project.
This time it has to do with collateral misconduct committed by the victims of -- who have reported sexual assault. So I'm just going to go through the statute very quickly and a few proposed ideas.

And it's going to end up with the same place the last one did -- one or two people that are interested in this collateral misconduct study. Let me know and we're just going to end up putting together a plan for this. And so let me just get through the statute first.

And here is the other kicker. September 30, 2019 is when this report is due, and not less frequently than every two years thereafter. The Secretary of Defense, acting through the DAC-IPAD, shall submit to the Congressional Defense Committees a report that includes the following.

And I've shortened it to you. Essentially, they want to know the number of sexual assault victims accused of collateral misconduct for the previous two years -- oh,
Sorry -- the number of sexual assault victims receiving an adverse action for collateral misconduct and the percentage of sexual assault victims receiving either an accusation or an adverse action for collateral misconduct.

So it's purely a data request. So next are my few observations about this request.

First of all, the report's due in September, which -- of next year, which is really pretty very soon for this project.

The next thing is that additional DAC-IPAD staffing would be needed to undertake the study. The most current projects are paused, so we're pretty -- already pretty maxed out. And this is going to be a pretty good lift.

The next is the study will require access to a substantial volume of personnel and legal documents. And the biggest problem is the DAC-IPAD will no longer be in existence after the first report is issued in 2019, so it cannot be doing any of the subsequent reports.

So next slide. What can the DAC-IPAD
do? Well, first thing I suggest is the DAC-IPAD define its role, and this is new language we've never seen before -- acting through the Secretary of Defense, acting through the Defense Advisory Committee is tasked to do this report.

So as not particularly clear, but here's an option. The DAC-IPAD could operate on the front end of this study by defining the parameters, the terms, the suggested way to go forward to collect this information and proposing it in a detailed way to the Department of Defense of the Secretary of Defense for execution.

And then the expertise on this panel will have been utilized to think about the issue and think about the best way to capture it for usefully providing useful information to Congress. And the next step will be the resources which will be an issue DoD can determine how they want to handle.

So if we take that approach, the next thing we do is define the terms. And I've gone through the key terms which I won't even --
there's only one term defined in the statute, which is what is a covered individual, which is a victim of sexual assault in the case files at the MCIOs, which is also a little unclear.

What is collateral misconduct? So I looked to the DoD SAPRO-regulation and they define victim misconduct -- collateral misconduct, the victim misconduct that might be in time, place, or circumstance associated with the victim's sexual assault incident.

And then it offers a few examples such as underage drinking, alcohol offenses, adultery and fraternization. Next is what is a victim of sexual assault. The NDAA defines it an any individual who's identified as a victim of sexual assault in the case files.

Well, a proposal here is let's identify exactly who Congress is probably most interested in hearing about. And that is the service members. So what if we say it's a service member victim and potentially -- who's accusing a service member, accused.
That way we're talking about somebody
where -- we're talking about a group where
they're going to be records we can identify in
the military that -- for civilians and other
categories may be more difficult to track.

So another reason to do it is the
number of reviews that will have to be done. If
you look at the FY-19, FY-17 SAPR report, there
were 5,110 unrestricted reports. But if you look
at just the number of unrestricted reports
involving allegations by a service member against
a service member, you cut it down to 2,486
reports, so that's your baseline.

You want to know, out of that group of
people, how many were accused of collateral
misconduct and how many were -- received adverse
action for collateral misconduct. So that's what
--

COL. WEIR: If I can interrupt you
just for a second. So the Case Review Working
Group's been going through the investigating
files. Part of our data, one of our points was
collateral misconduct.

So when see that the victim was underage drinking, we make a note of that. When we see the suspect is underage drinking, we make a note of that.

If we see there was fraternization, if he brought a female into the barracks in violation of barracks policy, that's one of the things that -- or she went into the barracks and didn't sign in.

But in these files that we're looking at from the MCIOs, there's no determination made in the file as to what happened with that collateral misconduct. So what is -- what will be required is to go out with an RFI to the Services to see if they somehow collect that information.

Because we'll see in a -- and I'll speak to CID -- we'll see in a CID file, there's been an allegation of adultery against the victim. We forward that. We don't -- for underage drinking, we don't investigate underage
drinking. They send it back to the command.

So we don't know what happened at that point, so that's going to require to see if the services are tracking that. Because if they're not, I don't know who is. If the victim received a letter, a counseling statement, we don't know that.

And I'm not sure that would be tracked in any other service's military justice actions that we can access. So it's just not there someplace that's easily retrieved.

So we need to be aware of that before we jump in with both feet, that this is something that we could come up with the outline on how this is going to work and maybe send out an RFI to the Services and say, hey, do you guys collect this and get the responses back and then we can have that information to go in the September 2019 report.

MS. CARSON: Okay, so the next slide. So the next definition we need to talk about is the -- what is an MCIO case file because, as
we've known from the work we've done with the
MCIOs so far, they have investigations.

They don't open investigation on
everything for various reasons that I know, if it
was an incident that happened prior to service,
as a civilian, there's no UCMJ jurisdiction.

So that's another limiting thing we
could put on the parameters and ask for cases
where an investigation file was opened.

Next slide, next question is, what
does accused of misconduct mean? And Option 1
and Option 2 are essentially ways to look for
whether or not a victim has been -- is being
investigated for something. But my sense of what
the real question is, is was there -- was the
victim engaging in misconduct.

And that's what Colonel Weir just
alluded to, that we're picking up from the case
files now. You can tell if there was
fraternization or if there was underage drinking
or some of the typical kinds of collateral
misconduct.
So the next question is, then just list what adverse actions are we interested in following up or considering? And those may not all be even considered adverse actions. We just listed examples of all the different adverse and administrative things that could happen to a person, so, as an example of that list.

Then the procedure for collecting data, and this just outlines that. And so just outlines the way that we can look at this issue, setting a baseline, determining the date of the sexual assault report, identifying any adverse actions.

And the next slide, reviewing the documentation of any adverse actions, then to determine victims who are accused of misconduct would entail looking through 2,000 files to determine whether there was misconduct engaged in.

And then the statistical required question would be to calculate the percentage of the baseline population that was found to have
engaged in collateral misconduct as well as the percentage receiving an adverse action for that.

So that's what the study would entail. The next question is, would there be more to do than just look at the numbers such as evaluating the qualitative data, taking testimony from witnesses, doing site visits, discussing collateral misconduct, if there were trends or patterns that have been observed by commanders, practitioners, soldiers, sailors, airmen in the field.

The next step would be figuring out the resources that are -- would be required to execute this project, which we can calculate. And then this last step would be recommending the data elements to document how to collect this information going forward because it's not really realistic to do this every two years.

It may be worth doing a study and then coming up with the best way to collect collateral misconduct information going forward so it's more easily done and trackable.
So that's the proposal for including
in the FY -- in our March 2019 report the
suggestion is that we think through a plan to
suggest and include that information in the
report and then allow DoD to determine what --
how or what to do to execute the plan.

CHAIR BASHFORD: So if I understand
correctly, we can tell them for fiscal year 2017,
the number of cases that somebody has been
engaged, either suspect or the victim has been
engaged in collateral misconduct because it's a
data point we're collecting?

COL. WEIR: Pending --

MS. CARSON: Or pending the -- so
there's still a whole category of cases for FY-17
that this committee won't have.

CHAIR BASHFORD: But we could --

MS. CARSON: But you could attribute
that accused, the number for the penetrative.

CHAIR BASHFORD: And then suggest that
we get RFIs for all of those people or just put
out a plan of analysis to kick right back to DoD?
MS. CARSON: Well, I think Colonel Weir was suggesting RFIs to determine how hard this is to do. So get the information from the Services about what it would entail to do this project.

And we'd incorporate that into our resource requirement rather than execute -- really getting your head around the project is Step 1, before you actually go execute the project, and this is a big one.

So I think it's worth really understanding what it's going to take and letting the expertise of the panel say, this is how we would do it. So do the --

BGEN SCHWENK: Don't you guys normally talk to the Services, you know, regularly on stuff besides just doing paper RFIs?

MS. CARSON: Yes. Yes.

BGEN SCHWENK: What if you sat around a table and said -- and get somebody from Israel's office and sit around the table and say, what do you guys -- we got to do this.
We're not doing it alone. We can shoot you RFIs and you can shoot yourselves and then go get us the data. Or we can all figure out how to do this. And then the DoD General Counsel's Office can decide what does that crazy language mean. And --

(Simultaneously speaking)

-- and my thought is what we want is the crazy language to mean we work with the Services and come up with what the report should look like and then say, thank you very much. Good luck, DoD. We hope everything turns out great.

And then they go collect the data, put it in some format that matches what we come up with and they submit it -- and give us a copy. And then we can decide whether it's something we want to jump on and look at in more depth and once we see what's there.

But -- so, anyway, that would be my preference, but I really think the way to start with them and see if you can't work some system out of how to do it. And then once you do, then
it's easy. Then you just write the RFI consistent with whatever you guys decide.

MS. CANNON: I just think it's a lot to ask of our staff who's actually started, in your comments, saying that the DAC staff were all kind of committed. When does the IPAD end?

MS. CARSON: 2021

BGEN SCHWENK: March 2021 for that.

MS. CANNON: Why did you say September 19 --


MS. CANNON: Okay, I misunderstood. Sorry.

MS. CARSON: So after that report, we've --

(Simultaneously speaking)

MS. CANNON: My point is, I don't think it's enough to just say staff, you know, you're going these -- you're having contacts anyway. I think the idea of trying to figure out directives -- back at you -- and maybe -- what I
hear you saying is you'd like help from the committee?

    MS. CARSON: Right.

    MS. CANNON: To do that?

    MS. CARSON: Just input, you know, would be a good opportunity for the committee just to talk on this issue, to us, and then we'll meet -- we'll write it up.

    MS. CANNON: Perhaps a proposal you might have about what you think and maybe, based on what the General's saying, you know, that talking it up with the contacts you have -- what kind of problems are we going to get and then coming to us.

    We can talk it through. It's kind of new, right, brand new. The other question I have is why has this happened, you know, where you got the motivation for this?

    MS. CARSON: I'm not sure.

    MS. CANNON: Is there some kind of allegation or something out there that --

    COL. WEIR: Anecdotally, people
believe that victims (audio cut out) aren't
coming forward because they're afraid of
collateral misconduct and that has some sort of
chilling effect perhaps on the process.

So, but we've had testimony from a
victim who was -- she was underage drinking and
she was happy to be punished because if she
didn't, she was different than the rest of the
people who were underage drinking at the party.

She didn't want to be not punished
while all of her peers and friends were being
punished because that -- you know, she did that
and lived it. And was an old memo in 2004 that
came out that said you're not really supposed to
look for evidence conduct committed by the victim
until after the process has ended.

And then you take some kind of action
based upon what you think should be done at the
lowest level to get the message sent. So I think
the -- and, believe me, none of us, as I as the
director and Julie as the Deputy Director, we
have not received any guidance from the
Department of Defense on what that means.

So we're trying to craft this thing to help them help themselves. And we have some expertise in looking at the files determined that, yes, there is some collateral misconduct. But absent the Services collecting that information, they would be the ones doing it, I don't know if Specialist Susie Smith got a counseling statement or an Article 15 for underage drinking and her no-action taking place.

There's no way for us to know that. Now, if the Services don't have some way to track that, then, you know, there's -- we're not going to be able to get that information. They would have to start tracking that right now for the September '19 report and you know how quickly that's going to happen.

CHAIR BASHFORD: I think we should craft an investigative plan that can be executed by DoD. And the other thing that's crossed my mind is when your Case Review Working Group, non-military background members have been reviewing
the files, they might not have picked up on all of the collateral misconduct.

Underage drinking, yes, but barrack visits -- barrack visits might have gone like this, so --

BGEN SCHWENK: We don't know the installation regulations that are the things they often worry about. Who knows, so.

MS. CARSON: I don't think you'd ever get every --

BGEN SCHWENK: You do the best you can.

MS. CARSON: -- potential collateral misconduct. You just identify the top four or five.

BGEN SCHWENK: You just do the best you can.

COL. WEIR: When you look at this, it's intuitive that both of them are 18. When you look at the age, they're 19. You figure that out and date of birth from what's in the files, so you know they're both drunk, so underage
drinking.

But most of the collateral misconduct is on the accused side. You know, he's the one that's married; she's not -- you know, that kind of thing.

MR. KRAMER: But it's only if they've been accused of collateral misconduct, right?

COL. WEIR: Well, that's the other thing. If there's no --

MR. KRAMER: Well, I know, but that's what it said.

MS. CARSON: They say accused. My sense is they want to know the difference between the people who are potentially going to get in trouble for it but don't and the people who do, which I would say engaged versus --

COL. WEIR: But Mr. Kramer, that's a perfectly valid point. The accused in the military justice system means something. You've been accused of an offense.

There's been an investigation been launched. The military police have started an
investigation into this. You're command has done
an informal investigation. But there's something
that puts you as -- you're suspected of
committing this offense.

MR. KRAMER: Because if -- the worry
is the retaliatory effect on some or many --
however victims. It seems to me like, just the
fact that there was some collateral misconduct
isn't what they're looking for.

They're looking for where collateral
misconduct has been used against the person or
threatened or some type of active use of it as
opposed to just the person may have engaged in
it.

MS. CARSON: Again, I think you're
reducing the pool with each step. The biggest
pool is how many engaged in it.

MR. KRAMER: Well, that's what I was
going to --

MS. CARSON: Yes, so the next smaller
pool is how many of those people were
investigated or accused or some command or and
MCIO investigation opened on them where their record right are all clumping.

Then the next one, is how many were charged with -- had charges show up in the military justice system versus how many got some other kind of adverse action.

MR. KRAMER: But it helps take care of the problem with the case Working Group of non-military people not being able to pick up. And I thinking the case working group do all the work on this, by the way.

MS. CANNON: Hey, there.

COL. WEIR: I was going to say this is data collection. And Cassia's not here.

MR. KRAMER: It's both. It's both -- both of them.

COL. WEIR: Cassia's not here, it's data collection.

CHAIR BASHFORD: But I do think we're doing, fulfilling our request if we suggested a baseline population, a parameter. Put it -- give them the data we have collected in our review of
these number of cases of this type of crime.

This is what we have found. Victims who've engaged, this is what we have found, the suspects who have engaged. And, you know, in order to find out what actually happened, I suspect they're going to have to pull all of those personnel files and ask them to have -- at it.

MS. CANNON: Do you need us to do something?

MS. CARSON: No, I think if anyone that's here now is interested in visiting with us about how we're going to write-in the questions, if you send questions or informal sit-down what we're going to do, just let me know. And we'll move forward.

MS. CANNON: September report?

MS. CARSON: Well, I guess that's a question for you. Do we want to address this in the report? And the due date for this report is September of 2019. Do we want to complete the component of DAC-IPAD complete for the March 2019
report? Do you want to address it separately or do you want to give yourselves till September 2019?

CHAIR BASHFORD: If we can --

DR. MARKOWITZ: It seems like a big lift.

CHAIR BASHFORD: All of the case -- I think we should be able to say, of the cases that have been reviewed so far, we've identified X number of instances on the part of this and on the part of that.

I mean, it would be nice to have a little bit of data, but that's all you're going to be able to say, is X number of cases for our baseline group. If we can punch that in and if it's all fed into the data -- not if you have go through the back and look at all the reports though.

MS. CANNON: That doesn't seem like it's fulfilling what they're asking for. I mean, the cases we looked at are very few compared to the -- I mean, we had a random sample, that was
significant for our purposes.

But it seems to me that what this would more call for is, in the future, collecting this so that you can answer that question. And giving parameters, like you say, about why are you are collecting. And then, from there, you can draw out some of these conclusions.

But we can't go -- we can't create something that we haven't collected, right. So it would be more, these are the things that we should be collecting and the Services should be collecting it so that the DoD can make an assessment.

MS. LONG: So then, on that data collection sheet that we talked about, one of our others, then you're going to want to align that SM and say that someone indicates accused or accuser was disciplined or some action was taken -- was for the collateral misconduct and then what that was.

I'm just trying to help on that degree -- 50 different data sheets.
CHAIR BASHFORD: But that could be a long time later, right, after adjudication?

MS. LONG: Well, I'm just thinking for those disposition sheets that we say if they're making a uniform one where, presumably, either the commander has to fill it out with a no-action or at the end of the case something happens.

Whatever that final document is, it has to indicate if something's going to be taken. Because that's when the decision will be happening anyway, right?

MS. PETERS: What's interesting is we would have them verify -- the Services, for that individual, she's -- even if she's the victim of sexual assault, gets her own form. So it's not -- her form is not associated, then, with the suspects.

MS. LONG: Right, I'm just wondering if, for purposes of data collection, if we want your people to have control over this to have to indicate no action taken or -- because it would be within the same people's control, right?
Wouldn't be a commander without it.

COL. WEIR: There would be a separate

DR. MARKOWITZ: It would be a
different component.

COL. WEIR: -- command disposition
form for victim's misconduct and then he would
have to fill out the underage drinking. And he
would have to fill out what he did or what she
did as well, so.

(Simultaneous speaking)

MS. LONG: I guess I'm just thinking
maybe something on whatever your -- is there --
you don't want to combine anything on a --

FEMALE PARTICIPANT: They're not
necessarily the same command. The victims --

(Simultaneously speaking)

DR. MARKOWITZ: Right, the victim is
in a different command.

MS. LONG: But I have seen in a recent
case review in an Air Force file where the
initial decision authority in his memorandum did,
in fact, identify that there was no action taken in response. So it's possible that some Services are already somewhere along the lines, starting to collect.

BGEN SCHWENK: Can you read the beginning of the statute again, Secretary of Defense, working through -- what does it say?

MS. CARSON: Not later than September 30, 2019 and not less frequently than once every two years thereafter, the Secretary of Defense, acting through the DAC-IPAD, shall submit to the Congressional Defense Committees a report that includes the following.

BGEN SCHWENK: You can read that as meaning that the Secretary of Defense has the requirement and not us. He just acts through us so that we're informed, knowledgeable and can decide whether it's something we want to look at.

DR. MARKOWITZ: I mean, I guess, getting back to your original question, I don't know why we would put the additional stress on
the staff and on the committee as well to get something done by the report date.

When there's a clear delineation of September, when this is due, it seems like there's a lot of conversation and there are a lot of members who are not here to have this conversation right now.

I don't know -- I mean, maybe somebody can see a benefit to having something in the report for March, but I'm not readily identifying an immediate benefit to having something in that.

And so, because the language doesn't seem to be particularly clear about what it is we're being tasked to do; the information seems to be complicated in terms of what we need to actually produce -- it just doesn't feel like a -- it doesn't feel urgent enough to get something into the March report.

Why not give ourselves till September to come up with a cogent plan to provide a way forward?

COL. WEIR: My recommendation is that
it's not in the March report. We can have a
placeholder, right. We've got enough stuff to
worry about getting -- really wrapping around the
issue and not get involved with this.

BGEN SCHWENK: I think all we have to
do is address it. It happened this year. It's an
annual report. We need to tell them it happened.
So we say, in this section of this NDAA,
Congress, da-da. They did -- they said this. The
DAC-IPAD has started coordinating with the
Services to figure out how to comply with the
statute.

CHAIR BASHFORD: The DAC-IPAD will be
taking it under advisement. I wouldn't go so far
as to say that we're --

BGEN SCHWENK: Yes, I mean, that's all
I'd say. But I think we have to mention it
because it happened this year, but we don't have
to say any more than we're working on it.

Then the next report we can say, and
we've decided that we're letting the Secretary do
it and we're here to see what he comes up with.
CHAIR BASHFORD: Roger. Thank you.

MS. CARSON: Okay, thank you.

BGEN SCHWENK: Boy, I sure wish we got an update on the Data Working Group.

CHAIR BASHFORD: Can't wait for Data Working Group update.

MS. ROZELL: All right, so we're going to be even shorter than everyone today. So we are the Data Group. We're working with the Data Working Group to collect court-martial documents. And we have done that through FY-17.

So right now Dr. Wells is on board. We've given him the case documents or the case files for him to start his analysis. And we have also put out our next RFI Set 10 for the FY-18 report. And we have received the initial listing of cases from all the services except for the Coast Guard.

MR. MASON: They have too many cases.

MS. ROZELL: Yes, I know. The Air Force has been granted a week delay, so once they have that information to us then we'll -- I will
start working with the services to identify a
time and a place when we come out there and start
collecting.

    I have had a great breakthrough with
the Navy-Marine Corps where they granted me
access to download those records from their
website. So it's less manpower on the services
and less manpower for me to have to actually go
out to physically get those case files.

    That's where we are at right now. I
have already started inputting the data on the
cases that I've started to download for one of
the Services. So that's where we stand as of
now.

    MR. MASON: The DAC-IPAD is going to
receive -- the committee will receive all of the
analysis, the multi-variant analysis for FY-16
and '17 at the January meeting. So it will be a
data-heavy meeting that day.

    If you remember last year, or earlier
this year when we did all those tables and charts
-- you're going to get all of that in January,
for two years the second time.

    CHAIR BASHFORD: Excellent, love that.

    MR. MASON: And the great part about
the RFI this year is we are essentially nine
months ahead of schedule where we were last year
by working with the Services. So we're making
progress, and it's exciting now because we are
bringing in a lot of information very quickly.

    BGEN SCHWENK: And you're working with
SAPRO to find out what to do about next year's
SAPRO report data?

    MR. MASON: We are -- we're going to
try to correlate to make sure that we're all
reporting the same information. And we are able
to tell, based on how many files reported to us,
when there's a duplicate or if something falls
out.

    And we're going to be able to provide
that back to SAPRO and work with them to see if
ye're reporting the same thing that we are so
that there isn't conflict between the two
reports.
COL. WEIR: Sir, I had a meeting with Dr. Van Winkel who oversees that area. And it was exactly on this issue. And she was correct - - the DAC-IPAD numbers and SAPRO numbers ought to be the same or very, very close.

And so what we're going to do now with the space is work with their point of contact to make sure, if there's a discrepancy, that we can explain it. And so the numbers are going to be - - they're very close, so there'll be a footnote why or not. So that's the goal. So if they have any more -- two reports pretty much say the same thing -- on the court-martial side.

MR. MASON: And, sir, if you recall, this past -- for FY-17, we were delayed until SAPRO published their numbers. SAPRO got their numbers on October 15th, and we were getting our numbers on October 15th.

So we are actually working in parallel rather than having to wait till May for the information that they already have.

So we should be able to be in lock-
step essentially with them and have numbers that are very similar.

BGEN SCHWENK: All right, so by the time their report comes out in May we already know what these are and why?

MR. MASON: Yes, and they'll be able to explain it and we'll be able to explain it.

BGEN SCHWENK: Explain it, right.

Okay, thank you.

CHAIR BASHFORD: Are there any roadblocks you're running into?

MR. MASON: At this point, no. We're full steam ahead. It's very refreshing.

BGEN SCHWENK: And do you guys have a plan of action yet on collateral misconduct studies?

MR. MASON: Since you said that was Dr. Spohn, I would defer to her. And so she has left, but I'm unable to tell you, sir. We haven't -- our hands are pretty full with just the court-martial data. And we will --

BGEN SCHWENK: Oh, your hands are
full.

CHAIR BASHFORD: Anything further?

Then, Major King?

MAJ. KING: With that, then, this

meeting of the DAC-IPAD is closed.

(Whereupon, the above-entitled matter

went off the record at 4:39 p.m.)
exception 82:9 114:4
126:8 181:22 186:10
194:6 211:2
exceptional 109:16
126:6,8,11
exceptionally 114:15
exceptions 126:15
excessive 92:16,17
exchanging 91:16
exciting 330:7
exclude 206:12
excluded 203:9
excusatory 263:13
excuse 183:9 199:18
execute 46:6 308:14
309:6 310:7,9
executed 315:19
executive 42:14
expected 49:3,4,7,11,16 50:6,7
50:13 222:21 52:1,3,9
51:13 209:7 270:22
expertise 149:20
153:17 205:9 301:13
310:13 315:4
expected 48:7,10 105:12
271:20
explain 12:15 39:13
54:10 79:9 80:13
119:19 132:17 134:6
137:11 138:3 143:17
143:21 331:9 332:7,7
332:8
explained 40:5
explaining 37:19
137:13 167:17
extension 22:21
77:20 97:14
explore 290:8
explosive 18:2
exposed 37:6
exposition 254:7
exposed 37:4
extending 224:7,11
extensive 161:13
extent 226:16 272:1
extenuation 44:14,18
extra 246:2
extracurricular 12:19
extraordinarily 26:16
46:15
extremely 13:1
eye 273:22
eyes 174:9
CERTIFICATE

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In the matter of: DAC-IPAD Public Meeting

Before: US DOD

Date: 10-19-18

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.

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Neal R. Gross
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