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
JANUARY 25, 2019

The Committee met in the Monument View Room at the Doubletree by Hilton Crystal City, 300 Army Navy Drive, Arlington, Virginia, at 9:00 a.m., Ms. Martha Bashford, Chair, presiding.

PRESENT:

Ms. Martha S. Bashford, Chair
Major General Marcia M. Anderson, U.S. Army (Ret.)
Hon. Paul W. Grimm
Ms. Jennifer Gentile Long*
Mr. James P. Markey
Dr. Jenifer Markowitz
CMSAF Rodney J. McKinley, USAF (Ret.)
Brig. Gen. James R. Schwenk, USMC (Ret.)
Dr. Cassia C. Spohn
Ms. Meghan A. Tokash*

Hon. Reggie B. Walton
STAFF:

Major Dwight Sullivan, Designated Federal Officer
Col. Steven Weir, USA, Staff Director
Ms. Julie Carson, Deputy Staff Director
Mr. Dale Trexler, Chief of Staff
Dr. Janice Chayt, Investigator
Dr. Alice Falk, Editor
Ms. Theresa Gallagher, Attorney-Advisor
Ms. Nalini Gupta, Attorney-Advisor
Ms. Amanda Hagy, Senior Paralegal
Mr. Chuck Mason, Attorney-Advisory
Ms. Meghan Peters, Attorney-Advisor
Ms. Stacy Powell, Attorney-Advisor
Ms. Stayce Rozell, Senior Paralegal
Ms. Terri Saunders, Attorney-Advisor
Ms. Kate Tagert, Attorney-Advisor
Ms. Patricia Ham, Attorney-Advisor
Ms. Marguerite McKinney, Analyst
Dr. William Wells, Criminologist

PRESENTERS:

Lieutenant Colonel (Retired) Joseph "Jay" Morse, USA
Colonel (Retired) Doug James, USAF
Colonel (Retired) David "Wil" Riggins, USA

*Present via telephone
CONTENTS

Welcome and Introduction . . . . . . . . . . . . . 4

Panel: Effects of Sexual Assault
Investigations on Accused Service
Members. . . . . . . . . . . . . . . . . . . . . . 7

Data Working Group Presentation of
Sexual Assault Court-Martial Data. . . . . . . . 125

Case Review Working Group Presentation
of Investigative Case File Review Data . . . 161

Committee Deliberations on March 2019
Draft Report . . . . . . . . . . . . . . . . . 304

Adjourned. . . . . . . . . . . . . . . . . . . 329
MR. SULLIVAN: Good morning. I'm Dwight Sullivan, the Designated Federal Officer of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, better known as the DAC-IPAD.

Public comments will be heard at the end of the meeting at the discretion of the Chair. It would be inappropriate for anyone in the public gallery to make a comment at any other time.

However, written public comments may always be submitted to the Committee for consideration. This meeting is open. Ms. Bashford, you have the time.

CHAIR BASHFORD: Thank you, Mr. Sullivan and good morning. I would like to welcome members and everyone in attendance today to the 11th meeting of the Defense Advisory Committee on Investigation, Prosecution, and
Defense of Sexual Assault in the Armed Forces, or DAC-IPAD.

Of the 15 committee members, ten members are present this morning and another member will be joining us, will be joining us telephonically.

Five members were not able to attend. Judge Leo Brisbois, Ms. Kathleen Cannon, Ms. Margaret Garvin, Ms. Jennifer Long and Mr. A.J. Kramer.

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

Please note that today's meeting is being transcribed and a written transcript will be posted on the DAC-IPAD website. We will begin the meeting with testimony from three former service members about their experience as service
members accused of sexual assault.

That Panel will be followed by a
court-martial data presentation provided by the
Committee's Data Working Group.

After a break for lunch, the Committee
will receive a presentation from its case review
working group on statistical data from the
working groups review of investigative case files
closed in Fiscal Year 2015, involving penetrative
sexual assault defenses.

For the final session, the Committee
will review and conduct deliberations on the
initial draft on its annual report, findings and
recommendations.

Each public meeting of the DAC-IPAD
includes a period of time for public comment. We
have received one written public comment prior to
today's meeting from Mr. Michael Conzachi,
Director of Investigations at Save Our Heroes.
That comment has been posted to our website and
copies are available at the sign in table.

So far we have received no request for
public comment at today's meeting. As Mr. Sullivan said, if a member of the audience would like to make a public comment on issues before the Committee, please direct your requests to the DAC-IPAD Staff Director, Colonel Steven Weir.

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

Thank you all for being here today. And, Lieutenant Colonel Morse, you may begin when you're ready. Thank you.

LT. COLONEL MORSE: Thank you very much. Good morning, my name is Jay Morse, I'm grateful for this opportunity to share with you.

My experience is in the Army as someone accused of assault. I intend for my comments to focus on how this allegation has impacted me, both my last year in the Army and the five years since then.

I'd like to supplement my previously written comments and I welcome any and all
questions. And I hope that we can engage in some meaningful dialogue.

Some brief background. I was commissioned as an Aviation Second Lieutenant in the Army in 1993 as serving as an ROTC cadet. I was selected for what's called a Funded Legal Education Program in 1998.

I graduated from law school in 2001 and switched over to be a judge advocate later that year.

I had served in various positions between January of 2002 and March of 2014, when an accusation was made against me. Those included positions, including, as a prosecutor, as a defense counsel and a supervising defense counsel, as deputy staff judge advocate and as a staff judge advocate.

My second to the last job in the Army was as the chief of the Trial Counsel Assistance Program, of which I suspect many of you are familiar.

During the, about two years and change
that I was the chief of TCAP, myself and approximately 30 other civilian and Military attorneys lead the training, instruction, advice of every prosecutor in the U.S. Army.

In addition, at the same time as the chief of TCAP, I supervised as part of those 24, or excuse me, as part of those 30, 24 special victim prosecutors located at bases around the world who took the lead on prosecuting or advising on all cases involving special victims. So not just sexual assault but domestic violence. And child victims as well.

In addition, I was one of a small handful of people that I believe really took the lead in representing the U.S. Army to Congress. A handful of times, ten to 15 times, I personally briefed either members of Congress or their staffs, on how the Army was handling sexual assault.

In addition, while I was the chief of TCAP, I was selected to be the lead prosecutor in the case of U.S. v. Sergeant Bales. Which is a
16 homicide case occurring in Afghanistan.

Myself and about ten other attorneys and paralegals, port Navy efforts of about 100 other people, to prosecute Sergeant Bales.

I have been previously selected to attend senior service college, and I deferred that for a year. And probably ahead of most my peers.

In early 2014 I was selected to be the Staff Judge Advocate of the 1st Cavalry Division later on that summer.

On or about February 21st of 2014, I was informed that a colleague claimed that I groped and tried to kiss her at about 1 o’clock in the morning in my hotel room, at a conference in March of 2011.

At some point this allegation against me was leaked to the press on March 5th of 2014. Every major news outlet ran my name, my title, my picture and the accusation against me.

I had to talk to my girlfriend, call my mother in Nevada, sent an email to a small
group of family and close friends to let them I
would be on national news that night. I actually
got an email the next day from a friend in London
to say that I made The Guardian.

Perhaps most importantly, or at least
relevant, this story aired the night before a
Senator Kirsten Gillibrand sponsored a bill to
remove sexual assault from a Military chain of
command, was put to a vote on the senate floor.

Much of my negative experience since
I left the Army is a direct result of what you
could probably still find on the internet should
you Google my name.

I was ultimately fired from my job at
TCAP. I was given what's called a locally-filed
letter of reprimand, which essentially means it
goes in a desk drawer and is supposed to
disappear once you either PCS. Once you either
move from that assignment, or in my case, leave
the Army.

CHAIR BASHFORD: I'm sorry --

LT. COLONEL MORSE: Go ahead.
CHAIR BASHFORD: -- what is PCS?

LT. COLONEL MORSE: I'm sorry. Yes, so permanent change of station.

CHAIR BASHFORD: Thank you.

LT. COLONEL MORSE: So you can have an officially-filed letter that becomes part of your file. It can be used against you later essentially.

But locally-filed is supposed to be, for all intents and purposes, a counseling statement.

CHAIR BASHFORD: Thank you.

LT. COLONEL MORSE: In October of 2015 I retired honorably as Lieutenant Colonel.

I don't want to re-litigate my case here today, and I'm certainly, though I'm willing to answer any questions, what I want to make clear and ensure there's no confusion, that at no point did I assault my accuser, at no point did I do anything that could be misinterpreted as non-consensual interactions.

The primary intent, I understand of
the Panel and of me, is to help understand how allegations of assault effect those accused, and whether or not there might be instances of how the Army, or even civilian leadership, might not fairly affect this position.

I could unhappily talk about this for hours, and I'm happy to talk to any of you any time, any place, in further detail. But I'll try to focus my comments on a few of my experiences.

After the accusation I was given no tasks or responsibilities. I had to move to an empty office away from my team. And was told to stay away from them.

I had a top secret SCI security clearance, that was suspended. Once the, it's called a flag, once that flag was removed, then essentially you can reinitiate your clearance, I was told that because I was going to retire that there was no need to do it. And so I do not have a clearance.

Before the investigation was complete, I was told that I was removed from my following
position as a staff judge advocate of the 1st Cavalry Division, and I was also removed from the list of selectees for senior service college.

After receiving my letter of reprimand, but prior to the General making the final determination, I was told that if I did not submit a request to retire the reprimand would be filed in my official file. I would then face a separation board and whatever comes after.

My selection board for the rank of Colonel was meeting just a few weeks actually after the filing of the reprimand. I was told that I needed to withdraw my name from consideration for the rank of Colonel.

I believe that I was competitive to be promoted. If I had been promoted and if I had served three years at the rank of Colonel, instead of retiring as a lieutenant colonel, my retirement pay over the next 40 years of my life would have been about $2 million more than retiring as a lieutenant colonel.

I was notified after the final
determination, it was made locally, I was notified by my senior rater that my file would go in front of a Grade Determination Board to make a determination as to what rank I should retire.

I should clarify, I was notified twice. The first notification listed a Deputy Undersecretary of the Army as the approval authority of my grade, my retirement grade. That's in accordance with the regulation.

About two days later I received a subsequent notification that said the Secretary of the Army would personally act on my case.

I don't know if this is typical. I do know that the regulations states that the default is of a Secretary of the Army acts on people retiring in the rank of one-star general and above.

During the investigation phase, multiple witnesses voluntarily contacted my defense attorney with information that was relevant to my case. As a result, a battalion commander in my chain of command, under the order
from the advising staff judge advocate, so a colonel judge advocate, ordered me to cease conducting my defense.

The specific order said that if me or anyone acting on my behalf, to include my defense counsel, spoke to anyone about the case, we would be in violation of a lawful order and we could both be charged with interfering with an investigation.

The advising trial counsel, or the advising prosecutor in this case, when making a determination as to whether or not I should be titled, which I can talk about in more detail, he told my attorney they would not consider the credibility of either me or my accuser. This is contrary to the, specifically contrary to the regulation.

The regulation that determines whether or not should be titled says that you are supposed to determine or assess credibility, given the totality of the circumstances and the source of the information.
If I can shift to after the Army leaking this accusation to the press has affected me in various ways. Literally from the day I retired.

This has been five years. The examples I'm going to give you have occurred just over the last five months.

I had an offer from a local think tank to write several blog posts about the training of NATO forces. The offer was withdrawn shortly after someone in that organization Googled me.

A colleague and I had an oral agreement with the U.S. Air Force JAG School at Maxwell Air Force Base to provide a week long advance communications course to mid-level judge advocates. About ten days before that course, the JAG school called my colleague and told him that he could come, I was not welcome.

I've applied to three executive MBA programs in the last few months. I addressed my exit from the Army and what any selection committee might find should they Google my name
in each one of those applications. All three
schools denied my applications.

One school, I asked all three for
feedback, only one did. They stated that their
main concerns were regarding my ability to fit
with their program and specifically because
"their institution relies so heavily on close
student interaction and effective teamwork."

There are a long list of reasons that I probably
should not go to a top 20 MBA program, but my
ability to be part of a team is not one of them.

I've had Global Entry for the last
three years. Global Entry, as you know, is one
of the programs that allows you to bypass customs
and border patrol.

I've had it for three years. I've
made literally 20 to 30 trips, international
trips, without interruption. Without any sort of
an issue.

In November, so just a few months ago,
I was coming back from Mexico on my way to
Seattle, I was pulled out of a line and told that
I required additional questioning because in 2014, their computer said that, 2014, I was arrested for assault and that I was given a reprimand.

I was recently offered a permanent position with one of my clients. I've been doing consulting for about the last year.

Before accepting I had a very, very long talk with the leadership, essentially to make sure they knew everything and also to ask them what they were going to do when someone in their organization inevitably Googled me. They assured me they had done their homework and that it was not going to be an issue.

About two weeks later I was told that someone in the organization Googled me, the permeant offer was rescinded. I still work with that organization, but I do it as a contractor.

On a very personal basis, I can't properly articulate to you how I feel the Army, JAG Corps leadership, treated me over the last year of my time in the Army.
I had a very strong sense of self, a pretty strong opinion of what I believe my role in the world was and that changed. A profound sense of justice and fairness and what I believe my role in that process was.

And frankly, I didn't know what to do with myself if I didn't belong to something bigger than me. Because of this I've become withdrawn, depressed.

I used to be someone who always sought out challenges and leadership opportunities and had a very strong desire to make the world, and those around me, better. And I just don't anymore.

It's effected the way I interact with my family, with my girlfriend, with my former colleagues, and generally, with the world around me. I don't know, and this has been five years, it's at the point where it's absurd frankly.

I don't know what it takes to get me back to the type of person I think I was before. But I hope that today is maybe the beginning.
Thank you for your time.

CHAIR BASHFORD: Thank you. Colonel James.

COLONEL JAMES: Thank you, Chairman Bashford, I appreciate it. Panel Members, thanks for letting me be here today.

Colonel Weir, great job setting everything up, I really appreciate it.

It is an honor to be here. And, Jay, thank you for your comments.

My name is Doug James, as she said. I'm a retired Air Force Colonel, a fighter pilot by trade. I flew the A-10 and the F-15.

I now fly for a major airline, I run my own consulting business and more most importantly, I'm honored to be the president of a non-profit for falsely accused service members.

And I'll just say, Jay's comments are typical of what I see every day at my non-profit. I'm here today to offer my testimony on my personal experience with the Military judicial system. Specifically, what happened to
me after a false allegation, which was a
byproduct of a very hostile and protracted
custody battle from my wife's ex-husband.

   My objective is not to only provide
you with my personal testimony but I'm going to
try to meld in what I see every day in the common
threads and Save Our Heroes. We just heard some
of them.

   Unfortunately, the common thread of
career killing, family destruction and the lack
of holding proven false accusers accountable has
turned the Military judicial system into a threat
of national security. I don't say that lightly.

   I worked hard at the Air Force, with
the Air Force. I flew the A-10 and F-15 for my
first eight years. Then I had an assignment to
the Pentagon, CENTCOM Headquarters in Tampa and
then Pacific Air Force Headquarters in Hawaii.

   While at these three assignments I was
a senior colonel, so I was able to work with
today's Who's Who in senior leadership, in both
the Military and the civilian world.
I spent half my career on active duty, the other half as a reservist. But 21 out of 28 years was active duty. That's a number that's very important later on.

There's no doubt my career was on an upward trajectory. In Winter of 2013, while I was living in Southern California, my wife's custody battle reached a level where we felt her husband's threats, her ex-husband's threats, were to be taken seriously.

I was drilling a PACAF at the time. I had a personal meeting with my two-star and I explained to him about the threats to our family and asked if he needed full-time help.

Without hesitation, the two-star needed to fill a critical O-6 fighter pilot billet due to a last minute assignment change. It was perfect for both of us.

I could get my wife out of the dangerous situation and help my PACAF. Little did I know that decision was going to be the end of my Military career.
This same two-star would be my convening authority and conveniently forget about my dangerous situation at home.

Just after arriving at PACAF I learned I screened for brigadier general. I never cared about rank my entire career, but it was exciting to have an opportunity to take my senior leadership to the next level.

My short-lived accomplishment ended in July of 2013 when a new reservist two-star boss of mine told me I was under investigation for accusation of a sexual assault. I was shocked and could not believe my wife's custody battle made it into the Air Force.

After I got a hold of myself, I had a great discussion with my new boss. I told him about the situation with my wife's ex-husband, why I was at PACAF full-time in the first place.

And after hearing my story, he counseled me to work my butt off and was sure the situation would resolve itself. We were both confident the Air Force would look at the
entirety of the situation and dismiss my case shortly.

Little did I know my career actually ended at that point. It's important to note that an allegation will end your career.

I take pride in saying I worked my butt off as a deputy assistant director for all of operations in the Pacific while being investigated for a completely baseless allegation.

My whole family assumed the Air Force, would see how baseless this allegation was. I never lived with my stepdaughter, and in fact, I was never alone with her because of my wife's fear of her ex-husband. And I had orders to prove the multiple times I was in Tampa and et cetera, et cetera.

A CD of his threats, phone messages and even pictures were given to the OSI, Office of Special Investigation. None of this critical information ever made the OSI's final report.

In fact, my wife's testimony was
reduced to three-quarters of a page while the ex-
husband's baseless rambling testimony made up
most of the report.

We eventually learned the Air Force
was not interested in the truth and more
interested in appeasing Congress. The Air Force,
quite honestly, was going to do everything
possible to convict me for something I didn't do.

At Save Our Heroes, in reference to
the UCMJ we say, your guilty until proven guilty.
Sadly, I felt this firsthand.

I was trailed to the OSI for almost a
year and a half. The team, whose tactics I'm not
going to talk about here, but all with the goal
to disregard the truth, and at a minimum, convict
me for some sort of derived collateral charge.

Remember, a conviction for a derived
collateral charge allows the Military to
statistically show a conviction for sexual
assault.

In summer of 2014, a year after the
investigation, I have started, I sat down with my
four-star boss at the time, and I sat down with
him one-on-one, and he was one of the only few
people on base that knew what was going on, and I
said, you can help me find the next job. Because
that was the next step for brigadier general.

And he said, no, I can't, with the
investigation going on. I told him I understood,
and I was done.

The four-star asked me if I could help
through the summer because they needed help. I
still considered him a mentor, even at that
point, because I had worked for him four times
through both of our careers. So I agreed.

I found out later the four-star wrote,
in emails that summer, let's just send him to a
court-martial and see what happens. This was a
guy I looked up to.

Two days before my last day on active
duty in August 2014, I called retirements to make
sure my paperwork was ready to go. I had
preplanned everything a month prior with my
retirement, perhaps I figured it was going to be
just a quick confirmation call.

Unfortunately, it wasn't. The GS-9 told me my retirement was on OSI hold. Yet, no officer in my chain had the leadership competency to tell me I couldn't retire.

The whole thing, the whole time I kept thinking, the Air Force will figure this out. I'll get an apology from somebody high up and even get a retirement ceremony.

I went back to my civilian airline and waited for my retirement. My security clearance was suspended in September of 2014. In Fall of 2014, at my wife's urging, I hired a civilian lawyer for $40,000. That's the going rate.

I couldn't believe I needed to hire a lawyer when it was so obvious this was a fabricated story. Just after my arraignment in September 2014, my Military lawyer gave me a heads up the Air Force Times would be posting an article about me the following Monday.

Immediately I got a hold of the VP at my civilian airline and asked for a conference
call. My wife and I sat down with him, the VP was awesome.

I knew him quite awhile because I had just interviewed three months prior for the flight OPs VP job at my airline. I was a finalist for the position. One of two people.

Little did I know, at the same time of interviewing for the VP job the OSI was asking the airline questions about me. Needless to say, I never got the job.

During our conference call I explained what happened about the news article. I will never forget what he said.

We see this all the time with employees going through divorces and custody battles, I'll have my ex-FBI guys check it out. If we think you're good to go, we'll let you keep flying, if not, you're grounded. And I thought that was reasonable.

I never heard from my airline again.

And I continue to fly.

My airline had just treated me with
more respect than the Air Force. I think that's part of the reason we got a pilot shortage to be quite honest.

In 2015, August 2015, two months before my planned court-martial, I couldn't take it anymore. The stress was getting to me and my family, I needed to start preparing for the trial.

I asked PACAF to put me on full-time orders so I could prepare, because remember, I'm a reservist at this point. My request got denied by Colonel Stickle. The Colonel in charge of all my type of reservists in the Air Force.

Colonel Stickle told me on the phone, and I quote, "you don't deserve orders because you're going to a court-martial." I questioned her and said, it sounds like you think I'm guilty.

I then told her my civilian airline treated me better than the Air Force, an organization I was willing to die for. Her answer was another classic. They should, we only
get you two weeks a year.

I couldn't believe what I heard. I answered, I guess you don't know my career. Remember, I had worked 21 out of 28 years.

A reservist one-star was assigned to make sure I was okay. They call him the wing man. Kept pushing the decision all the way to the new PACAF commander, General Robinson.

There was no way I was going to fly out in a civilian airline this close to the court-martial. General Robinson was awesome. She signed off on the orders.

But why did it take a four-star to sign off on them? Four emails later proved Colonel Stickle's barbaric thought process was manifested up and down the chain of command.

Unbelievably, my case was dropped two weeks before my court-martial for reasons I've never been told. In fact, when my lawyer called me with the news he said, I've never seen this before, take the gift and go away.

He emphasized that many times, and
actually had a Military lawyer call me to reinforce it, yes, these were serious red flags. The damage was done, I retired two days later.

There was no discussion about keeping me, I was a liability. Within a month, three general officers in my chain of command quietly retired, to include the convening authority who brought me on active duty and knew the whole story in the first place. Remember, he knew everything.

The Air Force never asked the Air Force Times to take the article off the net. So, Jay, I understand what you're saying.

At my lawyers urging, the Air Force Times wrote one sentence in an article six months later saying, all charges against Doug James have been dropped due to new evidence.

Now, keep in mind, I didn't know what the new evidence was. So I asked my Military lawyer for the new evidence. And she told me there was no evidence and sometimes the press gets it wrong.
Again, through FOIA, I found out the Air Force had actually written public affairs guidance, it's a PAG. And in that PAG were questions to answer the press if they asked.

And one of them specifically was, charges were dropped due to new evidence. The Air Force lied to me.

The Air Force told me they couldn't take the original article down because they had nothing to do with the Air Force Times. The Air Force Times article finally came down when I sent the editor a FOIA email written to the chief of staff and the Secretary in the Air Force about my case.

I was able to get the article off. The Air Force lied to me again. Unfortunately, as Jay has just said, there is still a dead link which will be there forever.

I'm still feeling the effects today. My case was dismissed without prejudice, which as you know, that means the Air Force can hold it over me for eternity.
A year ago, my wife was reunited with her kids. The things we've learned is shocking. I will not go into details, but I know the Air Force knows about their horrific life. Keep in mind, they were my dependents.

Unfortunately, because of the disposition of the case, I've been paying $1,000 a month for the kids to live in the apartment. I can't be anywhere near them because of the Air Force and reprisal.

I spend about $800 a month into counseling to get them back to normal in maturity levels. These kids were abused to their dad to a level you can't imagine, but the Air Force ignored it and would rather have destroyed a dedicated O-6's life.

It took me over a year to get my security clearances back after the dismissal. And the only reason why I got them back is because I went through the help of the late Senator McCain, who is my Senator, and Senator Sinema. Now Senator Sinema, was my congressional
representative at the time.

    Both were fantastic. And I have a lot
of respect for our new senator.

    But why would it take working through
my congressional delegation to get my clearances
back?

    My DNA is still in the FBI Database.
The Air Force just blew me off when I asked for
help. I've written numerous agencies to have it
taken out.

    And as you've heard in previous
testimony, the last quarter, that's almost
impossible to do. Interestingly enough, all the
Military lawyers and prosecutors in my case have
been promoted.

    The lead prosecutor is now a sitting
judge at Travis Air Force Base. He has a history
of destroying people's lives.

    The JAG who was advising the convening
authority is now a one-star. And I don't
understand how those people, who propagated a two
and a half year investigation over a baseless
allegation, single handedly destroying three
generals and a single colonel's career got
promoted.

There have been some blessings in
disguise. My wife was so shocked this case would
even move forward. She went to ASU Law School.
As you know, it's a top 25 law school. She
passed the Arizona bar this July, one of the
toughest in the country, and is now working for a
leading Military defender here in D.C. Very
proud of her.

I would argue her education and legal
maturity is higher than 80 percent of those in
the Military prosecutor, JAG Corps today.

Most importantly though, what I
learned over my entire career is helping over 300
others in the same situation as the president of
Save Our Heroes.

We are picking up a client every two
weeks. Military justice, injustice, is
destroying lives every day.

I will conclude by emphasizing, this
is a national security issue and the impacts to me, personally, are immeasurable. Four highly decorated senior officers lost their jobs because the Military justice system could not read a calendar.

If you think I'm joking, ask the Air Force why the case against me was dropped.

The monetary impacts can't be calculated. I lost both a chance at brigadier general and the VP at the airline I love.

With today's electronic medium, what future opportunities am I going to lose because of a dead link, and we've already heard that with Jay.

Unfortunately, I think my case is just the tip of the iceberg. Thank you for your time, I really, really appreciate it and I'll be happy to answer questions later.

CHAIR BASHFORD: Thank you. Colonel Riggins.

COLONEL RIGGINS: Gentlemen, thank you for your remarks. And, Colonel Weir, thanks for
the invite to be here today, I appreciate it.

Good morning, ladies and gentlemen, my name is Wil Riggins. Thank you for the opportunity to address the Committee. Today, of all days, is my 54th birthday.

I understand my purpose here today is to inform the Committee with regard to the impact and allegation of sexual assault had on my career and my private life.

While preparing these remarks, it occurred to me that simply sharing my story would fall woefully short of actually providing an understanding, true understanding, of the impact this allegation had on me, my career and my family.

After all, prior to my own experience, I certainly have heard of others in similar situations. Dealing with the allegations and trying to manage the ball out of having life, as they knew it, came to a dramatic and painful pause while subsequent events unfold.

So, I suppose I was informed about
the potential impact, but I can assure you that
until I experienced the horror myself, I did not
understand the depth and breadth of the crushing
impact on those who I love and care most about,
on the everyday mundane functions of our lives.
And certainly, not on my own emotional health or
on my professional life.

For this reason, I need your help
today to effectively create a level of
understanding that I believe must go beyond
simply informing in order to be effective.

In preparation for today's
discussions, I reviewed all of your online
professional biographies. That review revealed a
simple fact.

You were all asked to serve on this
committee because each of you have invested the
daily sweat and toil, the education and training,
the sacrifice in commitment as required to
achieve consistent excellence, and to be
recognized as experts and leaders within your
fields and to advance to a pinnacle that is
beyond most of your peers, and possibly, even
beyond your own expectations.

You also have my biography for
reference.

Like you, I had arrived at the
mountain top of my Army career in 2013. Having
achieved success in every level during the
preceding 26 years, since my graduation from West
Point in 1987.

I had been selected for multiple
promotions and advanced military and civilian
education opportunities well ahead of my peers.
Like you, that success came at a significant
personal price.

In my case, that included long hours,
time spent away from families and friends, missed
birthdays, sporting events. But also, exposure
to extreme danger on foreign soil. Not only to
myself but exposure to subordinate soldiers, men
and women, who were my responsibility.

On July 2nd of 2013 I formally learned
that I was one of 35 officers selected from a
field of over 3,500 colonels to be selected for
promotion for brigadier general in the Army.

Judging from your bios, most of you,
if not all, can relate to the elation and the joy
that I experienced, along with my entire family,
with that promotion announcement.

Here's where I need your help.
Because I need you to reflect on your own
background, your own history, your promotion, job
announcement, appointment or nomination to either
your current position or that earlier position,
that in your mind marks the absolute peak of your
professional accomplishments.

That moment where you realize that you
had achieved something truly amazing. A time
when you felt unparallel elation.

Now, I need you to imagine that in the
midst of your elation and the excitement shared
with loved ones and close friends, you become
subject of an allegation of wrong doing. Pick
your own poison.

It could be cheating on an examine,
plagiarizing a thesis, stealing. Or in my case, the allegation that I sexually assaulted another West Point cadet 27 years earlier in 1986.

Regardless of what allegation you chose, you know first and foremost that you did not commit the offense, yet, the more you affirm that fact the more vehemently your accuser claimed that you did.

The other condition to imagine, and it's very real, as we've heard earlier, is whatever the allegation you chose, it represents a perceived epidemic of wrong doing that's determined by Congress, and the media, where aggressive action must be taken at any cost, to eliminate similar future offenses within your profession.

For this reason, your appointment, announcement or promotion is publicly delayed while you are formally charged with the offense. Like Doug, my DNA still remains in the DNA database.

The ensuing investigation involves
family members across the country and the friends
you haven't seen or spoken with in years. You
may not even have accurate contact information
for somebody.

At this point, you're determined to
clear your name. After all, your entire
professional career and every accomplishment
you've ever achieved is now at stake.

In my case, my 70-year old mother in
Florida was one of the first to be interviewed as
part of my six month investigation. Followed
closely by my wife, who is here this morning, my
sister, my college roommates and other friends
from college.

Your family loves you, so they are all
in and support you in every way possible. But
you can see, and you hear in their voices, the
stress and concern. And you remember, they
didn't choose this, they're only dealing with
this for my sake.

After a long, painful and exhausting
six month investigation you're told the outcome,
"there was insufficient evidence to establish probable cause to believe that you committed the offense."

Throughout the investigation your family has been rock solid with their support, but you can visually see the fatigue and stress the ordeal has had on them. You can also see it when you look in the mirror. And you feel it all of the time.

You stop counting the number of sleepiness nights months ago. Your friends have been mostly supportive, at least to your face. But you've heard a couple of them say that there must be something to the allegation, "it's taken this long and you still haven't gotten that promotion."

Nevertheless, you breathe a cautious sigh of relief now that the investigation is over, thinking that you can finally resume your life. The elation you felt months before at your once in a lifetime achievement has faded, but you still believe that you have much to offer your
profession in this new position of elevated responsibility.

So you inquire as to the status of your promotion but hear nothing for another five months. Then, an official in your field determines that a panel should be assembled to revisit your selection for the screened job.

Interestingly, this panel process is how you were chosen initially. But you support the process and are pleased to learn that a second panel reviewed your complete body of work, and also reviews the complete investigation outcome, before arriving at the exact same decision that the first panel made. And that is, you were the best person qualified for this promotion.

In my case, the Secretary of the Army was the official who ordered a promotion review board of five Army generals to review my file, and the investigation, before making a recommendation on my promotion.

That promotion review board
unanimously upheld the decision on my initial promotion board by recommending, again, that I be promoted.

Another month passes before you learn that the official, in my case the Secretary of the Army who assembled the panel, decided to ignore the findings of the panel and punitively withdraw the support for your nomination.

You, your friends and your family are devastated. You don't understand because your expertise and qualifications for the position have been affirmed twice now.

Most recently in full light of the false allegation made against you, and the related investigation. So I ask you, what would you do next?

I requested a 15 minute office call with the Secretary of the Army, 15 minutes, to try to understand his decision making rational. That request was flatly rejected.

Again, I have to ask you to imagine yourself in this situation. You've been denied a
once in a lifetime opportunity that you
previously had earned, but now on top of that,
you've been disgraced and humiliated across the
entire breadth of your profession.

So, even returning to the position you
held previously is not an option. Again, think
about what you would do in that situation.

For my wife and I, we elected to
exercise the only options we believed were
available to us at the time. I filed two sets of
paperwork.

The first was for retirement from the
Army. The second was a lawsuit for defamation.
Forty-nine months and $200,000 later, about 15
miles from where we are right now, a Fairfax
County juror of four men, I'm sorry, of four
women and three men, determined that the
allegation was indeed a lie with intent to
defame.

The amount of damages they awarded was
record setting, because according to one jury
member, "we wanted to make sure nothing like this
would ever happen again."

So I ask you to place yourself in some

of the situations that I experienced during the

period beginning July 2013 and continuing over

the next four years when the Secretary of the

Army decided to ignore the recommendations of two

promotion boards and take unqualified punitive

action against me.

I believe that was the only way for

this Committee to truly understand how perversely

my case was handled by the Army and Department of

Defense and how devastating the impact was. I

truly hope you took the opportunity to image

yourself in a similar situation, because, as you

heard this morning already, it's happening to

current service members far too often.

I also hope that at some point during

these remarks you came to the same conclusion as

that juror, it should never happen again. Thank

you all for your time and attention and I look

forward to answering your questions.

CHAIR BASHFORD: Thank you.
Questions? Oh, I'll start them.

Lieutenant Morse. Colonel Morse, sorry. If you said it, I missed it. How long was the investigation into the allegation of your case?

LT. COLONEL MORSE: It was, from accusation until filing of a reprimand, was about four months. And then the grade determination board lasted another six or seven months, I think.

CHAIR BASHFORD: Thank you.

BGEN SCHWENK: So, what would you guys recommend to change the system to fix some or one or more of the things that you experienced, or that you know others have experienced, that didn't work well?

COLONEL JAMES: In my position at Save Our Heroes, we actually made eight trips to the Capitol this last year. And we've analyzed this as well as we can.

We're only 40 volunteers, but we do have a lot of legal people on our team. And we
hooked up with some well-known and well-connected
people here in D.C.

And basically, we've boiled it down to
a couple of suggestions. And I saw Ms. Coyne's
testimony from last time. Very, very good by the
way.

But her suggestion was a little more
band-aid. And I think, Judge Grimm, I think you
used that term if I remember correctly. Anyway,
we think it's at a very high level.

Right now, basically one senator can
ruin a general officer's career. We think, and
we're driving to have at least ten senators, in
writing, say that the general officer is not fit,
whatever, on a nomination.

We also believe strongly in
eliminating the Feres doctrine. And I'm sure you
know the Feres doctrine. But that would help in
a lot of these cases, and it would help in Wil's
case.

Having a chance to hold the prosecutor
accountable, much like was done in the Duke
Lacrosse case.

And then, and this falls to what happened with all of us here, and we think you got to keep these investigations out of the newspaper. We are finding that once they get into the newspaper, that person is dead. Literally.

Because the service must save face. They put them in there in the first place and now they have to save face and they're going to go for some sort of collateral charge to make it look good. We're seeing that all the time.

And I think Jay's is a perfect example how they're using non-judicial type punishment in not going through the normal system. Which is exactly against what Secretary Mattis wanted in the letter he wrote about six months ago.

So that would be my recommendation. That's what we're working with our people in the Hill on. And we'll make at least eight more trips in 2019.

HON. GRIMM: Can I ask you a follow-up
on that question, Colonel?

     COLONEL JAMES: Yes, Judge.

     HON. GRIMM: Your experience was, is that the announcement to the press came from within the Air Force itself as opposed to from the accuser or from someone else, is that what --

     COLONEL JAMES: Well, how mine came about was they found an Air Force Times writer fishing around on the docket. And I guess he gave my lawyer a heads up he was going to post something on the next Monday. So that's how mine got in there.

     But, I mean, that's all it takes is a reporter to go through the docket and then put something in the paper.

     HON. GRIMM: Because, if the information was publicly available information and there was no action by the Military service to bring that to the attention of the reporter, how would that be possible to prevent that from getting in the press, one of your recommendations was, don't disclose this information to the press
until such time that there is some event, such as a charge or something that would be public record, how could this Committee make recommendations to the services themselves that would prevent premature disclosure of this information to the press? Do you have any thoughts on that?

COLONEL JAMES: I don't. But I know of two that I'm working right now that are very high profile. I won't go into details.

But it was almost like there was a chest-beating going on by the services to get it out. I think that's very unfair. And we've heard the reasons why already. And it's going to be very unfair to these two cases.

BGEN SCHWENK: Colonel Morse or Colonel Riggins, did you guys --

COLONEL RIGGINS: Yes.

BGEN SCHWENK: -- have anything you wanted to add about the case?

LT. COLONEL MORSE: It's all right if I go after you?
BGEN SCHWENK: Okay.

COLONEL RIGGINS: I certainly have some thoughts here and absolutely agree with everything that Doug commented on, based on my personal experience.

The other thing that strikes me in all of these situations is that there is this constant mantra of epidemic, and I believe, and I saw personally, and knowing a little bit about these gentlemen's cases as well, having that mantra continue on and one leads a perception that these are not individual cases, that each have to be looked at and weighed on their own merit.

I think somewhere along the way we lost the basic focus that every single accusation, every single event, every one of these, has got to be looked at as a separate standalone case.

And in all of those cases, both the perceived victim and the accused, have rights that need to be absolutely protected. I think
some of that is informational in nature. It has
certainly processed, focused in nature.

And I know in my case, for the
Secretary of the Army, the review that I talked
about, where he was able to back away from the
promotion review board's case, I mean, those were
reviewed by both the Army Inspector General and
then the Department of Defense Inspector General.

And so, essentially punitive action
was allowed with no finding of wrongdoing. And,
again, in my mind, it's because we've got this
tidal wave where we say we've got this epidemic
and so we stop looking at the individual aspects.

I think if we, more than anything
else, we need to refocus on that.

BGEN SCHWENK: Thank you.

LT. COLONEL MORSE: I think two
things, and one touches upon what Colonel Riggins
said.

This is the same thing I said every
time I went to Congress before all this happened
to me. I mean, every single staffer or
representative or senator I talked to, I said, this is two separate systems you're talking about. This is how we treat someone who alleges that they've been assaulted, and this is how we treat someone whose been accused of being assaulted.

And I think that what we've done, I think because of congressional oversight, and I mean over, in both terms, as in too much in oversight, we've created one system. So we've essentially said, if you follow that trail the conclusion is that anytime a victim makes a statement it is, by default, true.

And there is no circumstance where someone whose claiming that she was assaulted, whatever, lied. And it's just not true.

It's created a situation where there's nothing I can do to defend myself. Nothing. No matter what the evidence.

A specific example, as it relates to Judge Grimm's statement about leaking this to the media. I was 40 years old, I had never been
married, I was single at the time. I think I had a reputation as an outgoing guy.

I'm sure that CID, I believe that the investigation was leaked by someone from the CID Office in Germany, watch all the other allegations come rolling in. When none did, and part of that is based on, this person who accused me, this isn't just a, this person ordered me to come to his hotel room and assaulted me, this is five pages of statements that I feel I was able to overwhelming disprove. But none of that matters.

Because if you say anything that puts into question the victim's credibility or why the victim would lie, then you are perceived as victim shaming or if you then put more weight or more credibility to the accused, you're going to get taken to task by Congress.

So, two separate things. One is, understand that these are two separate systems and they can be two separate systems, and they should be two separate systems.
If a person comes in and says I was assaulted, it's okay to say, I'm sorry this happened to you and I believe you and we're going to do a proper investigation. It's also okay to go back later and tell her, we did an investigation and we're not, we don't think you lied, what we're saying is we don't think there's enough evidence to go forward and we're not going to. That's okay to do.

The second part of that is the role of the attorney in this. I think that a staff judge advocate has an obligation to uphold the law at all costs.

My fear is that that has been, that's been subordinated to a desired protector convening authority. And so, as an advisory staff judge advocate, if you tell the convening authority there is not evidence here, not only not evidence to not go forward, there's not evidence for probable cause and there's not evidence for titling, then you've just placed that convening authority at risk of being
promoted to the next rank or even a lateral transfer.

And so, if I were you, I would ask some staff judge advocates if they believe that they've given, what they believe their obligation is to their convening authority, they're sure that he or she is --

BGEN SCHWENK: Absolutely.

LT. COLONEL MORSE: -- he or she is ready for promotion to the next rank and how that advice might play out if they advised to not go forward on sexual assault charges.

CHIEF MCKINLEY: I have a multi-layered question for each one of you. First off, I want to thank you for your service. I served alongside each one of you and I want to thank you for all that you've done for our country.

I also want to make a statement that the Air Force Times is not an official Air Force magazine. We all have our opinion on them but it's not from the Air Force.

I want to ask you, for your defense
counsel, each one of you had the Military defense
counsel, did you feel that they were properly	trained and willing and had the time to put forth	on your cases?

Do you think there was undue pressure,
like you, Colonel Morse, to the JAGs and so
forth, convening authorities, to really try to
find guilt and, we all served because it's all
about mission and how did your cases affect
mission capability and the morale of the people
surrounding you? Thank you.

LT. COLONEL MORSE: If I could answer
the second question first. You know, one of my,
I have never wanted to turn this into, for me, I
never wanted to turn this into me being like a
poster child for a men's advocacy group.

That's not the person I've been,
that's not how I lead in the Army. I believe
that I have treated everyone who's ever worked
for me fairly.

And I would ask all of you to go back
and interview every single woman who ever worked
for me and see if any of the allegations against me are consistent with any of their experiences.

I bring that up because, what I do fear is that you now have, you potentially have a situation where a male senior officer will never ever be in a room with the door closed with a subordinate female. Won't take a, won't share a taxi with her TDY, will get separate rental cars or whatever it might be.

It's created, as we all know, perception is more important than reality. It's created this perception that if I am anywhere with a female soldier or a female airman or a female Marine or a female sailor, I'm putting myself at risk of an accusation that I cannot defend. And I think it's awful.

I think it's, some of the absolute best people I've served with were women judge advocates. And to think that this situation has the unattended consequences that they're potentially discriminated against more than they were before is troubling to me.
But that's not my story to tell. You ought to call some women in here and ask them if they, if my experience has affected their experience in the JAG Corps since this happened.

CHIEF MCKINLEY: Okay.

COLONEL JAMES: Chief, thanks for your question. First of all, I want to clarify in the Air Force, hopefully I didn't lead people astray by thinking it was by the Air Force, but my point of that was, if I could have taken the article out, I think somebody from the Air Force could have taken the article out.

Your question about defense counsel. I had two Military defense counsels. The first one was actually my best. He was a young captain, good guy. I got frustrated and fired him because I couldn't understand why this thing was going on.

Then I ended up getting a major who was supposed to be the best ADC in the Pacific, because I was in the Pacific at the time. And she was okay.
The only thing, she didn't understand what SAID meant. I asked her one day, you know what SAID is? And I don't, most of you probably know, sexual allegations in divorce.

I thought that was kind of frustrating. And another comment I asked her, I said, how is this thing continuing, I don't understand what evidence they have. And she's, well, they have very strong testimony from a 15 year old kid. That frustrated me.

As far as, I did not see any effects of mission capability effects at the time. I had a very high profile position.

Hats off to my leadership at PACAF at the time. There were only about three people on base that even knew what was going on. The four-star, the three-star and probably the two-star. And obviously all the other side guys chasing after me.

I was able to, my boss was, my immediate boss was gone a lot, so I was in the very close hold meetings with only about six of
us in the room, twice a week. Which was great. They treated me as a professional, as I thought they should.

Things started breaking down towards the end though. After a year, when I said I'm done, actually, my last day on active duty I represented PACAF on a very high profile, and it just happened in the Pacific.

So I can honestly say I was treated with respect and professionalism until my last day. But, after the whole thing ended, you will have to go back and ask, Chief, some of your friends, but the entire PACAF leadership was decimated. And that goes back to my national security issue.

If a meth addict from LA can destroy PACAF leadership like that, what could a spy from a bad actor state do? So, I will stand by what I said.

COLONEL RIGGINS: Chief, thanks for the question. You know, in terms of the military defense aspect to the question, and I'm not sure
how the other services do it, but in the Army
once you are selected for promotion to general
officer -- from a personnel standpoint you are
handled a little bit differently.

One of the ways you are handled
differently is if you do have a need for military
representation you are typically given one of if
not the most senior staff judge advocate member
that is available on staff.

And initially I was assigned a
lieutenant colonel who was the branch chief for
defense here at Fort Myers, right next door.
About a week into the investigation I was told
that I was getting reassigned by the JAG office
to a major, a very competent young man, but it
was his first assignment as a defender, so before
that he had only been in a prosecutorial role.

You know, he represented himself well
and did a fair job. I mean there were a couple
of issues that we had to work through. And,
ultimately, at the end of the six month
investigation that was conducted by the Criminal
Investigative Division in the Army, you know, there was no finding of wrongdoing.

Part of the issue though is that I asked the question -- and it really didn't hit home with me at the point that the outcome of the investigation was published, it took a couple of months while I was waiting to see, okay, what's next.

I learned through the more senior defense attorney that the outcome of failure to establish probable cause is not the same as what Jay talked about, and when he said, look, we don't have any reason to take this forward.

And so what the outcome of the investigation did, and, quite frankly, I think counsel was, their hands were tied in terms of what they could do for me here, we were left in this middle ground, not guilty, but not innocent.

And so I asked the question, I called CID, I even talked to the one-star director of CID in the Army and he admitted to me in conversation that there is a reluctance, unless
the accuser goes back and admits that they made a
false allegation there is a reluctance for the
investigation to go down the road and say we have
no reason to believe that this allegation is
valid.

Well, so in the meantime we're stuck
in the middle and that's why, you know, the word
"Colonel" is on my nametag today instead of
Brigadier General. We've got to figure out a way
to get out of that gray space.

LT. COLONEL MORSE: If I could add to
that titling decision. So basically there is --
You can get titled for an offense. The standard
is that it's supposed to be credible.

So if we have, in my case, a trial
counsel who says I'm not going to assess either
party's credibility, and to go back to one of my
previous answers, I do believe that's because if
you either as a prosecutor or even as a defense
attorney if you bring up evidence that suggests
that the claimant is not credible then that is
called victim-shaming and it's automatically
discounted.

So the titling decision is supposed to be if credible evidence exists. It's a very, very low standard but it has absolutely outsized ramifications if you title somebody with an offense.

To go back and get it overturned is nearly impossible. There are two circumstances. One is, as the Colonel said, is that it's basically the wrong person, completely. There is DNA evidence, the alleged victim comes back and overturns her claim.

The other is if there is new evidence. In my case I actually presented what I believed was new evidence, two brand new statements that were undeniably, overwhelmingly, contradicted very key points in my accuser's statement, I mean overwhelmingly.

CID came back with their answer. Nine separate people on the Board said that I provided no new evidence. A couple of them said all I did was to serve to victim-shame.
These are in written statements that when you read it you're just, you have the sense of like I don't, are we reading two separate documents, like it's not based on any sort of reality.

And I do think it's because of a reluctance that if we don't title someone or if we don't take some sort of action then our convening authority at some point is going to get in trouble.

COLONEL JAMES: I totally agree with what Jay said. In my experience at Save Our Heroes we are seeing a tendency now in the last six months to go the non-judicial punishment route because here's what happens, and Wil and Jay are both good examples of this and I have seen it multiple times.

I've got a lieutenant commander in the Navy in this exact situation. Accused goes through like all this and figures out that, you know, it didn't happen, but now they are a liability.
They can't put their name in front of Congress to be promoted because they are afraid a senator, specifically a senator, because it's senators that approve it, will see that and start asking questions, so they are done.

So typically what they will do is, you know, what they did to Wil and I, just basically get us out or find the non-judicial punishment route so they can go back now and say we did something. That's typically what we are seeing at Save our Heroes.

CHAIR BASHFORD: I have a question because due to your rank and length of service you are somewhat atypical of the bulk of the people who are accused.

How do you think your experiences differ from that of say an E-3 or a private, somebody who is 19, 20, 21, or do you think they differ at all?

LT. COLONEL MORSE: I mean I think I had the fortunate or unfortunate experience of knowing how the system worked basically, you
know, from bottom to top, and I don't think our young soldiers know that.

What I don't think is different is that they are still immune to the same pressures. Even if they have a company commander or a battalion commander who might be taking action, those commanders are still being advised by the same staff judge advocates, or trial counsel who answer to those staff judge advocates who are still ensuring that action is taken.

I don't think they are able to do things like, you know, afford outside counsel to ask specifically, in my case, for a regional defense counsel, someone that I thought, someone who I admired and wanted to represent me.

I don't know that young soldiers have that same experience. I also think you just -- And the fact is an E-4 does not have the same power or wherewithal or knowledge of the Army, you know, that a 40-year-old O-5 does.

COLONEL JAMES: That's a great question, ma'am. That's why our organization
exists, for that young E-3/4/5/6.

    You know, a colonel can figure it out.

But I just put myself back when I was a second
lieutenant and a captain was the big guy as a
second lieutenant.

    I can't even imagine being an E-3 or
E-4, and typically what we are seeing, and,
again, I'm using my experience, and I see this
all the time, they'll go to the young E-3 or E-4
and say, hey, if you go to a court-martial you're
going to get 25 years so you might want to just
plead, you'll get three years, you'll get kicked
out, but you'll be good to go.

    What they don't tell him is he's going
to be a registered sex offender for the rest of
his life. So those are the people I am trying to
get.

    We've got one case going on now it
went that exact scenario that I just said and
we're helping him and they told him -- Just don't
plead to something you didn't do.

    Get a court-martial, go to a court-
martial. They have now denied the court-martial
and given him an LOR. And you know what's going
to happen now, they're going to kick him out.

And he is a class act. I mean he's a
fantastic kid, so we're going to do everything we
can.

COLONEL RIGGINS: Chairwoman, thank
you for the question, it really is a good one. I
would echo, you know, I mentioned the civil court
case that I had and when that hit the news in
August 2017 my email inbox immediately filled up
with emails and requests for information about
how I did what I did and it spanned the spectrum
of rank and it included a lot of parents.

And the parents typically were
involved with the young enlisted service members
exactly that you are talking about, because, you
know, there is absolutely a realization, it's
already been said there that, you know, these are
19, 20, 21 year olds who are absolutely, they are
already in a situation that is unlike anything
they have ever experienced before because they
are in the military.

They are still trying to figure this out. Now they are dealing with something that is going to affect the rest of their life and in a lot of cases they don't even realize it but their parents do.

And so I would tell you that within 45 days after, you know, my case hitting the news I probably had 30 to 35 different sets of folks contacting me.

And, again, I can think right now at least seven of those cases it was parents and in every one of them I picked up the phone and I talked to them and I said, hey, how can I help you.

In many cases I referred them to Doug and to the organization there and in some other cases I actually ended up talking to them about attorneys and in some cases linking their attorneys up with the civil attorney that I ended up hiring.

But what you find, especially for some
of those young enlisted folks, you know, they
come from, you know, low or middle class
families, they certainly -- We know that service
members don't have the resources it would take to
fend for themselves, but I would tell you their
families don't either.

And so they are truly in a situation
where they have no recourse other than to take
what is offered and in some cases it does really
become a, well, what's, you know, what looks to
be the lesser, and far too often we have seen
cases, and I have had parents tell me, well, you
know, my son has been offered a reduced, you
know, offense plea, what do you think.

I felt woefully inadequate to answer
the question. But the fact that they were even
offered that and, you know, again, back to the
point we made earlier, their case hadn't been
heard at that point, the investigation wasn't
even done.

I mean this was pre-conclusion of the
investigation and these are offers that are
already being made, hey, go ahead and plead
guilty to save us all the time, because this is
part of an epidemic and you are just swept up in
the wave. We've got to do better.

CHAIR BASHFORD: I have a follow-up.

Since a letter of reprimand can end a career or a
finding of insufficient evidence to go forward
can end a career, Colonel James, you had said,
you know, sometimes your advice is go ahead and
hold out for the court-martial.

If you are acquitted by a court-
martial do you have any sense of what that does
to your career, if anything?

COLONEL JAMES: Yes. I will stand by
what I said earlier, you are done with an
allegation alone. You're done. But at least you
can clear your name, you know, you go to the
court-martial.

What Wil said is so true. I get more
phone calls from parents than anything else and
my heart drops when I hear somebody has pled
because they're done, you know, so, yes.
MS. TOKASH: I have a question for Mr. James. This is Meghan Tokash calling telephonically.

CHAIR BASHFORD: Sure, please.

MS. TOKASH: Thank you, Chair Bashford. Mr. James, you used the term "proven false accusers" in your opening remarks and to me as a federal prosecutor the words "proven" and "false" have special meaning and in some cases they have legal implications.

Can you please explain what you mean when you used the term "proven false accusers" and how you prove that accusations are false in a trial before a judge or a jury?

COLONEL JAMES: Sure. Thanks for the question. Again, I am not a lawyer. Sometimes we in the flying world thing we are, but I'm not, and my wife keeps me under control, but --

(Off microphone comments.)

COLONEL JAMES: Thank you, sir.

(Laughter.)

COLONEL JAMES: Thank you, sir. Those
words, ma'am, were used very specifically. We have one proven false accuser that we have, and I don't know what the term would be, but we are following in our organization.

I won't go into the details because this isn't the forum for it, but it was in two different courts. We have written two letters to the FBI over it, and, in fact, I made a phone call to the FBI field office over this issue.

This person is collecting VA benefits. This is a whole other enchilada that should be brought up in a different forum. So I understand what that word means and in my term, you know, ma'am, I am not aware, again, but this was proven in two different court settings.

HON. GRIMM: Could I just follow --

(Simultaneous speaking.)

MS. TOKASH: So do you mean acquittal?

HON. GRIMM: Yes, that's what I was going to ask, are you saying that there were charges brought by this person that went to trial in a criminal context where the jury found the
accused not guilty? Is that what you mean by --

(Simultaneous speaking.)

COLONEL JAMES: Yes, sir. One was

actually appellate level and the other was

actually a Board of Inquiry.

HON. GRIMM: Okay, where the official

result of whatever the Board or the court was
determined that the accused was not guilty or not
responsible?

COLONEL JAMES: Yes, Judge.

HON. GRIMM: Did those specific

findings include a discussion of credibility? I
think what Ms. Tokash is trying to get to is that
sometimes there are specific comments in a
court's review of evidence that comments on
credibility.

Were there comments on the credibility

as being the reason why that was the finding or

would you have us understand that if a charge

proceeds to an adjudication and the accused is

not found responsible that that means that the

accusation was false, do you equate that as being
the same thing?

    COLONEL JAMES: This one was blatantly obvious. And, ma'am, I know your background. I, like Wil, studied all the bios and I know your background, a victim, and I appreciate everything you are doing, because I understand the other side of the coin, too. This one was --

    MS. TOKASH: I was a defense counsel too.

    COLONEL JAMES: Yes. Judge, this one was a clear cut credibility issues and the person who was accused was a Navy lieutenant commander on a boat who she didn't even know and NCIS at the time investigated it and admitted that on their investigation.

    So hopefully that answers your question.

    HON. GRIMM: I think it does.

    MS. TOKASH: It does.

    COLONEL JAMES: The interesting thing though, back to this particular case and what we've been talking about, this poor lieutenant
commander is waiting to get promoted to commander but because of the issues we've talked about he's been on hold for almost two years.

     HON. WALTON: Let me ask a question. It seems to me that all of you are expressing the underlying reason why you think you were not treated fairly, and that's political pressure, whether it be political pressure externally for the military or within the military.

     As a federal judge I don't have that type of pressure because I am insulated from that type of political pressure. Understandably there has to be a disciplinary system within the military, but is there any way that the military system can be totally fair and impartial when those external and internal political pressures are in play?

     LT. COLONEL MORSE: You know, I don't have an answer to that but I do have maybe some thoughts, and this goes back to when Senator Gillibrand first posed, so 2014, when she first presented a bill for the Senate floor.
If I recall correctly one of her suggestions was that all determinations be turned over to judge advocates. And I thought at the time you will see charges and conviction, you will see charges plummet if you did that.

You might see convictions go up, but my belief was that you would see charges plummet because now you have a trained judge advocate who is looking at the facts and not making a determination of I believe this person or not, but making a determination as to whether or not this meets a legal standard and if I should take this forward to trial.

I don't know if the answer is to give this purely to judge advocates to take authority out of the hands of commanders and to remove Congress's ability to provide oversight to that judge advocate, because my personal experience, I believe that the advising staff judge advocate in my case gave orders based on a desire to ensure his convening authority was not going to come under scrutiny by Congress.
I mean ordering a defense attorney to stop talking to witnesses is so unbelievably offensive to me, unbelievably offense, and I think that his advice was a direct result of concern about congressional oversight for his convening authority.

So I think if you take it out of the hands of commanders and give it to judge advocates you have to ensure that they then don't fall under the same scrutiny that the commander had done previously.

COLONEL JAMES: Judge, thank you for the question, sir. It's important to note that Save Our Heroes is an apolitical organization. I have been in Senator Gillibrand's office a couple times. I appreciate what she is doing.

We feel it's definitely political influence and that's why the senatorial approval, ten senators or more, we have worked through that issue.

We think it has nothing to do with the crime, it's just the crime of the day, the
politically incorrect crime of the day. Next year it could be something different, somebody is trying to drive some sort of political agenda, and I think the system is ripe for that.

One we are seeing trending now is, you know, you've seen it in the newspapers, certain situations happen overseas and the law of armed conflict question.

So I think you might see that trend in the next couple years and I will tell you from our organization we are going to be helping those people just as, you know, now it's sexual assault, but in two years it might be something different. That's why we think this senator thing is so important.

MG ANDERSON: I have a question. Oh, you're going to, Colonel Riggins you're going to respond to that? I'll let you finish.

COLONEL RIGGINS: Yes, ma'am, if I may.

MG ANDERSON: I'll let you finish.

COLONEL RIGGINS: Yes, Judge, and I'll
try to keep it short, but, you know, I think back
to the case that -- Your question is absolutely
excellent and I am probably more prone to
answering it in the negative.

I do believe it's a top-down problem.

I believe it has to start with the most senior
leaders within the Defense Department but it goes
higher than that and it absolutely goes to the
power of the purse that controls Defense spending
and Defense promotions.

The Senate Armed Services Committee,
the House Armed Services Committee, we know the
roles that they play. When statements come out
of those bodies that say we have to do to
something at any cost -- I hate to draw the
analogy, but those are the same kind of
statements that were made that led to a very
unfortunate historical incident in Vietnam in My
Lai.

When you make just blanket categorical
statements like that we need to do anything, pick
whatever it is, at any cost, you open a flood
gate there and people will interpret that
differently, and I think we have seen many cases
where that is exactly the case.

So it creates a command environment
where from the top down you have individuals
interpreting that.

In 2013 the way the Secretary of the
Army at the time interpreted it -- So we had
conflicts going on, as everybody here knows, on
two different battlefields, Afghanistan and Iraq.

The Secretary of the Army's number one
priority for 2013 had nothing to do with combat
operations, it had nothing to do with training
for combat operations.

The Secretary of the Army's number one
priority in 2013, and you can look it up, it's
still online, was complete eradication of sexual
assault in the ranks of the Army.

Now I'll leave it to you to determine
how realistic of a goal was that anyway, complete
eradication, because we all know the military is
nothing but a reflection of society.
And I applaud the efforts that are going on to properly identify and to punish validated cases of sexual assault, please don't misinterpret.

But when we have a command influence that says at any cost realize that will be interpreted in ways that none of us I think if we were under the microscope and we were on the receiving end of that we'd be comfortable with. Thank you.

MG ANDERSON: My question is kind of a follow-on a little bit to what General Schwenk asked you regarding suggestions or recommendations you might make and it kind of goes to the damage to your reputations along the lines of information that is still in the DNA database, and your experience, Colonel Morse, trying to get back into the country and finding yourself on some kind of a list.

So I guess I am kind of leaning in the direction of do you have recommendations to suggest to us that would address this issue of
the DNA database, your ability to travel when, in your cases, you know, there were no, you basically were found, it was unfounded, is there something you could suggest along those lines?

LT. COLONEL MORSE: Let me clarify first the allegation against me wasn't unfounded, but that's part of my concern is that I was titled for these offenses.

The titling is what has -- Google is one thing. The titling has affected me less so. Like these other two gentlemen, my fingerprints and DNA are in a file somewhere as well.

The process has affected me. So if defense investigators, if commanders feel compelled to find something no matter what so that they can then tell their commanders or Congress that I took certain action then it's -- I mean it eliminates the need for any sort of a regulation or a standard because no one is following it anyway.

When I provide evidence that I believe clearly fits the definition of new evidence and
instead that's spun as victim-shaming then you've essentially, you've got a rule without any sort of purpose or enforcement.

I think -- I mean one way to do it is, or one suggestion is that the defense bar has more resources than they do right now. I was as a defense counsel and a prosecutor as well.

The way you interact with criminal investigators who are supposed to be neutral is a very, very different relationship and it's a very different experience.

As a defense counsel if I wanted something done I did it myself. If I asked an investigator to go do a follow-up interview typically the investigator would not do it.

If they did do it and the evidence was potentially favorable to my client, and this is my experience as one accused as well, if the person being interviewed has information that is favorable to me, to the accused, then the investigator didn't want anything to do with it.

I had two witnesses actually have to
write their own separate statements because CID had four questions for them and when they answered negatively to each question they weren't interested in the other answers, so two full long statements all with very relevant evidence.

The way it's set up right now, because the government controls all resources for the defense, especially in the early stages, as a defense counsel or someone accused you don't have access to the information that might be able to help your client.

HON. GRIMM: Could I go down that path, please, Colonel, on General Anderson's question?

LT. COLONEL MORSE: Yes, sir.

HON. GRIMM: What specific resources do you believe that military defense counsel who are assigned to defend accused in these types of offenses should have that they do not have?

I am hearing part of it, you're saying separate investigators, is that what you are saying?
HON. GRIMM: Yes, and I think that the CID could follow the sort of career path that judge advocates do. I felt like I was both a better prosecutor and a better defense attorney and a better supervisor of trial counsel having served as both a defense attorney and as a prosecutor.

Why can't a CID investigator do the same thing? Why can't he or she serve a term as a defense investigator and then go back to serve as a government investigator?

HON. GRIMM: Any other resources other than investigators?

LT. COLONEL MORSE: You know, I don't know. I believe in -- In my experiences I believe in, let me say this the right way. I believe in the power of judge advocates.

I believe that if you went as an individual you would find overwhelmingly attorneys who want to do the right thing.

I think the higher up that you get and the more likely you are going to get your head
chopped off if you stick your head out too far
then people start becoming beholden to political
pressures.

I do believe that judge advocates
receive great training both as prosecutors and
defense attorneys, and, frankly, from some of the
people in the room here right now.

I don't think that needs to be
changed, but I do think an ability to have an
investigator that can go out and find information
and that information is going to be confidential
and privileged, that that investigator has the
same credibility as a government investigator
has.

That's the other problem is if in a
civilian world you might get labeled as a defense
hack or as a government hack and because you
carry that sort of background with you any
information you give is automatically conditioned
based off of what type of a hack you are.

I think in the military because you
serve both as a defense and a prosecution you are
less likely to be labeled that way and I think
you could do the same with investigators.

HON. GRIMM: So that would be, your
thought would be is that as opposed to a separate
defense investigative service with its own
resources, its own chain of command, its own
individuals that it responds to, that you believe
that if it was part of CID, for example, in the
Army --

LT. COLONEL MORSE: No, sir, the
reverse. I think that you could treat it more
like judge advocates. I mean the trial defense
services in the Army is stovepiped.

So, Judge, individual judge advocates
can go back and forth, and many do, and, frankly,
the best ones do. You could do the same for
criminal investigators.

HON. GRIMM: But within the CID
command, right? So you would have --

LT. COLONEL MORSE: No, you could make
them a separate --

HON. GRIMM: A separate one.
LT. COLONEL MORSE: Separate one.

(Simultaneous speaking.)

LT. COLONEL MORSE: Just the

individuals go back and forth, yes, sir.

HON. WALTON: Colonel Riggins, if you

had outside counsel representing you obviously

the prescription imposed could not have been

done, right?

LT. COLONEL MORSE: Is that question

to me, sir?

HON. WALTON: Yes.

COLONEL RIGGINS: Could you ask that

one more time?

HON. WALTON: You indicated that there

was an intrusion in the ability of your lawyer to

interview --

COLONEL RIGGINS: Yes, absolutely.

HON. GRIMM: If you had outside

counsel that would not have been the case, right?

COLONEL RIGGINS: You know, I don't

know, and the way that that played out was that I

was given this order, my judge advocate, or my
defense counsel filed a writ with the Army Court of Criminal Appeals.

The Defense Appellate Division, who is normally supposed to defend any government orders refused to defend that order at appellate court.

The day of or the day before, I believe, that that was supposed to go in front of the Army Court of Criminal Appeals the government withdrew their order and said that the investigation was complete.

All that is fact. My opinion is that that was a lie. I think they withdrew it because they knew that it was illegal and it was wrong.

The evidence I would give to that is witnesses were still contacting my defense counsel as much as a week later saying, hey, investigators just talked to me about your case.

So I don't know that an outside counsel would have fared any better.

HON. GRIMM: To follow-up on Judge Walton's question, are you saying that your concern would be -- What I think Judge Walton was
saying was a military defense attorney ordered or
threatened with criminal charges of obstructing
an investigation if you continued to ask
questions with respect to this investigation in
order to defend your client.

A civilian attorney could, is not
subject to be charged in a court-martial, but are
you suggesting that had you had a civilian
attorney who continued to try to contact
witnesses and gather evidence in your defense
that the command would then have interpreted that
as your action through your attorney and then
taking action against you?

COLONEL RIGGINS: I think if I had a
civilian attorney and that attorney did not file
a writ with ACCA and instead said basically thank
you but I'm going to continue to do my own thing,
I believe I would have been, I believe that would
have been an additional -- Had I been charged, I
was never charged with anything, I believe that
would have been an additional issue.

HON. GRIMM: So that's the protection
of having outside counsel not part of the military system would not address some of the concerns that you have expressed?

    COLONEL RIGGINS: Maybe, maybe not. All I would add is that, you know, the way you respond to being accused of a crime and the way you handle yourself throughout that process is a very, very personal thing.

    Throughout the process I made a determination early when a lot of people were telling me basically burn the house down, to include some of my own seniors in the JAG Corps.

    My very personal thought was I want to conduct myself in a way that I believe I have conducted myself over the last 20 years and I wanted to conduct myself in a way that my peers and colleagues are going to admire and continue to respect me for and I wanted to conduct myself in a way that five years from now or ten years from now I'm going to be proud of how I conducted myself, and I think if I would burn the house down I would not be proud of myself.
COLONEL JAMES: I couldn't agree more.

One of the things I am proudest about is I was going to represent and represented PACAF in front of the PACOM Commander on my last day at work.

And, General Anderson, I just want to answer the question you asked, too. In my case, my case has been dismissed without prejudice. What I think the better thing to do would have been investigate me, I understand that, and if it takes a year fine, I think it should have taken six months, honestly.

I think everything was done in my opinion perfectly to that point. I was still working. Like I said I was still in some of the very high profile meetings, blah, blah, blah, but where it broke down was after that.

There comes a point where you have to say nothing happened and dismiss it with prejudice. There should be no reason it can't be dismissed with prejudice.

Keep in mind it's costing you $1000 a month to put my stepdaughter in an apartment down
the street because I can't be anywhere near her
because, as you all know, under the USMJ I am
retired so they can call me back any time, and so
there has got to be -- and I have been told, I've
been working on it and I have been told it's
almost impossible to do that, too, get it
dismissed with prejudice.

   COLONEL RIGGINS: And, General,
understand I would echo that as well. I
mentioned the outcome of the investigation being
in the gray space, neither innocent, you know,
or guilty.

   I think we've got to be willing to
make that call, we've got to get to that point.
I think Colonel Morse's point about a defense
investigator, based on a conversation I had with
the Commander of Army CID, is absolutely a valid
recommendation going forward.

   Again, from the words of a one-star
general who is responsible for all CID, there was
no effort to ever prove that the event didn't
happen. There was only an effort to confirm that
the allegation was true.

    That's such a different viewpoint,

especially when you are on this side of the

table. Thank you.

    CHAIR BASHFORD: I just want to follow

up on one thing because there are cases where

there is insufficient evidence. You're not

saying it didn't happen, you're not saying it did

happen, you're saying I don't really know, I

can't decide, I do know there is insufficient

evidence to bring charges forward.

    And I think in the civilian world that

rarely has an impact on a suspect because nothing

happened. But I think it's much harder in the

military world because there are cases where you

simply don't know what happened.

    What do you think chain of command

should do in those situations? Should they treat

it as a declaration of innocence? Do they run

any risks of having somebody still in positions

where the ultimate conclusion was we just don't

know?
COLONEL RIGGINS: Chair Bashford,

thank you for the question. I thought about this
quite a bit. I'm certainly not, you know, a
constitutional scholar, but to me it comes back
to a very simple concept and that is you are
innocent until proven guilty.

I know that is an over-simplification
in this case, but I think it's absolutely
applicable. There was -- You know, in the course
of an investigation if you can't prove guilt then
where does that leave you, and, you know, in the
courtrooms that you all see where does that leave
you?

I just think that there is a different
viewpoint within the military because of the
stigma and an unwillingness. And, again, you
know, the chief investigator for the Army is
saying we never tried to look at it from that
angle, that's not what we do. Why not?

I mean can we not do that? Are we
incapable of doing that? Is that maybe not the
right thing to do, you know, in some cases, in
all cases?

I think that's a question we need to take a look at.

COLONEL JAMES: Ma'am, we have to solve that problem because this is -- I'm serious on what I said, this is a national security issue.

We are seeing -- I sat down and talked with some of these contacts here in D.C., they're pretty knowledgeable, and we spent an hour and a half across the way there talking about it, and they say it boils down to simple game theory.

There are people out there that realize what benefits they get if they make an accusation. One is an automatic PCS of their choice, permanent change of station, VA benefits, so it's going to get worse.

There are actually Facebook pages out there that talk about how to do this, so we have to get a handle on it. I think it's at epidemic levels now, but we have to get a handle.

And that is a great question. That's
probably the panacea right there.

LT. COLONEL MORSE: I don't think it's some of these cases we just don't know what happened, I think most of the cases we just don't know what happened.

That's a reason that you have things like credibility assessments. That's a reason why you have judge advocates that are supposed to follow the law and apply standards to determinations every step along the way.

I go back to some of my original comments that these are two separate systems. I mean it doesn't have to be you lied or you're guilty, it can be it's okay to say we just don't know what happened here and we're still going to provide all the resources that we have to ensure that someone who alleges that they have committed a, someone who alleges they have been assaulted is provided every resource possible.

I would agree with Colonel James that there are people out there who would make claims just so they can get favorable treatment. I
think it's this big and who cares.

If you are going to have a person or
two who abuses the system, that's everything.
Sex assault doesn't make it special. Soldiers
since the beginning of time have abused the
system, a small number of soldiers have abused
the system for their favor.

That doesn't mean that you completely
swing the pendulum the other way so that it
causes so much unfairness for people who are
accused. You can have it both ways.

SGT. MARKEY: Chair Bashford?

(Off microphone comments.)

SGT. MARKEY: First of all thank you
for being here today. Part of this committee is
designed for the investigation, prosecution, and
defense, so I think it's important to have your
testimony here today for us as we move forward.

I am hearing a couple different things
just as an initial observation, and I have a
question. One is I am hearing political and
cultural issues that are occurring within the
military, a bigger tackle than maybe the technical aspects of your investigative and the process you went through.

So I wanted to look at more of what are some opportunities in the technical aspects, and I know there has been some testimony about the quality, the unbiased, the fairness of your investigation and the process that you went through.

And I think Colonel Riggins mentioned that investigators said that they didn't -- I forget your exact words, but we wouldn't look at this from that particular angle, meaning that they would only look at one side of the issue.

I can tell you if any of my investigators ever came to me and said that they probably would not be investigators for me because we are, we are supposed to be objective, unbiased, and fair from the very beginning of the investigation. The minute we show some sort of bias we are no longer credible as an investigator.
And I know, Lieutenant Colonel Morse, you mentioned something about the command staff making a certain decision, so there is a sore point where the investigation information is collected, witnesses are interviewed, documented, evidence is collected, and it eventually comes to somebody within your chain of command to make a decision about what they want to do with this case, preferral of charges or not.

So we've had testimony from all angles regarding the current process and whether that is a fair and objective process to have somebody within your chain of command make a decision about you or somebody else that might be within that person's chain of command deciding that.

So we have heard all kinds of statements about whether that should be continued as a process or whether that's a process that needs to be reviewed.

Do you feel in your opinion within your particular situations that that was an issue you were concerned about or do you think that
that was not an issue that was of concern?

    LT. COLONEL MORSE: Are you talking about the effect of a commander making a decision?

    SGT. MARKEY: Yes.

    LT. COLONEL MORSE: So I'll give you another very, a specific example to me, so please don't apply this to my experience at large.

    I was told before I went in for my official reading for my officer letter of reprimand, again, that if I did not file a voluntary retirement that the letter would be filed in my permanent file.

    This was told by the military, the advising staff judge advocate. When I went through my reading the general went around the room and asked everyone else in the room what their recommendation was, so either official file, local file, or get rid of it.

    He asked the sergeant major and he said local file. He asked the staff judge advocate and he said I'll talk to you afterwards.
He asked my first line supervisor and my first line supervisor said throw it away, this isn't, throw it away, this isn't even just a local file, tear it up. The evidence has proven that he didn't do this.

He is already not going to be a colonel. When he said that the two-star general jumped down his throat a little bit and he said we're not here to determine whether or not Colonel Morse can be a Colonel, he can dust himself and serve after this.

It was clear at that point to me that whatever was told to me was from the JAG Corps and not the commander. So that's my opinion, that's not fact.

Based on my experience I believe the JAG Corps ensured that I submitted my letter of retirement, not the two-star general, not the commander.

I think if the commander had -- There was evidence to me that the commander didn't care if I continued to serve or not.
I think that, again, when you have both commanders, especially at high levels, when you have commanders and judge advocates who are advising them and every case is potentially a high profile case.

This was not the case, you know, 15 years ago or ten years ago. You had limited high profile cases that got congressional attention. Now every single sex assault allegation is a high profile case, somebody is watching.

Commanders and judge advocates are human beings and they are going to be affected a certain way.

If they think that if they don't find a case, right, I mean the titling decision, if they say this is unfounded or if our stats show that we unfound a large number of cases that's going to get somebody's attention and it causes you to change your decision-making process and it causes judge advocates to change how they advise and it causes commanders to change how they might give a certain disposition.
SGT. MARKEY: So do you think the commanders are in a position to make that decision?

Do you think they should have the authority or do you think somebody outside the commander who has direct supervision over that unit or those people should be in a position to make those decisions in these cases?

LT. COLONEL MORSE: So I'm going to play lawyer and say I don't know. There is a lot of different answers.

What I will tell you is that commanders need real authority to do their jobs. Commanders need real authority to effect good order and discipline.

Judge advocates need real authority to advise on the law and not based on politics. Commanders need real authority, whether that is direct or indirect, real authority to make decisions that effect could order and discipline.

When they are getting told, or believe that they getting told, because, again,
perception is more important than reality, if
their perception is that if I don't act a certain
way on this one particular case I am not going to
get promoted, I am not going to get a lateral
transfer, then it's going to change the way they
make a decision.

It's very hard to say I don't believe
evidence is sufficient therefore I'm not finding
this case. That's a hard thing to do. People
don't like confrontation.

It's very easy to say let's just
court-martial it and see what happens, let's just
kick it over to the court-martial system and let
them do whatever they want to do.

COLONEL JAMES: I have a very strong
answer for that. I believe the convening
authority is a dead man walking, a woman walking,
one way or the other, because they are either
going to put an innocent person in jail or their
career is over.

We've got historical evidence of that.
And I won't go into details, but a very famous
one in the Air Force in 2013, somebody I respect a lot lost her job over a decision she made.

That goes back to the non-judicial route that I talked about earlier. This is how they are saving themselves is they are going the non-judicial route so that they can say, yes, we took care of it non-judicially.

So I agree with what Jay is saying, if they have the authority, which they do now, as the convening authority to make that decision let them make the decision.

Keep the politics out of it. If they think that is their constitutional or UCMJ authority and they decide the person, it did not happen, then let them make that decision.

COLONEL RIGGINS: Yes, Sergeant Markey, thanks for the question. And I wanted to go back, you know, if I gave you the impression that I felt that any of those investigators were biased in any way against me I led you completely astray on that because I never felt that way with any of the investigators I worked with.
I do believe how you approach a
question and how you approach, you know, what
your start point is affects your viewpoint of
what the outcome possibilities are, and I think
that's all I was trying to eliminate.

In my case, just to echo what these
gentlemen have already said, you know, one of my
last jobs in the Army was as a Brigade Commander.
I had a successful brigade command.

But I thought about the effect on my
peer brigade commanders when the Secretary of the
Army makes a decision, and so he was levels
above, you know, as I think now at least five
levels above the convening authority in my case,
so the convening authority, you know, six months
down the road said, insufficient evidence, you
know, let's move on.

But then the Secretary of the Army
comes back and now it's a political clout and a
political capital question and it gets back to
exactly the question I think that Doug came up
with, you know, am I going to end a career or am
I going to subject the Army to more scrutiny, congressional scrutiny, that we are not being tough on sexual assault. His decision point was very clear.

And you have to realize when the Secretary of the Army takes the input from promotion review boards and takes all the input that has come up to him through the uniform branches, and I didn't mention I met with the Vice Chief of Staff from the Army, the second highest four-star in the Army, and I had his support going forward.

So I don't know what happened with the Chief of Staff, but I do know what happened with the Secretary, so there were only two more levels there.

But when the Secretary of the Army makes a statement like that you know as well as anybody who has served in uniform the flow-down effect, the command influence, that that has and the ripple down effect that's going to have throughout the formation, and that's exactly what
happened in my case.

So, you know, no question, I agree
with the statement on convening authorities but I
think we've got to realize the influence that is
causing them to be dead people walking is
happening at a much higher level.

And, you know, unless we give them
some top cover at that higher level, the
convening authorities, from that higher level, I
don't know that we can solve the problem.

HON. GRIMM: Colonel Riggins, when the
first steps were taken to explore what to try to
do with the problem of sexual assault within the
United States military a number of options were
discussed both within and without the military.

One option that was discussed not
within the military, or at least not publicly
portrayed as being within the military, was that
perhaps that type of offense should not be within
the Uniform Code of Military Justice and the
military should not prosecute.

That was resisted by the military for
the reason that there was concern that the
function of the military justice system is to
promote the good order of discipline within the
military.

COLONEL RIGGINS: Correct.

HON. GRIMM: That also makes a
tremendous amount of sense when you are dealing
with the type of military offenses that the
Uniform Code of Military Justice has.

You don't hear any other oversight of
any other aspect of the military justice system
except for this slice.

Would it be better for the protection
of the rights of the victim, would it be better
for the protection of the rights of the accused,
and better for the military to remove the type of
pressures that you have alluded to if these types
of offenses were removed from the Uniform Code of
Military Justice and were to be investigated,
prosecuted, and handled as in the civilian
community?

COLONEL RIGGINS: Judge, that's been
a question that we have been struggling with for a long time and I know, you know, if I put on my old brigade commander hat I had a very strong impression --

(Simultaneous speaking.)

HON. GRIMM: Right, a different view than you might --

COLONEL RIGGINS: You're absolutely right. It's amazing, you know, what a difference a day made between, you know, when I was in command of that brigade versus when I came out of command of that brigade and then went through this experience.

So that brigade commander would have answered your question absolutely, you know, the commander and their command responsibility for good order and discipline within a unit is as old as our country and that responsibility exists whether you are in the continental United States or whether you are deployed on foreign ground and people are shooting at you and, you know, it's an issue of whether somebody is, you know,
retreating in the face of the enemy.

So to caveat a one size fits all answer to your question I just don't think I can do it wearing either hat, before or after command.

I think, and I thought this along, and my wife and I have discussed this and I discussed this with my civilian attorney, you know, throughout the civil trial that we had, and, you know, maybe there are some triggers that should be implemented just based on the experiences that we've had where it would be necessary to pull this jurisdiction away from the typical command channels.

I am very reluctant to say that though because there are second and third order effects in that that I think are very, very difficult first of all to measure, second of all to comprehend, and third of all if you don't understand, you know, what those second and third order effects are the absolute worst time to find out about it is when we have the absolute
treasure of our country facing the enemy.

I don't want to use that as a crutch, but I really -- The stakes are high. And so I certainly would be willing, after having gone through the experience and having commanded and having been responsible and had UCMJ authority over, you know, thousands of soldiers, I would be willing to have that conversation to look for triggers and times when maybe that makes sense to do it.

In terms of saying an absolute every time, I don't think I could get there.

HON. GRIMM: Thank you.

COLONEL JAMES: Judge, when I came on to Save Our Heroes a couple years ago I would have said a violently yes, let's take them out.

I have matured in that decision process as I go through this. I honestly think it boils down to politics and the political influence of the UCMJ.

You are assuming that this type of crime or whatever will be the one. What if it is
like I think two years down the road it's something else, so I think it boils back to we have to have a way to keep the UCI out of it, Unlawful Command Influence, out of the system.

So I agree with Wil, I would hate to see us take the commander out and then find out on the battlefield we needed it.

DR. SPOHN: One of the things that we have been doing as a committee is looking at sexual assault cases, penetrative sexual assault cases, from Fiscal Year 2017 and the outcomes of those cases.

We have reviewed, or we have data on about 2000 of these cases and what we see is that in 80 percent of these cases no action was taken and no charges were preferred.

And I think this is what has, whether it's a crisis of confidence in the military, I mean data like that have been used by Congress and other agencies to illustrate the lack of seriousness with which this crime has taken. How would you interpret that figure?
LT. COLONEL MORSE: I would want to know why. I mean I think this is part of the problem that we take these statistics and just apply a blanket rule to them and say that because you are not doing, because my presumption is that if there are more charges and more convictions then you must be doing your job and because there are fewer charges and convictions you are not doing your job, and I think that's false on its face.

I think that that is -- I am not a political guy but I think when people start saying things like that that's political pressure, right, because that resounds with the American public.

I would want to know all those cases. I was a budget officer for the JAG Corps and someone asked me how much does it cost to do a court-marital and I said it depends, what are the facts. This is the same.

So our, you know, 80 percent is that a no action taken because we are investigating or
-- I would want to know the reason behind those facts. I don't think you can draw a conclusion from just that statistic.

DR. SPOHN: But people do.

LT. COLONEL MORSE: Of course they do.

This is what I said, I mean perception is more important than reality.

So as human beings we have to be as senators, as convening authorities, as Secretaries of the Army, we have to be bigger than that and say that you might think perception is more important than reality, but we're trying to deal in truth and we're trying to have answers that meet truth not perception.

COLONEL RIGGINS: Yes, Dr. Spohn, I'd go back to, you know, the point I tried to make earlier on where we really need to treat each of these cases individually on some of the merits, and that's hard to do and it certainly doesn't resonate well when there are statistics that are put out there and, you know, we're never going to get ahead of that, right, I mean they're always
going to be out there.

But I think that is an opportunity for strategic level leadership to step up and do exactly what these gentlemen just talked about and say, look, we pledge a few things here, right, one is we will always, always investigate every one of these things and we're going to go down and we're going to get beyond the statistics into the details, right. We need to do that.

And that's not just for, you know, a sexual assault related, I mean that's anything that's going on, you know, in the military and I think we've got a great group of investigators who do that kind of work.

But then we've got to be able to act on the outcome of that either way, right, without worrying about, you know, the political influence that comes with potentially making what's perceived as the politically wrong decision. That's the challenge I think.

DR. SPOHN: Thank you.

CHAIR BASHFORD: Do any of the members
have anything further to ask the panel?

(No audible response.)

CHAIR BASHFORD: Thank you all for coming. I want to thank the staff, for I know it was hard to assemble to come.

I don't know what your schedules are, but if you have time you might be interested in two of the data presentations we are doing, which is the presentation of sexual assault court-martial data right after our break and then after lunch the presentation of the investigative case file data.

You are more than welcome to join us if you have the time. Thank you again for coming. We'll take a 10-minute break.

(Whereupon, the above-entitled matter went off the record at 10:56 a.m. and resumed at 11:10 a.m.)

CHAIR BASHFORD: Okay, Mr. Mason, Dr. Wells, Ms. Rozell, you're now going to be presenting us with your sexual assault court martial data. Is that correct?
MR. MASON: Yes, ma'am.

CHAIR BASHFORD: You have it.

MR. MASON: Thank you, ma'am.

Everybody, we have the PowerPoint behind you, but you all have a copy of the slides with you. And this is a variation of what you saw yesterday, with modifications, based on clarifications that I could make so that the charts are a little clearer for you.

What we'll be discussing is the descriptive statistics for FY 2015 through 2017. And then, Dr. Wells is going to do his multivariate analysis takeaways, which are for FY 2016 and 2017.

Just for situational awareness, the multivariate analysis that you see at the end of the data chapter where it says, FY15, and then there's a bunch of bullet points, and then FY16 and '17 in the text of the chapter of the bullet points, those are a combination of the multivariate analysis that Dr. Spohn did for 2015.
Those are her text and there will be a footnote citing back to the analysis that she did for the JPP previously. And then, the '16 and '17 are actual texts from the work that Dr. Wells did.

All of the tables that support all of the charts that we're seeing today are in the Appendix, like we did last year, and they are the source materials for '15, '16 and '17, so that that material -- if somebody wants to check our work, so to say, they can look at the data points and then reconstruct where we came up with our results.

BGEN SCHWENK: So, are you saying that we trust Dr. Wells' 2016-2017, but when we look at 2015 from that Spohn person --

MR. MASON: There's a big red flag.

BGEN SCHWENK: Yeah, we're not sure about that?

MR. MASON: Absolutely.

BGEN SCHWENK: Okay.

MR. MASON: And actually, Dr. Wells
requested the footnote. So, that should tell you where -- you know, much like yesterday, him saying that we do the simple work. He may have a problem with Dr. Spohn. So, we will have to discuss that later.

All right, so the first slide that you're going to see is that in the cases that are documented by the DAC IPAD that are in our database at this point, for FY15, '16 and '17, you can see a slight downward trend.

One question that has been raised is, as the numbers change, you see it in later charts. You'll see where different results are being realized.

That's as -- as we do quality control on the database and we update files, as well as add in new files that we're constantly receiving that we'll see on the Court of Appeals, that a case is out and it's on appeal but we don't have it, we'll go out and ask for it.

And you can see where we've added approximately 30 cases just in the FY16 numbers,
that were not included in the analysis last year, but are included at this point.

BGEN SCHWENK: And these count all three types of courts martial?

MR. MASON: Yes, this is all cases that we have in. So, for FY 17, anything that went to -- any charges that were preferred that are sexual assault are included in that number.

So, if it then went to NJP, it's still in that 658 number. That's just the number of cases for that fiscal year that are currently in our database.

BGEN SCHWENK: Okay, so it's not necessarily court martial.

MR. MASON: No. That is just -- it's all cases that are in the system that had a charge preferred for sexual assault that meet our initial standards.

BGEN SCHWENK: Right. And sexual assault charges, we're just talking anything under 120.

MR. MASON: Yes, sir. And there's a
few other categories how it falls in. And that's also in the report that explains where they come from.

MS. ROZELL: In addition to forcible sodomy under Article 125.

MR. MASON: On the next slide you'll see -- this is similar to what you saw yesterday in the preparatory session. We have FY15, '16 and '17, the Military Service of the accused.

The last column has been added, and it is the percentage of the Force in FY2017. So, what you're able to do now is to look and see that in our database the Coast Guard is three percent of the cases for FY17.

As a percentage of the total force, they were 3.1 percent. So, there's parity between how many cases we have in our database, compared to what is their total force percentage.

That last column, you'll see on the next slide, is sourced from our tables that we have for '15, '16 and '17 -- you're only seeing '17 here -- that explains what the population is
for each service, percentage-wise, versus the cases that are in the database. And there's no change to the FY17 slide as a representation, that you're seeing today.

On the next slide we have the sex of the accused. And there's no change to this slide. It is again showing that it's fairly consistent that 99 percent of the accused from '15, '16 and '17 are male, and roughly less than one percent are female accused.

As a question that was raised yesterday on terminology, you can now see there's just FY17. Here's a representation, and this change will be made on the other slides.

But rather than say rank of the accused, it now is titled Pay Grade of the Accused. And that was just a concern that was raised, so it's been modified.

Going to -- since we just were talking the accused at that point, we now go to the sex of the victim, that we can tell from our database what we are observing.
And again, it's fairly standard between '16 and '17, that 93 percent of the victims in the cases that we have seen are female. Roughly six percent between '16 and '17 are males, and then, less than one percent is -- the victims are both male and female against an accused.

So, you'll have multiple victims in a case, and then, less than one percent, when there are those multiple victims, it's going to be both male and female.

On the next slide, this is -- where we're going to be looking now, this slide and the next one that we're going to look at, you have an option -- and I need direction from you, please -- on which version you would like to see in the report.

It's not as much of an issue on this first one that we're looking at, which is the instances of you having male accused, and what the sex of the victim is.

So, whether the male is just
assaulting males, assaulting females only, or both male and female, the difference between the two charts is just how we represent it -- whether it's a percentage or the actual number of incidents we have in each situation.

It is okay to have this chart remain percentages because we're talking such a large number and you just use a percentage.

And on the next slide, where we talk about female-accused sex of the victims, do just numbers, because the concern was, yesterday when we had 60 and 40 percent, that -- what does that really mean when we're talking such a small number, when it's three and two.

So, in FY17, when we had a female-accused -- you can see there were five female-accused in our entire database for '17. So, rather than using percentages, the suggestion was use numbers.

So -- and we can have different -- we can do the male-accused with percentages and the female-accused with numbers, or we can do them
both with percentages, or we can do them both
with numbers. It just depends on how you're
comfortable with the representation.

HON. WALTON: Do any of the statistics
reflect how many victims are transgender?

MR. MASON: No, sir. We don't have
that information. Is there -- is there a
preference?

DR. MARKOWITZ: I certainly think that
for female -- for the female assailants, that we
need the specific number.

MR. MASON: Okay.

DR. MARKOWITZ: I think that it's
pretty important. I don't have a particular
preference in regards to the male-accused. But
certainly for the female-accused I think we need
the specific number, because it is such a low
number.

I agree that the percentage would be
somewhat -- not necessarily misleading, but it
doesn't paint the specific picture.

MR. MASON: Doesn't give you
granularity of what we're actually looking at.

DR. MARKOWITZ: Exactly. So, that

would be my particular preference.

HON. GRIMM: Does it have to be one or

the other?

MR. MASON: We can put both in if you

would like both in. Absolutely. I mean, I

could -- I don't know if combining them on the

same slide will work

HON. GRIMM: No no no no. I'm not
talking about that.

MR. MASON: Okay. No, we could have

all four charts very easily. That's not a

problem.

CHAIR BASHFORD: Do you have

percentages for the male-accused and numbers for

the female-accused?

MR. MASON: We can do that, as well.

CHAIR BASHFORD: If I see the numbers,

I immediately start trying to do the percentages

for the big numbers, but I'm just not that good.

So --
MR. MASON: So, if the direction that
you're feeling more comfortable with is, I will
leave the male-accused sex of victims as
percentages, and for female-accused sex of
victims, we will go to the individual numbers.
Okay.

And when you see the draft report at
the next version, when you actually are going for
the approval, it will reflect those charts
accordingly.

Okay, so the next couple of slides
we're not going to have any changes. With
respect to court martial data and the victim
relationship to the accused, this is something
that we're able to add in as a chart this year.

And the reason that it wasn't included
last year -- and also goes to the reason of why
we're only looking at FY15, '16 and '17 on these
charts -- is, prior to FY15 we were not able to
get the number specifically and how it was being
requested through the JPP with respect to
other -- the intimate relationship distinction --
intimate partner or spouse relationship.

In '15, '16 and '17, we've been able
to get that, and we will be getting it again in
FY18. So, rather than trying to compare two
different sets of data that do not have all the
same variables, we've dropped off the '12, '13
and '14 Fiscal Years in our representation.

We haven't removed them from the
database, so we still have that information. But
we're just not going to be reflecting it in our
analysis, because we want to show that all the
variable are present in all the cases that we've
added.

So, it is a new chart, but it does
show you, again for FY15, '16 and '17, what type
of activity we were seeing, or what type of
relationship we're seeing between the victim and
the accused.

On the next slide we talk about number
of victims per case. And again, there isn't
anything drastically different in this. The
numbers are very similar, and between '15, '16
and '17 it's fairly standard, or fairly consistent, I should say.

This chart has not changed from what you saw yesterday with the type of sex offense charged -- penetrative versus contact. Again, the question that was raised earlier, what cases are in our database? And we look at the most serious charge offense with respect to a sexual assault.

So, it's either a penetrative is the most serious category, or a contact offense is the most serious category. And then, we break it down from there.

What you can see in this has been fairly consistent that the most serious offense charged -- type of sex offense charged -- is going to be a penetrative at 73-74 percent, and then contact offenses, right around 26 to 26½ percent.

DR. SPOHN: For accuracy, you might change the title to Most Serious Sex Offense Charge, because some of those cases have both
kinds of cases.

MR. MASON: Okay.

DR. SPOHN: Both kinds of offenses.

MR. MASON: Okay, be glad to. Okay, the next slide is talking about Article 32 Hearings, and it will be the slide after this, as well. This is an issue that we started discussing last year.

As the Article 32 Hearing changed in format and, essentially, substance, we wanted to track how many 32 hearings were actually being held, versus how many are being waived, and what might be happening.

As we mentioned at the beginning, the number of cases that we received in FY17 was lower than what we received in FY16. However, it's interesting when you look at FY16 and FY17 on this chart, if you do a percentage, it has not changed in the number of held-versus-waived for the last two years.

So, even though we had a drop in the number of cases that we have in our database, in
this -- for this statistic the number has remained constant.

And then, on the next slide, you can see what happens when we're talking about the actual 32 waivers, how many times that a case is being waived -- an Article 32 Hearing that's being waived -- but there is not a pre-trial agreement that's requiring them to waive it.

The percentage when they were waived that involved a contact offense, the percentage that were waived involving a penetrative offense, and then the conviction rate when the Article 32 was waived.

Last year, that was an issue that was brought up in the discussions by the committee, was, what was happening when FY15 we had an almost 80 percent conviction rate, and then in FY16 it dropped down to 47.

We were curious to see where it was going to go. It has bounced back up to almost 62 percent. We don't know why. And it's something that the data working group -- again, what these
numbers show is what we can see in our database, but we don't have the reason behind it.

So, with the data working group, they may be coming back to the full committee with, here's guidance or suggestion of where we might want to go with further research to see what's happening.

And I should put as a side note, we have all the FY18 data, or we're in the process of adding that now. So, in six months or so we should be able to come back to you and say, here's what happened in FY18, and we'll be able to look at four years and make some better decisions on research at that point, because we'll have four solid years of data.

CHAIR BASHFORD: Chuck, what is considered a conviction to be included in the conviction rate?

MR. MASON: That it is a conviction on any offense.

CHAIR BASHFORD: Anything.

MR. MASON: Anything. Just that they
went to a 32 or waived the 32, but yet still had a conviction or not.

CHAIR BASHFORD: So, it could be dereliction of duty.

MR. MASON: Absolutely. The next slide -- case disposition court martial type -- gives you an illustration of all of the cases that we have where the sexual assault was preferred. How are these cases being handled?

It doesn't necessarily mean that a sexual assault is being handled at that level. It just -- it's in our database on how was it resolved if it did go to court martial. And you'll see the numbers are fairly consistent -- right around, you know, just pushing 80 percent for a general court martial, a little under 20 percent for your special, and just about five percent for your summary court martial.

The next two slides are, again, a decision point. I would like some guidance from you, if possible, of which style you would prefer. The original what you saw yesterday was
case disposition by Military Service of the
accused, and it says, FY2017.

We have this slide -- this chart will
be created for '15, '16 and '17, but I was just
showing you '17 for discussion purposes.

The next slide shows you when you
break out each of the court martials and whether
it was a penetrate -- courts martial, or whether
it was penetrative or contact.

Now, it is a bit of an eye chart when
it goes in this direction. It can be cleaned up
with shading or other ways to demark the
different categories. But if you like the
additional information, we can work with the
second slide to provide that detail.

DR. MARKOWITZ: Personally, I like the
detail. I know I wasn't here yesterday for this,
but for me I definitely like the detail. And so,
if you are able to provide that shading, that
for -- just knowing the way that I use data like
this, that would be really helpful.

MR. MASON: Okay.
DR. MARKOWITZ: So, I personally would like it.

MR. MASON: It's not a problem to create this. It's a few more keystrokes, but we'll be glad to get it done and we'll do it for '15, '16 and '17, so you can compare the three years against each other.

BGEN SCHWENK: I agree with what Jen said. Backing up, when the Chair asked a question about the conviction rate and the answer was, dereliction of duty or anything else, I personally don't care about dereliction of duty or anything else.

What I care about is, was there a conviction on the sexual offense that was charged. So, maybe we can't for this year, but for some year in the future when we're putting statistics together, I'd like to see the conviction rate of the penetrative sexual offense when the 32 was waived, and the conviction rate of the contact offense when the 32 was waived, so I really get an idea of what's happening with the
sexual assault offenses.

And so, that's on that slide. That's slide 16, I guess? And then, on slide 17, we have case disposition. So, my gut is, they're -- all the sexual assaults are put together on '17. But my gut is, well, the penetrative ought to be going to GCNs, generally speaking, and the contact probably not so much. But if we could break that down in the future --

MR. MASON: The next slide. We're getting there.

BGEN SCHWENK: Oh, we're getting there?

MR. MASON: Yes, sir.

BGEN SCHWENK: Okay. All right.

MR. MASON: Based on comments from yesterday, we're going to get there.

BGEN SCHWENK: All right, you know me well, you can shut me up. Thank you.

MR. MASON: And, sir, I will --

BGEN SCHWENK: Sorry to bother you.

MR. MASON: Okay. Sir, if we can do
the Article 32 before the report goes to the
final draft, I'll be glad to.

BGEN SCHWENK: Right. I mean, if you
can't, I'm just --

MR. MASON: We'll give it a try.

BGEN SCHWENK: Sure.

MR. MASON: If not, it'll definitely
be included in the next round.

BGEN SCHWENK: Okay, thank you.

MR. MASON: Yes, sir. So, the next
slide, Case Disposition, Penetrative Offense
Preferred and Contact Offense Preferred.

The question yesterday was with the
wording, whether it was as accurate as it could
be -- whether it was misleading or not. Because
the question became, we shouldn't be seeing
penetrative offenses actually going to a summary
court martial.

We went into the database to look at
FY17 to see exactly what was happening, and there
are ten cases where a summary court martial, a --
the most serious offense charged, or preferred is
a penetrative offense.

However, in six of those ten cases it was actually referred to the summary court martial. And in two of those instances they were found guilty of it. I believe they were found guilty of contact, ultimately, but not the penetrative.

So, even though we shouldn't be seeing these cases going to a summary court martial, it still is happening.

So, I changed the titling on the slide to be Penetrative Offense Preferred and Contact Offense Preferred, because that is the most accurate way. And, Dr. Spohn, that was based on your concern about how it was worded.

So, I think that clears it up because it does say that we're in the category. But we can show in the database also, just for information, there are 13 cases of a preferred sexual penetrative offense that went to the special court martial, and five of those were actually referred at a special court martial.
So, the most serious offense was penetrative in 13, and then five were referred still to a summary. So, it is still happening. It is a smaller number, but it's there.

So, that -- the changes on that reflect the concerns that were raised. The last -- next couple of pages I'm not going to go into detail on. Chair Bashford asked the question this morning of, again, well how did the numbers change from year to year.

And I'm going to provide a little bit more detail and will be able to show in the appendices -- because the appendix that applies to our report has all the data tables.

But you'll see if you look at last year's report, how some of the numbers have changed -- what the conviction rate was, what the acquittal rate was. And that's as we add in these 30-something cases and we're doing our quality control. We will see that as of the date today, you may have a different percentage.

The one thing you can feel confident
about is that Dr. Wells and I did these numbers separately and did them -- he's using his software, I'm using the Excel spreadsheet -- we came up with the same results.

So, we get there, but it does change from year to year as we're updating and adding more cases in that we did not have. Yes, ma'am.

CHAIR BASHFORD: I'm just going to say, I realize the conviction rates for the members panels have increased with the addition of new cases, but these are still god-awful conviction rates, and I think Judge Walton, Judge Grimm would agree with me.

So, these are the best of the best cases after the winnowing out period, and there's just something wrong, you know, and I think that that's part of what we're here to decide, you know.

And I don't know that we have the data yet to know, is it the wrong cases going forward, is it the prosecutors, is it the -- you know.

But this is not in norm with any other data
outside of this area -- you know, the civilian area -- that I've ever seen.

MR. MASON: And I think you will see, as staff we're going to take some suggestions to the working group of maybe other ways we can look at this information, or other data we might want to try to pull, and see if we can inform it a little bit.

But I would hope that by the next full meeting we will have some more direction for you.

BGEN SCHWENK: Chair Bashford, I think in the case review working group, as we wrap up with the preferred or no-action cases, one of the discussion items has been whether we should then launch on, why is the acquittal rate so low. So, we would skip the process between preferred --

CHAIR BASHFORD: Acquittal rate so high.

BGEN SCHWENK: The acquittal rate so high. Sorry. Yeah, why is the acquittal rate so high. Thank you. Yes, and just skip into that and see what Chuck and the case review -- I mean,
the data working group has, and decide what we need.

But we're thinking that's going to be records at trial, and going through those. So, even though the numbers are smaller, the size of the file could be significantly larger.

But -- so, we're thinking about that and I guess maybe at our next meeting, when Chuck has more detailed things, we'll have a better idea of what to recommend to the full DAC IPAD that the case review working group take on for next year.

MR. MASON: One more? One more?
Okay, and I'm -- so, the last four charts -- the last four slides, you have seen those, they were from yesterday, there aren't any major changes for today. If you would go to, I believe it's slide 26, it's Summary of Multivariate Results, I'm now going to turn things over to Dr. Wells, and he will talk to you about his analysis and his takeaways.

DR. WELLS: Thanks, Chuck. Thanks,
Members. So, we don't have for you today the
detailed analytic results from the multivariate
models. What we're prepared are the four summary
slides. But just to reiterate, we analyzed the
data for FY16 and FY17 and we estimated a series
of multivariate models for both of those years.

And we had looked at a series of
outcome variables for both of those years. So,
the first four outcome variables for both years
dealt with whether or not there was a conviction
for a penetrative offense, whether or not there
was a conviction for any offense, whether the
case ended in acquittal, and whether the case
ended in dismissal. So, those were the first
four dependent variables.

Then, we took off the cases that ended
in a conviction, and we looked at the sentencing
results. So, the first outcome variable we
examined was whether or not there was a period of
confinement given, whether punitive separation
occurred, and then the last dependent variable --
so, dependent variable number seven -- was a
combined measure of the length of the sentence
and the punitive separation. So, it was a
sentencing severity scale.

Okay, so those were the seven
dependent variables that we looked at in our
multivariate models, and we did that for '16 and
'17. And you'll have access to those full
results in the appendix if you would like to see
those, and we talked about those a little bit
yesterday.

So, what we have here today is just
the summary of patterns that we observed.
Because certain patterns emerged when you look at
the '16 data and the '17 data. And that's what I
provided for you.

So, the four predictors -- so, the
four variables that stood out included the
Military Service Branch, the number of charges in
the case, the type of charge or conviction
offense, and then last, a handful of victim-
related variables.

Those weren't as consistent, but
they're noteworthy. And that's what we're going
to have up here for you on the last slide. So,
the first slide summarizes -- oh, I'm sorry. Go
back, Stacy -- service branch.

So, the general pattern that emerged
is reflected here, that any chances of a
conviction were lower in the Air Force than the
other service branches across both years, and
that was pretty clear when we looked at those
multivariate models. There was something
standing apart there.

The other pattern that emerged when we
looked at the sentencing outcomes, is that in a
general sense -- not always, not compared to --
not all service branch comparison possibilities,
but convicted Marine Corps members tended to be
sentenced a little bit more severely than
convicted members of the other branches of
service.

BGEN SCHWENK: No.

(Laughter.)

DR. WELLS: Number of charges
consistently mattered across our model. So, the chances of conviction were greater when there were more charges filed in a case, and the chances of dismissal or acquittal were lower when there were greater numbers of charges.

And then, when there were greater numbers of charges, the severity of the sentences also increased.

CHAIR BASHFORD: And just to clarify, that's, again, any kind of charge -- adultery, dereliction of duty -- not just the sexual charges. Right?

DR. WELLS: Yes, ma'am. Yeah, we just summed up the total number of charges in the case. And you'll have access to the data that show the ranges. And it was a broad range of charges across the cases.

The charged offense or conviction offense, so the particular type of offense that we're talking about here, mattered. In FY16, if you were charged with a penetrative offense, you were less likely to be convicted than if you were
charged with a contact offense.

Also, regarding penetrative offenses, you were more likely to be acquitted and more likely to have the case fully dismissed. I mean, that was only for FY17.

Convictions for penetrative offenses lead to more serious sanctions, however, when we compare them to contact offenses or non-sexual assault conviction offenses.

Last, as I indicated, there were a handful of victim-related variables that weren't consistent across many models, but they emerged and worth noting here.

Dismissal was greater for intimate partner cases than other relationship cases. In FY16 and FY17, there was a relationship between numbers of victims, and an increased chance of conviction on a penetrative offense -- that was only for FY17 -- and then, military-only victim cases were linked to reduced chance of a confinement sentence, compared to civilian victim cases, and a mixture of victims military and
civilian. But again, that was only for FY17.

So, that's the summary of patterns that we see, and the full sets of model results are available for you.

The last thing I'll say is, the only thing we presented here were the patterns where there was a relationship. It's also important to know when the patterns show there is no relationship at all, because those findings can be just as revealing. Thank you.

MR. MASON: Unless you have any other questions for us, that is or data presentation for you.

CHAIR BASHFORD: I do have one question. Can you give us some examples of what you've seen where there was no relationship between different variates? You said sometimes the fact that there is no relationship is just as important. Can you give us a couple of examples?

DR. WELLS: Yeah, exactly. Rank or pay grade of the accused did not matter in any model. Gender of the victim was not important
across the models.

The intimate-partner variable was only important in that one. So, across the other models for FY16 and '17, that was generally unimportant.

BGEN SCHWENK: Do you want to discuss the racial issue? You know, whether there's any -- is there a problem with the race data that you're getting? You know.

MR. MASON: Well, with respect to the actual courts martial, we do not have that data. It is not a point that is captured in the record of trial that we have access to.

The -- I would suggest, sir, that you might want to ask with the Case Review, when they do their presentation this afternoon, they can tell you the issues that they have come across with respect to how the services are coding the races of the accused.

But it is not something that we can track in our database, and it's not even a field that we attempt to fill. The one thing that we
are doing that I can kind of piggyback on, we have been going back and adding the date of births to our data fields, so that we can, once the case review finishes with their 2000 files, we can try to mirror the investigation from the very beginning, to when it goes to trial, tie those two cases, and actually have, soup-to-nuts, the entire process.

So, we'll be able to see that when this investigation started and it actually went to conclusion, if there's any trends that might -- or common variables between the two sides, that lead us towards the court martial component.

BGEN SCHWENK: And what you said also true for victims? The difficulty in identifying the victims also depends on race?

MR. MASON: Yes, sir. So, with respect to court martial, we do not have that anywhere in our database at all.

BGEN SCHWENK: I just think that's something we may want to look into try -- that's
got to be somewhere. And -- because how else can
you evaluate whether the system appears --
numerically, at least -- to be even-handed or
not. So, I think it's something we ought to
think about making somebody go look, like the
staff, see what they can find.

COLONEL WEIR: If I could add,

General, the court martial documents that --

BGEN SCHWENK: No, you can't add,

whoever you are.

(Laughter.)

COLONEL WEIR: The court martial
documents that we upload into the database are
all the court martial documents you would
normally see. A charge sheet, Article 32,
Preliminary Hearing Officer's Report, Staff Judge
Advocate's recommendation to the convening
authority, result of trial, and any other, you
know, victim's wishes that we might be able to
pull down and upload.

So, in none of those documents is
there any place where race is a box that's filled
out in those documents. So, that's the reason why the court martial database folks don't have access to it, because the documents that they pull down as part of a court martial -- even the record of trial, it's nowhere mentioned, so that we wouldn't have access to that information from what they're pulling down.

But, I will hold the suspense until this afternoon and we'll talk about it again.

BGEN SCHWENK: I would also add for the Committee's information, that GAO was in the process of conducting a wide-scale analysis of racial disparities within the military justice system, or lack of racial disparities within the military justice system, in that report.

I believe it's expected out -- that February time frame? Then, I will say we should wait to see what they have to say. And Dwight, you'll send us a copy?

MR. SULLIVAN: Of course.

BGEN SCHWENK: Thank you.

CHAIR BASHFORD: Are we able to break
for lunch early and then start up again early?
Are we waiting on delivery, or anything like that?

PARTICIPANT: I could check.

CHAIR BASHFORD: We don't need an hour
to eat sandwiches, so why don't we break now and
come back at quarter-to-one.

(Whereupon the above-entitled matter
gone off the record at 11:44 a.m. and
12:45 p.m.)

CHAIR BASHFORD: Okay. Welcome back all. We're going to start our afternoon panel
with the Case Review Working Group Presentation.

MS. TAGERT: Good afternoon. For those in the aud -- have we started?

Well, good afternoon. For those in the audience, the next presentation is going to
be showing data that the Case Review Working Group has collected through reading sexual
assault investigations closed in Fiscal Year 17, and reporting information based on those case
files.
And the first section -- there's going
to be two sets of results that are going to be
presented today. The first are descriptive
statistics, which are a result of the Staff using
the database that we have to put together the
numbers.

And the second set of data is going to
be a more higher level analysis. And Dr. Wells
is going to be going over with that with you.

For purposes of the DAC-IPAD Members,
this is just a taste of the kind of data that
we're able to extract from the database.
However, anything that you may want to look at
based on the numbers that we've provided, can
also be discussed. And Dr. Wells and I could
potentially put additional presentations
together.

So the first set of data that --

BGEN SCHWENK: Can I interrupt for a
minute, please?

MS. TAGERT: Yes, sir.

BGEN SCHWENK: Let me just say that a
lot of the data that's here comes from our group of 165 or whatever cases it was that the Staff and the Members all reviewed.

It doesn't come from the 2055 big pot of cases that is our mission to complete. We've done 1400. The Staff has done 1400 of those. So there's 600 to go.

So, don't be thinking too much about conclusions from the data based on 165. Because that may be a great random sample, but it's not 2055.

So, it will be next fall when we have completed our work and turned it over to Dr. Wells. And he's done his analysis that will really have an in-depth review of all the data and what we can learn from it.

So this is sort of like a preview, a sneak preview of a small fraction. Thank you.

MS. TAGERT: Yes. I should have explained that. The first set of data that we're looking at are reporting parties.

And unlike in the civilian system,
victims are able to give obviously reports of sexual assault. But so are third parties.

And they have been broken down into victim authorized representatives, who can be people that are associated with the Family Advocacy Program, SARC, Special Victims' Counsel, Victims' Legal Counsel, as well as the third group, which is the Command.

The Command does not have the -- the Command, if they are told of a sexual assault or learn of one, they by regulation have to report.

It's a mandatory report.

However, as you can tell, the majority of cases that are reported to law enforcement, and we are not talking about restricted reports here. We're only talking about unrestricted, are not the victims themselves.

So, that was something that we found interesting thorough the case investigations.

DR. MARKOWITZ: Excuse me, Kate?

Medical providers, do they fall under victim authorized representatives? Or other personnel?
MS. TAGERT: They do.


MS. TAGERT: If -- of course if the victim has given that, yes. Exactly.

We've also broken down the other third party reports to kind of give you an idea of what those look like. And those were intimate partners, family, friends, neighbors, and then there was about ten cases where they didn't fit into any type of category.

The case review checklist also recorded the date of the sexual assault versus the date of the report. And we ran these numbers to show you incrementally how many reports were reported between certain days.

And so you -- reported within 48 hours is 33 percent. And the numbers go up to show you incrementally how many cases are reported within a certain amount of time.

For the report that will be issued in March based on Dr. Spohn's recommendation, we're
also going to do a median of these numbers to present for you next time.

There has been testimony provided to case review and the DAC-IPAD about the length of investigations. And potentially some negative side effects that maybe on the victim and the subject.

So we did an average duration of all the cases from the time that a case is opened. Not based on the reporting, just when the case was opened. To the time that the Command gets the report. All the time that the Commander can make a decision.

Next year we will also be providing the dates of how long it takes the Commander to come to a decision. I just want to be clear on this. This is just the length of investigation up until the time that the Commander can take action.

This is the victim demographic characteristics. I don't believe that there's any surprise here.
Overwhelmingly, victims are female and enlisted. The second largest demographic is the civilian spouse of a Service Member. There are 40 there. However, only 20 of those cases involved the subject being married to that civilian spouse.

The age of victims on average are between 19 and 20. That's the largest percentage of ages that we saw in these particular case files.

And for the next report we will link the age and the rank together. So you can see where those fall. We can kind of compare those together.

We also did a victim/subject relationship. And this was based on a hierarchy model that Dr. Wells did for us. Which was combining the closest relationship.

There was disagreement between reviewers sometimes on these cases as to what the relationship was. Whether or not it was an acquaintance or a coworker.
So we didn't want to discount anyone's answers how they reviewed the relationship or how they felt the victim described the relationship. So these numbers represent the closest relationship that was reported.

And as you can see, the largest number here is friend. People -- the victim and the subject describe themselves as friends.

Here we have a declination to participate with the investigation. Overall out of 165 cases there were 56 cases that involved the victim's declination.

(Off mic comments.)

MS. TAGERT: These are the numbers that we were -- these are the cases that we were able to tell that there was a victim declination. However, not in every case did we see an official declination memo either from an attorney or the victim.

Potentially we would see a note from an investigator that said victim declines to participate. In other cases we wouldn't see
So there's no sort of consistent way across the services that they're accounting for this. However the largest group of characteristics or demographics that declined to participate were Service Members and civilians. However, keep in mind that those were the largest demographic of victims in general, so.

BGEN SCHWENK: So, is that 56 out of the 65 cases?

MS. TAGERT: Yes, sir.

BGEN SCHWENK: There was a declination in 56 out of 65.

(Off mic comment.)

BGEN SCHWENK: One hundred and sixty-five.

MS. TAGERT: Yes. Not necessarily a formal declination. Although some of them were. But some mention of a victim not wanting to cooperate with the investigation or the prosecution.
HON. WALTON: Do you know if there are domestic violence victims' advocates available?

MS. TAGERT: Yes. There are. The Services, I believe it falls under the Family Advocacy Program. So, yes.

SGT. MARKEY: And one more, for definition, which types of victims are not eligible for SVC?

MS. TAGERT: So for purposes of our study, sir, the people that were eligible were Service Members, civilian spouses of Service Members. Some dependents basically depending on the relationship.

However, the Service regulations that we looked at, there are always exceptions. So they could potentially give a Special Victims' Counsel to someone that is not within those dependent status or Service Member.

So we can't tell you who is or isn't eligible when they have exceptions to people having Special Victims' Counsel. And I believe that DoD civilians are not eligible for Special
Victims' Counsel as well.

Next slide. We also ran the numbers to see whether or not having a Special Victims' Counsel potentially would have an impact on the victim declination.

Now as you heard from Dr. Wells yesterday when he did his presentation on statistics, this is a bivariate analysis. So there may be other reasons as to why people are declining if they have or have not had a Special Victims' Counsel.

And the eligible victims represented by an SVC versus eligible victims not represented by an SVC, that is not a statistically significant number. So there's not really a difference between those two parties or two groupings.

However, victims not eligible for an SVC and the percentage that participated in the investigation, is significantly to -- significant between those parties.

So, --
CHAIR BASHFORD: So it will be very interesting when we get the full cohort of cases to see if the numbers and percentages still track past the random sample.

MS. TAGERT: Yes, ma'am. And Dr. Wells, tell me if they don't track, then there's a problem with the reviewers.

(Laughter.)

MS. TAGERT: So let's hope they do.

Next slide.

All right. So, as I mentioned before, the fact that a third party can make a report of sexual assault is unique to the military.

And so we also took a look at whether or not that was -- what effect of having a third party report would have on the participation level.

And here as you can see, if the Command is the party making the report, they have the largest percentage of participating victims. And the Case Review Working Group found that interesting.
Potentially there is a bias against Commanders. And maybe people believe that if the Com -- you know, the Commands -- there's maybe an effect on prosecution with the Command.

But here we found that if they were the reporting party, there seemed to be more participation then if other people reported. Including the victim him or herself.

Again, this is the demographic characteristics. It's very similar to what SAPRO puts out. The majority of subjects are male and enlisted.

And as you can see here, the ages of the subjects are -- it's a little older then victims. But not by much.

The Case Review Working Group also recorded every time a subject gave a statement to law enforcement. And as you can see, in the majority of cases, up to 74 percent, the subject does indeed give a statement to either a military investigator or a civilian law enforcement agency.
And we also then broke it down for those that did choose to give a statement, we thought well maybe an attorney is telling them that it would be wise to give a statement.

But here, as you can tell, there were very little -- there was very little legal representation at an initial interview for any of the people, whether or not they gave a statement or did not.

SGT. MARKEY: But you weren't able to determine whether those were exculpatory or inculpatory?

MS. TAGERT: No, sir.

CHAIR BASHFORD: Well, ultimately we did. But I don't think for purposes of this. But didn't we check if it was an admission or a denial confession?

MS. TAGERT: Oh, yes. I'm sorry, sir. We were -- we did record whether or not there was a confession. So we will be able to see the results of that.

And I think Dr. Wells in his
presentation shows the percentage of cases that a
Command takes action when there's been an
admission or a confession.

DR. WELLS: Right. So in addition to
the results that Kate discussed, we did a little
bit more sophisticated analysis based on some of
the things that the case file reviewers noted
when they were recording the data.

And some of their observations. And
then some of the things that the Staff and the
Committee had indicated as well.

So that's what we're going to talk
about now. I'm going to talk about four sets of
a little bit more in-depth analysis that we
performed.

So the first thing we're going to talk
about is the consistency of case closure status
across four different decision points. So we're
going to talk about Command decision, probable
cause determination, DIBRS classification, and
MCIO classification.

And one of the things that we did was
determined what closure classifications were used
in two or more of those decision points.

And then we could compare how often
those things intersect. In other words, how
consistently these particular closure
classifications are used across those decision
points.

So in the chart you're going to see,
it doesn't track a particular case to see how
consistent a closure classification is used
within that case. It's just aggregate counts
within those cells. And then that will give us a
picture of consistency.

So here are the results that you can
see. So across the top row are the four decision
points, Command, probable cause, DIBRS and MCIO.

And then in the first column you can
see the five different closure classifications.
So I'll draw your attention too just a few of the
highlights here.

If you look at the unfounded row, you
see that DIBRS uses the unfounded classification
most often. Nearly a third of the cases that had a DIBRS classification were listed as unfounded. DIBRS also uses prosecution declined most frequently. Over a third of the time that they make a closure classification they list it as prosecution declined. And that's quite a bit more than MCIOs and Command. Command uses that category less than 10 percent of the time. Victim declinations, lack of participation. Commanders use this classification most frequently. Over one fifth of the time. And then it's used least frequently by the MCIOs. You see a pretty big difference there in those percentages. And then last, Commanders almost exclusively use the insufficient evidence classification. So we can see some patterns of inconsistency and how these different decision points close out their cases. And again, we did take a look at some of the individual cases. And I can report those
particular numbers to you. And they can be listed in the appendix if you would like. Next slide.

So the next issue we wanted to take a look at was the nature of victim impairment. And we felt like this variable was pretty important, because it can have an impact on case progression for a couple of different reasons, including potential issues of victim credibility.

And then also issues related to the quality of evidence in a particular investigation. So, we wanted to know how often these cases entailed victim impairment and then what the impairment looked like in these cases.

So, in the next table here you can see that a victim was impaired in over half of the cases. And this indicates that we've got some investigative challenges with a pretty significant portion of cases in this sample.

Then the next step was to look at the nature of victim impairment. And what you see there with those rows under the nature of
impairment is sort of a hierarchical
classification of victim impairment.

With the top row being the highest
degree of impairment. The person was passed out
or unconscious. Versus blacked out at least some
memory loss. And then asleep.

And then you can see how those are
broken down. And you can see that being passed
out and unconscious represented about 43 percent
of all of the impairment cases.

So when we talk about impaired
victims, we're talking about something that is
fairly substantial.

MS. TAGERT: And just for purposes of
when we're discussing what those definitions are,
this was as described by the victim in her
statement. It's not the reviewer's opinion as to
what her state of mind was. Or his.

DR. WELLS: And sometimes within the
data we will see things in a single case where it
will list the victim as either being passed out
with partial memory.
And what we did in those kinds of cases was code the most severe form of impairment. So we would code that as being blacked out as opposed to just partial memory.

We'll take a closer look at this variable to see how it was related to victim reported drug and/or alcohol use. And this was primarily a check on the quality of the victim impairment variable.

But it was also to allow us to get a better idea of what victim impairment looked like. And I think the takeaway conclusion from this is, that victim impairment variable does a pretty good job of measuring this, at least when we compare it to drug and alcohol use.

So I'll just walk you through a couple of the cells. So if you look at the lower left cell there, under victim impairment, where the number is 73. And what that means is, 80 percent of the cases, actually 80.2 percent of the victim impairment cases involved a victim who said he or she used alcohol, but did not use drugs.
And if you go one cell up and you see that number 11, that's 12.1 percent of the victim impairment cases. And in those cases the victim said that he or she had used drugs and/or alcohol.

We can't talk about the extent of drug or alcohol use. We can't talk about the type of drugs that were used.

But we do know that if we add up those two cells, it comes out to a little bit more than 92 percent of the victim impairment cases involved drug and/or alcohol use.

DR. MARKOWITZ: So, is there any consideration given to surreptitious provision or surreptitious use of drugs in any of these cases?

So the possibility of someone being given something against their will like in those particular cases or against their knowledge. Did that come up in any of these cases, where somebody is not sure whether or not they were given something in the course of an incident?

DR. WELLS: Right. So some of those
indications are in the data, as we were reviewing
the data file.

DR. MARKOWITZ: Right.

DR. WELL: I can't speak to how
systematically that was recorded and written
down. But maybe Kate can talk about that a
little bit.

MS. TAGERT: So, on the checklist Dr.
Markowitz, it set. There was an option for
drugged.

So there were victims that reported
that they were impaired but they don't know how
they got impaired. And sometimes reviewers would
hit drugged.

Or if someone reported that they felt
like they were drugged, yes. That would -- those
numbers would account for those.

DR. MARKOWITZ: Okay.

MS. TAGERT: And just to be clear,
drugs is not just -- there was confusion
yesterday. So it's not street drugs necessarily.

It could be Ambien, or any kind of prescription
drug that is used with alcohol or anything like that.

DR. MARKOWITZ: And just so to make sure I understand. So we're not talking -- so a patient's -- or I'm sorry, a victim's account of believing they were drugged would be enough to put them in this category?

You weren't verifying with like tox screens or what have you in the case reports like this was.

MS. TAGERT: So we do have -- there's another section in the minority of cases there is a tox exam. But if there was one on the victim, and the subject, that is recorded.

DR. MARKOWITZ: Okay.

MS. TARGET: And that will be provided in the big report next year.

DR. MARKOWITZ: Right. Thank you.

SGT. MARKEY: And I think if you remember going back to the time line of when most or a majority, 51 percent or more were reported after 48 hours, that became problematic
investigatively to try to corroborate, you know, alcohol content or any type of drugs. So.

DR. MARKOWITZ: Sure. I was more interested in whether just a simple report of belief of being drugged --

SGT. MARKEY: Right.

DR. MARKOWITZ: Put that individual within that category. So that was really my -- my big question was how we were categorizing those individuals.

So, thank you.

DR. WELLS: So overall the patterns here support that victim impairment variable seems to be capturing what's going on here fairly well.

We looked at those three cases where the victim said they were impaired, but they didn't use drugs and they didn't use alcohol. And there were indications in the data that they were impaired in some way.

And then -- and the victim was not impaired, the 51 in the lower right cell is what
we would expect to see if they weren't impaired.
They also reported that they didn't use drugs.
They didn't use alcohol.
And then 22, they reported that they used alcohol but they were not impaired.

DR. MARKOWITZ: Just as a -- just as a general consideration going forward. From my own clinical perspective, there may be some utility in a category of unclear what the nature of the impairment is.

I think that information is as important as anything else. The fact that there are times in which we do not know why a patient comes to us impaired.

So, it's something to consider as we are having these conversations.

DR. WELLS: Next, so the third analysis that we did, to take a closer look at some of these data, were to figure out what happened in some of these cases in which a civilian agency was involved, a civilian agency was the lead, and then the question is, what
happened in the military criminal justice system within these cases?

So, I'm going to go through a couple of tables here. A lot of numbers. A lot of different categories. But they'll lead us to a conclusion about what happened here in just a second.

So, what we see is that in -- how does that add up? Fifty cases -- 49 cases. Sorry. Forty-nine cases involved in off installation incident and a civilian agency was involved.

The top three rows add up to 50 because two agencies were involved in one of those cases. That's why it doesn't add up to 49.

So we had 49 cases off installation in which a civilian agency was involved. We see that in 34 of those, the civilian agency took the lead.

The next row of data show that a civilian prosecutor prosecuted the case one of those times. So one out of the 49 cases with a civilian agency involvement led to civilian
prosecution.

And then the last row of data allows us to understand why was that the case. Why were 48 cases not prosecuted?

And the top row there captures 45.8 percent of those cases. That combines two categories. One of two things happened there within that row.

Either the law enforcement agency never took it to the prosecutor's office. And that was indicated in the case file notes. Or, the case was taken to a civilian prosecutor -- prosecuting agency, and they declined to move forward with the case. So that was 22 of those cases.

So the next step in our analysis, and Kate -- the discussion that Kate and I had was, so let's take those 22 cases and see if anything happened in the military justice system after they were declined at the civilian side.

So the next slide you're going to see --
BGEN SCHWENK: Can I make one comment on this slide before you review it?

DR. WELLS: Yeah. Yeah, yeah.

BGEN SCHWENK: So the first category is what agency was involved. And then we say civilian investigative agency took the lead in 34 cases.

So then the next one is civilian prosecutor prosecuted the case. And we have one in yes. And 48 no.

DR. WELLS: Um-hum.

BGEN SCHWENK: I wonder if it would be more helpful if we said one yes, and 33 no. Because to me it goes like, you know, a tiered system.

They took the lead in 34 cases.

DR. WELLS: Um-hum.

BGEN SCHWENK: That means they get the first call on whether to prosecute. On the ones we took the lead on, probably we were making the decision on whether to prosecute.

So, when we say that in 48 times they
didn't prosecute, well 15 of them is probably because we were the lead. We took it. It was us.

So I'm -- so that's something to think about. I don't know what the answer is. But, that's my thought looking at it.

DR. WELL: We can do that.

BGEN SCHWENK: Thank you.

DR. WELLS: Okay. So then what we did with the next slide and the next layer of this analysis was to pick off those 22 cases. Would you go back one Stayce, just real quick before we get to that?

So we picked off those 22 cases where the prosecution was declined or the case was never presented to the prosecutor. And these are off-installation cases. So these are all off-installation.

Okay, so the next slide presents those 22 cases. And what we wanted to know is, what happened, if anything, with the military criminal justice processing.
In 11 of those 22, so half of those cases, a Judge Advocate determined that probable cause did not exist. Five, probable cause was determined to exist. And it wasn't determined to exist in six of those cases. So no probable cause.

Then we can see that the case was acted upon in five of those cases. And then in all five of those cases it resulted in a conviction for a sex assault. Or a conviction for multiple charges, conviction for a sex assault and for a non-sexual assault crime.

And so five out of the 22 went forward and resulted in some conviction within the military system. Okay.

Last --

CHAIR BASHFORD: Just before you go to the last one.

DR. WELLS: Yes.

CHAIR BASHFORD: You know, during our first Panel this morning, I know several of the Panel Members were asked did they think that
handing this section off to a different form of prosecution would be beneficial?

And this preliminary data suggests there might not be any difference. I think. Because they're just not -- they're not going forward on very many of these cases.

At least the ones that we saw that happened off base. I guess that was more of a comment then a question.

(Laughter.)

DR. WELLS: The last analysis then is again, with these 165 case files that were reviewed and we recorded data for, we looked at a series of bivariate analysis.

So we looked at a series of case characteristics to see how they were related to whether or not a Commander took action on a penetrated sexual assault complaint. So they either took action or they did not.

And then we wanted to look at those categories according to a host of other case characteristics. And what you have in front of
you there are some of the relationships that emerged from that analysis.

The full table of results will be made available to you if you want. It has a data appendix. And the full table is there for you to review in the future.

So what I've done here is just offered some examples to illustrate some of the points where we do find a relationship. So, I'm going to walk you through just a couple of these to illustrate the point. And several of these make perfect sense.

When a Judge Advocate determines there was probably cause, the case was more likely to result in some action on the penetrative sexual assault complaint. When the victim participated in the investigation, there was also a greater chance that there was some action on the penetrative assault sexual complaint -- penetrative sexual assault complaint.

If the victim received a forensic sexual assault medical examination, it was more
likely to move forward with some action. When
the victim and the subject were not intimate
partners, when there was some other relationship,
all those relationships combined together, there
was more likely to be some action.

When the subject confessed, there was
a much greater chance that some action was taken
in the case. And then you can see the other
characteristics that are there.

And that was the last set of analysis
that we performed to take a closer look at some
of the case file data.

BGEN SCHWENK: The Case Review Working
Group will, like I said earlier, be in the
business of reviewing at least 60 cases in the
next couple of months so we can wrap it up in
time to turn it over to Dr. Wells.

Anybody that's not on the Case Review
Working Group and can't wait to have an
opportunity to review a military criminal
investigative organization investigative file,
say that three times fast, is welcome to contact
Kate.

And Kate will be happy to hook you up with a case, an investigative file, and a sheet with whatever number of variables we have. So that you'll get a real chance to put your hands on it and see what it's like and do it.

And so let her know. But you're all welcome. Thank you.

MS. TAGERT: Those furloughed are welcome.

(Laughter.)

MS. TAGERT: Pizza.

CHAIR BASHFORD: Are there any questions from the Committee or anyone?

DR. SPOHN: Perhaps we could return to the question that General Schwenk asked about race and ethnicity.

MS. TAGERT: Yes. At this time the case review is concerned about the data that we have on race and ethnicity. Because as we found, and we've heard some testimony from Judge Advocates, race is not recorded on criminal
Although we have seen race on the MCIOs documents. They're basic -- it's broken down into white or black. And I think that the reviewers looked at other documents.

So, we were more granular on what someone was described as. So, if someone was -- we would say Hispanic as opposed to white. Which is what the MCIOs would classify someone as.

So we need to figure out whether or not we need to look at the investigations to look only at race. Or whether or not we're going to rely on other documents.

And some of the cases which I found most helpful, the investigator asked the subject or the victim to describe what they are. Or what, you know, what they identify as.

And so, those cases I feel like we can rely on more. But, with the reviewers getting information on race and ethnicity from different documents, whether or not that be a DEERS application for insurance, or another criminal
investigation in the civilian side of the house,
I just don't trust the data that we have.

And I don't know how to fix it yet.
And I hope that I have an answer for you the next
time we meet.

CHAIR BASHFORD: We can review those
cases again.

(Laughter.)

CHAIR BASHFORD: I mean, there were
cases that were reviewed where just based on
names alone, somebody was -- it happened in a
Pacific base, and the person was clearly
Polynesian descent.

Or American Indian descent based on
surname alone. But I don't know how much you can
then say, oh, this person has a Hispanic surname,
let me check Hispanic box if it's not checked at
the outset.

So, we trust Ms. Tagert will come up
with a solution.

SGT. MARKEY: Well, and I think that
kind of reflects on we've had this discussion
about some of the problematic issues we came across with the documentation. And the varied ways that information was documented across the services.

I commend the Staff for all the work they did on the case review. And we commented that they still have their hair on their heads, because this -- the way information was being documented was not consistent.

There were not standards. In something as simple as race, you would think we would be able to come up with a standard way of documenting that.

And that even became problematic. So, a lot of the data that we collected, or didn't -- wasn't able to collect, it was because it just wasn't there. It was inconsistent.

And I think you will probably hear me repeatedly say that inconsistency creates problems with being accurate and transparent with how you report. And what is actually going on within the military.
And so I think that's one of the
issues that we can glean out of this case review.
Is how that needs to be addressed.

CHAIR BASHFORD: And Ms. Carson, I
believe, we had -- there was an appendix to
something that we had gotten about going forward.
What they're going to be collecting.

Which had much more significant
breakdowns. Pacific Islander, Native American, -
-

MS. CARSON: We certainly can address
that issue for their systems going forward.

CHAIR BASHFORD: Going forward. Yeah.

MS. CARSON: Have an Article 140A
requirement. We just have to figure out how to
apply it and that's --

CHAIR BASHFORD: Any other questions?
Okay. We're scheduled for a break, but I think
since we just got back, we can forge ahead.

COLONEL WEIR: I think I'll move to
the big table so it's easier for you all to hear
me. And have this discussion on the proposed
Findings and recommendations.

Okay. What I'd like to do is start with Chapter 1, which we went through yesterday at an administrative session.

And basically that session was to make changes in the way stuff was drafted. There was no discussion on the Findings or discussion on proposals or recommendations, because that requires a public hearing.

So what we did yesterday was go through the Chapter. And make sure it was clear to the Committee Members what we were trying to say as a Staff when we draft that.

So what we're going to do today is there were points where you all have to make decisions and deliberate on the language you want to incorporate into the report. And then we will vote when appropriate and tackle it that way.

So, the first issue that we saw was in Page 8, if you can flip to -- and Ms. Tokash yesterday mentioned that the sentence reads, over the past decade media -- it's the first sentence
in that -- on that page.

For the past decade, media reports have criticized the Military and Commanders for insufficient action against alleged offenders in sexual assault cases. The Staff had decided that we were going to take out Commanders and just leave it the Military for insufficient action against alleged offenders in sexual assault cases.

She made a point, a valid point that we speak about Commanders. And that Commanders have been the focus and Commander's decisions.

So what I need you as a Committee to do, is to determine whether that sentence should remain the way it was originally drafted. Or take out the word Commanders.

And that's open for discussion.

CHAIR BASHFORD: I just would take out the media reports have criticized. And start with the Military. And if we decided Commanders, has been criticized.

I really don't think the fact that the
media has done it. They've been criticized by
more than just the media.

COLONEL WEIR: Okay.

BGEN SCHWENK: I would note that on
the Military and Commanders issue, Commanders are
part of the Military. So, it's not really
Military and Commanders. It's Military including
Commanders.

And the criticism, although I think
Meghan's point was that the sentences that follow
that are particularly focused on decisions by
Commanders.

I think the criticism in the first
sentence is broader then just Commanders. It's
Military-wide.

So, I would either go the Military or
go the Military including Commanders. But, I
wouldn't do Military and Commanders.

CHAIR BASHFORD: Including sounds
good.

COLONEL WEIR: So, General Schwenk has
made a suggestion. Over the past decade the
Military has been criticized for taking insufficient action. So, it would say, Military and -- Military including Commanders in that sentence.

CHAIR BASHFORD: So if we pass that.

BGEN SCHWENK: Right.

SGT. MARKEY: And continue with the rest of that paragraph.

COLONEL WEIR: Yes.

SGT. MARKEY: Without -- okay.

COLONEL WEIR: Anyone opposed to that correction?

(No response.)

COLONEL WEIR: Seeing or hearing no opposition, we'll move onto the next one.

If we turn to Page Ten. And this is --

MS. GENTILE LONG: Steve, this is Jen Long from the Train. Can you hear me?

COLONEL WEIR: Yes.

MS. GENTILE LONG: Sorry. I joined --

I just wanted to go back too alleged. I thought
there was a discussion to revisit wording.

It occurs in that first sentence.

Which is why I wanted to get to it.

COLONEL WEIR: Yes. We're going to remove the word alleged. I think we had it in there, I think, 70 times.

So we're going to remove alleged.

MS. GENTILE LONG: Thanks so much.

COLONEL WEIR: Okay. The next issue that we discussed yesterday or we talked about and needed some decision by the Committee today, was Page 10 through 13.

The common fact patterns in which reasonable -- which it was reasonable that charges were not preferred for the penetrative sexual assault offense.

Did -- the issue became that maybe it was focused too much on the victim. And was there a way to either -- to shorten the paragraphs and just do a list of items that were found that were consistent throughout?

Or did we need to have this section at
all in the report? And so that's where we're at for this decision point.

SGT. MARKEY: And I had raised that point. It's almost two pages. And in each one of those paragraphs, I'm not disputing that that was the information and facts that we, during the case file review, saw and documented.

But, each paragraph has the optics of starting out with the victim x, y, and z. The victim x, y, and z.

I think it may be more appropriate to maybe take those five or six paragraphs and create a shorter synopsis of the data that we actually pulled from that. Which we can attribute to some of the factors that we saw in the review pertaining to victims of these crimes.

I just -- I just think the length to which it went to, was greater then I think was necessary.

DR. MARKOWITZ: I would absolutely Mr. Markey on that. I agree 100 percent on that.

CHAIR BASHFORD: I took a look at how
you would do it. Frankly, I couldn't come up
with any way of just sort of compressing it other
than the nearly half of the cases were
decissions.

I think even saying some of the data
we've already seen about the numbers or the
percentages of people that reported being
impaired, again looks as though you're pointing
the finger. Unless you can tie it into an --
which often results in the ability to provide
detail or provide information to the
investigators.

But, I -- it's hard to -- I would
either take it out. Or just really, really leave
it to the declination and maybe -- maybe
impaired.

DR. MARKOWITZ: Yeah. I agree. So,
I -- I don't know why I'm holding this down. I
would actually be in favor of removing it all
together.

If we are going to keep it in, I think
a very -- the brief synopsis that you're talking
about would be appropriate.

It does feel -- it does feel like this is a lot.

COLONEL WEIR: The information about declination and impairment is covered in other sections of the data. So, to me it wouldn't make sense just to have a paragraph about declination and impairment in this section when it's already covered, if that's all that's going to be in it.

It would make sense to remove it completely. And then that information would be covered later on in other parts of the -- of this.

Because -- you know, as the Staff reviewed the cases, we tried to come up with a written picture of how these cases, the facts and situations behind the cases that led to some of the results that happened.

And to give you guys -- to give the Committee a better site picture of what was going on. But I completely understand if.

You know, that was our attempt to make
sure that once reading this, you would understand. Okay, I understand how we got to a no action taken on this case.

       DR. SPOHN: Except this is on -- this section refers specifically to the cases in which the Case Review Working Group deemed the action in the case reasonable.

       Which is not covered in any other -- was not covered in the data that was looked at thus far.

       And so it seems to me that these conclusions need to be included. But perhaps all of the explanatory material, which is really sort of pointing a finger at the victim, can be removed.

       And we can just state, 45 percent involved cases where the victim declined to participate. Whatever the percentage is where the victim was impaired as a result of drinking excessive amounts of alcohol.

       And, you know, remove some of the editorializing.
CHAIR BASHFORD: If the Committee
found it reasonable that charges were not
preferred in the -- nearly half of the cases
where the victim -- where the victim declined to
go forward. Something like that?

But I think Dr. Spohn's right. That
we are re -- we'll be doing something slightly
different. We're explaining why we felt it was
reasonably to work with this.

BGEN SCHWENK: I mean, the way I look
at it when I reviewed them is, every case was
different. You know, and so whether the
Commander's decision, the initial disposition
decision was reasonable or not, depended on
whatever was in that case file.

And I either felt it was reasonable or
unreasonable. So, then to me if we're going to
say well, these are the kinds of cases that were
reasonable when it's 90 something percent that we
determined were reasonable. And this small
percentage over there becomes all but impossible.

And it -- it's almost like we're
trying to take what factors correlate to a preferral decision or a no action decision, and put it into our analysis of reasonableness.

The reasonableness one, like the first Panel told us this morning, every case is different. And that's how I looked at it. I think it's all --it's really hard to say to the Staff, try to figure out 45 percent of the cases that were, you know, impaired.

I don't know what that means, unreasonableness. Because I'm sure in the unreasonableness there were impaired cases also.

You know, so I would just take it out. And just talk about the reasonableness decision itself. And what we did. How we did it. Here's what we came up with.

And people are entitled to take it for whatever they want to take it for. And then I would save the -- trying to figure out what factors in a given case might predict a given outcome, preferral or no action or whatever.

Save that for when we've done 2055
cases and we have a bigger database to look at.

Those are my thoughts.

DR. SPOHN: That's a really good point. And something I hadn't thought about. Is that, I mean, 93 percent of these cases, we said that they were reasonable.

So really you're talking about the fact patterns in all of the cases.

CHAIR BASHFORD: So, if you were to remove -- if you were to remove number one, both one and bullet two. And then jump to the discussion on 14.

COLONEL WEIR: Um-hum. So what -- what we'll -- I think what we would do is remove one, two, three, four, --

CHAIR BASHFORD: The start.

COLONEL WEIR: Around start.

CHAIR BASHFORD: The bold one on ten.

And move everything --

COLONEL WEIR: Yeah. There were five.

So it would be number one on Page 11. Number two on Page 11, because that once again talks about.
And then we go to Page 12, that talks about number three.

Another fact pattern in common, when the victim's description of the sexual encounter does not meet the elements of penetrative sexual -- so once again, that would be --

BGEN SCHWENK: Yeah. We're talking about -- go back to Page Ten.

CHAIR BASHFORD: Cross everything out underneath the charts.

BGEN SCHWENK: And then we have right under the chart, bold number one.

COLONEL WEIR: Um-hum.

BGEN SCHWENK: Kill all of bold number one and bold number two. And that leaves us -- that takes us to Page 14. That's D, discussion which we'll agree to re-label as something else.

CHAIR BASHFORD: Yeah.

BGEN SCHWENK: And then do a discussion of how we did reasonableness.

CHAIR BASHFORD: Yeah.

COLONEL WEIR: Okay. That's the --
BGEN SCHWENK: That was, I think, what you were saying, right Martha?

DR. SPOHN: Agreed.

COLONEL WEIR: Is everyone in favor of making that change?

ALL: Yes.

COLONEL WEIR: Hearing no noes, okay. So that's what we'll do.

CHAIR BASHFORD: Great. As far as I'm concerned, you can still call it -- you can still call it discussion.

BGEN SCHWENK: And if it doesn't turn out right, it's Meghan's fault.

(Laughter.)

SGT. MARKEY: Well, and Colonel, I under -- I completely understand the principal. This -- these are the fact patterns in the case we saw that the Command also had to -- had looked at to make those decisions.

And I think part of the Committee is looking at what information did they have to make those decisions? And with our professional
backgrounds, we looked at that same information.

And so we were able to compare their
decision with the same information. And what --
so the question I would ask is, well, what
information was there that supported that
decision to prefer or not prefer.

And so, I agree with taking it out.

But I do think it's important information to
support the Committee and the Subcommittee's
working team about how they were able to come to
those percentage of agreements with what the
Commander decided to do.

So, I don't know if that would be in
an appendix. Or how that might be described.

COLONEL WEIR: I think that if we
looked at the -- and we discuss it a little bit
in the methodology and when we discuss the 21
page data information checklist, and the 255 data
points that, you know, we could say something
about it.

And that's what we base -- that's what
the Committee and the Staff based their
reasonable decision on, were those data points. I'm not sure if that gets you to where you.

CHAIR BASHFORD: And I'm not sure we based on our decision though on the data points. Because we collected a lot of data points. Age, --

BGEN SCHWENK: That aren't really relevant.

CHAIR BASHFORD: That aren't really relevant to the overall. I think it's really we looked at the overall investigative file only if it was available to us.

And just used our judgement to come down as a reasonable or unreasonable, no matter what the underlying decision -- Command decision had been.

But, I think if you link it to the data points, you're in a morass.

SGT. MARKEY: And I think that the -- I think the idea that the Commander looked at those same investigative files to make the same decision.
So we were, in theory, we were looking at all the entire case file with the same information. And so our conclusions in the majority of the cases agreed with the Commander's conclusion, based on some commonality factors.

So the question is, whether we want to include those types of commonalities of how these cases were presented and the information in the files.

And so I just think if the question would come up, well, what did you base your decision to agree with the Commander on? And what were some of the things that were common between the Commander's decision and your decision?

I think that would be the only -- the only issue that might come up questioning the Committee's conclusions as well.

But, I just think the way it's documented now, is something that we all agree probably should not be at this section. So, maybe table and think about how we might else --
if that -- if that seems to be an issue of concern.

BGEN SCHWENK: I mean, it seems to me that's worth talking about in the CRWG when we get together the next time. Because we're -- that issue's going to come up bigger when we do next year's report and we have all 2055 cases that we're talking about.

So, why don't we take a shot at the CRWG of talking about it. And see how we might describe it in the interim period.

So that when we come back in October and get the briefing from Dr. Wells on all the numbers, the CRWG can also say, and we've been thinking about how to -- how to address this. And here are our thoughts. Whatever they maybe at that point.

Is that okay?

SGT. MARKEY: Yeah. That's fine with me.

BGEN SCHWENK: Okay.

COLONEL WEIR: So as it stands right
now, we're deleting and we're picking up with discussion.

CHAIR BASHFORD: Correct.

COLONEL WEIR: Okay. In the discussion section, does the Committee want to discuss civilian no prosecution rates? Or make any comments in the report on the 80 percent of cases in which no charges were preferred for the penetrative sexual assault offense?

CHAIR BASHFORD: I'm not -- I'm not sure we have enough civilian data to make that -- to make that determination.

I know what I suspect. But that's not -- shouldn't go into a report.

COLONEL WEIR: And I would say that making it, like Dr. -- or is that Doctor/General, General Schwenk mentioned --

BGEN SCHWENK: I'm not smart enough to be both.

COLONEL WEIR: That might be a better -- the better opportunity to make comments on that 80 percent would be after we've done the
2000 cases. And we've got more data.

And so it might be premature to add anything into the report at this point based upon the size.

DR. SPOHN: I also don't think that we know what decision in the civilian world to compare it to.

CHAIR BASHFORD: Right.

COLONEL WEIR: Right.

DR. SPOHN: I mean, is it arrest?

It's probably not presentation to the prosecutor for a filing decision.

So, what would be the comparable point of comparison? I don't think there --

COLONEL WEIR: I think yesterday we discussed it's tough to compare the Military system to the civilian system. Because we investigate every single allegation of sexual assault.

And it goes up for a Command decision.

We don't necessarily know how all those civilian jurisdictions work.
And so trying -- someone could say oh, well they don't do 80 percent either. So you're just as bad as the civilians.

And so, that's not our intent.

Because I think we do a much better job since every single sexual assault case gets investigated and it goes to a lawyer for review. And then to a Commander for final decision.

And that it's not the same correlation in the civilian world. A detective can't stop an investigation and it never makes its way to a District Attorney for a decision.

And so --

BGEN SCHWENK: But we haven't looked at the issue. We haven't done any research. We just shouldn't address it.

COLONEL WEIR: Okay.

CHAIR BASHFORD: So we should delete that it -- we should delete the bolded, the yellowed paragraph. I believe the paragraph right above it as well.

COLONEL WEIR: Yes. On page 15, the
Staff suggested revising Finding onto state, on the basis of its review of 165 Military investigative cases, the DAC-IPAD finds that Commander's disposition of penetrative sexual assault complaints are reasonable in a percentage of cases.

And if we can -- the proposed Finding is on the screen.

CHAIR BASHFORD: Just remind me why it's still XX?

BGEN SCHWENK: Well, it was 93. But there were five cases that might have flipped. Or two cases that might have flipped.

COLONEL WEIR: It was 90 -- it was the 90 -- it was 93 percent of cases. And then we discovered because of due diligence of this great Staff I have, that one of those cases was mis-binned as a penetrative sexual assault case. And it wasn't.

And the other case is we discovered, is pending court martial. So, that --

BGEN SCHWENK: It was down as a no
action.

COLONEL WEIR: Right. And so they've taken action on that case. So the percentage is going to be somewhere in the neighborhood of 94.

So the percent's not really changing.

But those cases aren't cases that should be looked at as part of the sample.

CHAIR BASHFORD: Got it.

BGEN SCHWENK: I would say what the -- what the CRWG is consistently, we've tried consistently to say is, for the preamble beginning clause there, based solely on its review of Military Law Enforcement and investigative case files.

Because that's all we had is the Mil -- the criminal investigative case file. The Commander had that. But the Commander might have had other stuff we don't have, because it's not in the file.

So we've always said based solely on its review of. So, I would recommend we change that. So it tries to make that clear.
CHAIR BASHFORD: The other thing, and it may be nitpicking, but the DAC-IPAD didn't do the review. The Case Review Working Group is an arm of the DAC-IPAD. I don't know if you want -- if it's too wordy to say the DAC-IPAD working through the Case Review Working Group found.

BGEN SCHWENK: Congress did that on the collateral misconduct. The Secretary of Defense acting through the DAC-IPAD. We can do the same thing here.

CHAIR BASHFORD: I just -- I want -- I don't want it to get so wordy that it loses its -- loses its meaning.

DR. SPOHN: Well, could we say based solely on the case review, Working Group's review of Military Law Enforcement investigative files, the DAC-IPAD finds?

HON. GRIMM: It's the finding of the whole Committee.

DR. SPOHN: Right. So you will recalculate that figure?
1 COLONEL WEIR: Right.

2 DR. SPOHN: And include the

3 appropriate figure in the final report.

4 MS. CARSON: Can I ask a question of

5 clarification? Could you take out solely? Or is

6 that still in?

7 BGEN SCHWENK: It's got to be in, I

8 think. I think it's got to be -- my vote is,

9 keep it in.

10 MS. CARSON: Do you want to add --

11 BGEN SCHWENK: Because that's all we

12 had.

13 MS. CARSON: That other documents

14 reviewed from the DAC-IPAD court-martial database

15 and individual documents requested from the MCIO?

16 BGEN SCHWENK: What was that?

17 MS. CARSON: Those were documents that

18 were not in the case file as provided to us.

19 MS. TAGERT: So are these for the

20 preferred cases where we --

21 BGEN SCHWENK: Oh, where you found

22 other stuff later on. Yeah.
MS. TAGERT: And that's an addition for accuracy purposes. We reached back to the Services to provide us with command disposition reports that were not necessarily in the investigative case file.

BGEN SCHWENK: I mean, clearly anything that came in time after the initial disposition decision didn't factor into a reasonableness determination of that decision.

So, it would have to be -- the only thing that we would have had extraneous would be a document that said the Commander made this initial disposition decision, and here's why. Right?

Is that the only document we're really talking about? That wasn't in the criminal investigative case file that would have been relevant.

MS. TAGERT: As well as any preferred document that the Data Group uses. So, as the SJA assigns the charge sheet --

BGEN SCHWENK: But see the SJA device
comes way down the path. If you start -- if any
of us use that as a basis for whether something
was reasonable or not, then we're not -- then
we're talking about something that happened later
on.

MS. TAGERT: Um-hum.

BGEN SCHWENK: Why would we be looking
at something that happened months after the
preferral decision that we're supposed to be
reviewing?

MS. TAGERT: We looked at -- people
took it into account when making a decision of
whether or not to -- those -- there were
additional doc -- there were additional questions
that relate to cases that actually were
preferred.

BGEN SCHWENK: Right. That has to do
with the data stuff that, you know, the data
points that we had. But it doesn't have to do
with the reasonableness decision, because that
was based on at the time the Commander made the
decision for preferral or no action.
Documents relevant to that are those that date that date or before. Afterwards, I don't know.

I guess we'll need -- I don't know.

COLONEL WEIR: So the wording -- help me out here. Based solely on its review of Military Law Enforcement investigative case files, the DAC-IPAD finds the Commander's dispositions of penetrative sexual assault allegations are reasonable in a percentage of the cases, which will somewhere be 94 percent.

Now, that language was -- now did we want to incorporate or did you want to incorporate the Case Review Working Group or the DAC-IPAD and then somehow get Case Review?

I mean, it's not going to be too wordy. And it's not going to lose its -- do we want to signify that it was the Case Review Working Group that reviewed those cases?

DR. SPOHN: And the Staff.

COLONEL WEIR: Yeah. And the Staff and --
CHAIR BASHFORD: Why don't we just say based on the review? I think if we say based solely on this, it sounds weaselly.

HON. GRIMM: So, if we're saying it's based upon that review, then it's pretty clear what it's based on.

COLONEL WEIR: Right.

HON. GRIMM: So, that probably communicates the message.

COLONEL WEIR: Yeah. That's fine with me.

HON. GRIMM: Because clearly he has the means to lobby this.

COLONEL WEIR: Okay. So, based on the review of Military Law Enforcement to investigate the case files, the DAC-IPAD finds that Commander's dispositions of penetrative sexual assault allegations are reasonable in a percentage of the cases.

CHAIR BASHFORD: Complaints.

DR. SPOHN: Complaints, um-hum.

BGEN SCHWENK: Allegations goes to
complaints.

COLONEL WEIR: Oh, yes. Yes, I'm sorry.

BGEN SCHWENK: And dispensed with.

You see you're too old, you're back to allegations and then print. We've gone to a new world on that.

COLONEL WEIR: Is there --

CHAIR BASHFORD: Any further -- any further discussion?

(No response.)

CHAIR BASHFORD: I would ask the Committee to vote Finding One as amended.

BGEN SCHWENK: Second.

COLONEL WEIR: Yeah. And does anyone need me to read it as I think I understand it now?

CHAIR BASHFORD: We can vote.

COLONEL WEIR: Are we good?

CHAIR BASHFORD: Okay. It's been moved and seconded. All in favor?

(Chorus of ayes.)
CHAIR BASHFORD: Any opposed?

(No response.)

CHAIR BASHFORD: It passes. There was one other thing that I just wanted to draw to your attention to that we changed yesterday, footnote 144 on 15.

Where it says, this report will not address the race or ethnicity. We're going to change that to cannot.

Because we simply don't have the data. Will not sound like it's voluntary.

BGEN SCHWENK: Right. Um-hum.

COLONEL WEIR: The Staff had a -- this is on Page 15 as well. It was a Finding Number Two.

And this is just a recommendation. Staff suggests adding Finding Two, which would state on the basis of its review of 165 Military investigative cases, the Committee did not identify any systematic concerns with the Commanders exercising their discretion when disposing of penetrative sexual assault cases.
Now what we mean by that is at this juncture, looking at 165 --

BGEN SCHWENK: It's on the board up there if you want to look at it.

DR. SPOHN: That's not it.

COLONEL WEIR: No.

BGEN SCHWENK: Oh, that's not it? Oh, okay. It's not on the board up there.

DR. SPOHN: Could you read it again?

COLONEL WEIR: On the basis of its review or based on the review of 165 Military investigative cases, the Committee did not identify any systematic concerns with Commanders exercise of their discretion when disposing of penetrative sexual assault cases.

So the thought process behind that is, we've looked at 165 cases, and so far, based upon that sample, the Committee has not -- has not looked, or have not seen any problems with Commanders making these decisions.

DR. SPOHN: How is that different from the Finding One?
BGEN SCHWENK: Yeah. It's like written for Marines, you know.

(Laughter.)

BGEN SCHWENK: It's obvious in Number One. But just to be sure you didn't miss it, you picked it up in this one.

COLONEL WEIR: I mean, it's very similar.

BGEN SCHWENK: Yeah. I don't think it's needed.

DR. SPOHN: I don't think it's needed.

COLONEL WEIR: Okay.

DR. SPOHN: Yes.

COLONEL WEIR: Great. Finding Two.


COLONEL WEIR: Yes.

BGEN SCHWENK: Oh, okay.

COLONEL WEIR: Military Investigators testify that they are 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.

That was some of the testimony that ties their investigation to a checklist. I think that we have noted in the review of cases that you will see where an Investigator has gone out to a hotel where an alleged sexual assault occurred, or a compliant of a sexual assault occurred five years ago.

And they go out to the hotel that's been renovated, remodeled, the name has changed, and they take pictures of the room. That's kind of one of the, you know, that's a hypothetical of some of the stuff that's -- that kind of goes to this finding.

And this Investigator discretion, I think from the testimony that we've heard from investigators that the Committee feels that they ought to have, I think Chair Bashford, you mentioned, you know, in one of your comments that, you know, they're trained Investigators.

Just turn them loose and let them
investigate a case. And not be beholden to a checklist that makes little or no sense.

And a lot of it's not even relevant or admissible in a court martial.

CHAIR BASHFORD: Not every step of that checklist needs to be followed in every particular case, I think is what we're getting at here.

HON. GRIMM: Right.

CHAIR BASHFORD: And that they should be able to determine which of these investigative steps are appropriate under this particular case.

HON. GRIMM: Yes. A checklist may be very helpful. But, in a certain -- it may suggest certain things that could be done that make sense in one case but not another.

But to suggest that they don't need a checklist and every Investigator should sort of just let their own investigative GPS tell them how to go, doesn't seem like a wise thing to do.

HON. WALTON: And the concern with a checklist also is you don't want to give the
impression that all you need to do is what's on
the checklist.

HON. GRIMM: Right. So it can be
useful. But it should not be either considered
all that should be done, or everything on it
should be done in every case.

I think that's the point that we were
getting.

CHAIR BASHFORD: Well, what if we
added in Finding Two, they have little discretion
to determine which investigative actions in the
checklist. So it's clear we're not saying
jettison the checklist.

HON. GRIMM: Or actions not on the
checklist. Which is lots of stuff.

CHAIR BASHFORD: Any further
discussion of Finding Two?

(No response.)

CHAIR BASHFORD: As amended then I
propose -- put it to a vote. Second?

BGEN SCHWENK: Second.

CHAIR BASHFORD: All in favor?
(Chorus of ayes.)

CHAIR BASHFORD:  Opposed?

(No response.)

CHAIR BASHFORD:  Okay.  That passes.

COLONEL WEIR:  Finding Three, in the course of conducting case reviews, the Committee found that nearly all case files include the same series of investigative actions, including photographs of the incident locations and extensive interviews of coworkers and other character witnesses, whether relevant to the specific case or not.

CHAIR BASHFORD:  That's kind of just expanding on Finding Two.

DR. MARKOWITZ:  Exactly right.

CHAIR BASHFORD:  Do we -- is it worthwhile to have a separate Finding on that?

DR. MARKOWITZ:  I mean, do we have a feeling about it?  Do we feel some way about that?

BGEN SCHWENK:  What two said.

DR. MARKOWITZ:  Right.
BGEN SCHWENK: You know, if it doesn't add any value to the investigation, don't spend the time. So I'd say Three's redundant with Two.

DR. MARKOWITZ: Right. Because Three does just seem to restate without any --

CHAIR BASHFORD: I think the addition, but I don't know if it needs it, is --

DR. MARKOWITZ: -- without any qualification.

CHAIR BASHFORD: Is the coworkers and the characters --

DR. MARKOWITZ: Right.

CHAIR BASHFORD: And the family and all of that. But, I think it's -- I agree, I think it's stated in Finding Two.

DR. MARKOWITZ: Yeah.

MS. GENTILE LONG: Chair Bashford, this is Jennifer Long. Do you think though, because I remember the things directly related to those pages of interviews basically getting at the character of the victim in many cases.

CHAIR BASHFORD: Uh-huh.
MS. GENTILE LONG: Or versus the accused. And I'm wondering if the basis to amend, to bring that up. So that it is represented or reflected.

If you're going to remove Finding Three.

COLONEL WEIR: I -- what Ms. Long is talking about, is if you remember in some of these investigations that the Investigat -- the suspect or subject of the investigation is 20 years old.

The Investigator goes back and finds his high school girlfriend that he took to the prom, and asked the question, is he a good guy? Is he a bad guy? Did you -- did he ever sexually assault you?

And you see that going through. Or the question is to a fellow Airmen or Soldiers, how is so and so when she's drinking? How is he when he's drinking?

More character issue questions that aren't relevant. You're not going to be able to
get that in most cases, admitted into court
during the trial.

    And what it seems to do is it -- you
have a victim set of friends and then you have
the accused or the suspect set of friends that
are now giving opposite opinions on what kind of
individual this person is.

    HON. GRIMM: Well, wait a minute.
That's just not accurate. Because there are
instances when the general prohibition against
character evidence does not apply.

    And so I think it -- it is -- we
should be concerned about trying to zero in, in a
very narrow sense on some aspect of an
investigation.

    It's up to the po -- it's up to JAG to
decide whether it's relevant and whether it's
going to be admitted or not.

    While in general character evidence is
not allowed in, you have a significant number of
exceptions. And they include, in a criminal
case, defendant is allowed to introduce pertinent
character evidence of the defendant and in some instances, with certain restrictions under the Rape Shield Rule, the victim.

So to suggest that it's improper for them to try to find out through investigation that maybe relevant for example, to consent, I think is a dangerous thing to suggest.

COLONEL WEIR: So I think what the discussion is, do we need Finding Three?

CHAIR BASHFORD: I would say we don't.

HON. GRIMM: I think we covered it in the first one about the checklist is helpful, but not wholly written. And there are some things that are not on the checklist you might want to do.

CHAIR BASHFORD: So, is everybody in agreement that we'll ditch Finding Number Three?

(Chorus of yeses.)

CHAIR BASHFORD: Yes. Okay. It's gone.

COLONEL WEIR: All right. Finding Four.
DR. SPOHN: Would it be possible to remove the word appropriately?

DR. MARKOWITZ: Which word?

DR. SPOHN: Appropriately.

HON. GRIMM: Under Four, the first line.

DR. MARKOWITZ: Appropriately.

COLONEL WEIR: Anyone object to the removal of the word appropriately?

CHAIR BASHFORD: I understand what you're saying, because we found that the vast majority of the decisions were appropriate. But it just -- it does sort of jump out there a little bit.

DR. SPOHN: Like a value judgement, so.

HON. GRIMM: Right. A characterization.

DR. SPOHN: Um-hum.

COLONEL WEIR: No objection to appropriately being removed.

CHAIR BASHFORD: With that removal
then, I move to find Finding Four, as revised, adopted.

HON. GRIMM: Second.

CHAIR BASHFORD: All in favor?

(Chorus of ayes.)

CHAIR BASHFORD: Anyone opposed?

(No response.)

CHAIR BASHFORD: Next.

COLONEL WEIR: The assessment that the Staff has, with your concurrence, the Committee will continue to monitor the important and problematic issues identified with Investigator discretion.

I think that goes to the point that we're going to be looking at a lot more cases. And we'll be able to come back at the end of those cases with a better overall understanding with two thousand cases.

MS. GALLAGHER: And, if I may add, one of the things that we were talking about with regards to the assessment, was whether or not to add in the lengthy investigation as something
that we could continue to monitor.

Because it's not -- the findings that

it's not otherwise addressed as an assessment.

CHAIR BASHFORD: Yeah. I think if we

added and the continued -- after discretion say,

and the length of investigations.

HON. GRIMM: Do we need important and

problematic? I mean, we're just saying that

we're going to continue --

MS. GALLAGHER: Yeah.

HON. GRIMM: We're going to continue

to monitor these issues.

COLONEL WEIR: Okay. Any disagreement

on with removing or any -- removing the word

problematic?

BGEN SCHWENK: And important. We
could just say, the Committee will continue to
monitor these issues. You know, if that's what
we're going to do.

DR. MARKOWITZ: Yep.

BGEN SCHWENK: And it's for all

conditions.
DR. MARKOWITZ: Yes.

BGEN SCHWENK: All the issues and the findings.

COLONEL WEIR: So, I -- what I have now is, the Committee will continue to monitor the issues identified --

CHAIR BASHFORD: These issues.

COLONEL WEIR: These issues?

DR. MARKOWITZ: These issues, period.

COLONEL WEIR: These issues. Okay.

CHAIR BASHFORD: Period. Moving on.

COLONEL WEIR: And with that, revised Finding Five --


COLONEL WEIR: It is revised, accurate and uniform documentation of a Commander's disposition decision -- of a Commander's disposition decision, the reasons for the decision, and any disciplinary action taken for alleged violations of the Uniform Code of Military Justice, is essential to ensure that Military criminal investigative agencies provide
accurate and timely reports of crime data to
federal law enforcement agencies and databases.

CHAIR BASHFORD: Any discussion?

(No response.)

CHAIR BASHFORD: If there's nothing to
discuss on this, then I would move that Finding
Five as revised, be adopted by the DAC-IPAD.

HON. GRIMM: Second.

CHAIR BASHFORD: All in favor?

(Chorus of ayes.)

CHAIR BASHFORD: Any opposed?

(No response.)

CHAIR BASHFORD: Moving on.

COLONEL WEIR: Finding Six. Section
535 of the Fiscal Year 19 National Defense
Authorization Act requires the Secretary of
Defense to establish a Uniform Command Action
Form applicable across the Armed Forces for
reporting the final disposition of cases of
sexual assault in which one, the alleged offender
is a member of the Armed Forces, and two, the
victim files an unrestricted report of the
alleged assault.

CHAIR BASHFORD: I'm not sure what the purpose of that is. That's just --

COLONEL WEIR: That's just a reading --

CHAIR BASHFORD: That's just saying what the law is. Are we teeing up for something else? Or --

HON. GRIMM: That's a good question.

COLONEL WEIR: No. That's just a restatement of the law and the requirement.

HON. GRIMM: But what if you intend --

(Simultaneous speaking.)

HON. GRIMM: Definitely could find something if the law were reported. Now, it could be found that the law requires that if it's not being done, then that's fine.

BGEN SCHWENK: I think it's a setup for Recommendation One. Because Recommendation One talks about Section 535 of the FY19 NDAA. So the Finding sort of says what that is. And you could just make it a footnote to
Recommendation One I suppose.

But I think that must be the connection of why it's there.

DR. SPOHN: Or is that a finding that there is no --

HON. GRIMM: Right.

DR. SPOHN: At the current time there is no uniform --

HON. GRIMM: Right. It's required, but it's not yet in existence.

DR. MARKOWITZ: Right. I think that's our -- I think that's our finding.

HON. GRIMM: That is a relevant finding.

CHAIR BASHFORD: So is our Finding despite this section, which requires this. It's not being carried on in practice?

DR. SPOHN: That the form does not exist.

HON. GRIMM: But we could just start off with although. And then, you know, this is not being done. Or this currently is not being
done.

DR. SPOHN: I mean, we're just beginning. We just started really.

BGEN SCHWENK: Yeah. So, I mean, this thing's been in the law for a couple of months.

DR. MARKOWITZ: Right. We're only just starting, FY19 with it.

BGEN SCHWENK: Yeah. I mean --

CHAIR BASHFORD: That seems a little unfair.

BGEN SCHWENK: That's piling on.

DR. MARKOWITZ: Yes. So that might be mean.

BGEN SCHWENK: So that's why -- that's why I think it just goes to Recommendation One explaining it.

DR. MARKOWITZ: Yeah.

CHAIR BASHFORD: So no Finding Six?

DR. MARKOWITZ: No.

BGEN SCHWENK: You can make it a footnote to Recommendation One so people know what we're talking about in Recommendation One.
HON. GRIMM: Right.

CHAIR BASHFORD: Finding Seven.

COLONEL WEIR: The Command Disposition Action Reports that are found in investigative files are often unclear, incomplete, inaccurate, and inconsistent within and across the Services.

BGEN SCHWENK: But how do we really feel about them?

(Laughter.)

BGEN SCHWENK: Can we add one more in there?

CHIEF McKINLEY: Can we add that we gave you a recommendation of 140A?

DR. MARKOWITZ: Yeah.

CHAIR BASHFORD: Oh, we're going to get to that. Any discussion on Finding Seven?

(No response.)

CHAIR BASHFORD: I would move that it be adopted by the Committee.

DR. MARKOWITZ: Second.

CHAIR BASHFORD: All in favor?

(Chorus of ayes.)
CHAIR BASHFORD: Opposed?

(No response.)

CHAIR BASHFORD: It's adopted. Moving on.

COLONEL WEIR: Finding Eight, Command Disposition Action Reports that are found in investigative files include terminology inconsistent with MCIO federal database reporting requirements. To meet these requirements Investigators must therefore interpret the terms used leading to inconsistent results.

And I think what this Finding goes too, is that the Disposition Form is either not provided, or it's inconsistent with the terminology. So, the MCIOs are led to have to come up with their own interpretation of that and enter it into the databases.

CHAIR BASHFORD: Just remind me, is MCIO a generic term for pros all Services?

COLONEL WEIR: Yes. It's Military Criminal Investigation Organization.

CHAIR BASHFORD: Okay.
HON. GRIMM: So, when we say to meet these requirements, are we talking about the reporting requirements for the MCIO?

COLONEL WEIR: Yes.

SGT. MARKEY: So, it's leading to inconsistent reporting as opposed to inconsistent results? Or both?

Because really what we're talking about is the data that's being input into MCIO as a part of the requirement, is being -- is difficult because of the terminology that's being provided to them.

COLONEL WEIR: And I think if you recall back to Dr. Wells' slide where it talked about the different case closed unfounded, --

SGT. MARKEY: Um-hum.

COLONEL WEIR: And you'll see what a Commander says. And then you go across what the MCIO, why are those two different?

If it's victim declined, it should be victim declined, not unfounded. So that's kind of what that finding is looking at.
BGEN SCHWENK: Yeah. So I would say that instead of inconsistent, inaccurate. I mean, isn't that the problem?

Because they're interpreting and they do it inaccurately. And it's -- and I agree with you, it's not the results. It's the database reporting requi -- reporting that's inaccurate with what the MCIO has.

CHAIR BASHFORD: Inconsistent and inaccurate.

BGEN SCHWENK: Uh, it's just inaccurate. And then we could say database reporting to refer back to it.

SGT. MARKEY: Why don't we also use unclear, incomplete -- just like we did --

(Laughter.)

BGEN SCHWENK: Lions and tigers and bears.

HON. GRIMM: Would it be possible to add the word reporting before the word requirement in the next -- third to the last?

These reporting requirements.
Because if you're not really familiar with what MCIO terms, it's the reporting requirements that are -- in order to meet the reporting requirements they're having to interpolate these things. And then that's what's being the problem.

COLONEL WEIR: So, the way I think you are probably going to have me to read this, Command Disposition Action Form reports that are found in the investigative files include terminology inconsistent with Military Criminal Investigation Organization federal database reporting requirements. To meet these reporting requirements, Investigators must therefore interpret the terms used leading to inconsistent and inaccurate results.

CHAIR BASHFORD: Um-hum.

BGEN SCHWENK: I'd say database reporting instead of results.

COLONEL WEIR: Inaccurate database reporting. Got it.

BGEN SCHWENK: It's their database
reporting that gets screwed up.

CHAIR BASHFORD: Yeah. Any further discussion on Finding Eight as revised?

(No response.)

CHAIR BASHFORD: Then I move that the DAC-IPAD adopt.

DR. MARKOWITZ: Second.

CHAIR BASHFORD: All in favor?

(Chorus of ayes.)

CHAIR BASHFORD: Opposed?

(No response.)

CHAIR BASHFORD: All right.

COLONEL WEIR: Finding Nine, for MCIOs, the primary purpose of the Command Disposition Action Report is to enable them to officially close their cases and make required federal reports to DIBRS and NCIC.

BGEN SCHWENK: I don't know why that's needed. But I don't have any objection either.

CHAIR BASHFORD: Well, I think it's accurate. I don't think they can close their investigation until they get the report back.
Right?

COLONEL WEIR: That's right.

CHAIR BASHFORD: Hence all these still waiting, still waiting, still waiting. Any discussion on Finding Nine?

(No response.)

CHAIR BASHFORD: I move that it be adopted by the DAC-IPAD.

COLONEL WEIR: Mr. Markey I think --

CHAIR BASHFORD: Oh, sorry.

SGT. MARKEY: So the finding would be that MCIOs are not -- the finding is the primary purpose at this point. The finding of the MCIOs are unable to close their cases.

I'm trying to figure out if that's the actual finding of the primary purpose.

BGEN SCHWENK: The MCIOs need the Command Disposition Action Report to officially close their cases and make required federal reporting to DIBRS. Is that what you're --

SGT. MARKEY: Yes. That would be it.

Appreciate it sir.
BGEN SCHWENK: Okay.

SGT. MARKEY: Thank you sir.

BGEN SCHWENK: You might let that --

COLONEL WEIR: Could you say that one more time.

BGEN SCHWENK: I don't know what I just said.

CHAIR BASHFORD: MCIOs need the Command Disposition Action Reports to close their cases and make required federal report, et cetera. That's what you said.

BGEN SCHWENK: Yes. Thank you.

DR. MARKOWITZ: Yeah.

BGEN SCHWENK: If everybody likes it, I did say that. If not, you've misinterpreted it.

CHIEF McKINLEY: Would it be wrong to also add in there to do it in a timely manner? Because one of the problems is, Commanders are filling it out much later.

MS. TAGERT: You have that in there.

I think it's Finding Twelve.
CHIEF McKINLEY: Okay. So that's actually in there?

CHAIR BASHFORD: Um-hum.

BGEN SCHWENK: Right. Yes.

COLONEL WEIR: So you were ahead of the game, Chief. So this Finding Nine reads, as I believe, MCIOs need the Command Disposition Action Reports to enable them to officially close their cases and make required federal reports to DIBRS and NCIC.

BGEN SCHWENK: I think Martha edited out this would be better.

CHAIR BASHFORD: As amended, does the DAC-IPAD adopt -- adopt it, I move to.

BGEN SCHWENK: Second.

CHAIR BASHFORD: In favor?

(Chorus of ayes.)

CHAIR BASHFORD: Opposed?

(No response.)

CHAIR BASHFORD: It's adopted. Moving on.

COLONEL WEIR: Finding Ten, Command
Disposition Action documentation found in the
investigative case files sometimes conflict with
the actual action taken by the command.

BGEN SCHWENK: Well, I think that's
fine with me. But it doesn't hook more with
Seven?

What we're talking -- and I think we
ought to group the findings together. So, if
we're talking about Command Disposition Action
Reports, in Seven, you know, then maybe the Ten
would go right after that to give an example.

COLONEL WEIR: So your recommendation
is to move Finding Ten under Finding Seven and
then it would be Finding Eight?

BGEN SCHWENK: Yeah. Or whatever it
would be, yes. So that Seven says, Command
Discipline Action Reports that are found in
investigative files are often unfair, incomplete,
inaccurate, and inconsistent.

And then the next one would say,
Command Discipline Action Reports found in
investigative files sometimes conflict with the
actual command action taken. Because it seems
like they flow from one to the other.

         CHAIR BASHFORD: Um-hum.

         SGT. MARKEY: Be sure to put conflicts
with an S.

         BGEN SCHWENK: Documentation sometimes
conflicts rather then conflict.

         COLONEL WEIR: So adding to ensure the
wording would be conflicts with the actual action
taken by the command?

         CHAIR BASHFORD: So it would be
Finding Eight.

         COLONEL WEIR: And that would be
Finding Eight instead of ten.

         CHAIR BASHFORD: Right.

         COLONEL WEIR: And that would just
move everyone down one.

         BGEN SCHWENK: Yeah.

         CHAIR BASHFORD: Any further
discussion? If not, I move we adopt the Finding
Eight to replace the old Finding Eight.

         HON. GRIMM: Second.
CHAIR BASHFORD: All in favor, aye.

(Chorus of ayes.)

CHAIR BASHFORD: Opposed?

(No response.)

CHAIR BASHFORD: That's the new Finding Eight. And you then renumber Nine and Ten.

COLONEL WEIR: Yes, ma'am.

CHAIR BASHFORD: And now onto Eleven.

COLONEL WEIR: Judge Advocates testify that they do not routinely assist Commanders in completing Command Disposition Action Reports.

And this Finding is tied into Recommendation Two.

BGEN SCHWENK: Fine with me.

CHAIR BASHFORD: Um-hum. Any discussion?

(No response)

CHAIR BASHFORD: If none, then I move we adopt Finding Eleven. All in favor?

COLONEL WEIR: Ma'am, we need a second, don't we?

HON. GRIMM: Second.
CHAIR BASHFORD: Okay, with second.

(Chorus of ayes.)

CHAIR BASHFORD: Opposed?

(No response.)

CHAIR BASHFORD: Finding Eleven is done. Finding Twelve.

COLONEL WEIR: Command Disposition Action Reports are often not submitted to the MCIOs within five days of command action as required by DoD policy.

CHIEF McKINLEY: Often are instead of are often.

CHAIR BASHFORD: It should be often are not.

COLONEL WEIR: Command Disposition Action Reports often are not submitted to the MCIOs within five days of command action as required by DoD policy.

CHAIR BASHFORD: Okay. Any further discussion?

(No response.)

CHAIR BASHFORD: I move we adopt
Finding Twelve.

HON. GRIMM: Second.

CHAIR BASHFORD: All in favor?

(Chorus of ayes.)

CHAIR BASHFORD: Opposed?

(No response.)

CHAIR BASHFORD: Okay. Findings are done. Recommendations.

COLONEL WEIR: Recommendation One as revised. In developing a uniform Command Action Form in accordance with Section 535 of the Fiscal Year 19 National Defense Authorization Act, the Secretary of Defense should establish a standard set of options for documenting command disposition decisions. And require inclusion of the rationale for those decisions, including declinations to take action.

The Secretary of Defense should ensure that the standard set of options for documenting command dispositions decisions are based on recognized legal investigatory terminology, and standards that are uniform across the Services
and accurately reflect command action source documents.

CHAIR BASHFORD: Discussion?

HON. GRIMM: Can we say command disposition decisions and require the rationale for those decisions, instead of require inclusion of the?

And require the rationale for those decisions including declinations taken.

CHAIR BASHFORD: Any further?

(No response.)

CHAIR BASHFORD: Then as amended, I move we adopt Recommendation Number One.

HON. GRIMM: Second.

CHAIR BASHFORD: All in favor?

(Chorus of ayes.)

CHAIR BASHFORD: Opposed?

(No response.)

CHAIR BASHFORD: As amended then, that's adopted.

COLONEL WEIR: Okay. Moving to Recommendation Two. The Secretary of Defense
should ensure that Judge Advocates or equivalent civilian attorneys review and provide advice to Commanders in completing Command Disposition Action Reports in order to make certain that the documentation is accurate and complete.

DR. SPOHN: Review what?

BGEN SCHWENK: Yeah. I'd delete review and. The recommendation is they provide advice in completing the form, the report.

And they have to review whatever they have to review to be able to do that.

DR. MARKOWITZ: To provide advice.

BGEN SCHWENK: I think that's inherent when you provide the advice.

COLONEL WEIR: So, the Secretary of Defense should ensure that Judge Advocates or equivalent civilian attorneys provide advice to Commanders in completing?

CHAIR BASHFORD: Yeah. Um-hum.

COLONEL WEIR: So, we're removing review?

BGEN SCHWENK: Review and.
COLONEl WEIR: Review and. Provide
advice to Commanders in completing Command
Disposition Action Reports in order to make
certain that the documentation is accurate and
complete.

CHAIR BASHFORD: Colonel just -- just
remind me how a civ -- an equivalent civilian
attorney would be in the role?

COLONEl WEIR: It could be in some
instances we have civilians who are Deputy Staff
Judge Advocates that could be doing the role of
the --

CHAIR BASHFORD: Not somebody
wandering in from Main Street?

COLONEl WEIR: No, no, no. This would
be someone in the JAG Office whose job it is to --
or a DoD government lawyer.

And that just covers those situations
where some organizations have civilian lawyers
providing advice.

HON. GRIMM: Or test and evaluation
command.
BGEN SCHWENK: You could put DoD in before civilian.

CHAIR BASHFORD: So as amended, --

SGT. MARKEY: I just -- I'm sorry, Chair. I just have one question.

So, is the intent of this recommendation to have the JAG show the Commander how to fill the report out? Or are we trying to send the message that the -- there should be a discussion as to the findings of the Commander?

COLONEL WEIR: Yes. The recommendation goes to the fact that there should be a lawyer involved who has looked at the case.

And so when this form goes from the Commander to the MCIO, the accurate reason or accurate disposition of that case is given to the MCIO.

So, there should not be, if there was a Judge Advocate reviewing the case, and the Commander -- the reason that the Commander is not taking action is because the victim has declined to participate, then the lawyer and him would
discuss that, or her. And that would be the reason.

That would go over to the MCIO and there should not be, if there's a JAG, a misinterpretation of that. And so when it gets to the MCIO, on the Case Disposition form, it would say, victim declined to participate.

So there would not be -- it's just another check on the system so when it gets to the investigators, they know what the accurate reason is why this no action was taken.

Because then they have to enter that into their systems.

SGT. MARKEY: I was looking at some of the wording. It's right there. Okay, so you put the date on here. And then you put, you know, after the technical part of filling the form out as opposed to more of the investigative side, decision making process, so.

I think a little -- well, the intent is both. To ensure that the decision made is a sound command decision, and the form is filled
out as required.

Does that sound --

COLONEL WEIR: Okay. Yeah. That's fine like that.

CHAIR BASHFORD: Maybe if we said so that the documentation of that decision is accurate and complete?

And you may remember, we saw cases where it said command action precluded. And then the reasons, there were only two ways command action is precluded, but there were four or five or six different things that would be lumped under there.

DR. SPOHN: Should the recommendation say the Secretary of Defense should require? Or is it ensure?

I mean, do we want them to promulgate a rule?

BGEN SCHWENK: Yes. There is no rule. So, I mean, if we wrote ensure, he'd have to do it by the regulations somehow.

DR. SPOHN: Oh, okay.
HON. GRIMM: So again, we want it to be referred.

BGEN SCHWENK: Right. Require is probably, you know, better.

HON. GRIMM: Yeah.

BGEN SCHWENK: I mean, I think what Mr. Markey is saying is, he would prefer if it read, the Secretary of Defense should ensure -- thank you.

The Secretary of Defense should ensure that Judge Advocates or equivalent civilian attorneys review and provide advice to Commanders in making initial disposition decisions and in completing Command Disposition Action Reports in order to make certain that the documentation is accurate and complete. Right? Both?

SGT. MARKEY: I'm trying to catch both of those. Yes.

BGEN SCHWENK: Okay, so.

CHAIR BASHFORD: Except for a Command Disposition Form.

BGEN SCHWENK: Oh, okay.
CHAIR BASHFORD: No decision.

BGEN SCHWENK: No. I think he wants them to do the decision and then the form, the report so that the Judge Advocate knows what the decision was and why, and was involved in it.

And now he can check the report to make sure it accurately reflects what he knows the Commander reasoned this.

SGT. MARKEY: And is that appropriate at this -- in this Recommendation? But yeah. I think that's the best process.

BGEN SCHWENK: I don't think that's what we had in mind initially, because we were just focused on doing the report.

SGT. MARKEY: Get the report then.

BGEN SCHWENK: The form, the report itself.

SGT. MARKEY: Yeah.

BGEN SCHWENK: He's brought out broadening it. Which somebody should be doing anyhow.

CHAIR BASHFORD: I don't know if it
would go there though. Because everything
leading up to that --

BGEN SCHWENK: It's all about the
report.

CHAIR BASHFORD: Right. It's all
about the report. The documentation of the
decision, not the decision itself.

BGEN SCHWENK: Right.

COLONEL WEIR: So what I've got right
now is that the Secretary of Defense should
require that Judge Advocates, and we've had --
General Schwenk said, or DoD civilian attorneys
provide advice to Commanders in completing
Command Disposition Action Reports in order to
make certain that the documentation is accurate
and complete.

BGEN SCHWENK: Right. And then we
would save Mr. Markey's for another day. And
another issue.

SGT. MARKEY: But I will say advice.

I think that word indicates to me that they're
advising him on the decision, not just how to
fill the form out.

But maybe I'm reading too much into
the word advice. They're advising him.

COLONEL WEIR: Well, I think that --
I don't think you're -- I think that would --
that's envisioned by the trial counsel in
advising the Commander.

Based upon the facts of this case, my
recommendation to you is that you --

SGT. MARKEY: Complete the form.

COLONEL WEIR: Clip the -- or check
the box insufficient evidence.

SGT. MARKEY: Okay. I see that.

COLONEL WEIR: And that's the advice
on the legal portion of the case, not -- does
that make sense?

CHAIR BASHFORD: This follows up on
our Finding Number Eleven. That they're not
routinely assisting Commanders in completing the
forms. And we want them to.

MS. GALLAGHER: And you haven't yet
made any finding or taken the testimony to
determine that the lawyers are not providing the
advice on the disposition itself.

So this was focused just on the
completion of the form.

SGT. MARKEY: Okay.

CHAIR BASHFORD: Any further
discussion?

(No response.)

CHAIR BASHFORD: So, as amended, I
move we adopt Recommendation Number Two.

HON. GRIMM: Second.

CHAIR BASHFORD: All in favor?

(Chorus of ayes.)

CHAIR BASHFORD: Oppose?

(No response.)

CHAIR BASHFORD: That's adopted.

COLONEL WEIR: Finding Thirteen.

There's significant confusion among
Investigators, Judge Advocates, and Commanders as
to what the terms probable cause, reasonable
grounds to believe, and unfounded, false or
baseless, mean, when and by whom probable cause
and unfounded determinations are made and how they are documented throughout the investigative process.

MG ANDERSON: Can I -- could somebody explain -- can you explain what how they are documented and used throughout the process?

Is that how they're used on any reporting forms? How Investigators are using them in their reports?

I'm just a little unclear.

COLONEL WEIR: This goes to the idea of what -- how a case when it's closed, how it is classified.

In the Army you're not the -- the JAGs don't make an unfounding decision. And I believe all the Services it's the same way. A JAG does not say unfounded.

But that is a case closure classification under --

DR. MARKOWITZ: DIBRS.

COLONEL WEIR: DIBRS. So, there is some confusion as to how those terms crosswalk
with each other. So the Judge Advocate makes a probable cause determination, but that may end up being unfounded in another database.

MS. TAGERT: So ma'am, just to follow up on that, the DAC-IPAD has received testimony that only Commanders make probable cause determinations. Only Commanders make unfounded determinations.

But when we looked at the documentation that Commanders provide, and I think this goes to what Mr. Markey was previously talking about, there is no discussion on whether or not probably cause is met. Or whether or not a case is unfounded.

So there seems to be confusion as to what party makes those decisions. And of course there is a probable cause determination by a Judge Advocate as required by the reporting to the FBI database. Which is why you have that probable cause determination in the data.

But, you saw probable cause determinations in different places in the
investigation that were not necessarily across
those three players.

    MG ANDERSON: Okay. Thank you.

    CHAIR BASHFORD: Any further
discussion as to Finding Thirteen?

    (No response.)

    CHAIR BASHFORD: Okay. I move that it
be adopted by the DAC-IPAD.

    HON. GRIMM: Second.

    CHAIR BASHFORD: All in favor?

    (Chorus of ayes.)

    CHAIR BASHFORD: Opposed?

    (No response.)

    DR. SPOHN: And we're making no
recommendation based on this Finding.

    HON. GRIMM: Not yet.

    DR. SPOHN: Okay.

    COLONEL WEIR: Finding Fourteen
proposed the standards, timing and authorities
for collecting and submitting fingerprints to the
federal database, making probable cause
determinations and submitting final disposition
information to the federal database are unclear and not uniform across the Services.

CHAIR BASHFORD: And when you say authorities, do you mean who's doing it? Or do you mean the authority to do it?

COLONEL WEIR: The authority to do it.

CHAIR BASHFORD: Then I would make that singular not plural.

COLONEL WEIR: And what this Finding goes to, is that across the Services it varies, when is a suspect or subject's fingerprinted?

Most of the time it's taken when he's brought in for the first interview and they do the fingerprints.

You might see within a week a JAG makes the determination there's probable cause and off the fingerprints go. You might see six months later the JAG makes a determination that the fingerprints should be sent off.

There's no consistency across the Services as to when that determination is made.

So should, you know, is there a point in time
where the investigation has gone far enough that you can say at a point this is when you should send off the fingerprints.

And then what we found in the files is that as you look at them, sometimes there is a very clear, Captain so and so reviewed this. And has determined that probable cause exists to believe that this offense was committed. And the fingerprints were sent off.

And in other files you never know if it happened or when it happened. And this goes too also in the report where it's talked about the Air Force experience with the fingerprint issue.

Because, you know, when was the right time to do it. And it was, you know, left. You know, there needs to be more guidance about that.

And right now the -- we've deleted the S off authority?

BGEN SCHWENK: Um-hum.

COLONEL WEIR: And that's the only change that's been made so far.
CHAIR BASHFORD: Any further discussion? Dr. Spohn, you look pensive.

DR. SPOHN: No.

CHAIR BASHFORD: Then as amended, -- as amended I move that we adopt Finding Fourteen.

HON. GRIMM: Second.

CHAIR BASHFORD: All in favor?

(Chorus of ayes.)

CHAIR BASHFORD: Opposed?

(No response.)

CHAIR BASHFORD: Okay. So that's done.

COLONEL WEIR: Finding Fifteen.

Coordination with Judge Advocates on a probable cause determination is often not documented in the investigative file.

And I just discussed that. It would make it -- it would make it much easier if there was uniform at where it must be in the file.

CID is right up front on their -- in their first two pages of the investigation when the probable cause determination was made. In
some other files, you can't find it.

And so there should be that

coordination and it should be documented is what

this finding is going to.

CHAIR BASHFORD: And this again is

regarding the federal criminal history report?

COLONEL WEIR: Yes.

CHIEF McKinley: I would also say

often is instead of just often. Because often

not isn't often.

SGT Markey: And Chair Bashford, I

think you made a good point. At different

locations in the investigative file there were

different probable cause determinations.

And so the probable cause
determination to collect fingerprints and

photographs and perhaps DNA, it was sometimes in

conflict later on when we would see a disposition

that there was no probable cause.

CHAIR BASHFORD: Um-hum.

SGT. MARKEY: And so the confusion

became as well, you had probable cause. Where
did that probable cause go?

So, do we need to articulate this is probable cause only for the collection of that information from the subject? As opposed to probable cause is determined whether a case is preferred or somebody is going to be arrested?

CHAIR BASHFORD: Colonel, this would still be under the federal criminal history reporting? The finding?

COLONEL WEIR: Yes.

CHAIR BASHFORD: Okay.

SGT. MARKEY: Okay. But --

CHAIR BASHFORD: Won't the Finding have that caption?

COLONEL WEIR: Yes.

CHAIR BASHFORD: Okay.

COLONEL WEIR: It's interesting Mr. Markey that because that was a point I was going to make, is there's three different probable cause determinations in one case file.

And if there's probable cause to send the fingerprints off, why isn't there probable
cause for the act? You know, so probable cause is probable cause.

So right now the proposed Finding Fifteen, coordinate -- coordination with Judge Advocates on a probable cause determination is -- often is not documented in the investigative file.

CHAIR BASHFORD: Any further discussion?

(No response.)

CHAIR BASHFORD: I move we adopt Finding Fifteen as amended.

HON. GRIMM: Second.

CHAIR BASHFORD: In favor?

(Chorus of ayes.)

CHAIR BASHFORD: Opposed?

(No response.)

CHAIR BASHFORD: That's adopted.

COLONEL WEIR: Sixteen. Final dispositions being reported to the NCIC for sexual assault offenses are sometimes inaccurate or misleading.
DR. SPOHN: There was discussion yesterday about making that often instead of sometimes.

HON. GRIMM: So the data showed that it was not just occasional, it was very prominent then, right?

So often would be more accurate.

DR. SPOHN: Often would be accurate.

HON. GRIMM: Yes.

COLONEL WEIR: So it would be often are inaccurate or misleading.

CHAIR BASHFORD: Any further discussion on that?

(No response.)

CHAIR BASHFORD: Then I move that we adopt Finding Sixteen.

HON. GRIMM: Second.

CHAIR BASHFORD: All in favor?

(Chorus of ayes.)

CHAIR BASHFORD: Opposed?

(No response.)

CHAIR BASHFORD: Finding Sixteen is
adopted.

COLONEL WEIR: All right, Finding 17.

DoD policy does not provide direction to the Services for cases in which fingerprints are submitted to the Federal Criminal History Database and the command disposition action on the sexual assault is an election not to pursue criminal charges.

MS. GALLAGHER: And on that one there was staff discussion that's not as clear as it could be. And the staff was recommending we change that to DoD policy does not provide guidance to the Services for sexual assault cases in which fingerprints are submitted to the Federal Criminal History Database, and the command takes no action on the sexual assault.

BGEN SCHWENK: What kind of guidance are we talking about? Guidance about what?

CHAIR BASHFORD: What to do with the fingerprints, I suppose.

MS. GALLAGHER: All, yes, all of the Services are not necessarily doing the same
thing. I mean, it's not addressed in DoD policy as to how they are supposed to characterize a final disposition that involves no action on a criminal case.

BGEN SCHWENK: So are those two different issues?

HON. GRIMM: Yeah, that's what I'm wondering. It seems like just one issue, but it really sounds like it's two.

BGEN SCHWENK: These are two different issues, right, they're distinct. One is when to submit databases -- I mean fingerprints, or something about fingerprints. And another one is what we do and how to put a command disposition action when there's no pursuit of criminal charges.

CHAIR BASHFORD: It seems to me what you're trying to get at is that DoD policy does not provide guidance to the Services for cases where no criminal charges are pursued on the sexual assault, but fingerprints have already been submitted.
MS. GALLAGHER: That's correct. It's trying to articulate that clearly.

CHAIR BASHFORD: So it's, I think it's just if you reverse it a little bit. So start out with the ultimate decision was not to go forward, but you've already done this, yes. The guidance is being provided, that makes sense. So it'd be for cases in which --

HON. GRIMM: The command disposition is an election --

CHAIR BASHFORD: Not to pursue charges, but --

HON. GRIMM: Right, yes.

CHAIR BASHFORD: -- fingerprints have been.

HON. GRIMM: Right.

COLONEL WEIR: Okay, let me see if this is the way you would like it. For cases in which there is an election not to pursue criminal charges, DoD policy does not provide guidance to the Services for cases in which fingerprints are submitted to the Federal Criminal History
Database --

BGEN SCHWENK: Have been.

COLONEL WEIR: Have.

HON. GRIMM: Colonel, it would be all right to start off, DoD policy does not provide direction to the Services for cases where the command disposition action on sexual assault is an election not to pursue criminal charges, but fingerprints have been submitted to the Federal Criminal History Database.

So the introductory language is fine the way it starts.

COLONEL WEIR: Can you, sir, can you read that again?

HON. GRIMM: Sure. Can we make sure that the staff over there takes this down.

COLONEL WEIR: No, no, no, it's the Chair's suggestion is a good suggestion. DoD policy does not provide direction to the Services for cases where the command disposition action on the sexual assault is an election not to pursue criminal charges, but in which fingerprints have
been submitted to the Federal Criminal History Database.

CHAIR BASHFORD: Any further discussion? Then as amended, I move that the DAC-IPAD adopt Finding 17.

HON. GRIMM: Second.

CHAIR BASHFORD: All in favor?

(Chorus of ayes.)

CHAIR BASHFORD: Opposed? And that's adopted.

COLONEL WEIR: Okay, next is a proposed initial assessment. The Case Review Working Group will continue to monitor the important and problematic issues associated with collecting and submitting fingerprints and submitting final disposition information to the federal databases.

And earlier we removed problematic, set --

DR. SPOHN: Important and, yeah.

COLONEL WEIR: Important and problematic. So if I'm assuming we want it to
read the same. Well, the CRWG will continue to
monitor the issues associated with collecting and
submitting fingerprints and submitting final
disposition information to the federal databases.

DR. SPOHN: Right.

CHAIR BASHFORD: Do we want to say the
CRWG or the Committee?

COLONEL WEIR: I think it's probably
better to say the Committee.

CHAIR BASHFORD: That's what we said
the last time.

BGEN SCHWENK: I agree.

COLONEL WEIR: So as amended, the DAC-
IPAD will continue to monitor the issues
associated with collecting and submitting
fingerprints and submitting final disposition
information to the federal databases.

CHAIR BASHFORD: I would just say
Committee, because that's what we said on the
last initial assessment. So can we say DAC-IPAD
twice or we say Committee twice.

HON. GRIMM: Whatever you said.
CHAIR BASHFORD: You said Committee.

HON. GRIMM: Committee, the Committee.

CHAIR BASHFORD: I don't think that has to be adopted, right?

HON. GRIMM: That's just it.

COLONEL WEIR: Okay.

CHAIR BASHFORD: And then the last proposed recommendations, then I think probably a short break would be in order.

COLONEL WEIR: DoD policy should provide guidance on how the Services should address cases in which no criminal or administrative action was taken on the sexual assault offense, and cases in which administrative, judicial, or non-judicial action was taken for an offense other than sexual assault when they submit final disposition information to federal databases.

DR. SPOHN: Is address cases sort of vague?

MS. GALLAGHER: One of the --

DR. SPOHN: What do you mean by
address cases?

HON. GRIMM: Should, the Services should.

MS. GALLAGHER: One of the recommendations was, well, to change DoD policy to --

PARTICIPANT: Secretary of Defense.

MS. GALLAGHER: Send the recommendation to the Secretary of Defense. And then the two options there, should provide or should establish a working group to assess and recommend uniform guidance. Because there's issues involved with how to address it.

CHAIR BASHFORD: I'm not sure what we're trying to get at here, so.

BGEN SCHWENK: What, address what?

CHAIR BASHFORD: We have cases where no action's taken on the sexual, but there is action taken on other offenses.

MS. GALLAGHER: There's two issues involved there. The one is where no criminal action was taken on the event, where there's no
action. And then there's cases in which some action was taken, but not on that offense. So I guess you're right, they could be merged into the same thing.

BGEN SCHWENK: Well, isn't there action in their guidance on submitting, we're talking about --

DR. SPOHN: Fingerprints.

BGEN SCHWENK: -- final disposition information to federal databases. That kind of guidance?

MS. GALLAGHER: Correct.

BGEN SCHWENK: And isn't there already guidance on submitting final disposition information to federal databases?

MS. GALLAGHER: There is no DoD guidance on how to characterize command dispositions that involve taking no action on a criminal charge for which the fingerprints were submitted, such as the Article 120 sexual assault. The command election is to take no action.
There's no DoD policy guidance on how to characterize that in the final disposition report, and the Services are left to address it separately.

CHAIR BASHFORD: I'm still not seeing what the issue is. Is it that they've sent fingerprints in and now they've been convicted, or just on a much different type of offense?

MS. GALLAGHER: That is one of the things. For example, fingerprints are sent in for a sexual assault, Article 120. Command disposition comes back, and the election is they're going to take no action, there's no criminal, judicial, non-judicial action.

CHAIR BASHFORD: But they left their post.

BGEN SCHWENK: No, this is for no action.

MS. GALLAGHER: Or at all.

BGEN SCHWENK: The first example is no action.

MS. GALLAGHER: No action at all.
CHAIR BASHFORD: Okay.

BGEN SCHWENK: I think Terri's saying there's two categories. One is fingerprints for a sexual assault, no action on anything. One is fingerprints for a sexual assault that action on something other than a sexual assault.

MS. GALLAGHER: Yes.

BGEN SCHWENK: So what are they doing in those cases?

MS. GALLAGHER: Well, they are putting in --

BGEN SCHWENK: Whatever they're, they're doing what we said earlier.

MS. GALLAGHER: Sometimes they'll put in administrative actions taken, and the administrative action was for adultery, not a sexual assault. Which results in the implication that the administrative action was for a sexual assault, and that's what's in their criminal history.

CHAIR BASHFORD: I think this needs to be broken down, then, because one of the
recommendations should then deal with our Finding
17, right. Where we say there was an election
not to pursue criminal charges, because
fingerprints had been taken.

And then a second one, which I don't
think we've made a finding for yet, is they did
something else administrative, judicial, or non-
judicial, but for some other category of offense,
right?

MS. GALLAGHER: Right, but it could
also be consolidated into one in that there is no
action taken on the sexual assault offense. So
if there is an action taken on some other
offense, that's something different.

CHAIR BASHFORD: But you're saying if
somebody that is fingerprinted or stopped, it
will show up as a sexual assault offense? I
don't know that we've had testimony on that,
though, I don't.

MS. GALLAGHER: It's in the R-84s that
have been in the case -- we've seen it in the
final dispositions.
BGEN SCHWENK: What about if we looked at Finding 14, the one that is really broad and says the standards time -- I don't remember how we edited it there.

CHAIR BASHFORD: Authority, that's the only change.

BGEN SCHWENK: Pardon me?

CHAIR BASHFORD: We only switched authorities to authority.

BGEN SCHWENK: Okay, so the standards, the timing, the authority for collecting and submitting fingerprints, making probable cause determinations and submitting final disposition information to the federal database are unclear and not uniform.

So why don't we just have a recommendation that says Secretary of Defense should clarify the guidance on exactly that, all that stuff. You just made a finding that it's not done well, but now tell them to do it. Now would that subsume both of those examples?

Because it would relate to the last thing,
submitting final disposition information to the federal database.

HON. GRIMM: We want uniform guidance.

BGEN SCHWENK: Yes, uniform guidance.

HON. GRIMM: Across the Services.

BGEN SCHWENK: Right. I mean, maybe that would be a nice broad thing, goes off of 14 and covers all the rest of the findings and what was done with them.

COLONEL WEIR: So let me see if I -- Secretary of Defense should provide guidance --

BGEN SCHWENK: Uniform.

COLONEL WEIR: -- uniform guidance on the standards, timing, and authority for collecting and submitting fingerprints to the federal database, making probable cause determinations, and submitting final disposition information to the federal database.

BGEN SCHWENK: Period.

COLONEL WEIR: Period.

BGEN SCHWENK: Yes.

CHAIR BASHFORD: Does that cover what
you wanted to get at in here, or not?

    MS. GALLAGHER: Yes. Bravo.

    COLONEL WEIR: So let me see if I, we'll do it one more time. Secretary of Defense should provide uniform guidance on how the Services -- provide uniform guidance on the standards, timing, and authority for collecting and submitting fingerprints to the federal database, making probable cause determinations, and submitting final disposition information to the federal database.

    CHAIR BASHFORD: Did you say uniform guidance twice?

    HON. GRIMM: Yeah, I think he went back.

    CHAIR BASHFORD: Oh, okay.

    COLONEL WEIR: Yeah, I got tongue-tied there.

    CHAIR BASHFORD: Okay.

    PARTICIPANT: That was a reboot.

    MS. GALLAGHER: But the issues there is there is some guidance that is uniform from
the DoD. It just doesn't address all of the
topics, such as the cases in which no action is
taken by the commander, or action is taken on
some other offense. So maybe it's pointing
attention and directing the areas that are
missing specifically.

COLONEL WEIR: So would we, if after,
to the federal database to include cases in which
no criminal or administrative action was taken on
the sexual assault offense and cases in which
administrative, judicial, or non-judicial action
was taken for an offense other than sexual
assault? Period?

MG ANDERSON: Could I make a
suggestion that potentially we wait until we've
reviewed all the cases that involve an
administrative action or have been binned by the
Services? Because it will give us a little bit
more insight into this particular issue.

MS. GALLAGHER: The other issue there
is that they are currently revising the DoD
policy applicable to this and will be issuing it
certainly well before we finish all these cases.
So if there's a recommendation to be made, it
should be made in time to be considered during
the evaluation of the policy.

CHAIR BASHFORD: I guess what I'm
having trouble with is what's the difference in
the second thing between, so you say no criminal
or administrative actions was taken on the sexual
assault. And cases where administrative,
judicial, or non-judicial action taken for
different offenses, is judicial the same as
criminal?

MS. GALLAGHER: Yeah, judicial is
defined in the policy as a summary, special and
general court martial. Non-judicial is defined
as the article UCMJ Article 15 proceeding. And
administrative is not defined. Although the DoD
policy does address administrative action in lieu
of a court martial, it does not address
administrative actions generally.

BGEN SCHWENK: And this is really
complicated. I know, Terri showed me yesterday
some clear examples, like five or six clear
examples where the command came in and said here
is our final action. And then you went and
looked at the form that was submitted by the
MCIO, and the final action on that one was not
the same. So that I understand.

You know, there's a -- but we've
already said that. This gets very nuanced and
gets more complicated the more we look into it.
I don't know that we have the time to look into
it.

HON. GRIMM: So maybe it does suggest
that we see what the data that is going to be
produced in the completion of the case samples
and then have some idea. Because however it
needs to be drafted, it needs to drafted to hit
all of those concerns.

And right now, it's kind of hard to
.tease those concerns out the way it is now. So
maybe it would be helpful to hold off on this one
until we get a little bit more data.

CHAIR BASHFORD: What we're really
trying to say is that accurate final disposition
information on all sorts of cases, where the
initial charge was a sexual offense, should be
submitted, right? Even where that's not the
ultimate.

MS. GALLAGHER: Yes, we are not
collecting a specific data point on the -- what
is identified in the final disposition report.
It's just one of the observations from reviewing
the files. It's not unique to the administrative
or non-judicial action file. It's in really all
of no action files as well as the administrative
and non-judicial files.

And the point is to try and avoid the
situations where you have fingerprints submitted
for a sexual assault offense, and then the final
disposition is submitted to the Criminal History
Database is misrepresentative of what occurred.
In the sense that they'll have a verbal
counseling and it'll be listed as counseling.

But it's a verbal counseling on being
stupid or, you know, violating adultery. Or
something other than what those fingerprints are in the database for. And instead of listing a separate offense like adultery or violation of a regulation and putting the disposition related to that criminal offense, they just have on the form, sexual assault.

CHAIR BASHFORD: So what if it would be Secretary of Defense should provide uniform guidances -- uniform guidance to the Services to address cases where fingerprints have been submitted in connection with a sexual assault offense, but the final disposition is for something else. Just a little bit of something with the something else when they submit that information to the federal databases.

MS. GALLAGHER: Yes.

CHAIR BASHFORD: Would that -- so?

HON. GRIMM: Yes.

CHAIR BASHFORD: Okay.

All right, wordsmith that a little bit. So it'd be Secretary of Defense should provide uniform guidance to the Services in cases
where fingerprints have been submitted in
connection with the accusation of a sexual
offense, but the final disposition was for an
offense other than a sexual assault offense.

HON. GRIMM: That's right.

CHAIR BASHFORD: And then you got get

--

BGEN SCHWENK: Or was either no action
or action on an offense other than a sexual
assault offense.

Right, Terri, no action and action on
an offense other than a sexual assault?

CHAIR BASHFORD: Final disposition is
either no action or action on something else?

HON. GRIMM: Other than -- yes.

CHAIR BASHFORD: On something,
something other.

BGEN SCHWENK: On an offense other
than sexual assault.

HON. GRIMM: Offense other than sexual
assault.

CHAIR BASHFORD: And then I think you
have to still put in when they submit their
disposition information to the federal databases.

BGEN SCHWENK: So I'm really looking
forward to Colonel Weir, you reading this back to
us.

COLONEL WEIR: You got it, sir. All
right, Secretary of Defense should provide
uniform guidance to the Services in cases where
fingerprint have been submitted for an
allegation of sexual assault when there was no
action taken, or action on an offense other than
sexual assault, when they submit final
disposition information to federal databases.

CHAIR BASHFORD: I suggest we take our
ten minute break now, and we'll just look at the
final version of that.

(Whereupon, the above-entitled matter
went off the record at 3:07 p.m. and resumed at
3:23 p.m.)

COLONEL WEIR: All right. All right,
we've got a draft proposed recommendation that
hopefully we've worded this to everyone's
satisfaction.

The Secretary of Defense should provide uniform guidance to the Services on submitting final disposition information to federal databases for those cases in which, after fingerprints have been submitted, either the command took no action, or took action only for an offense other than sexual assault.

BGEN SCHWENK: Read it again, sorry.

COLONEL WEIR: Okay. The Secretary of Defense should provide uniform guidance to the Services on submitting final disposition information to federal databases for those cases in which, after fingerprints have been submitted, either the command took no action, or took action only for an offense other than sexual assault.

BGEN SCHWENK: Thank you.

CHAIR BASHFORD: So any further comment on the proposed recommendation as revised? Then I propose that the DAC-IPAD adopt that as it applies to the Federal Criminal History Reporting.
HON. GRIMM: Second.

CHAIR BASHFORD: In favor?

(Chorus of ayes.)

CHAIR BASHFORD: Any opposed? That's adopted.

COLONEL WEIR: Okay, what I'd like to do now is jump into the rest of the report. We've got six more hours, so I'm glad Delta's delayed the flights.

CHAIR BASHFORD: We've just finished Chapter 1.

BGEN SCHWENK: You may have six more hours.

COLONEL WEIR: So Chapter 2, the sexual assault court martial case adjudication trends and analysis, we've had, yesterday we went through this chapter. And we've also talked about the data that's going to be in the chapter.

So the, if you go to page 47, we know we're going to add a graph there that talks about the percentage of each service.

CHAIR BASHFORD: I only have 20 pages
in mine.

COLONEL WEIR: It should be in your
folder with, in your read-ahead folder, you
should have the remaining.

BGEN SCHWENK: You know, each chapter
starts with one.

COLONEL WEIR: Oh, okay, never mind.

BGEN SCHWENK: So what page did we end
up on?

COLONEL WEIR: So I'm on page 47 of --

BGEN SCHWENK: Chapter 1 ended on 44.

So maybe page 3 of this thing. You got one of
these?

COLONEL WEIR: Yes, yes. Okay, now --

BGEN SCHWENK: Is that your 47?

COLONEL WEIR: Yes. Sorry about that.

BGEN SCHWENK: Page 3 is his 47.

COLONEL WEIR: So we discussed that,
I believe it was Chair Bashford thought it would
be informative to have a percentage of the
Services of those percentages make more sense.

So it's 42% for FY17. The Army's 42%, but how
much of the total force does the Army make up?
So we'll add that slide in there.

So that was page 3 of yours.

BGEN SCHWENK: Yeah, just subtract 44
off of yours.

COLONEL WEIR: And on page 7 -- 6, we
we're going to change grade -- rank, to grade.
On the next slides. On page, the graph that
talks about male accused sex of victims, we're
putting in actual numbers on the female accused
for those graphs, so that gives you a better idea
of how many we're actually talking about.

So instead of 60 it might be, you
know, 6. So then, I forget who on the Committee
wanted that information, but that's going to be
done.

We were going to break out, on the
graph that talks about case disposition by
military service of the accused, break out
penetrative and contact. We talked about that
earlier today when Chuck was doing the briefing.

We've had the briefing from Dr. Wells
on the multivariate. It's fiscal years 2016, 2017, we got a briefing on that today. And the
data project way forward, which should be your
last page or thereabout your last page, and
basically that says that the Data Working Group
will continue the collection and analysis.

Future analysis will include
descriptive statistics concerning court martial
case characteristics, case disposition, and case
outcomes. In addition, the DWG anticipates
further examination into the data points
concerning adjudged versus approved sentences,
the relationship between the victim and the
accused, and the resulting outcomes of the case,
and timeliness of the court martial process
through the Services.

Is there any other items that you as
Committee members would like the Data Working
Group to look into?

SGT MARKEY: Colonel, I know we had
had a little bit of discussion on victims
dragging out of the process, not wanting to move
forward. And we talked about, are there any
types of characteristics that would indicate any
sort of pattern of when they drop out of the
system. And then of course why they might be
dropping out.

And I know that might be more in the
future to do onsite visits with, you know, and
gathering maybe survey information about that.
But I think since we see a lot of reports where
victims did not want to participate, I think it
might be important to determine if there's
something to that that creates, that's creating
that atmosphere of nonparticipation.

COLONEL WEIR: We've discussed that
and I think that's probably a working group or a
site visit process that will probably result in
something in next year's report. There's --
based upon what the court -- the Data Working
Group can do with court martial statistics, and
we've had meetings with people who are interested
in figuring out that very question.

And it's or -- and it goes kind of
hand in hand with the acquittal rate question, how, why is the acquittal rate so high, the conviction rate conversely so low.

And so that's one of the things that we're also going to be looking at as the Case Review Working Group, as we get through with the review of the cases.

And we're actually going to have a meeting with some folks to try to figure out a way ahead to be able to do that, to figure out can you, is it, you know, is it going to require records of trial, is it going to require transcripts, you know, records of trial, tapes being transcribed into records of trial for the evaluation of that. So that's probably in the way ahead for future work.

But that's the Data Working Group way ahead. Is there anything that you wanted them to do?

CHAIR BASHFORD: One thing I know Dean Harrison was very interested in is retention rates after a sexual case, both, on behalf of
both sides. What happens to the largely women
victims, do they stay in and continue a career?
What happens to the accused?

We got a glimpse of that, but you
know, what happens to them if the charges do not
go forward. And he saw that as a potential huge
loss to the Services of really talented people.
If there's a way we could look at that, I would
like to do that.

COLONEL WEIR: What we'll do is talk
to Service reps and figure out if there's a way
to go through each of their human resources
offices to kind of determine if we had, and I'm
not sure how we'd be able to do this with Privacy
Act information stuff, but a name of a victim and
did he or she get out information.

So we'll get back to you with more
information on it, if that's even possible for
this committee to do based upon, you know, not
wanting to release names of individual soldiers.
Maybe we just do it by, you know, numbers, not by
name. And try to have them sorted out, but we'll
look into that. That's probably in our request for information.

We can jump into Chapter 3, which talks to changes in military sexual assault data collection and case management in the new Article 140. Chair Bashford mentioned that this morning. She received a letter addressed to her on behalf of the DoD General Counsel that they got the recommendation from the DAC-IPAD, and you've been provided copies of that letter.

So they're moving towards some of the things that you identified even today about the race of the individual involved, that's one of the things that was brought out in that, is to capture more of that information.

My recommendation for Chapter 3 is it's all good information. We can just attach that memorandum, or excuse me, letter, as an attachment in an appendix. And we can footnote that that recommendation was received and the response is attached in Appendix whatever. That would be my recommendation.
CHAIR BASHFORD: There were two appendices. There was the letter attached to his letter attached to his letter and then there was an appendix.

COLONEL WEIR: Right.

CHAIR BASHFORD: And I don't think everybody got the appendix.

COLONEL WEIR: Yes, we will -- we ended up getting that. But we will definitely send that out to you. We'll hang it on our website, so you guys can access that, and we'll send it out to your email -- clog up more of your email.

But that would be my recommendation, is just to add that, the letter and its attachments as an appendix to the report. And we'll footnote that, see letter based upon the recommendations.

BGEN SCHWENK: Sounds good to me.

CHAIR BASHFORD: Does that need a vote?

COLONEL WEIR: Yes please.
CHAIR BASHFORD: Any further discussion putting Chapter 3 and the letter? I move that we include Chapter 3 and the letter in the appendices.

HON. GRIMM: Second.

CHAIR BASHFORD: All in favor?

(Chorus of ayes.)

CHAIR BASHFORD: Opposed?

COLONEL WEIR: Chapter 4, the Department of Defense expedited transfer policy and related issues. We've discussed the expedited transfer. I believe that we have, or the Committee has looked at that. And I want to say that they voted on the findings and recommendations in October.

BGEN SCHWENK: Yes, so they're all voted on?

COLONEL WEIR: So they're all voted on, and this is just putting the expedited transfer chapter in the annual report. And the only thing that we will do, as you notice in that chapter, Finding, it's XX, we just didn't want to
put a number in there and have to change it. But
the DAC-IPAD has voted on the findings and
recommendations for the expedited transfer
portion of this.

CHAIR BASHFORD: My only comment is on
page 5, and that in the footnote 134 about
testimony in front of the PWG. Is that going to
be sufficiently anonymized, given the small size
of that?

COLONEL WEIR: And that's in which
footnote, ma'am?

CHAIR BASHFORD: It's footnote 134,
and it's the second paragraph, second sentence of
the first full paragraph on page 5.

MS. SAUNDERS: Ma'am, I think we had
talked about that and we had agreed to take that
part of it out.

CHAIR BASHFORD: That was a different
one we talked about.

MS. SAUNDERS: Right.

CHAIR BASHFORD: So is this one
sufficiently anonymized as well?
MS. SAUNDERS: I think we're going to take out the testimony of --

CHAIR BASHFORD: Okay.

MS. SAUNDERS: --- a portion.

MS. CARSON: We'll put that on all of them for the ones that --

CHAIR BASHFORD: Okay.

MS. CARSON: -- involved something with the testimony we want to anonymize.

CHAIR BASHFORD: Okay.

COLONEL WEIR: So that moves us to Chapter 5, the discussion of required study on collateral misconduct.

CHAIR BASHFORD: Do we have to approve Chapter 4?

COLONEL WEIR: Yes, I'm sorry.

CHAIR BASHFORD: Any further discussion on Chapter 4? Then I move we adopt it as part of our annual report.

HON. GRIMM: Second.

CHAIR BASHFORD: All in favor?

(Chorus of ayes.)
CHAIR BASHFORD: Opposed? Chapter 4 it is.

COLONEL WEIR: Chapter 5 talks about discussion of a required study on collateral misconduct.

This was briefed to the Committee at the October meeting where you all were informed concerning the National Defense Authorization Act, where there was a -- it includes a revision requiring the Secretary of Defense, acting through the Defense Advisory Committee on Investigation and Prosecution of Sexual Assault in the Armed Forces, to prepare and submit biannual reports to Congress detailing the number of instances in which an individual who reports an incident of sexual assault is either investigated for or receives adverse action as a result of the misconduct engaged in. But that individual is collateral to the investigation of the sexual offense.

There's the initial observations that we discussed. And basically what this is, this
chapter is a review of the discussions that you 
had in October concerning the collateral 
misconduct issue.

So this is what we as the staff 
captured and placed in this chapter, just to 
alert those who will receive this annual report 
that we're aware of that and we're waiting for 
further guidance and 50 more people.

Any comments or questions?

CHAIR BASHFORD: I just want to point 
out that the cases I think the Working Group has 
reviewed, whether there's collateral misconduct, 
sometimes it's apparent in the file underage 
drinking, whether there has been any action taken 
on any collateral misconduct is I would say more 
often than not not apparent.

So to actually find that out, I think 
you'd have to do the same thing with an RFI for 
the person's records to see what had happened. 
And I think that would be a massive task.

HON. GRIMM: We have a great working 
relationship with the Service representatives,
no, we used to.

(Laughter.)

HON. GRIMM: And we will get with them and theirs to try to help us figure out a way to solve this problem. I heard that perhaps if we had a Social Security number of someone in a report, they could run a query and maybe find out if anything was done. But we'll delve further into that and see if there was any non-judicial action taken.

But it's just not the 165 files that have been reviewed that were part of this sample that's part of this report. We've looked, I think that what's known as 1400.

And you will obviously glean from that investigation that there was some misconduct that went on, but most of the investigation -- the agencies that are investigating an allegation of rape or sexual assault are not investigating underage drinking.

That's a refer back to the command, hey, by the way, we found that this out, you
know, it's out of our, it's not within our

purview to investigate this. So it's not clear,
it's not at all clear from the files.

Now, sometimes you will find that a
subject gets punished for collateral misconduct
even if he wasn't punished for the sexual assault
in a no-action taken case. But that's not really
what I believe the focus of this requirement is
from Congress. So, more information to follow on
that.

And Chapter 6, additional issues for
the DAC-IPAD's review identified by the JPP.
This is just an update to let the folks know. If
you'll recall, the DoD General Counsel sent a
letter, a memorandum to the DAC-IPAD requesting
that the DAC-IPAD look into Article 32, 33, and
34, which were JPP recommendations.

And he requested that there be
something in the annual report concerning that.
So -- I'm sorry, 5 is attached to 6.

Part of the problem with doing this or
the request, some of law just came into effect on
January. So it was -- we were unable to do anything with that because the law hadn't taken effect yet. And the Article 32 new provision had taken effect, but it's still too new.

As you saw from the data presentations, we know that how many Article 32s are waived, and we've got analysis of how many 32s were waived and how did it result in the finding of not guilty. We were able to do some of that stuff.

But I think it's still too early until we get three or four or five years of data to try to figure out whether those changes. You know, anecdotally when you read a preferred case that's been referred to a court martial and you see the start time of the 32 was at 10:03, finish time 10:22, I'm not sure, you know, how valuable that exercise was.

And when you read the actual report, the evidence submitted is a CID report, the CID -- or, I'll use CID since I'm a Army dude -- CID agent was there to testify, and really there's no
testimony, they just didn't submit the report.
The victim doesn't testify and the defendant --
the suspect. And no other witness.

And then the 32 officer -- preliminary
hearing officer makes his determination based
upon that.

So that will be of interest when you
see the length of these things. And we're where
we're at because 132, and I won't mention the
Navy, I mean, the Service, was the eight-hour,
you know, on the witness, two-day 32. Which
ended up causing the problem here.

But that's Chapter 6, it's just to
capture what we know and kind of lay it all out
for the final report. There's no findings or
recommendations to make of that, other than to
approve the chapter.

CHAIR BASHFORD: Any discussion on
Chapter 6?

BGEN SCHWENK: What's our way ahead on
Chapter 6?

CHAIR BASHFORD: Wait and see.
BGEN SCHWENK: Wait and see? Okay.

COLONEL WEIR: There's, what we've,
what the staff is, we're talking about, we're
still in discussion. But it may be a good place,
and it's no decision, obviously you're the Chair
and you get to make the decisions. But the
Policy Working Group might be a good place to
place that and see where it goes.

But right now I think until we see a
year's worth of information coming out of that
data, you know, data collected for that, it
probably might be too tough to even figure it
out. I mean, part of the problems that we've
had, we've got the information from 2012 court
martial, '13, '14.

But the law changed in there. So you
know, how accurate. You can't compare '16 to '14
to '12 because everything's got changed around.
So if we could maybe have a pause in new laws and
changes for you know, five years.

PARTICIPANT: Face over there when you
say that.
COLONEL WEIR: Some of that. So we might able to really come up with some valuable data.

CHAIR BASHFORD: I think that should be one of our recommendations.

(Laughter.)

COLONEL WEIR: But we, our next, what we'll do is we'll make all the revisions and the changes that we, you know, take law enforcement out and keep some of those, the words that we found. And then we'll send you out a clean copy of that.

And if there's something that we missed where we didn't take out law enforcement or something, if you'd just please get that back to us, we'll make those changes.

And that will be, we've already discussed and voted on the new, the draft stuff. So there's no -- been no new findings or recommendations that have been brought up that we have to think about voting on in the future. So I'm not sure -- I'll talk to you, Chair Bashford,
if we need the telephonic February meeting.

And it might be just a good idea to get everyone in, everyone happy and give us the yeah, yeah, yeah. And it'll be a short, 15, 20 minute meeting just to make sure. I want to make sure before we go final and it gets submitted to the Secretary of Defense that everyone is happy.

CHAIR BASHFORD: Since General Schwenk weighed in, I don't think we've actually formally adopted Chapter 6. You asked what was the way ahead.

BGEN SCHWENK: Sorry. I think that an idle mind is the Devil's workshop. And seated next to you on your right is the Devil's workshop. So for those of you who can't see, that would be Chief McKinley. So I think it makes a lot of sense to get them started on thinking about 32, 34, whatever. Without any staff support, just let it on.

Let the staff provide the documents and let them sit down when we come for the next meeting in three months and at least get started
thinking about it. Because otherwise, you know, time will go by and three months after that and three months after that. And also, idle, we'll be idle.

CHAIR BASHFORD: Other than the ad hominem comments.

(Laughter.)

CHAIR BASHFORD: Any further discussion on Chapter 6? Then I move we adopt it as part of our annual report.

HON. GRIMM: Second.

CHAIR BASHFORD: All in favor?

(Chorus of ayes.)

CHAIR BASHFORD: Opposed? We're done.

COLONEL WEIR: Well, I think we have some cases. Now, the Case Review Working Group has reviewed these cases, but if any other folks that want to pop over and take a look at these investigations, you're more than welcome to.

I know, Chief, you're moving closer, so you could drive here and we'd pay for your mileage and a room, and you can bring a cot and sleep in
our office and just do nothing but review cases.

CHIEF McKinley: I would like to say also that we probably need to real soon start thinking about site visits if we're going to do them at all. Because only having two years left.

BGEN Schwenk: Yes, that's what the General was saying earlier.

CHIEF McKinley: And we've got to get on the move if we're going to do it. And really have a course of direction on, you know, what are we going to try to accomplish on the site visits.

Chair Bashford: So that we're putting that on the staff to start thinking about, I know you already have been. Before I call Mr. Sullivan into, leaping into service again, I really want to take a moment to thank the staff on the work they've done in putting this together.

Even though we have nitpicked you a little bit, I mean it's a truly an awesome amount of work, and you've done, just really.

(Applause.)
BGEN SCHWENK: And that's overcoming the Staff Director. I mean that's --

CHAIR BASHFORD: Mr. Sullivan.

MR. SULLIVAN: This meeting of the DAC-IPAD is officially closed.

(Whereupon, the above-entitled matter went off the record at 3:52 p.m.)
CERTIFICATE

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DAC-IPAD

Date: 01-25-19

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.

----------------------------------
Court Reporter