

UNITED STATES DEPARTMENT OF DEFENSE

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

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17th PUBLIC MEETING

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FRIDAY
MAY 15, 2020

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The Advisory Committee convened via teleconference at 11:00 a.m. Eastern Time, Ms. Martha Bashford, Chair, presiding.

PRESENT:

Ms. Martha Bashford, Chair
MG Marcia Anderson, US Army (Ret.)
Hon. Leo L. Brisbois
Ms. Kathleen Cannon
Ms. Meg Garvin
Hon. Paul W. Grimm
Mr. A.J. Kramer
Ms. Jennifer Gentile Long
Sgt. James Markey, Phoenix Police Department
(Ret.)
Dr. Jenifer Markowitz
Chief Rodney McKinley, Chief Master Sergeant of
the Air Force (Ret.)
BGen James Schwenk, US Marine Corps (Ret.)
Dr. Cassia Spohn
Ms. Meghan Tokash
Hon. Reggie Walton

STAFF:

Mr. Dwight Sullivan, Designated Federal Official
Colonel Steven Weir, US Army, DAC-IPAD Staff
Director

Ms. Julie Carson, Deputy Staff Director

Ms. Alice Falk, Technical Editor

Ms. Theresa Gallagher, Attorney Advisor

Ms. Nalini Gupta, Attorney Advisor

Mr. Glen Hines, Attorney Advisor

Ms. Kate Tagert, Attorney Advisor

Ms. Stacy Powell, Senior Paralegal

Mr. Dale Trexler, DAC-IPAD Chief of Staff

Ms. Amanda Hagy, Senior Paralegal

Mr. Chuck Mason, Attorney Advisor

Ms. Marguerite McKinney, Management & Program
Analyst

Ms. Meghan Peters, Attorney Advisor

Ms. Stayce Rozell, Senior Paralegal

Ms. Terri Saunders, Attorney Advisor

Ms. Eleanor Vuono, Attorney Advisor

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

2 11:02 a.m.

3 MR. SULLIVAN: Good morning. This is
4 Dwight Sullivan, I am the designated federal
5 officer of the Defense Advisory Committee on
6 Investigation, Prosecution, and Defense of Sexual
7 Assault in the Armed Forces, colloquially known
8 as the DAC-IPAD.

9 This public meeting is now open.
10 Chair Bashford, you have the baton.

11 CHAIR BASHFORD: Thank you, Dwight.
12 Good morning to everybody; Committee Members and
13 Staff and Service Members. I'd like to welcome
14 everybody in attendance to the 17th public
15 meeting of the DAC-IPAD.

16 In accordance with the current DoD
17 guidelines for operations during the COVID-19
18 pandemic, today's meeting is being held via
19 teleconference.

20 Please note, non-DAC-IPAD attendees
21 will be muted by our teleconference administrator
22 in compliance with DoD's legal guidance as to

1 prevent background noise or disruptions during
2 the meeting. Committee Members and Staff, I ask
3 you to please keep your phones muted as well when
4 you are not speaking.

5 I'm going to begin by taking a formal
6 attendance. General Anderson?

7 MG ANDERSON: Here.

8 CHAIR BASHFORD: Judge Brisbois?

9 HON. BRISBOIS: Here.

10 CHAIR BASHFORD: Ms. Cannon?

11 MS. CANNON: Here.

12 CHAIR BASHFORD: Ms. Garvin?

13 MS. GARVIN: Here.

14 CHAIR BASHFORD: Judge Grimm?

15 HON. GRIMM: Good morning. Here.

16 CHAIR BASHFORD: Mr. Kramer?

17 MR. KRAMER: Here.

18 CHAIR BASHFORD: Ms. Long?

19 MS. LONG: Here.

20 CHAIR BASHFORD: Mr. Markey?

21 SGT. MARKEY: Here.

22 CHAIR BASHFORD: Dr. Markowitz?

1 MS. MARKOWITZ: Here.

2 CHAIR BASHFORD: Chief McKinley?

3 CHIEF MCKINLEY: Here.

4 CHAIR BASHFORD: General Schwenk?

5 BGEN SCHWENK: Here.

6 CHAIR BASHFORD: Dr. Spohn?

7 DR. SPOHN: Here.

8 CHAIR BASHFORD: Ms. Tokash?

9 MS. TOKASH: Here.

10 CHAIR BASHFORD: And Judge Walton?

11 Judge Walton?

12 COLONEL WEIR: Ma'am, I think he muted
13 himself.

14 MR. TREXLER: Judge Walton, if you
15 would push 0 on your keypad on your phone you
16 will unmute.

17 HON. WALTON: Here.

18 CHAIR BASHFORD: Okay. With 15
19 members present we have a quorum for the public
20 meeting.

21 The DAC-IPAD was created by the
22 Secretary of Defense in 2016 in accordance with

1 the National Defense Authorization Act for Fiscal
2 Year 2015 as amended.

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

8 Today's meeting is being transcribed
9 and a complete written transcript will be posted
10 on the DAC-IPAD's website at www.dacipad.whs.mil.

11 If a meeting attendee would like to
12 make a public comment, please submit your name
13 and the phone number you are calling from to Mr.
14 Dale Trexler at dale.l.trexler.civ@mail.mil, no
15 later than 1:00 p.m. Eastern Time.

16 Comments will be heard at the
17 discretion of the Chair. And written public
18 comments may be submitted at any time for the
19 Committee's consideration.

20 Today the Committee will deliberate on
21 "whether to approve the draft DAC-IPAD report on
22 the feasibility and advisability of establishing

1 a process for the appointment of a guardian ad
2 litem to represent the interest of a minor victim
3 of an alleged sex related offense in the
4 Military."

5 The DAC-IPAD's analysis and report on
6 this topic was requested in 2019 by the Armed
7 Services Committee of the U.S. House of
8 Representatives. Following the guardian ad litem
9 deliberation, the Committee will deliberate on
10 and vote whether to approve the draft DAC-IPAD
11 letter to the Secretary of Defense, with the
12 committee's analysis of, and professional
13 recommendation regarding Department of Defense's
14 report on preservation of the restricted report
15 options for adult sexual assault victims.

16 The DAC-IPAD's consultation on this
17 report was requested by DoD in accordance with
18 Section 540k of the NDAA for Fiscal Year 2020.
19 The Committee will also receive updates from its
20 Case Review, Policy and Data Working Groups,
21 which I'm pleased to announce have officially
22 been approved as permanent Subcommittees of the

1 DAC-IPAD.

2 Thank you everybody for attending
3 today. We will begin our deliberations on the
4 appointment of guardian ad litem for child
5 victims of sexual offenses in the Military.

6 To preface this discussion, the DAC-
7 IPAD members have not had the opportunity to
8 receive live, in-person testimony within the
9 short time frame required for this report,
10 therefore DAC-IPAD attorneys conducted the
11 research on this important topic, sought input
12 from individual committee members who have
13 expertise in this area, interviewed civilian and
14 military experts and masterfully distilled the
15 key issues in a draft report for the committee's
16 consideration.

17 We reviewed the report with the Staff
18 yesterday in our preparatory session to make
19 technical edits and identify substantive
20 questions for today's deliberation.

21 Before I hand it over to the Staff and
22 Colonel Weir to fulfill cases deliberation, I

1 have one request for the Committee Members.

2 Judge Grimm stated an excellent
3 suggestion on our test call earlier this week,
4 that when participants have a question or wish to
5 speak, simply state your name and then wait to be
6 acknowledged by either me or Colonel Weir. So
7 state your name, quiet, be acknowledged and then
8 speak.

9 This process will both help us
10 identify who is speaking when multiple people
11 speak at the same time, and will also be very
12 helpful to the court reporter in identifying
13 speakers.

14 Thank you all again for your
15 attendance today. And with that, I will hand it
16 over to the guardian ad litem experts to start us
17 off. Thank you.

18 COLONEL WEIR: Thank you, Chair
19 Bashford. I'd just like to offer a few comments
20 before I turn it over to the guardian ad litem
21 team.

22 As the Chair mentioned, this was a

1 request that came from the House Armed Services
2 Committee. And I'd like to reiterate exactly the
3 language for those who are in the audience that
4 might not have the document or be familiar with
5 it.

6 It's an appointment of guardian ad
7 litem for minor victims. The Committee has
8 concerns for the welfare of minor Military
9 dependents who are victims of an alleged sex
10 related offense.

11 The Committee acknowledges the
12 Department of Defense's continued efforts to
13 implement services in support of service members
14 who are victims of sexual assault, and further,
15 to expand some of these services to dependents
16 who are victims.

17 However, the Committee remains
18 concerned that there is not an adequate mechanism
19 that's in the Military court-martial process to
20 represent the best interest of minor victims
21 following an alleged sex-related offense.

22 Therefore, not later than 180 days

1 after the date of the enactment of this Act, the
2 Defense Advisory Committee on Investigation,
3 Prosecution and Defense of Sexual Assault in the
4 Armed Forces shall submit to the Committees on
5 the Armed Services of the Senate and the House of
6 Representatives a report that evaluates the need
7 for, the feasibility of establishing a process
8 under which a guardian ad litem may be appointed
9 to represent the interest of a child, a victim of
10 an alleged sex offense as determined and defined
11 in Section 1044(g) of Title X, the United States
12 code who has not attained the age of 18 years.

13 So, that was the task that was
14 provided to the DAC-IPAD and the requirement for
15 the DAC-IPAD to draft a report back to the Armed
16 Services Committee.

17 Now, as the Chair mentioned, because
18 of the situation with the COVID-19, as well as
19 the short time line, what we did as a Staff was
20 we put together what we affectionately referred
21 to as the GAL team, as it just happens to be all
22 gals.

1 But the guardian ad litem team did an
2 immense amount of research. They went and
3 basically dug into the history of guardian ad
4 litem, they looked at both the ABA standards,
5 state standards, had many, many hours of, and I
6 sat in on some of these extensive conversations,
7 many, many, many hours of telephone conversations
8 with United States experts in the area.

9 And when you look at the report, the
10 draft report you have in front of you, I would
11 hold that up to any scholarly article, in any
12 journal or law review. And that's the top-notch
13 quality of the report that was generated by the
14 guardian ad litem team.

15 So, without saying anything further
16 I'm going to turn it over to Patty Ham, Eleanor
17 Vuono and Nalini Gupta to talk about the
18 recommendations. Thank you very much.

19 MS. HAM: Thank you, Colonel Weir.
20 This is Patty Ham, and along with Eleanor Vuono
21 and Nalini Gupta.

22 As Colonel Weir said, we are your GAL

1 gals. So Colonel Weir has laid out for the
2 public who might be listening in what the HASC,
3 the House Armed Services Committee assigned to
4 the DAC-IPAD, consists of.

5 Also, for members of the public who
6 might be listening, the potential findings and
7 recommendations the Committee will be discussing
8 today are found on the DAC-IPAD website under the
9 meeting materials for today's date. And they
10 include the potential findings and
11 recommendations.

12 They also include the presentation
13 that was provided to the members to describe the
14 report and the research that was conducted. The
15 PowerPoint presentation.

16 We're not going to use that today, but
17 it's posted for members of the public to see if
18 they choose to do so.

19 We'd like to take a couple of minutes
20 to then describe and recap for the members the
21 approach that the team took to this task. And we
22 did that by identifying potential questions the

1 Committee might want to have answered in order to
2 come up with their findings and recommendations.

3 And they broke down in to really five
4 areas. First, what services does the military
5 currently provide child victims of sex-related
6 offenses.

7 Second, what do civilians do, and
8 we've broke that down into academic literature on
9 the methods of representation for child victims,
10 what's the ABA done, including the model Rules of
11 Professional Conduct and the services about
12 those, as well as state and federal statutes and
13 practices.

14 The third question was, based on all
15 this research, were there any potential gaps in
16 services provided to child victims of sex-related
17 offenses. And if so, is the guardian ad litem
18 the best practice to fill those gaps.

19 Fourth, do all child victims require
20 the same approach.

21 And fifth, how do we find the answers
22 to those questions.

1 And Colonel Weir and Chair Bashford
2 have already described in brief our methodology.
3 So I'm going to turn to Ms. Vuono who is going to
4 describe the potential gap that our research
5 identified.

6 MS. VUONO: Thank you. This is
7 Eleanor Vuono, one of Staff Attorneys with the
8 DAC-IPAD.

9 And one of the approaches that we took
10 with the military was to send out questionnaires
11 to the family advocacy program as well as the
12 military judges and the special victims counsel
13 programs in all of the services to understand the
14 range of support for a child victim who is
15 involved in the criminal justice system in the
16 military.

17 And we discovered quite a robust array
18 of services to children. But along with those
19 services that are provided, the key one being of
20 course the ability to have an attorney who formed
21 an attorney client relationship with the victim,
22 there were some gaps in the services that are

1 provided. And the first gap we identified was an
2 eligibility gap.

3 So according to the statute, child
4 victims in the military justice system are
5 eligible for the SVC or VLC programs, which is
6 what the word is that they use for the VLC
7 program in the Navy and the Marine Corps.

8 They are eligible if they are Military
9 dependent. So there are non-Military dependent,
10 children who are not Military dependents who are
11 ineligible for SVC services. Although the
12 services all reported that they do make
13 exceptions to that rule and grant eligibility
14 upon request.

15 But the Army gave us a breakout of the
16 number of reports involving children as victims
17 of sexual offenses in 2018 and 2019. And 39
18 percent of those reports involving children were
19 ineligible for SVC services.

20 We didn't receive eligibility data for
21 the rest of the services.

22 Then the second gap we identified was

1 access to the attorney, the SVC or VLC program.
2 And the numbers that we received back from the
3 services indicate that while, even if there is
4 eligibility, only about ten percent of child
5 victims are utilizing the SVC or VLC programs.

6 The third gap we identified was one of
7 expertise, and has to do with just the challenge
8 of serving as an attorney and entering into an
9 attorney/client relationship with the child.
10 That requires specialized training on sexual
11 assault and child advocacy, which the SVC and VLC
12 do receive, but we identified some areas where
13 that could be addressed.

14 And then the fourth gap we identified
15 is that for some children they may not have a
16 supportive parent or family member who can help
17 them through the process. There is no dedicated
18 victim advocate program assigned directly to the
19 children as opposed to the non-offending parent,
20 which is what happens in the family advocacy
21 program.

22 And there is an Article 6b UCMJ

1 authority to designate someone to assume the
2 rights of the child. But there is no requirement
3 in the statute as to how, or whether that
4 individual must act in the child's interest.
5 Best interest or otherwise.

6 So those are the key gaps that we
7 identified that we sought to address through the
8 findings and the recommendations.

9 Patty?

10 MS. GUPTA: Good morning, everyone,
11 we're going to -- oh, I'm sorry, go ahead.

12 MS. HAM: We're going to do, address
13 very briefly the question of, do all children
14 need the same services. And we attempted to do
15 that through developing several different
16 scenarios to help you think through these
17 findings and recommendations. And Nalini is
18 going to cover those briefly.

19 MS. GUPTA: Good morning, everyone.
20 This is Nalini Gupta. And like Patty said, we
21 have three different scenarios which we have
22 already alerted the Committee Members to during

1 the preparatory meeting. But I would like to
2 review them once again to refresh your memory.

3 So, in the first scenario we have
4 Child A. Child A is a 12-year-old Military
5 dependent who alleges sexual abuse by their Army
6 stepfather. The child reports the allegation to
7 CID, and the child also requested an SVC.

8 The SVC conducts a capacity
9 determination, concludes that the child has the
10 capacity to enter into an attorney/client
11 relationship and direct representation.

12 The SVC is able to explain the
13 investigative and court-martial process to the
14 child. And an SVC is able to identify Child A's
15 desires and develop a strategy to represent Child
16 A's expressed interest.

17 A military judge in this scenario does
18 not appoint an Article 6b representative, the
19 child can exercise their own Article 6b.

20 In this scenario the Military's
21 current support system for children, such as
22 Child A, is quite effective because the child is

1 able to direct their own representation.

2 In Scenario 2 we have Child B, who is
3 much younger. A 3-year-old Military dependent.

4 Child B alleges sexual abuse by their
5 Marine stepfather. And Child B's mother contacts
6 NCIS and requests a VLC.

7 The child does not have capacity to
8 direct their own representation due to their
9 young age. But the child has a supportive family
10 member in this scenario, the mother, who was able
11 to assist the SVC.

12 So the SVC explains the process to the
13 child in an age appropriate matter and tries to
14 discern whether the child is willing to testify,
15 what accommodations are necessary to make a child
16 feel comfortable, et cetera.

17 The mother is designated by the
18 Military judge to exercise Child B's crime
19 victim's rights, under Article 6b. Again, in
20 this scenario, the Military's current services
21 for children are, such as Child B, are pretty
22 effective.

1 Even though Child B cannot direct
2 their own representation, they have a supportive
3 non-offending family member who can adequately
4 advocate for their interest.

5 Finally we have Scenario 3 involving
6 Child C. Child C is also very young. A 3-year-
7 old Military dependent who alleges sexual abuse
8 by their stepfather, a Navy Sailor.

9 In this scenario though the mother
10 reports the allegation to NCIS. And the mother
11 initially requested VLC, and the VLC conducts a
12 capacity determination and concluded that the
13 child is not capable of directing their own
14 representation.

15 However, the mother decides that the
16 child is lying about the allegations and the
17 mother stops responding to the VLC and bringing
18 the child to meetings with the VLC. And the
19 child has no other supportive family members to
20 support the child through the court-martial
21 process.

22 So, unlike Child A and B, this is

1 particularly where there is a gap in services
2 provided by the Military because the child cannot
3 express their interest, also does not have any
4 supportive family member whose interests are not
5 in conflict with the child.

6 Before we go into the deliberations,
7 I'd like to flag two questions that were raised
8 by Committee Members yesterday during the
9 preparatory meeting. Judge Grimm asked a
10 question about a child who could express their
11 own interest and direct their own representation
12 but did not have a supportive family member and
13 therefore the child stops cooperating with the
14 prosecution.

15 Mr. Kramer asked a question about how
16 to define a supportive and non-supportive parent.
17 So, Chair Bashford, would you like to begin
18 deliberations on those two particular questions
19 since they do relate to the scenarios that we
20 just discussed?

21 CHAIR BASHFORD: Yes, that would be
22 good. This is Chair Bashford. Does anybody have

1 any comments about that?

2 HON. GRIMM: Judge Grimm.

3 CHAIR BASHFORD: Go ahead.

4 HON. GRIMM: Thank you, Chair
5 Bashford. The Scenario 3 that the Staff has
6 prepared, and the materials they prepared were
7 really exceptional, highlights the pressure
8 points that can occur sometimes in cases such as
9 this where you have a child who may be old enough
10 to have the capacity to be able to direct counsel
11 and express their views and wills about what
12 happened but who may not have a supportive
13 parent.

14 In these cases, and based upon actual
15 cases that have, I have dealt with as a Judge, it
16 doesn't happen often, but it does happen often
17 enough. There is a, there can be a dynamic in
18 the family where the service member, who lives in
19 the household where the victim is, who is the
20 sole or significant economic source of survival
21 for the family, is the one who is accused.

22 If found responsible and convicted,

1 they're subject to disciplinary or other
2 consequences, that can include loss of pay or
3 even loss of income altogether.

4 Under those circumstances an otherwise
5 supported family member, the spouse, might find
6 themselves in economic conflict if the case
7 proceeds forward. And that then puts the child
8 in a very difficult position.

9 MS. LONG: Jennifer --

10 HON. GRIMM: And my, yes, I'm going to
11 stop now because there is some background noise.
12 I apologize.

13 MS. LONG: Oh, I didn't mean to cut
14 you off, I definitely can wait. I think we all
15 have background noise, we're tolerant over here.
16 Please finish.

17 HON. GRIMM: All right. So the
18 question then becomes, if we have a person who
19 is, has pressure put on them as a consequence of
20 their family, who would have the ability to
21 decide what they want to do and they say then, I
22 don't want to go anymore, I can't remember

1 anymore, I'm not really sure if it was my step-
2 dad or not or I was making that up or I was mad
3 at him because he wouldn't buy me a new bike or
4 so I just made that up. Those are the kinds of
5 things that come up.

6 And it's that circumstance it seems to
7 me, how are we able to have the attorney who is
8 responsible to the wishes of the client, and at
9 the same time determines that the wishes of the
10 client may result in the case not being able to
11 proceed to the merits.

12 And I'll stop now and let others have
13 any comments or discussion.

14 COLONEL WEIR: I think Ms. Long had a
15 comment.

16 MS. LONG: I did. I wanted to echo
17 the Judge's highlighting of that situation.

18 In addition, some other variables that
19 can lead to non-supportive care givers, even as a
20 non-offending, can be more insidious. Like
21 competition with the child.

22 I mean, it really is, as people know

1 from their experience, reports of child abuse,
2 child sexual abuse can cause care givers
3 significant stress, can exacerbate perhaps
4 feelings or situations that already exist and can
5 cause a care giver's support network to pull
6 apart.

7 And all of these things can have
8 collateral consequences that put pressure on the
9 child to recant, and/or direct, I mean, there can
10 be direct interference, intimidation, albeit
11 subtle, to put pressure on a child.

12 So I think having protection to
13 determine, to determine whether or not someone is
14 supportive and then what the factors are causing
15 a parent not to be supportive is important.

16 And I did forward some materials that
17 I thought would be helpful to the DAC-IPAD Staff
18 as they continue to deliberate. Some articles
19 written about these situations.

20 But they were yesterday after the
21 questions raised so I don't, they certainly
22 haven't been able to be set forth. So I'm sure

1 people on the call may already be aware of them.

2 MS. GARVIN: Meg Garvin.

3 CHAIR BASHFORD: Go ahead, Meg.

4 MS. GARVIN: Thank you. Certainly
5 what has been raised by the Judge --

6 MS. LONG: I'm not sure if people can
7 hear me, I'm going to call back in again.

8 CHAIR BASHFORD: Jennifer, we could
9 hear you.

10 COLONEL WEIR: We could hear you.

11 MS. GARVIN: So, this is Meg Garvin.
12 Following up on what Jennifer Long and the Judge
13 has said.

14 I think the circumstances certainly,
15 that are described in that scenario, certainly
16 warrant digging into the second question also
17 which is, if a 6b representative is going to be
18 appointed, how do we determine that they would be
19 in fact not just co-opting the rights of the
20 victim, because they stand in their shoes, the
21 minor victim, but acting in some way that's in
22 alignment with interests or best interests. I

1 think they're really related.

2 What I would like to add to the
3 conversation is that if there is an SVC or VLC
4 and the minor has capacity to direct
5 representation but the concern is that their
6 direction of the representation is being
7 manipulated, I think that's a different question.

8 We have, many times as lawyers working
9 with survivors in the civilian side, we have
10 situations where the circumstances result in
11 coercion and pressure on our client to act and
12 activate their rights in a particular way. It
13 happens with adult survivors as well as minor
14 survivors.

15 There might be additional pressure on
16 a minor because they were dependent. But the
17 SVCs and VLCs are used to, in certain dynamic
18 situations, figuring out ways to separate clients
19 from the situations, or from the pressures, and
20 try to navigate what are their interests and then
21 act on those.

22 So if the client, if the minor has

1 been determined to have capacity with having
2 attorney/client relationship, and is directing
3 that in a particular, I think we need to honor
4 that, even if it is not what we thought.

5 And yes, there is concern by the court
6 that there is so much pressure on that
7 relationship. I wouldn't want to take away the
8 attorney/client necessarily, I'd want an
9 appointment of a different 6b representative.

10 And/or in the civilian system,
11 sometimes there is both a lawyer for the client,
12 the minor, and a GAL so that the court can hear
13 what is this child advocating for themselves, as
14 articulated, and what does an outside person see
15 is in the best interest.

16 And so I wonder if there is a way to
17 consider that. I'll stop there.

18 CHAIR BASHFORD: Chair Bashford. Any
19 other comments on this area right now?

20 MR. KRAMER: A.J. Kramer.

21 CHAIR BASHFORD: Go ahead, A.J.

22 MR. KRAMER: Thank you. Yes, so I had

1 yesterday expressed about what is a supportive
2 family member. And obviously I recognize what
3 everybody has said, which is all true.

4 And by the way, I should also thank
5 the Staff for doing an incredible job on, because
6 it's been irregular so to speak times, and never
7 mind in the times that they had to adapt to for
8 producing this.

9 Just a couple of comments on what the
10 supportive path is. I view that there is, I
11 don't know how you would call it, valid, invalid,
12 good, bad reasons that somebody might or might
13 not be supportive.

14 Of course there is a scenario, Judge
15 Grimm and Ms. Long spoke about it, where there is
16 a desire, whatever reason, by adults to either
17 downplay or get the child to retract or whatever
18 it might be. Even though the allegations might
19 well be true.

20 But there is a different situation too
21 where a parent might not be supportive, where
22 they have reason, good or valid or good faith

1 reason to doubt the child, such as where there
2 may be a custody battle going on, there may be a
3 demand for attention the other way, like Ms. Long
4 and Meg Garvin said.

5 There might be, they might discover a
6 diary or the child talking and saying that the
7 allegations were not true. So, it may be, show
8 good faith and bad faith, non-supportive.

9 And I do want to say yes, it's a
10 conflict. It's a really real thing because if
11 somebody has the capacity, a lawyer is supposed
12 to, in most cases, abide by the wishes of the
13 client, in a situation like this, because they're
14 not charged with a crime, that's a different
15 issue.

16 But a guardian ad litem generally is
17 appointed when somebody is not competent in their
18 decision. And so the question becomes, is there
19 a general assumption that any minor is not
20 competent but then the lawyer would be bound by
21 their decisions anyhow.

22 So it's a little bit of a catch-22.

1 Because if the person is competent to make the
2 decisions according to her lawyer then there is
3 no need for a guardian ad litem, it's only when
4 the person is not competent to make the decision
5 that a -- merely guardian ad litem.

6 And you get into this difficulty with
7 children. It's a terrible tension here. And
8 I'll leave it there.

9 MS. HAM: Mr. Kramer, this is Patty
10 Ham.

11 MR. KRAMER: Yes.

12 MS. HAM: Thinking about your
13 question, just wanted to add some additional
14 information for your consideration.

15 So the law as it stands right now
16 gives the military judge a great deal of
17 discretion, actually four or five layers of
18 discretion, in determining whether to appoint
19 someone to assume the rights of the victim under
20 Article 6b.

21 First of all, should he do that,
22 should he appoint somebody. Second of all, who

1 should that person be.

2 Third, is there good cause to replace
3 that person because it's not defined so it's very
4 broad. And fourth, should he hold a hearing on
5 any of these matters.

6 So the military judge has great
7 discretion in determining those issues. I
8 thought that might add some additional
9 information for your consideration.

10 MR. KRAMER: Yes, I think that, I
11 mean, I think that's great. They have very
12 difficult issues because if, it depends whether
13 you're operating on the assumption, which is
14 often a legal assumption that minors are not
15 capable of making certain decisions. It occurs
16 all the time with minors.

17 In which case then there may be a
18 reason to appoint a guardian ad litem in almost
19 every case. But if you're going to differentiate
20 between a judge having to determine whether the
21 particular minor is capable of making the
22 decisions, that's much more complex in deciding

1 whether to appoint a guardian.

2 Then there is really not a reason to
3 appoint a guardian ad litem. If you go on a
4 case-by-case basis like that and the
5 determination if the person is competent.

6 MS. HAM: And the statute was amended,
7 as you all know. This is Patty Ham, again, I'm
8 sorry court reporter.

9 The statute was amended, Article 6b,
10 in the Military Justice Act of 2016 to eliminate
11 shall appoint for a minor to may appoint. So,
12 again, specifically to leave to the judge's
13 discretion when that should occur.

14 And our research revealed that if a
15 child is competent to direct a representation or
16 if they don't have a, haven't chosen to utilize
17 an SVC, if they're competent to exercise their
18 rights under Article 6b.

19 Competent is not the right word. They
20 have the capacity to exercise their rights under
21 6b there is no need or desire to have someone
22 else do that for them.

1 MS. VUONO: This is Eleanor Vuono.
2 Also to contribute to your discussion, it's worth
3 perhaps considering some of the elements of the
4 report where the factual findings indicated that
5 these sorts of difficult pressures on a child
6 victim are very much inherent in the challenge of
7 representing kids for the SVCs and the VLCs.

8 And based on some of those findings,
9 and what we learned from the attorneys in
10 Pennsylvania who seek to avoid conflicts between
11 what the child's expressed interest is and what
12 the other person might disagree or decide is the
13 best interest, that sort of leads to the
14 conversation you may want to have about the value
15 of adding a victim advocate or a social worker or
16 an expert or someone to the SVC, VLC team to be
17 able to support the lawyer as they work through
18 some of those thorny challenges when working with
19 kids.

20 So, the discussion that you all are
21 having plays into several of the potential
22 recommendations that could address that very real

1 problem.

2 CHAIR BASHFORD: This is Martha
3 Bashford. If there's no other comments from the
4 Committee on this, perhaps it's best to move us
5 further through the deliberation process.

6 MS. GARVIN: Meg Garvin.

7 CHAIR BASHFORD: Go ahead Meg.

8 MS. GARVIN: Chair, thank you. I'm
9 not sure if it's specifically related to this or
10 something broader but I wanted to flag the
11 scenarios that the Staff put together, which I
12 will echo the report and the scenarios, are
13 excellent.

14 I want to flag that they're based on,
15 as we start getting into complications, they're
16 based on age. And it appears to be pure numeric
17 age.

18 And I wanted to flag for the Committee
19 that I think we should be thinking about
20 developmental capacity not simply chronological
21 age. And I know the scenarios are clean so that
22 we can look at them from a chronological age

1 perspective.

2 But my understanding of the literature
3 around this, and my own personal experience in
4 working with child victims, is chronological age
5 is not determined, is not the determinative
6 factor because you can have different
7 developmental capacities across different ages.

8 So I just wanted to flag that for our
9 general conversations and enter that we consider
10 it in any aspects that support our findings.

11 MS. HAM: Ms. Garvin, this is Patty
12 Ham. Thank you for that comment. And the report
13 goes into the model Rules of Professional Conduct
14 1.14, which reflect some of what you just said.

15 And the ABA initiatives in this area
16 which are also described in detail in the report
17 also reflect exactly what you said.

18 And they give guidance to an attorney
19 on how to determine if a client has diminished
20 capacity or partially diminished capacity because
21 the rules and initiatives also recognize a
22 client, a child client, could be able to direct

1 the representation in some areas but not others.

2 MR. KRAMER: This is A.J. Kramer
3 again. Sorry.

4 CHAIR BASHFORD: Go ahead.

5 MR. KRAMER: Thanks. You know, Ms.
6 Garvin is absolutely right, I think, in a real-
7 world scenario. The problem is the laws
8 oftentimes draw a bright line.

9 And the two most common examples I
10 think are the recent Supreme Court cases saying
11 that if you're under 18 when you commit the crime
12 you can't be subject to the death penalty. And
13 then after that they said if you're under 18 you
14 can't automatically get a sentence of life
15 without parole. A mandatory life without parole
16 sentence.

17 And they just drew a bright in over to
18 census said, wait a minute, somebody 17 and 11
19 months and they're much more mature.

20 So the problem is the law often deals
21 in bright lines. And the difficulties come when
22 we start to try to do it on a case-by-case basis

1 determining whether somebody is competent or not
2 to make their own decisions or whatever the term
3 is used.

4 Because the appointment of a guardian
5 ad litem essentially presumes if there is some
6 conflict because the lawyer can't, because the
7 best interest of the client might not be able to
8 be taken into account because the client is not
9 competent to deal with those. And then the
10 question becomes, does that apply to everybody
11 under 18 or not.

12 MS. GARVIN: Meg Garvin.

13 CHAIR BASHFORD: Go ahead, Meg.

14 MS. GARVIN: Mr. Kramer, I absolutely
15 agree that the law sometimes, I mean, I shouldn't
16 say I agree, the law does of course, right,
17 you're absolutely correct, does draw bright lines
18 sometimes.

19 In representation of children,
20 however, and I think the report, and Patty, you
21 can obviously correct me if I'm wrong, but the
22 report lays out that the ABA has been navigating

1 this with regard to capacity to direct
2 representation.

3 They've been navigating that is based
4 on capacity, not competency. And has been a
5 developmental, and different analysis than like
6 testimonial competency or other competencies for
7 quite a long time.

8 And so I think in terms of
9 recommendations with regard to appointment, I
10 think there is sufficient information out there
11 and guidance, including training, that lawyers
12 can start to make that assessment not on a bright
13 line.

14 And courts can honor that a minor
15 victim can direct representation, regardless of
16 age, if there is capacity there to do that.

17 And in other areas of law, right, we
18 have different capacity determinations at
19 different ages. And different consent ages for
20 instance.

21 And so, what I am flagging is, and we
22 have courts that have said, for my edification,

1 as I analyze this, I am going to appoint, they
2 may not always name it a GAL because there is the
3 guardian aspect which then undermines the
4 understanding of the capacity to direct
5 representation, but I am going to appoint someone
6 to brief the court on best interests of this
7 minor because I am not sure I am hearing that
8 from the people here.

9 So there is not always the stepping
10 into the shoes of the minor, there is opportunity
11 in court proceedings for appointments of a person
12 to brief the court on best interest while there
13 is still the attorney for the child's victim who
14 is doing direct representation.

15 So, I'm just, I'm citing all of that
16 for our consideration so that we try to fill all
17 of the gaps that the Staff has identified, which
18 I think are fillable, based on the report
19 provided.

20 MS. HAM: Ma'am, this is Patty Ham.
21 With that maybe it would be helpful to turn to
22 the first potential recommendation and get your

1 thoughts on whether you agree or not?

2 And --

3 CHAIR BASHFORD: Yes, I think that's
4 a good plan because --

5 MS. HAM: -- consensus --

6 (Simultaneous speaking.)

7 CHAIR BASHFORD: There is 45 minutes
8 and a lot of recommendations to look at, so if
9 everybody could turn to the Recommendation Number
10 1.

11 MS. HAM: This is Patty, one more
12 time. We did want to mention that the report, it
13 lays out all the factual information.

14 And there are a number of potential
15 findings under each recommendation. They largely
16 come from the fact that the research revealed,
17 almost like finding the fact for a motion.

18 So the first recommendation, for
19 everyone listening, is potential recommendation
20 Number 1. It is not advisable or necessary to
21 establish a process in the military justice
22 system under which a guardian ad litem may be

1 appointed to represent the best interest of a
2 child victim of an alleged sex related offense in
3 a court-martial.

4 And there are a number of potential
5 findings. And I open it up to team members to
6 deliberate on that potential recommendation.

7 CHAIR BASHFORD: This is Chair
8 Bashford. Does anybody have a comment?

9 MS. GARVIN: Meg Garvin.

10 CHAIR BASHFORD: Go ahead, Ms. Garvin.

11 MS. GARVIN: I have two, I think are
12 questions. They may be comments but I think are
13 questions.

14 I'm assuming that for purposes of
15 moving this forward we would be, it would seem
16 very clear that it is a recommendation that is
17 not advised or necessary at this time based on
18 the information received to date.

19 Because since we weren't able to hear,
20 the Staff has done a brilliant job of collecting
21 what is out there and interviewing by telephone,
22 but without testimonial aspects of this, I think

1 it's a slightly different type of recommendation
2 than was made in the past.

3 So I think was a comment, not a
4 question, for us to consider. I don't know that
5 it requires editing but I'm flagging it.

6 And then my second one is a question.
7 It says, the phrasing is that it's not advisable
8 or necessary to establish a process where
9 guardians may be appointed.

10 I wanted to ask, is there any, and I'm
11 sorry if I missed this is the report, is there
12 any inherent authority of a military court to
13 appoint a guardian ad litem already?

14 It's such that it's not about
15 establishing a process by which they may appoint,
16 but establishing a new process by which they
17 could appoint.

18 So I just wasn't sure of the scope of
19 inherent authority of the military court to
20 already do that. It just isn't explicit.

21 MS. HAM: Ms. Garvin, this is Patty
22 Ham. We are not aware of any inherent authority.

1 In order to provide the judge the
2 authority to do that, there could be a statutory
3 change. Similar to what was given federal judges
4 in 18 U.S.C. 3509.

5 And, Dwight, if you had any other
6 comments on that.

7 HON. GRIMM: Grimm.

8 CHAIR BASHFORD: Go ahead, Dwight.

9 MR. SULLIVAN: Oh, I would agree with
10 Patty. And the court tells us that as Article 1
11 courts that are created with a specific mission,
12 the jurisdiction and authorities of the court-
13 martials are construed narrowly.

14 There might be an interesting question
15 about whether the President could authorize this
16 authority pursuant to his delegated authority
17 under Article 30A of the UCMJ 10 U.S.C. 830a.
18 But I agree with Patty that currently under the
19 law there would not be an inherent authority of
20 the military judge to do so. Over.

21 CHAIR BASHFORD: Thank you.

22 MS. HAM: And this is Patty. Add one

1 other point that typically the 18 U.S.C. does not
2 apply to the Military, including amendments to 18
3 U.S.C., unless they indicate strongly they intend
4 to include the Military. Which is why their
5 civil, federal Crime Victim Rights Act did not
6 apply to the military and Congress enacted
7 Article 6b.

8 HON. GRIMM: Grimm.

9 CHAIR BASHFORD: Yes, go ahead.

10 HON. GRIMM: Thank you, Chair
11 Bashford. One of the problems that I encountered
12 when appointing a guardian ad litem in a sex
13 offense case to protect the interest of the
14 minor, is that the federal statute authorizes the
15 court to appoint the guardian ad litem, but there
16 is no funding that comes with it.

17 And as a result of that, finding
18 someone who would have the special skill set and
19 personal capacity to have a relationship with the
20 victim in a way that would allow them to fulfill
21 the objective of a guardian ad litem was
22 dependent upon finding someone who was either

1 willing to work for free or was part of an
2 organization that had an independent source of
3 funding.

4 And it became obvious that sometimes
5 it took a tremendous amount of effort to find
6 someone. And they often times found themselves
7 putting in a significant amount of time because
8 they might be providing information that's
9 requested to the court, they might be providing
10 information that put them with the counsel for
11 the prosecution by saying there may be too many
12 efforts to prepare this witness or to interview
13 the witness in a way that could cause stress to
14 the witness or the defense attorney or both.

15 And so my concern is, is that, well,
16 I think that there ought to be some mechanism by
17 which if all of the other sources of support for
18 a victim are not satisfactory, because you have
19 that conflict, you got that need, whether it's
20 developmental, a capacity of the victim, whether
21 it's their age, whether it's because you have a
22 suspicion that they are getting pressured,

1 wherever it may be that the existing support
2 systems are insufficient, that some authority to
3 provide for a guardian ad litem would seem to be
4 a good thing to have and a possible
5 recommendation under those limited set of
6 circumstances.

7 But if it's going to be done, then
8 there has to be a source of funding, otherwise
9 you have an appearance of something, which is
10 helpful, that may in reality be far from that.
11 That's it.

12 MS. HAM: This is Patty, I have a
13 comment.

14 CHAIR BASHFORD: Yes. It's Chair
15 Bashford.

16 One of your bullet points says that
17 the services currently have MOUs for civilian
18 services to obtain guardian ad litem services for
19 child victims when necessary. How extensive are
20 those MOUs with the civilian services?

21 MS. VUONO: This is Eleanor Vuono, and
22 I can answer that question. So, it differs

1 across services and depends on the local
2 installations, would be probably the first answer
3 to that.

4 Although we do recognize that there is
5 an effort underway to create a national MOU with
6 a national organization that manages these child
7 advocacy centers which are located across the
8 country as well.

9 But regarding the particular finding
10 that you mentioned, the, one of these children
11 had a guardian ad litem appointed as part of the
12 civil child abuse and neglect proceeding.

13 And all of those services, except the
14 Navy, have reported at least one, sometimes two
15 in the last two years, where that civilian
16 guardian ad litem was appointed to support the
17 child because they already had a relationship
18 with the child or already knew the child and they
19 were already working with the child. And they
20 became the Article 6b representative in the
21 court-martial.

22 And so, those relationships exist.

1 And the SVCs and VLCs know that those are
2 resources they can tap into if needed.

3 The Navy did report that there was a
4 civilian guardian ad litem in a case last year,
5 2018 or 2019, who was involved with the child
6 civil proceedings. They did not get involved in
7 the court-martial and they were unclear to what
8 extent they supported the SVC or the child
9 through that criminal process.

10 So, I hope I answered the question.
11 The idea is that there are systems in place, the
12 services have used them. They are rarely
13 utilized. But with this new MOU there may be
14 more use of those relationships once the national
15 MOU is in place with these child advocacy
16 centers.

17 CHAIR BASHFORD: Thank you, Eleanor.

18 MS. VUONO: I hope that answers the
19 question.

20 CHAIR BASHFORD: Any further comments
21 from the Committee Members?

22 Chair Bashford again. I think one of

1 the reasons we're somewhat struggling with all of
2 this is that we haven't examined any cases
3 involving child victims. We deliberately
4 excluded them from our purview.

5 And this is a great report but it's
6 to, responding to another agency's request, and
7 we will respond to it. But I just think we're a
8 little bit struggling because we don't have the
9 data background.

10 MS. LONG: Jennifer Long.

11 CHAIR BASHFORD: Go ahead, Ms. Long.

12 MS. LONG: I agree with the Chair that
13 additional data on top of a very excellent report
14 would be necessary to be able to make it an
15 informed decision.

16 HON. GRIMM: Grimm.

17 CHAIR BASHFORD: Go ahead, Judge.

18 HON. GRIMM: I agree with that. I
19 wonder if, since at the time the tasking for the
20 Committee to provide the input to the Armed
21 Services Committees was made, I think it's a safe
22 assumption that, I'm just thinking about the

1 current health pandemic that we are facing now.

2 And obviously we want to respond in
3 some fashion that is substantive as we can based
4 upon the information we have now by that
5 deadline. I wonder if an alternative available
6 to the Committee is to identify the discussion,
7 the factors that we have, have come to our
8 attention based upon the excellent staff work,
9 that we need some additional information on, that
10 the unique circumstances that existed at the time
11 we were trying to develop the information
12 prevented us from having the kind of testimony
13 one-on-one, follow-up questions with people who
14 are able to sort of give us the additional data
15 that we don't have now.

16 So that we are responsive to the
17 deadline. It is not just a cursory response
18 asking for more time, but is substantive as can
19 be provided, but at the same time says we need
20 additional time to get, fix things to make
21 specific recommendations.

22 I would think that, I would hope that

1 that kind of a response would be a possibility if
2 the Committee thinks that it is better to have a
3 fully formed recommendation based upon all the
4 data the Committee believed it should consider,
5 than to meet a deadline for the pure sake of
6 meeting a deadline when the deadline was
7 established in a time when the events that have
8 prevented us from having all the data we would
9 otherwise have, could not have been anticipated.

10 COLONEL WEIR: This is Colonel Weir.
11 I would be interested in asking the Committee,
12 especially those members who are mentioning
13 additional data, what that data would be?

14 CHAIR BASHFORD: This is Chair
15 Bashford. I think that part of the problem is
16 our stats show that 90 percent of child victims
17 don't avail themselves of an SVC. And I think an
18 agreement with almost every single one of the
19 other recommendations, I would just like to see,
20 if you strengthen the SVC/VLC, why are only 10
21 percent of them taking advantage of it? Is it
22 really unnecessary? Is it not productive?

1 It just seems we're making these
2 assertions kind of out of the blue. I don't know
3 how well these cases are being handled, how
4 satisfied people are. All the services
5 unanimously thought that a GAL was unnecessary.

6 COLONEL WEIR: This is Colonel Weir.
7 The information about whether or not a child
8 victim had a SVC or VLC, if you'll recall when
9 our previous looks at the SVC/VLC program on
10 adult victims not wanting a VLC, we were told
11 many times by all the services that that
12 information was not available.

13 So we couldn't, or the Committee could
14 not look into reasons why the VLC or SVC was not
15 being utilized or, in the same vein, why the
16 victim was not participating in the process. And
17 when we went back and asked what records or data
18 do you have on why victims aren't participating
19 in the process, what we got was we don't keep
20 that kind of information. It's attorney/client,
21 and we don't have it.

22 So I'm not sure that we're going to be

1 able to get any more fidelity from the SVC/VLC
2 programs on why child victims, the 90 percent,
3 don't utilize an SVC. So I don't know if we're
4 going to gain any ground there. Because we've
5 already plowed that ground, and we were told that
6 it doesn't exist.

7 CHAIR BASHFORD: Okay. Thank you.

8 COLONEL WEIR: And just to further
9 comment on data, we don't have the ability as the
10 staff to go in and look at each one of these
11 child victim cases across the services and to
12 determine whether or not a guardian was useful,
13 not useful, whether one was appointed, and delve
14 into the details of -- and I don't know what the
15 number of cases are.

16 But, you know, I don't believe we have
17 the staff, the capacity to go in there and look
18 at each individual case. So, you know, what we
19 tried to do was to gather the best practices,
20 talk to experts in the field, condense that into
21 a report, and then, you know, present that to
22 you.

1 I think we may be at the end of,
2 unless there's some other specific data you're
3 looking for that doesn't involve looking at
4 individual cases.

5 MS. VUONO: This is Eleanor Vuono.
6 It may help, as you're thinking through
7 Recommendations 1 through 8, or any additional
8 ones you might want to consider, as the staff
9 moved through this process, it seemed that we
10 learned that perhaps the question that Congress
11 asked us was sort of missing, not the point but
12 they were asking one question, and we discovered
13 that there seemed to be other problems.

14 And so, for example, the question that
15 was presented, and the Recommendation 1, of
16 course, is an attempt to answer the question
17 directly that Congress posed in the HASC Report.
18 I shouldn't say the HASC Report, it wasn't
19 Congress, it was just the HASC Report.

20 But in that question they asked about
21 whether there was a need for a GAL process. And
22 then they asked about representation of best

1 interest. And as we learned, you know, the
2 states and the federal system have identified
3 having an attorney as better than having a GAL.
4 And the word GAL has almost lost meaning in some
5 ways, because it's been used in so many different
6 contexts.

7 So the best interest question is kind
8 of a different question from the word GAL. And
9 we tried to move away from that generally in the
10 other recommendations and to identify sort of how
11 services do support children on the criminal
12 side.

13 The problem with Recommendation 1, and
14 I think you're touching on it, is that that was
15 an attempt to directly answer Congress' question.
16 So I don't know whether there's any value in
17 saying perhaps that's one that can't be answered
18 until you sort of go through the other ones.
19 Perhaps, you know, moving onto the other ones,
20 seeks to address what we saw as potential
21 problems in the services that kids are currently
22 provided.

1 And then maybe that would help either
2 figure out whether the question is the wrong
3 question, whether it's the right question,
4 whether the question needs to be developed a
5 little more.

6 I'm just pointing out that
7 Recommendation 1 is a challenging one, because it
8 was directly trying to answer what the HASC
9 Report asked. And we sort of found that that
10 wasn't perhaps the most important question, even
11 though it's before us.

12 CHAIR BASHFORD: Thank you. This is
13 the Chair. I suggest we look at the other
14 recommendations and then move back to
15 Recommendation 1. It might be clearer after we
16 look at the other ones.

17 MS. HAM: Yes, ma'am, this is Patty
18 Ham. So Recommendation 2, again, so
19 Recommendation 1 was attempt to directly answer
20 Congress' question, potential Recommendations 2
21 through 8, some of which have alternate
22 recommendations, are an attempt to address some

1 potential ways to address gaps that were
2 identified, if you indeed agree those are the
3 correct gaps.

4 So DAC-IPAD Recommendation No. 2, or
5 potential recommendation, is that the secretaries
6 of the military departments enhance the funding
7 and training for SVCs/VLCs appointed to represent
8 child victims, including authorization to hire
9 civilian highly qualified experts with experience
10 and expertise in representing child victims,
11 including expertise in child development within
12 the SVC/VLC program.

13 There were a couple of potential
14 findings of fact under that. And this was
15 intended to address the issue of determining
16 capacity, the issue of expertise in developmental
17 age of children, and all the other issues that
18 Ms. Garvin addressed. I open it up to you for
19 discussion and deliberation on that potential
20 recommendation.

21 CHAIR BASHFORD: This is the Chair.
22 Any comments?

1 MS. GARVIN: Meg Garvin.

2 CHAIR BASHFORD: Go ahead, Meg.

3 MS. GARVIN: I'm not going to comment
4 on the drafting. I'm still reading it, even
5 though I had it earlier. But I'm just going to
6 say that I think this is critical. And so
7 someone else might have thoughts on the drafting
8 of it.

9 But having worked with some of the
10 SVCs and VLCs on child victim representation, and
11 then having done the same with civilian victims
12 rights lawyers, additional expertise is critical
13 in ensuring that their funding, to Judge Grimm's
14 point earlier, in general for this, making sure
15 that that is there is really critical to doing
16 this right.

17 And so this recommendation resonates
18 quite a bit with me, to ensure that we are not
19 just saying go do it, but we're saying go do it
20 well. So I really appreciate this one.

21 CHAIR BASHFORD: Thank you. Any other
22 comments? This seems to me to be pretty

1 non-controversial.

2 Colonel Weir, remind me, do the
3 Committee members vote on recommendations?

4 COLONEL WEIR: Yes, Chair. I would
5 recommend voting on it. Once the discussion is
6 concluded on each recommendation, that you take a
7 vote on that recommendation, and then move on to
8 next one, and follow the same process.

9 MS. CARSON: This is Julie Carson.

10 CHAIR BASHFORD: Go ahead, Julie.

11 MS. CARSON: I would suggest, we
12 typically approve the findings as well as the
13 recommendation. So I don't know if, in this
14 case, it was going to affect the findings
15 individually or if you would just prefer to
16 approve the recommendation.

17 CHAIR BASHFORD: I'm going to ask the
18 Committee, and just for the sake of time, that we
19 vote to approve Recommendation 2 and the two
20 findings below it. I think we'd probably better
21 do it if there's anybody opposed to that.

22 If there's no one opposed, then

1 Recommendation Number 2 and the two findings has
2 been approved unanimously by the Committee. If
3 we could move on now to Recommendation 3?

4 MS. HAM: Thank you, Ms. Bashford.
5 And Recommendation 3, for those who've been
6 listening in the public, is in conjunction with
7 Recommendation Number 2 the Judge Advocates
8 General and the SJA to the Commandant of the
9 Marine Corps develop a cadre of identifiable
10 SVC/VLC who have specialized training, experience
11 and expertise in representing child victims of
12 sex offenders by utilizing military personnel
13 mechanisms such as additional skill identifiers.

14 So this is also an attempt to address
15 the gap in potential experience and expertise in
16 representing child victims.

17 CHAIR BASHFORD: Does anyone have any
18 comments on the proposed recommendation and the
19 one finding? If there's no comment ---

20 (Audio interference.)

21 CHAIR BASHFORD: Yes? Does somebody
22 have a comment? If there's no --

1 MS. LONG: If anyone can hear me, my
2 line went dead.

3 COLONEL WEIR: Ms. Long, I can hear
4 you.

5 MS. LONG: Oh, maybe it ---

6 BGen SCHWENK: This is Jim Schwenk.
7 I can hear you.

8 MS. LONG: -- was Ms. Bashford. Maybe
9 Ms. Bashford's line went dead.

10 (Simultaneous speaking.)

11 COLONEL WEIR: Chair Bashford, can you
12 hear me?

13 BGen SCHWENK: Another insurrection by
14 the staff.

15 MR. SULLIVAN: This is Dwight
16 Sullivan, the DFO. I would suggest that Colonel
17 Weir continue to moderate the conversation until
18 the Chair is able to rejoin us.

19 COLONEL WEIR: Okay. We were on
20 Recommendation 3. Were there any comments or
21 discussion? Hearing no comments or discussion,
22 I'd like to vote on Recommendation Number 3 and

1 its finding.

2 MR. SULLIVAN: I think I just heard
3 somebody join us. This is Dwight Sullivan. Is
4 that Chair Bashford? I'm sorry. Go ahead,
5 Colonel.

6 COLONEL WEIR: If there is any -- So
7 we're voting on Recommendation 3 and its finding.
8 Is there anyone that disagrees with that
9 recommendation and finding? Please let me know.

10 Okay, moving on to Recommendation 4,
11 I'll turn it over to Patty.

12 CHAIR BASHFORD: Colonel Weir, can you
13 hear me now?

14 COLONEL WEIR: Yes.

15 CHAIR BASHFORD: Okay.

16 COLONEL WEIR: We just moved to
17 Recommendation 4, ma'am.

18 CHAIR BASHFORD: Thank you. I just
19 had to call back in.

20 (Simultaneous speaking.)

21 MS. VUONO: This is Eleanor Vuono.
22 Did you want to state on the record whether that

1 was approved unanimously, Number 3?

2 COLONEL WEIR: Yes. The vote was
3 unanimous on Recommendation Number 3 and the
4 finding.

5 MS. HAM: So turning to potential
6 Recommendation Number 4, this attempts to address
7 a potential issue with the lack of utilization of
8 SVCs by directing the Department of Defense
9 Office of Inspector General, which makes policies
10 for the military investigative organizations, and
11 the Secretaries of military departments, to
12 assess whether the MCIOs and the family advocacy
13 programs currently are providing accurate and
14 timely notification to child victims of the right
15 to request SVC/VLC representation as soon as an
16 allegation of a sexual offense is reported and to
17 take necessary corrective action.

18 I'll turn it over for any discussion
19 or deliberation on that recommendation.

20 HON. WALTON: This is Reggie Walton.

21 CHAIR BASHFORD: Go ahead, Judge
22 Walton.

1 HON. WALTON: I agree with the
2 recommendation. However, it really doesn't
3 address the situation involving a child of really
4 tender age who's not going to be able to
5 comprehend the advice, that they have the option
6 of having such representation.

7 MS. HAM: Judge Walton, this is Patty
8 Ham. In that circumstance our understanding,
9 from the Special Victim Counsel, Victim Legal
10 Counsel policy documents, is the SVC will sign a
11 letter of representation with the parent,
12 although the letter makes clear that they are
13 representing the child's interests, not the
14 parent's interest.

15 I don't know if that helps, and
16 perhaps some additional wording should be added
17 to the potential recommendation if people agree
18 with me, if the members agree with it, to clarify
19 that point.

20 HON. WALTON: This is Judge Walton
21 again. I guess that in part addresses my
22 concern. But it doesn't address the problem of

1 if you've got a parent who is reluctant to have
2 the child proceed and that reluctance is not
3 meritorious, it's just designed to protect the
4 alleged perpetrator.

5 (Simultaneous speaking.)

6 CHAIR BASHFORD: Ms. Ham, is that
7 where a 6b representative could be appointed?

8 MS. HAM: Yes, ma'am. Well Eleanor,
9 do you want to take that one?

10 MS. VUONO: Yes. So there's two parts
11 to that. This is Eleanor Vuono. And the first
12 part is that if you look to, there's another
13 recommendation in here that addresses the problem
14 of if the parent doesn't want a lawyer, what can
15 be done?

16 And there is an option or a potential
17 recommendation to allow the military judge to
18 direct appointment. So I think you flagged an
19 important gap. And that one is addressed through
20 Number 6.

21 For purposes of Number 4, this was
22 really just a look at the policies and the ways

1 that currently the services, the SVC/VLC program
2 are able to be requested by kids. And we could
3 certainly have the bullet that points out that
4 the parent does sign the letter in some cases, if
5 that helps.

6 But we just were assuming that perhaps
7 part of the problem is notice, or knowledge, or
8 information. We don't know if that's the
9 problem, but we were guessing that it would be
10 worth looking into to see if that was the
11 problem.

12 And an Article 6b representative can
13 be appointed by a military judge pre-referral as
14 part of the Military Justice Act for 2016
15 changes. So there could be a 6b rep. I don't
16 know if it would be as quick as this
17 recommendation was envisioning which would be at
18 the time the sexual offense is reported. So it
19 might be on the same afternoon, for example. But
20 the Article 6b representative can be appointed
21 much sooner in the process than previously,
22 before the statute changed.

1 MS. CARSON: This is Julie Carson.

2 CHAIR BASHFORD: Go ahead.

3 MS. CARSON: That might be something
4 that you might consider recommending as well, is
5 encouragement to appoint the Article 6b
6 representative earlier in the process. I don't
7 think that's typically done until children have
8 been referred.

9 CHAIR BASHFORD: This is the Chair.
10 Ms. Carson, could we put that under
11 Recommendation Number 8 about Article 6b's duties
12 and responsibilities?

13 MS. CARSON: Yes. I think that we can
14 put some language in for that, Patty.

15 MS. VUONO: The authority is there.
16 Whether it's being utilized or not I think is the
17 question. But certainly if there's a need for a
18 6b representative pre-referral under Article 30a,
19 the Judge does have the authority to appoint
20 either if there's no supportive family member
21 they could, for example, use a civilian GAL in
22 that setting.

1 So I think the authority already
2 exists. I don't know how often it's being used.
3 But we originally had that as a recommendation
4 and realized it already was in the law, the
5 authority to appoint the 6b representative
6 pre-referral.

7 MS. HAM: Chair Bashford, this is
8 Patty Ham. Your suggestion would be just to add
9 language to Recommendation Number 8 and its
10 alternative to ensure that an article 6b
11 representative, if necessary, is appointed as
12 early in the process as possible.

13 CHAIR BASHFORD: Yes. With that
14 addition, are we ready to consider the
15 Recommendation Number 4 and the two findings?

16 So I either put it to the vote the
17 same way, unless I hear anybody saying no. Does
18 anybody say no to Recommendation 4 and its two
19 findings?

20 Then Recommendation 4 and its two
21 findings are unanimously passed. Moving on to
22 Number 5.

1 MS. HAM: Thank you, Chair Bashford.
2 And Number 5 has a potential on an alternate.
3 And the first is that that Congress amend 10 USC
4 Section 1044(e), echo, to expand SVC/VLC to any
5 child victim of a sexual related offense
6 committed by an individual subject to UCMJ.

7 The alternate is the Judge Advocate's
8 General of the military departments and staff
9 judge advocates, the Commandant of the Marine
10 Corps establish guidance and procedures to
11 routinely grant SVC/VLC services upon request to
12 non-eligible children in cases involving child
13 victims of sexual offenses but authorize the
14 exceptions to policy.

15 And the alternate recommendation is,
16 it's just formalizing our understanding, it's
17 already happening, which is exceptions to policy
18 are routinely granted. So this would just have
19 the SVC/VLC handbooks guiding documents set in
20 writing to liberally grant those requests.

21 I turn it over to the Committee for
22 deliberation.

1 MS. GARVIN: Meg Garvin.

2 CHAIR BASHFORD: Go ahead, Meg.

3 MS. GARVIN: My preference between the
4 two is the former, with perhaps the latter
5 recommendation being actually in the notes for
6 the guidance after in the report.

7 The reason I say that is, if it is
8 based on an upon request aspect of it, then we're
9 tying it to the prior recommendation which is if
10 we're not sufficiently notifying people of
11 options and opportunities they may not know to
12 act.

13 And so we may not have a pool of folks
14 actively asking for that, which would be granted.
15 And if it's not a directed activity, I think
16 we'll still be missing from folks that would
17 benefit -- some children that would benefit from
18 this. So my preference of those two is the
19 former.

20 MR. KRAMER: A.J. Kramer.

21 CHAIR BASHFORD: Go ahead, Mr. Kramer.

22 MR. KRAMER: Thank you. Yes, I

1 completely agree with Ms. Garvin that the whole
2 point of it is to try to make children who need,
3 want, ask for or not ask for, but they could --
4 If you're going to educate them about the
5 availability of it, I think the first one makes a
6 lot more sense. If you're going to tell people
7 about it, why not adopt the first alternative in
8 Recommendation Number 5?

9 CHAIR BASHFORD: This is the Chair.
10 I agree, but I do think the bullet point findings
11 under the alternate recommendation could just as
12 easily go under Recommendation 5.

13 Do any of the members prefer alternate
14 Recommendation Number 5? Does anybody prefer
15 alternate Recommendation Number 5?

16 Hearing no responses, I would then ask
17 of the Committee to vote on Recommendation Number
18 5 of expanding eligibility. Anyone opposed,
19 please say no.

20 Hearing no opposition, Recommendation
21 Number 5 is approved. Do we want to move the
22 bullet points from the alternate recommendation

1 to Recommendation Number 5?

2 COLONEL WEIR: Chair Bashford, if I
3 might, this is Colonel Weir.

4 CHAIR BASHFORD: Go ahead.

5 COLONEL WEIR: The third bullet down,
6 it says that upon request. And the
7 Recommendation 5 that you voted on doesn't say
8 upon request. So I think Finding Number 3 would
9 not be part of a vote for findings or the ability
10 to move all of that underneath Recommendation
11 Number 5 that you just voted on.

12 BGen SCHWENK: Jim Schwenk.

13 CHAIR BASHFORD: Go ahead.

14 BGen SCHWENK: Yes. Colonel Weir, on
15 the other hand, maybe that's the kind of thing
16 Congress would want to know, if they're going to
17 decide whether to vote. Because the services are
18 sure to say, I would assume, not a problem,
19 there's no issue here. We're routinely granting
20 these requests.

21 And that would shift the argument over
22 to what the fellow member said about getting

1 notice out to kids and making sure that it just
2 automatically happens. So it might be good
3 background for us to include to show that the
4 staff at least, if not the members, the staff has
5 done the homework, and we know what the current
6 situation is.

7 COLONEL WEIR: Yes, sir. That's an
8 excellent point.

9 CHAIR BASHFORD: Okay. So I'm going
10 to ask the Committee if there's any opposition to
11 voting on the findings and moving them under our
12 already voted Recommendation Number 5. If
13 anybody is opposed, please say so.

14 Hearing no opposition, we then pass
15 those findings, voted on unanimously. And we can
16 move on to Number 6.

17 MS. HAM: Thank you, Ms. Bashford.
18 Potential Recommendation Number 6 reads that
19 Congress amends -- we have to decide which
20 article of the UCMJ -- to authorize the military
21 judge to direct the appointment of an SVC/VLC for
22 a child victim of a sexual related offense in the

1 very limited circumstances where there is no
2 supportive parent or guardian.

3 And this also is attempting to address
4 the lack of current utilization of the SVC and is
5 in line with how many states operate, in
6 particular one that we described yesterday, an
7 appointment of a judge particularly in difficult
8 cases.

9 CHAIR BASHFORD: It's the Chair. Do
10 any members have comments or questions about this
11 recommendation or the finding?

12 BGen SCHWENK: Jim Schwenk.

13 CHAIR BASHFORD: Go ahead.

14 BGen SCHWENK: Yes, Patty and everyone
15 else there, so the limitation we have here is
16 when there is no supportive parent or guardian,
17 which brings up the whole problem of what does
18 supportive mean. But that's the limitation.

19 So when you guys were putting this
20 together, the other options you had were no
21 limitation, and vest the decision and the
22 discretion of the Judge based on the particular

1 facts of the case.

2 Or something like the ABA standard
3 that was on Page 19 of our materials, the Court
4 finds that the child is just not otherwise
5 adequately protected, or what 3509 says, protect
6 the best interest of the child. So those two are
7 similar.

8 Why did you choose this one, very
9 limited circumstances when there is no supportive
10 parent or guardian, as opposed to the others, or
11 just leave it in the hands of the Judge to make
12 the call based on the facts of the case? Thanks.

13 MS. HAM: General Schwenk, this is
14 Patty Ham. I think the way you described -- no,
15 I don't want to say I think -- the way you
16 described it is probably better than what we came
17 up with. But we again were trying, our wording
18 was just trying to address the specific potential
19 gap we found. But your wording addresses it
20 better.

21 MS. VUONO: And this is Eleanor Vuono.
22 One of the things you've identified is that this

1 would be appointing an attorney, where some of
2 the language I think was about appointing a best
3 interest advocate or a GAL.

4 And so the only mechanism currently in
5 the military is for the victim to request a
6 lawyer. So we were trying to figure out a way,
7 if the victim didn't request a lawyer, the parent
8 wasn't going to allow a lawyer, if the Judge
9 could say, well I'm going to appoint an attorney
10 to represent the kid.

11 This was really just to try and
12 enhance the support of an attorney in the child's
13 representation, not to move farther towards the
14 best interest or a GAL appointment.

15 BGen SCHWENK: Thank you.

16 CHAIR BASHFORD: This is Martha
17 Bashford. So what was the language you had
18 suggested, General Schwenk? General Schwenk?

19 BGen SCHWENK: Yes. If I turn off my
20 mute, I probably sound better. This is Jim
21 Schwenk. The one I got from the ABA was: Court
22 finds that the child's interests are not

1 otherwise adequately protected.

2 And to Eleanor's point, it was 3509
3 that said protect the best interest of the child.
4 So of the two, I sort of like the ABA one better.
5 But I also like judges, so I don't mind giving
6 them the authority and let them figure it out
7 case by case.

8 MS. VUONO: This is Eleanor again.
9 Yes, maybe I wasn't clear. The idea was not to
10 appoint a best interest or a guardian ad litem
11 but to appoint an SVC, merely that far and not to
12 go as far as directing it to be a best interest
13 advocate.

14 BGen SCHWENK: Yes. Eleanor, this is
15 Jim again. Yes, I don't read the limitation as
16 defining what their duty is as opposed to just
17 when the Judge can exercise the discretion to
18 appoint the SVC who then does SVC duties.

19 MS. HAM: So the language would be in
20 the very limited circumstances or just for a
21 child victim of a sexual related offense, when
22 the Court finds the child's interests are not

1 otherwise protected.

2 BGen SCHWENK: Or adequately protected
3 again.

4 MS. HAM: Not otherwise adequately
5 protected. So we drop out the words in the very
6 limited circumstances where there was no
7 supportive parent or guardian, and instead add
8 the Court finds the child's interests are not
9 otherwise adequately protected.

10 BGen SCHWENK: Right. And then the
11 Judge may appoint an SVC. Thank you.

12 CHAIR BASHFORD: Any comments,
13 questions from the Committee on Number 6 and its
14 findings as amended?

15 Hearing none, then I'm going to ask
16 that the Committee vote on Recommendation Number
17 6 as amended and the three findings. Any members
18 opposed?

19 MR. SULLIVAN: I'm sorry, one point,
20 Dwight Sullivan here.

21 CHAIR BASHFORD: Sure.

22 MR. SULLIVAN: I believe as worded it

1 still includes the placeholder Article XX. I
2 would suggest that before voting on this, that
3 placeholder either be filled in to say 6b or the
4 article number be removed and just say Congress
5 amend the UCMJ.

6 CHAIR BASHFORD: Is it Article 6b, or
7 do we not know?

8 MR. SULLIVAN: Article 6, this is
9 Dwight, Article 6b would appear to be a logical
10 place to insert that, since that's the article
11 that already deals with how child victims' rights
12 are to be asserted and protected.

13 CHAIR BASHFORD: Yes. That makes
14 sense to me. So we'll say Congress amend Article
15 6b, UCMJ, as amended then. Are there any people
16 in opposition to six and the three findings? If
17 you have --

18 MS. VUONO: I have a question for
19 Dwight about that. Dwight, the question is: is
20 your proposal then to make a new sub-paragraph
21 to Article 6b clarifying that this is not an
22 Article 6b appointment? Because that's already

1 in sub-section C. Your suggestion is that
2 Article 6b is the right place to house the
3 Judge's appointment of an attorney.

4 MR. SULLIVAN: This is Dwight. In
5 this context, I think that a normal person
6 looking at the UCMJ in this context is going to
7 be looking at Article 6, Article 6b, c. You
8 know, that's the area they're going to be looking
9 at.

10 And so for somebody, the most logical
11 place I think to ensure that somebody sees this
12 when they're looking for it, would be to put it
13 in as either a sub-paragraph under c or insert a
14 new paragraph there. But that would just be the
15 most logical place.

16 But again, another way of approaching
17 it would be just to take out the reference to the
18 article and just that a UCMJ, and trust Congress
19 to put it where it makes the most sense.

20 CHAIR BASHFORD: I have no preference,
21 Ms. Bashford.

22 BGen SCHWENK: This is Jim Schwenk.

1 I think that it's helpful if we give them a hint
2 of where we think it ought to go. And I agree
3 with Dwight. I think 6b and then Section c, and
4 they'll just divide it into two sub-sections, and
5 that'll be that, sub-paragraphs rather, and
6 that'll be that.

7 CHAIR BASHFORD: This is Chair
8 Bashford. That's what we've --

9 BGen SCHWENK: So I think we can say
10 6b.

11 CHAIR BASHFORD: That's what we've
12 already voted on. So unless there's a move to
13 amend that, I think we should just move on.

14 MS. HAM: Thank you, Ms. Bashford.
15 The next potential recommendation, Number 7,
16 addresses the gap in experience and the lack of
17 dedicated victim advocates for children currently
18 in the military services, in the services that
19 the military provides.

20 And it reads, the Secretary of Defense
21 and the Secretary of the Military Departments
22 develop a child victim advocate capacity within

1 each of the services to support child victims of
2 sexual offenses, embed the child victim advocate
3 within the SVC/VLC programs to ensure the child's
4 legal interests are fully represented and
5 protected.

6 And there are several potential
7 findings underneath that that attempt to explain
8 that this is not intended to be similar to a unit
9 victim advocate that supports adult victims of
10 sexual offenses, military victims of sexual
11 offenses.

12 This is more intended to be an expert
13 in child development, family background and
14 dynamics, social worker sort of person and victim
15 advocate that would fall under the victim
16 advocate, victim privilege that already exists,
17 or could potentially be subject to
18 attorney/client privilege as a member of the
19 VLC/SVC team. And I'll open it up for your
20 deliberation.

21 CHAIR BASHFORD: Questions or comments
22 from the Committee? Chair Bashford.

1 MS. VUONO: This is Eleanor Vuono.
2 One other point that the staff discussed this
3 morning was that in the second to the last
4 finding bullet underneath Recommendation Number
5 7, the purpose of the victim advocate is really
6 to support the child's complete team.

7 And so we felt perhaps this should
8 read that while a victim advocate may not be
9 necessary in every criminal case, this capability
10 is most beneficial in cases when the child victim
11 cannot express an interest and/or there is not a
12 supportive parent to inform the representation of
13 the child client.

14 We didn't want it to be so limited
15 that it needed to be both of those. So we would
16 suggest that we edit that second to the last
17 bullet to make it an and/or, either of those
18 cases, a victim advocate could be quite helpful
19 to the SVC representation.

20 MR. KRAMER: It's A.J. Kramer.

21 CHAIR BASHFORD: Go ahead, Mr. Kramer.

22 MR. KRAMER: Thank you. Sorry, I just

1 have a quick question. One of the things, the
2 second bullet point, the second sentence says
3 current practice is to return children in need of
4 such services to the state for treatment and
5 support. I'm just curious. How is that done?
6 Are they taken with a parent, or how does that
7 work?

8 MS. VUONO: This is Eleanor Vuono. We
9 did speak with the Navy FAP directors, and they
10 mentioned that there's a -- they have in place
11 foster relationships overseas. And so they're
12 either assisted with a family member who made
13 contact with them, and if there's not a family
14 member there, foster parents who may be doing it
15 as well.

16 MR. KRAMER: Okay, thanks, just
17 curious.

18 MS. HAM: And there is -- Mr. Kramer,
19 this is Patty. There is also the authority of
20 commanders overseas in acute situations to remove
21 a child from a home and place the child with
22 another military family to get the child out of

1 danger immediately.

2 MR. KRAMER: Thanks.

3 CHAIR BASHFORD: This is Chair
4 Bashford. Are there any other questions or
5 discussions about Number 7 and the bullet points
6 including the one as amended to the N/4?

7 If not, I would ask the Committee to
8 vote on Recommendation Number 7 and the findings
9 as amended. And I'm asking to see if there is
10 anybody opposed? Hearing no opposition, then
11 that is passed. We'll move on to Number 8.

12 MS. HAM: Number 8 has an alternate as
13 well. And this is --

14 (Simultaneous speaking.)

15 CHAIR BASHFORD: Just one second.

16 MS. HAM: -- to address the --

17 CHAIR BASHFORD: Chair Bashford.

18 Number I also has a pretty big typo -- UCMJ not
19 UMCJ.

20 MS. HAM: Ah, yes. Ha, ha, ha. Thank
21 you.

22 CHAIR BASHFORD: You're welcome.

1 MS. HAM: And there may be other typos
2 that need to be corrected throughout some of
3 these. So thank you. So it's Congress. This is
4 attempting to address gaps where there is no
5 supportive family member, understanding the
6 issues with defining what a supportive family
7 member is.

8 And that is Congress and then Article
9 6b, UCMJ to require that any representative who
10 assumes the rights of the victim shall act to
11 protect the victim's interest, and then adding
12 the wording discussed earlier this morning, and
13 that the representative is necessary to be
14 appointed as early in the process as possible.

15 I turn it over for your deliberation.
16 The alternate -- well I'll read the alternate
17 too. The alternate is Congress shall amend
18 Article 6b, UCMJ, to require any representative
19 who assumes the rights of the victim shall act in
20 the victim's best interest, and that the
21 representative, if necessary, should be appointed
22 as early as possible in the process, period.

1 CHAIR BASHFORD: This is Chair
2 Bashford. Can you just help clarify for me the
3 difference between Number 8 and Alternate Number
4 8?

5 MS. HAM: Yes, ma'am. The thinking
6 there was that a parent is presumed to be acting
7 in their child's interest. So the first option
8 would solidify that, would make that part of the
9 statute.

10 The second option is I think we
11 intended to address more particularly where
12 someone other than a parent is appointed. The
13 issue we identified with that option is that many
14 laypeople will not have the expertise to
15 determine what is, quote, "the child's best
16 interest." So the original option might be more
17 universally applicable, I guess, is the way to
18 say it.

19 CHAIR BASHFORD: Thank you. I'd like
20 to hear from members of the Committee whether
21 they prefer 8 or Alternate 8, or don't have a
22 preference.

1 MS. GARVIN: Meg Garvin.

2 CHAIR BASHFORD: Go ahead, Meg.

3 MS. GARVIN: I prefer the former, the
4 first one, which is slightly broader than best
5 interest, in part because of some disparity and
6 disagreement around what constitutes best
7 interest. So I think it's a more direct approach
8 to do interest.

9 I have one other comment which is
10 bullet, I believe it's Bullet 4, this amendment
11 ensures the Article 6b representative does not
12 undermine the rights. I think there's a typo in
13 the last line. I think it should just be
14 unreasonable -- matters which are objectively
15 unreasonable.

16 And my real comment is that sentence
17 seems like a very important bullet. And I might
18 recommend moving it up higher because I think it
19 captures what the main goal of this
20 recommendation is, at least from my perspective.
21 And so I mean I know it's really Number 4, I
22 don't know where it moved up, but I'm just

1 suggesting that it might be useful to put it as
2 the second bullet perhaps.

3 MS. CANNON: Kathleen Cannon.

4 CHAIR BASHFORD: Go ahead, Kathleen.

5 MS. CANNON: I concur with the
6 reasoning of the prior caller on choosing the
7 first paragraph in Recommendation 8.

8 MS. TOKASH: Meghan Tokash.

9 CHAIR BASHFORD: Go ahead, Meghan.

10 MS. TOKASH: I also like the first
11 option. I think it's broader and apt to
12 encapsulate -- I just think it's broader. I like
13 it better than the second option.

14 CHAIR BASHFORD: Does anybody prefer
15 the second option?

16 Okay. Hearing nobody say they prefer
17 the second, I'm going to ask that we vote to
18 adopt Recommendation Number 8 and the findings,
19 and move up the current Bullet Point Number 4 to
20 Bullet Point Number 2. Is there anybody in
21 opposition to that?

22 Then Recommendation Number 8 and the

1 bullet point, with some movement there, has been
2 unanimously adopted.

3 MS. HAM: Ma'am, this is Patty. If we
4 could --

5 CHAIR BASHFORD: Go ahead.

6 MS. HAM: I'm sorry.

7 CHAIR BASHFORD: Go ahead, Patty.

8 MS. HAM: Yes. Thank you. Yes, if
9 this had moved to the findings under
10 Recommendation Number 7 again, we again in our
11 discussions we had added the and/or. We had also
12 added a few words to the end of the last sentence
13 to clarify that this information would enable the
14 SVC/VLC to make a substituted judgement
15 determination for the client who lacks capacity,
16 I just wanted to clarify that, to direct their
17 representation, if it's okay to add that
18 clarification.

19 CHAIR BASHFORD: They could substitute
20 a judgement determination for -- just tell me
21 what you said again. You broke up a bit.

22 MS. HAM: For a client who lacks

1 capacity to direct their representation.

2 CHAIR BASHFORD: Any members opposed
3 to that friendly amendment? Hearing no
4 opposition, that's passed unanimously.

5 MS. HAM: And ma'am, just two
6 potential areas to address, Recommendation 1, it
7 doesn't appear the Committee is ready to vote on.
8 Is there any consensus on the findings under
9 Recommendation 1, and then the report itself?

10 COLONEL WEIR: Patty, let me interrupt
11 you for just a second. This is Colonel Weir.

12 Chair, with your permission, I think
13 it would be good to take the lunch break now.
14 And that would give all the Committee members a
15 half hour to take a look at Recommendation 1 and
16 the findings, and maybe peruse the report. And
17 then we'll come back after lunch, and then go
18 back and dive into Recommendation 1.

19 CHAIR BASHFORD: I agree. I also
20 think we might want to consider Recommendation 1
21 in light of all of the other recommendations and
22 findings we've just made.

1 COLONEL WEIR: Right, I agree. And if
2 we could take the lunch break now and return at
3 25 after 1:00. And we would pick up with the
4 discussion on Recommendation 1, if that's okay
5 with you, Chair.

6 CHAIR BASHFORD: That's great.
7 Adjourned for lunch.

8 (Whereupon, the above-entitled matter
9 went off the record at 12:49 p.m. and resumed at
10 1:25 p.m.)

11 COLONEL WEIR: Good afternoon. This
12 is Colonel Weir. Before we get started with
13 looking at Recommendation 1, I want to go back
14 through and do a roll call to make sure that all
15 of you that were on before, were able to get back
16 on.

17 So, I'm going to start with Chair
18 Bashford?

19 CHAIR BASHFORD: Present.

20 COLONEL WEIR: General Anderson?

21 MG ANDERSON: I'm here.

22 COLONEL WEIR: Judge Brisbois?

1 HON. BRISBOIS: Here.

2 COLONEL WEIR: Ms. Cannon?

3 MS. CANNON: Good morning from
4 California. Still morning here.

5 COLONEL WEIR: Ms. Garvin?

6 MS. GARVIN: Here.

7 COLONEL WEIR: Judge Grimm?

8 CHAIR BASHFORD: He said he was going
9 to have to lose it at 1:00.

10 COLONEL WEIR: Right. Mr. Kramer?

11 MR. KRAMER: Here.

12 COLONEL WEIR: Ms. Long?

13 MS. LONG: Here.

14 COLONEL WEIR: Mr. Markey?

15 SGT. MARKEY: Here.

16 COLONEL WEIR: Dr. Markowitz?

17 MS. MARKOWITZ: Here.

18 COLONEL WEIR: Chief McKinley?

19 CHIEF MCKINLEY: Here.

20 COLONEL WEIR: General Schwenk?

21 BGEN SCHWENK: Present.

22 COLONEL WEIR: Dr. Spohn?

1 DR. SPOHN: I'm here.

2 COLONEL WEIR: Ms. Tokash?

3 MS. TOKASH: Here.

4 COLONEL WEIR: Judge Walton?

5 HON. WALTON: Here.

6 COLONEL WEIR: Okay good. So we have
7 quorum for the afternoon session.

8 So, what I'd like to do is start, you
9 know, we will kind of show the Recommendation 1,
10 and then went to, and did the rest of the
11 recommendations. And now I'd like to come back
12 to Recommendation 1 and open that back up for
13 discussion or comment that you all may have.

14 HON. WALTON: This is Reggie Walton.

15 CHAIR BASHFORD: Go ahead, Judge.

16 HON. WALTON: Great. I think I'm
17 agreeable with this recommendation provided that
18 the military judges have the authority to appoint
19 a guardian ad litem when they think it's
20 appropriate, and as Judge Grimm indicted, the
21 financial resources to pay for such services.

22 MS. CANNON: Kathleen Cannon.

1 CHAIR BASHFORD: Go ahead.

2 MS. CANNON: The only problem with
3 that suggestion, Judge, is if we make this
4 recommendation, I don't know why the military
5 justice system would make an appointment.
6 Because we are saying, it's not advisable or
7 necessary.

8 HON. WALTON: Well, but if -- again,
9 if we had the language provided that the military
10 judges know that they have the authority to
11 appoint a guardian ad litem, and that funding is
12 available to pay for such services. I mean, I
13 would --

14 (Recording operator interruption.)

15 HON. WALTON: Therefore, it's my
16 recommendation that if this is adopted, that that
17 language be included. That the only reason we
18 did not conclude that such a policy was
19 necessary, was because we're recommending that
20 the military judges be given that authority and
21 the funding to be able to pay for it.

22 MS. LONG: Jennifer Long.

1 CHAIR BASHFORD: Go ahead, please.

2 MS. LONG: This is a point of
3 clarification. I have a question based on what
4 the Judge, the Judge's comments.

5 For the staff members who put this
6 together, is the idea that the GAL is not
7 necessary to create, and the judges could still
8 appoint them because there are MOUs with civilian
9 organizations that could provide that?

10 Or, because I see the findings related
11 to the MOU civilian places. Or is that not --
12 that not the reason the finding is underneath
13 that recommendation?

14 MS. VUONO: Yeah, I think --

15 MS. HAM: Hi, this is Patty. Eleanor,
16 would you take that?

17 MS. VUONO: Yeah. So, this is Eleanor
18 Vuono. And I think the point of this one was, if
19 the committee believed that all of these other
20 recommendations would address what we've
21 identified as gaps in services to children, then
22 a new program called the Military GAL program,

1 separate from whatever civilian GAL services are
2 already provided for children, would not be
3 necessary.

4 This is not in conjunction though,
5 just to clarify, with a recommendation that the
6 military judge appoint a guardian ad litem.
7 That's not it in the recommendations.

8 And the reasons it's not, is one,
9 guardian ad litem are appointed right now in the
10 civilian courts in civil child custody and abuse
11 cases say, and those guardian ad litem have been
12 used as Article 6b representatives.

13 So, there is a relationship for a
14 civilian GAL to support a child through a 6b
15 appointment. But that is not a GAL program.

16 So, that's the clarification we were
17 trying to make. It's a bit of a nuance. But,
18 the notion that a civilian GAL could be appointed
19 as a 6b rep, is not the same thing as creating a
20 Military GAL program.

21 MS. LONG: But it -- this is still
22 Jennifer Long. But the idea was, it was one of

1 the things that you all thought could fill the
2 gap?

3 MS. VUONO: The civilian GAL being
4 used as a 6b rep is one of the ways that the
5 military fills the gap, correct. And we did not
6 see the efficacy of a separate Military GAL
7 program.

8 MS. LONG: So, I guess I would just
9 offer so that there's no misunderstanding, and
10 again, I don't know, I would like to hear from
11 the Judges if there's any language for
12 Recommendation 1 that would make them feel
13 comfortable with the, you know, leaving it so
14 that the judges still had discretion to appoint
15 someone. That there wasn't any misunderstanding.

16 If there's any language they would
17 suggest that could remedy Recommendation 1 that
18 would make them feel comfortable that children
19 were protected in the circumstances that they
20 were concerned about?

21 CHAIR BASHFORD: Go ahead, Judge
22 Walton. Go ahead, Judge.

1 HON. WALTON: Reggie Walton. I think
2 at the end of the recommendation there could be a
3 clause added indicating that the -- that this
4 recommendation is being made provided that
5 military judges are in fact authorized to appoint
6 guardian ad litem when deemed appropriate. And
7 that funding for such appointments are available.

8 MS. VUONO: So, just to be clear for
9 that clause. This is Eleanor Vuono. Meaning
10 provided that military judges exercised their
11 authority under Article 6b, to utilize GALs as
12 necessary, and to ensure appropriations.

13 Is that what, is that perhaps? I just
14 want to be clear with the clause you're
15 suggesting.

16 HON. WALTON: Yes. That's probably
17 more correct. Yes.

18 BGEN SCHWENK: Jim Schwenk.

19 CHAIR BASHFORD: Go ahead, please.

20 BGEN SCHWENK: Yeah. I -- based on
21 what Judge Walton said and what Judge Grimm said
22 earlier, it seems to me what they're looking for

1 is, in a really messed up family, or adult child
2 situation, they would like to have some
3 independent person who will come to them with the
4 best interest of the child in mind, and talk to
5 them about how best to satisfy the exercise of
6 the child victim's rights.

7 And so, appointing someone as a
8 personal representative under 6b doesn't do that.
9 To me you need a separate subsection under 6b
10 that specifically authorizes the judge to do
11 exactly that, appoint an independent person to
12 advise the judge in the best interest of the
13 child in the exercise of the child's rights at
14 the criminal, at the, you know, criminal court.

15 To me that's the only reason we would,
16 and that, when you get somebody talking about the
17 best interest of the child, you immediately think
18 of a guardian ad litem.

19 To me that's the only thing I've heard
20 in all the discussion that we would possibly want
21 to have a process, which is what this says, a
22 process in the military justice system under

1 which a guardian ad litem maybe appointed by the
2 military judge, to represent not the child, but
3 to represent the best interest of the child in
4 talking to the judge.

5 So, I think that -- we could say,
6 there's no reason to have a Military GAL program,
7 that is a whole bunch of guardian ad litem that
8 we train and do everything with, and maintain,
9 that's absolutely true.

10 But we do need, it seems to me, based
11 on what those two judges who handle these cases,
12 I certainly haven't, what we do need is a process
13 in military justice that allows that judge to
14 appoint somebody like a GAL person, an expert, a
15 civilian expert, to come in and advise the judge
16 on the best interest of the child in exercising
17 their rights.

18 That's my thought.

19 COLONEL WEIR: This is Colonel Weir.
20 Would it be possible then to look at
21 Recommendation 6, and maybe do a Recommendation
22 6A, and do exactly what Judge Walton and Judge

1 Grimm were talking about, under that provision?

2 Do you have the authorized employment
3 of an SVC by the military judge. You could also
4 have the appointment of a guardian ad litem by
5 the military judge.

6 And if that was, is part of
7 Recommendation 6, would that, Judge Walton, would
8 that answer your concern?

9 HON. WALTON: Yes. I think it would.
10 I agree with General Schwenk that we are, should
11 be talking about an independent guardian ad
12 litem.

13 And I would have no problem with that
14 being added to Recommendation 6.

15 BGEN SCHWENK: Jim Schwenk.

16 CHAIR BASHFORD: Jim, go ahead.

17 BGEN SCHWENK: Thank you. I agree
18 with that. That's a good idea, Steve. Because
19 that way we could wrap both of those 6b
20 amendments into the same thing.

21 They're limited in scope. The
22 standard actually, could be the same. I was

1 looking, it says, court finds, so the judge finds
2 that the child's interests are not otherwise
3 adequately protected, so he wants, he wants that
4 guardian ad litem to advise him on what's best.

5 I think that's a really good solution.
6 And then in the first one, Recommendation 1,
7 we've got that program versus process. So, we're
8 going to have to say, except as in, as noted in
9 Recommendation 6, and we'll need a GAL program.

10 COLONEL WEIR: This is a point of
11 discussion, I guess. Do you need a
12 Recommendation 1 if you have the follow on
13 recommendations that have been approved by the
14 Committee?

15 BGEN SCHWENK: This is Jim Schwenk.

16 CHAIR BASHFORD: Go ahead.

17 BGEN SCHWENK: Thank you. Good
18 question. But I really liked, maybe because I'm
19 me, but I really liked the idea we took the issue
20 right on, and we addressed it.

21 I mean, we didn't, the staff did. I
22 liked it. I know it threw us all for a loop.

1 But, we're working our way through it.

2 And you know, they asked a question
3 and we ought to give them an answer. And accept
4 it in Recommendation 6, where we don't think a
5 process or program is necessary in the military
6 system.

7 That's my two cents. Thanks.

8 HON. BRISBOIS: Judge Brisbois.

9 CHAIR BASHFORD: Go ahead Judge
10 Brisbois.

11 HON. BRISBOIS: Well, I -- to speak to
12 Colonel Weir's point, I mean that's the thought
13 that's been percolating in my head all day long,
14 you know, looking back to Recommendation 1 as we
15 discussed 2 through 8.

16 As it's drafted, you know, in that, it
17 is not advisable or necessary, you know, that
18 seems to me to be directly at odds with the fact
19 that we're making all these detailed
20 Recommendations 2 through 8.

21 There's obviously something that the
22 current system doesn't address. And you know,

1 everybody has concerns and we've expressed those
2 concerns.

3 But, if we lead off with that
4 Recommendation 1 as written, the people who
5 receive this report are going to stop there. And
6 2 through 8 are going to be put in the round
7 receptacle next to their desk.

8 So, I'm -- I've been leaning all day
9 towards the view that Recommendation 1 is
10 redundant and contrary to everything else we've
11 done this morning.

12 SGT. MARKEY: Jim Markey --

13 HON. WALTON: This is Reggie Walton.
14 I'm sorry. You can go ahead.

15 SGT. MARKEY: Oh, I tend to agree. As
16 I read through this, I had a couple of questions.
17 Well, when you talk about a GAL program, are you
18 talking about some formal policy or procedure
19 that's put in place?

20 And when you talk about process, is
21 that also part of policy or procedure that would
22 be written?

1 And I think one of the things we've
2 discussed is the fact that we want to try to
3 standardize and make this process as, I don't
4 want to say easy, but as understandable for
5 judges and court appointed folks that are making
6 these decisions.

7 And I think having some sort of
8 guidance, but it does, it does kind of negate all
9 the 2 through 8 that we've talked about. So, we
10 don't go -- unless we can clarify a little bit
11 more of this statement.

12 I think incorporate it in 6, I think
13 that's adequate to have that discussion there,
14 and probably not need 1. Unless there's another
15 way to wordsmith that.

16 CHAIR BASHFORD: This is Martha. With
17 respect to General Schwenk, one thing about the
18 6b rep, our Recommendation 8, to clarify their
19 duties and responsibilities, it says they shall
20 act to protect the victim's interests.

21 So, I think that goes a long way there
22 too. And with respect to Number 1, what if we

1 made the recommendation, in light of the DAC-
2 IPAD's recommendations and findings 2 through 8,
3 we believe it's not -- a GAL program is not
4 necessary.

5 Because it's -- we're not really,
6 we're addressing gaps through other measures,
7 better training, some advocacy, but those are
8 actually different than the GAL program.

9 COLONEL WEIR: So ma'am, if I may,
10 this is Colonel Weir, the Recommendation 1 would
11 say, and we can wordsmith it, but, a Military GAL
12 program is not, is unnecessary so long as
13 Recommendations 2 through 8 are approved by the
14 Department of Defense, or whatever we.

15 I mean, that's what we're trying to
16 say. Is we've filled in the gaps with 2 through
17 8. So, therefore you don't need a formal
18 process, except if you don't do 2 through 8.

19 CHAIR BASHFORD: I think that makes
20 sense. And I think to address the Judge's
21 comments, still putting a little something in the
22 other Recommendation that in rare circumstances,

1 there's the ability to do it. Which there
2 clearly is now anyhow, because it happens
3 sometimes.

4 BGEN SCHWENK: Jim Schwenk.

5 CHAIR BASHFORD: Go ahead, Jim.

6 BGEN SCHWENK: Thank you. A friendly
7 amendment. I mean, I like what Steve said. And
8 I think that's the right direction.

9 But, why don't we make 1, 8? Why
10 don't we start with our Recommendations? Like
11 start with 6 and then go through 2, 3, 4, 5, 7,
12 8, and then -- and then, have 1 at the end so it
13 wraps it all up by saying, if 1 through 7 are
14 implemented, then there's no need for a program.

15 But also, you don't hit with that, I
16 mean, you don't get hit with that right off the
17 bat when reading. Thank you.

18 MS. HAM: General Schwenk, -- I'm
19 sorry, General Schwenk, this is Patty Ham. Would
20 you also want -- would you want too though,
21 include all or some of the findings that are
22 currently under Number 1 to precede those

1 Recommendations?

2 Or would you put them all at the end
3 with making Number 1, Number 8?

4 BGEN SCHWENK: This is Jim Schwenk.
5 Is that okay if I answer?

6 CHAIR BASHFORD: Go ahead.

7 BGEN SCHWENK: Okay, thanks. I'm not
8 smart enough to know right offhand. I guess my
9 reaction is, let's start off with what we have
10 for the others.

11 And then keep all these findings
12 underneath what's now Recommendation 1, but that
13 I'm suggesting might move to Recommendation 8.
14 Are there -- is there one or more of those that
15 you think ought to be moved up somehow?

16 MS. HAM: I -- sir, I don't have an
17 opinion one way or the other. They're basically
18 factual, I don't know, you know, in my mind,
19 findings of fact that are drawn from the research
20 that describes what already exists.

21 And they may make kind of a good
22 introduction to all this, all the other findings

1 forward. You know, or they could fit under this,
2 if it was moved to Number 8.

3 BGEN SCHWENK: This is Jim Schwenk.
4 I think that's a good idea to take those I'm
5 reading them now again. And I think it does make
6 sense to have them as sort of the introductory
7 thing and then the Recommendations that come
8 after.

9 CHAIR BASHFORD: This is Martha. What
10 if we put them at the very beginning as
11 introductory findings? And then move onto our
12 Recommendations.

13 And put the GAL program as
14 Recommendation 8 with no other findings?

15 BGEN SCHWENK: This is Jim Schwenk.
16 That works for me.

17 COLONEL WEIR: Okay, Chair Bashford,
18 this is Colonel Weir. So, right now on the
19 table, we have moving Recommendation 1, and
20 making that Recommendation 8.

21 And adding verbiage in there that a
22 Military GAL program is unnecessary so long as

1 the Recommendations 1 through 7 are approved by
2 the Department of Defense.

3 We also have in Article 6, or excuse
4 me, I'm sorry, Recommendation 6, we have the
5 additional language that would be added into
6 Article 6, which I'll call the Judge Walton
7 amendment, where it says, you know, we would say
8 that the military judge also has the authority to
9 appoint a guardian ad litem in those cases where
10 the military judge determines it is appropriate.

11 I know, Judge Walton, that you said
12 with appropriate funding. I would recommend we
13 just leave that language out.

14 I would not want to give an out on a
15 Recommendation that's hinged on funding. The
16 Department will find the money to pay for this.
17 So, I would think that that's an unnecessary
18 clause added to that.

19 But, I'll leave it for your
20 discussion. But right now I believe that's what
21 we have on the table.

22 Turn it back over to you, Chair.

1 BGEN SCHWENK: Jim Schwenk.

2 CHAIR BASHFORD: Go ahead, Jim.

3 BGEN SCHWENK: Thanks. Steve, don't
4 forget, we're going to take those findings from 1
5 and put them as a preliminary finding.

6 COLONEL WEIR: Yes, sir.

7 BGEN SCHWENK: Okay. Thanks.

8 MS. VUONO: And this is Eleanor Vuono.

9 Just another clarification for the edits that
10 Colonel Weir just suggested, to Recommendation
11 Number 6.

12 To be clear, in the literature we've
13 learned that the phrase guardian ad litem has
14 become somewhat muddled, because it can be an
15 attorney, it doesn't have to be an attorney. Out
16 of concern that this not be misunderstood to
17 think that an SVC/VLC couldn't serve as an
18 advocate, most attorneys feel it's not the job of
19 an attorney.

20 Do you merely want to call this a best
21 interest advocate? Which is sort of what the GAL
22 is supposed to do.

1 They're appointed by the court to
2 advise the court, as opposed to enter into a
3 relationship with the child. But certainly, they
4 would have to meet the child.

5 But, my question to you is, is the
6 idea to clarify the language in Number 6,
7 Recommendation Number 6 to amend Article 6b, so
8 that the judge can direct the SVC, as well as
9 appoint an independent best interest advocate to
10 represent, or to advocate for the child in the
11 court?

12 MS. GARVIN: Meg Garvin.

13 CHAIR BASHFORD: Go ahead.

14 MS. GARVIN: That modification that
15 you just articulated, is what I would support
16 most. To keep the rules separate and to allow
17 the authority -- to make the authority expressed
18 to appoint both.

19 (Simultaneous speaking.)

20 MS. HAM: This is Patty Ham. There's
21 a definition of best interest advocate that the
22 ABA uses that we could incorporate if the members

1 found that helpful.

2 Best interest advocate is one who is
3 not acting as a lawyer and does not represent the
4 child, but instead assists the court in
5 determining the best interest of the child.

6 CHAIR BASHFORD: This is Martha.
7 Could you just explain to me how that would be
8 different then a regular Article 6b
9 representative?

10 MS. HAM: Ma'am, an Article 6b
11 representative is one who is designated, steps
12 into the shoes of the victim and assumes their
13 rights. So they exercise their rights on their
14 behalf.

15 But, there's no requirement that they
16 act in their best interest. One of the
17 recommendations that you all approved earlier was
18 on Number 8, which is to clarify that the Article
19 6b representative shall act to protect the
20 victim's interest.

21 So, that's the answer I can provide
22 for you. This would be for that.

1 CHAIR BASHFORD: But is -- as part of
2 those Recommendations, how would a different best
3 interest advocate differ if what we're saying is
4 the 6b rep GAL?

5 BGEN SCHWENK: Jim Schwenk.

6 CHAIR BASHFORD: Go ahead, Jim.

7 BGEN SCHWENK: Yeah. The way I look
8 at it is, the 6b representative steps into the
9 shoes of the child, and makes decisions on the
10 child's behalf in the best interest under our new
11 rule. Under the best -- what that person thinks
12 is the best interest of the child. They make
13 those decisions. They step forward accordingly.

14 The judge wants somebody independent.
15 Somebody who's not in the shoes of the
16 prosecutor, the trial counsel, the defense
17 counsel, the child, anybody else. He wants a
18 completely independent person who takes an
19 independent view and makes independent best
20 interest judgements. Or, they're not judgments,
21 judgments and advice for the judge.

22 So, to me, they're similar. But

1 they're fundamentally different in the basic role
2 that they come from. Thank you.

3 CHAIR BASHFORD: Thank you.

4 HON. WALTON: This is Reggie Walton.
5 I don't think I disagree with Colonel Weir's
6 position regarding funding. He obviously knows
7 more about how the military operates. And
8 hopefully if that Recommendation is adopted,
9 funding would be made available.

10 But, I do think that the requirement
11 of funding needs to be mentioned somewhere.
12 Whether it's in the comment or in the opening
13 statement or whatever. But, I think it needs to
14 be made clear that the guardian ad litem's
15 appointment process doesn't work well unless
16 there is funding available to pay for that
17 service.

18 COLONEL WEIR: How about, sir, Judge
19 Walton, in Recommendation 8, we add some language
20 that says, all these Recommendations are going to
21 require adequate funding by the Department of
22 Defense?

1 HON. WALTON: I think that's -- that's
2 fine.

3 MS. HAM: We do have, Colonel Weir, we
4 do have right above Recommendation 6, with regard
5 to expanding the eligibility pool for SCVs, we do
6 have a bullet point there that expresses it for
7 that Recommendation. We can put it somewhere
8 else too.

9 CHAIR BASHFORD: Well, this is Martha.
10 I think every one of these Recommendations is
11 going to take, you know, take resources. The
12 Recommendation of the highly qualified expert,
13 the different child advocates we've looked at,
14 the improved coverage by SVC/VLC. So, I think
15 some sort of, one broad thing maybe in the
16 introduction that says, you know, it's going to
17 take time and treasure.

18 COLONEL WEIR: How about after the --
19 we've moved Recommendation 1 to 8. We've taken
20 the findings from 1 and we're going to turn that
21 into an introduction. How about a sentence right
22 before we go into Recommendations that says, the

1 DAC-IPAD Committee is fully aware that the
2 Recommendations below, 1 through 8, will require
3 additional funding and perhaps personnel by the
4 Department of Defense.

5 But, the DAC-IPAD feels strongly that
6 the additional funding and personnel will afford
7 the protections needed for minors who are the
8 victims of sexual assault committed by members of
9 the Armed Forces.

10 CHAIR BASHFORD: Well, that works for
11 me. Any other comments?

12 COLONEL WEIR: Judge Walton?

13 HON. WALTON: That sounds find to me.

14 CHAIR BASHFORD: Okay. So we are
15 voting on moving Recommendation 1 to
16 Recommendation 8. The findings under former 1
17 being introductory findings.

18 The addition of the sentence just
19 outlined by Colonel Weir about funding. And one
20 more bullet point about the ability as able to, I
21 think that was under Number 6, which will now be
22 Number 5, to appoint a best interest advocate to

1 advise the court.

2 We're adding that to the sentence. I
3 forgot how that was.

4 COLONEL WEIR: Yes, ma'am. I believe
5 that was the Judge Walton amendment where we
6 would add in appropriate circumstances, the
7 military judge may appoint a best interest of the
8 child advocate or a person, or whatever the word
9 is, that will, you know, I think that we can
10 wordsmith it.

11 But, the idea is that this is an
12 independent person who the judge has the ability
13 to call in and ask questions about, you know,
14 what's going on with the child. And I think that
15 was what Judge Walton's concern was. And it was
16 echoed by General Schwenk, having an independent
17 third party.

18 So, that would be an addition to what
19 now would be Recommendation 5. And I concur with
20 your read out of the current voting situation.

21 CHAIR BASHFORD: Does anybody have any
22 further comments or questions about that?

1 I'm going to ask the Committee to
2 vote, and that if anybody has any objections,
3 please voice them. Hearing no objections, that
4 said above on the Recommendations and the
5 Findings are approved.

6 COLONEL WEIR: Ma'am, at this point I
7 would like the Committee to take a vote on the
8 Report as drafted. We still owe an executive
9 summary and a conclusion. But, those will not be
10 substantive changes. There will be no
11 substantive changes to those two parts of the
12 report.

13 What we will do is add those along
14 with the changes that we've made here today. And
15 then we will send that back out to the Committee
16 Members for any technical changes, you know, we
17 misspelled a word, we forgot a comma, that type
18 of thing. But, the bulk of the report that
19 you've seen in front of you is what you're going
20 to -- what's going to be presented to the
21 Department of Defense and the HASC and SASC.

22 CHAIR BASHFORD: So, do any Committee

1 Members have any questions or comments on the
2 report? Which I think was brilliant. This is not
3 --

4 MS. HAM: Chair Bashford, this is --

5 CHAIR BASHFORD: Go ahead.

6 MS. HAM: I'm sorry ma'am, this is
7 Patty Ham. We did receive some additional
8 information from Ms. Long that specifically
9 addressed Mr. Kramer's question on how do you
10 determine if there is a supportive parent?

11 If it's okay, we could add a few lines
12 into the report that would describe that
13 research. And of course, highlight that in red
14 for you all. But that wouldn't hold up your
15 overall vote on the report.

16 CHAIR BASHFORD: Okay. So, does
17 anybody have any questions or comment? Then
18 subject to the addition of some lines as
19 described by Ms. Ham, I'm going to ask the
20 Committee to vote on the report.

21 Does anybody have any objection to it?
22 Hearing no objections, it's unanimously passed.

1 COLONEL WEIR: Ma'am, at this point,
2 if we could just take a short break in place.
3 Because we're going to start right with the
4 restricted report option with Meghan Peters and
5 Terri Saunders.

6 I want to make sure that both those
7 folks are on the line. And we're going to go
8 right into the response, the draft response, so.

9 CHAIR BASHFORD: Okay. Great.

10 COLONEL WEIR: I'll just turn it over
11 to Terri and Meghan. You can jump right into the
12 draft response.

13 MS. SAUNDERS: Thank you, Colonel
14 Weir. This is Terri Saunders. Chair Bashford,
15 and Members of the Committee, for this discussion
16 we'll be reviewing Tabs 5 and 6 of the materials
17 that were emailed to you. And this is DoD's
18 Report on the Preservation of Restricted Report
19 Option for Adult Sexual Assault Victims. And
20 then Tab 6 would be the proposed Response Letter
21 with recommendations from the DAC-IPAD.

22 COLONEL WEIR: Terri, if I could just

1 interrupt you for a second.

2 MS. SAUNDERS: Sure.

3 COLONEL WEIR: We provided you the
4 draft DoD response. That document, I believe, is
5 a working document. We have not put that
6 document on the website. And will not do so
7 until we receive notice that it's been approved
8 and signed off by the appropriate person in the
9 Department of Defense.

10 But it was important for your
11 materials that you had it to understand what was
12 going on. And to bounce the draft response off
13 of what the DoD draft response is going to be.
14 So, I just want to clarify that. That this is a
15 working draft by the Department of Defense.
16 Things may change.

17 So, I would appreciate it that you
18 have it, you don't share that with anybody. And
19 we'll, you know, once it gets finally approved,
20 we'll hang it next to our response on the web
21 page. Okay. Sorry about that, Terri. Thanks.

22 MS. SAUNDERS: Thanks, sir. The

1 primary issues here involve whether an adult
2 sexual assault victim should be able to make a
3 restricted report, or request a criminal
4 investigation into the assault be discontinued
5 when the complaint is made by a third party, or
6 when the victim inadvertently discloses the
7 assault to a mandatory reporter.

8 The impetus for the DoD report and the
9 DAC-IPAD response, are with -- some legislation
10 was enacted in the 2020 National Defense
11 Authorization Act.

12 And that legislation asked DoD to look
13 at the feasibility and advisability of a DoD
14 policy that would permit a service member, excuse
15 me, a service member or adult military dependent
16 victim of sexual assault to have the restricted
17 reporting option, regardless of who made the
18 disclosure of the sexual assault. And then that
19 legislation also required DoD to get the DAC-
20 IPAD's input on that. So, that's why you have
21 that draft report from the DoD and the proposed
22 response.

1 Some background on this, this is not
2 the first, the Committee's first time looking at
3 this issue. We initially looked at this in 2018.
4 We had a commander who was providing testimony
5 before the Committee on a separate topic.

6 And he told the Committee that if he
7 had one recommendation to make to help victims,
8 it would be to establish a policy where if the
9 third party reports a sexual assault, or the
10 victim, you know, inadvertently makes a
11 disclosure to a mandatory reporter, it would give
12 that victim more control over the situation, and
13 allow her to essentially pull back that report
14 and request that the investigation be stopped.

15 And this was, you know, his concern
16 was, the victim's privacy in situations where she
17 had never intended to make a report of sexual
18 assault. The Committee decided to take on that
19 issue. And the Policy Working Group looked at
20 that and heard from representatives from the
21 military criminal investigative organizations,
22 DoD and service SAPRO personnel, as well as the

1 Special Victim Counsel and Victims' Legal Counsel
2 community on this and other topics.

3 And ultimately, the Committee issued,
4 in the 2019 annual report, issued a review of
5 this topic. And made a recommendation. That
6 recommendation at the time was that the DoD
7 establish a working group to determine whether
8 this is feasible. And provided some guidance.
9 And the goal of the working group was to have the
10 DoD ultimately establish such a policy. The DoD,
11 we've spoken back and forth in the course of
12 writing this draft response, to some of the SAPRO
13 personnel at DoD.

14 And in speaking with them, it was very
15 clear that they took this mandate very seriously.
16 And they went into this working group with the
17 idea of establishing real change to help victims.

18 Ultimately, they released the report,
19 or they sent us the report that you have in front
20 of you. And they've made several recommendations
21 along these lines. Essentially what they, the
22 recommendations do, is they expand the restricted

1 reporting options for situations as we discussed,
2 when a third party has made the allegation, or
3 when the victim has inadvertently disclosed.

4 However, what it doesn't do, is in
5 most instances allow the victim to request that
6 the investigation be discontinued. Even when --
7 even under their recommendations. Even when the
8 victim is able to file a restricted report, it's
9 very clear that when a third party has reported,
10 and -- or the chain of command finds out, that it
11 must go to the criminal investigators.

12 And the criminal investigators must
13 continue to investigate the offense, even if the
14 victim does not want them to. And even if the
15 victim elects not to participate in the
16 investigation.

17 There are very limited circumstances
18 where one of the recommendations allows a victim
19 to request that the investigation be
20 discontinued, is in the situation where the third
21 party reporter or the victim does not identify
22 the subject of the assault, and the investigators

1 do not believe that through investigation they
2 will be able to identify the subject.

3 That's a pretty limited circumstance.
4 And in the reviews of -- in the DAC-IPAD's
5 reviews of criminal investigations of sexual
6 assault investigations that we've been conducting
7 over the last couple of years, we have been able
8 to see that in most instances, when a third party
9 has reported, typically the suspect is
10 identified. So, what this would initiate then,
11 is a full investigation, even when the victim
12 does not want there to be one. Again, in the
13 course of our reviews of these criminal
14 investigations, they are very thorough.

15 Often the investigator will interview
16 the victim's coworkers, neighbors, sometimes
17 family, friends, even when those -- even when
18 those individuals may not necessarily be directly
19 involved with the sexual assault allegation.

20 This obviously, as you can imagine,
21 can be very traumatic for a victim. Well, it can
22 be traumatic for any victim of sexual assault.

1 But it maybe particularly in a case where the
2 victim has never intended to report the assault,
3 and that decision was taken out of her hands.

4 So, the -- you have the DoD report
5 which does address on the one hand, you know,
6 expanding the restricted reporting options. But
7 does not really go further in addressing,
8 allowing a victim to request that the -- that the
9 investigation be discontinued, except in that
10 limited circumstance.

11 We've heard from, especially from the
12 criminal investigators, they have a very
13 legitimate public safety concern with allowing
14 the victim to do that. And that, you know, that
15 concern involves, if they have a known suspect
16 that has committed a sexual assault, they want to
17 be able to hold that person accountable. That's
18 very understandable. And they also want to
19 prevent that person from potentially committing
20 any further assaults.

21 A legitimate concern, and what we
22 bring up in the response, and what we brought up

1 in the initial DAC-IPAD review of the subject, is
2 a lot of those same arguments were put forth
3 about 15 years ago, prior to the DoD adopting the
4 restricted reporting option.

5 I think there was a lot of concern at
6 that point that if the DoD adopted restricted
7 reporting, there would be offenders that might go
8 free and could possibly be free to re-offend.

9 I think what we have seen in the
10 course of the last 15 years is that the
11 restricted reporting option has been very
12 successful. It has allowed victims to report
13 their offense, receive treatment, and in some
14 instances they may convert that report to
15 unrestricted. But they don't have to do that.
16 So, and I think, built into the restricted
17 reporting option is, there are some safety valves
18 that would hopefully prevent any offenders from
19 re-offending.

20 The proposed DAC-IPAD response, we put
21 forth a recommendation at the end. And
22 basically, this recommendation essentially

1 mirrors the original DAC-IPAD recommendation,
2 with the exception that under this
3 recommendation, rather than asking the DoD to
4 form a working group to look at this issue, which
5 of course they've already done, it actually
6 recommends that the DoD establish the policy.

7 And Madam Chair, I can -- would you
8 like me to read through the recommendation at
9 this point?

10 CHAIR BASHFORD: Yes, please.

11 MS. SAUNDERS: Okay. The
12 recommendation reads as follows: The Secretary
13 of Defense, in accordance -- so in consultation
14 with the Secretary of Homeland Security, with the
15 respect to the Coast Guard when not operating as
16 a service in the Navy, establish a policy that
17 would provide adult sexual assault victims the
18 option to request termination of the criminal
19 investigation when a third party has reported the
20 sexual assault, or when the victim has disclosed
21 the assault to a member of the chain of command,
22 or to military law enforcement.

1 The proposed policy should take into
2 account specific circumstances such as the
3 interest of justice and safety, under which a
4 case may merit further investigation, regardless
5 of the victim's wishes. It should also take into
6 account whether existing safeguards are
7 sufficient to ensure that victims are not
8 improperly pressured by the subject or by others
9 to request that the investigation be terminated.

10 The policy should contain the
11 following requirements: A, the victim be
12 required to meet with a Special Victim Counsel or
13 a Victims' Legal Counsel before signing a
14 statement requesting that the investigation be
15 discontinued, so that the SVC or VLC can advise
16 the victim of the potential consequences of
17 closing the investigation.

18 B, the investigative agent be required
19 to obtain supervisory or military criminal
20 investigative organization headquarters level
21 approval to close the investigation under these
22 circumstances.

1 C, the MCIOs be aware of, and take
2 steps, to mitigate the potential perception by
3 third party reporters that allegations are being
4 ignored when they see that no investigation is
5 taking place. Such steps would include the
6 status -- or excuse me, notifying the third party
7 reporter of the MCIOs' decision to honor the
8 victim's request.

9 D, cases in which the subject is in a
10 position of authority over the victim, be
11 excluded from such a policy.

12 And E, if the MCIO terminated the
13 investigation at the request of the victim, no
14 adverse administrative or disciplinary action may
15 be taken against the subject based solely on the
16 reporting witnesses' allegation of sexual
17 assault.

18 One thing I did want to point out
19 regarding the, one of the provisions of that
20 recommendation, and that's the recommendation
21 that requires the -- that part of the
22 recommendation that requires the victim to

1 consult with a Special Victim Counsel or Victims'
2 Legal Counsel prior to requesting termination of
3 the investigation.

4 We have heard through DoD that the
5 Special Victim Counsel and Victims' Legal Counsel
6 programs of the Services take issue with that.
7 And I think their position, and Dwight, please
8 jump in if you can explain this better. But, my
9 understanding is the crux of their objection to
10 that is that a victim should not be required to
11 consult with a Special Victim Counsel. That
12 Special Victim Counsel should be made available
13 to them.

14 And perhaps they could be encouraged
15 to go see them. But, it should not be a
16 requirement for an adult sexual assault victim to
17 see the SVC before being able to request that the
18 investigation be terminated.

19 So, that is one issue that you may
20 want to discuss in your deliberation. I'm
21 available to answer any questions that you have
22 regarding the report or the proposed DoD response

1 as you're conducting your deliberations.

2 MS. LONG: Jennifer Long.

3 CHAIR BASHFORD: Go ahead.

4 MS. LONG: I have a question. One of
5 the last things you said before your last
6 explanation.

7 And it was about, I just didn't catch
8 it, because I was writing something else, what
9 the -- that it prohibits the prosecution of a
10 case without victim involvement? Or only on
11 third party involvement?

12 Could you read that again, and direct
13 me to where it was in the document we're looking
14 at?

15 MS. SAUNDERS: Oh, sure. I think this
16 was provision E of the proposed recommendation.
17 And you'll find that at the top of page seven of
18 the proposed response. And it says, if the MCIO
19 terminates the investigation at the request of
20 the victim, no adverse administrative or
21 disciplinary actions may be taken against the
22 subject based solely on the reporting witness'

1 allegation of sexual assault.

2 And I think the concern of the Policy
3 Working Group and of the Committee, and why that
4 was included, is, I think, they felt for due
5 process reasons for the subject, if the victim
6 did not want to pursue an investigation, they --
7 based solely on the allegation they did not want,
8 you know, the subject for example, to be
9 discharged or other disciplinary action to be
10 taken against that individual.

11 MS. LONG: I -- okay. I see it. And
12 I see the language. So, just based solely on the
13 reporting, the report basically of the sexual
14 assault. There would have to be something else.
15 It wouldn't prevent -- I'm just trying to think
16 of an egregious situation. And again, thinking
17 more like a prosecutor and not a victim's
18 attorney.

19 MS. SAUNDERS: Oh, sure.

20 MS. LONG: Thinking this doesn't
21 prohibit if something else was involved. They
22 might be able to do an adverse action, it's just

1 in this particular case, in the -- it wouldn't
2 just be able to be on the sole report of that
3 third party that initiated everything.

4 Is that the correct reading of this?

5 MS. SAUNDERS: Ms. Long, I think that
6 was where the Committee was, and where the
7 working group came out on that issue.

8 And I think (audio interference) the
9 idea is, obviously in certain situations the
10 victim would now have sole control over whether
11 the allegation is investigated. There obviously
12 would be some public safety issues if you had for
13 example, a suspect who is the suspect in another
14 case. Perhaps that would take -- perhaps that
15 would require investigation in the instant case.

16 Or as we suggested in one of the other
17 safeguards, if you know, if it's a supervisor
18 who's committing the offense, we would suggest
19 that that be -- that that investigation must go
20 forward.

21 MS. LONG: Thank you.

22 MS. GARVIN: Meg Garvin.

1 CHAIR BASHFORD: Go ahead, Meg.

2 MS. GARVIN: I would agree with how
3 you've articulated, I think, the SVC/VLC
4 objections to the first statement of the report.
5 It can be required to consult. I think that is a
6 very, I don't know the right word,
7 paternalistic/maternalistic parental way to
8 approach survivor agency, is to require them to
9 take a step before they can make a choice.

10 So, I would prefer availability. That
11 it be required that it be known they have the
12 option of consulting to understand the
13 ramifications or something like that, rather than
14 that they actually be required to consult.

15 I also think it puts the SVC/VLCs in
16 a very awkward position with regard to how to
17 create an attorney/client relationship in that
18 moment if they didn't have one before, when it's
19 a mandated moment.

20 CHAIR BASHFORD: This is Martha. Meg,
21 would saying, a victim be encouraged to meet
22 before signing a statement, meet that objection?

1 MS. GARVIN: I think so. I mean, I'm
2 much more of a fan of the even more neutral, be
3 made aware of. Which I know is passive voice,
4 which as an author of a report, everyone there is
5 probably cringing.

6 But, if folks are comfortable with
7 encouraged, I could agree to that, yeah.

8 MS. TOKASH: This is Meghan Tokash.

9 CHAIR BASHFORD: Go ahead, Meghan.

10 MS. TOKASH: How about being invited
11 to? You can always extend the invitation for a
12 victim/survivor to do something. And they can
13 then make a choice.

14 BGEN SCHWENK: This is Jim Schwenk.

15 CHAIR BASHFORD: Go ahead, Jim.

16 BGEN SCHWENK: Just for everybody's
17 information in that draft DoD document that we
18 have, one of the little numbers says, victim was
19 offered a referral to, and encouraged to meet
20 with an SVC/VLC, or retain private counsel. So,
21 that's where they came down within DoD. They
22 didn't like the required that we had in our

1 initial one from last year, suggestion from last
2 year.

3 But they went with, offered a referral
4 to, and encouraged to meet with. Thank you.

5 CHAIR BASHFORD: This is Martha. I
6 like that language. And maybe we can incorporate
7 that.

8 MS. SAUNDERS: This is Terri Saunders.
9 So, I could change the language in A. It would
10 be, the victim should be offered a referral to,
11 and encouraged to meet with a Special Victim
12 Counsel or Victims' Legal Counsel before signing
13 a statement requesting that the investigation be
14 discontinued, so that the SVC or VLC can advise
15 the victim of the potential consequences of
16 closing the investigation.

17 CHAIR BASHFORD: That sounds good. Do
18 people have other comments, questions,
19 discussion?

20 SGT. MARKEY: This is Jim Markey.

21 CHAIR BASHFORD: Go ahead, Jim.

22 SGT. MARKEY: I just had a couple of

1 thoughts. Is it in the policy or practice now
2 that if a victim reports they don't want to go
3 forward that they're required to make a written,
4 signed statement? And in some in our role, it's
5 been a big discussion of whether, you know, when
6 that -- you know, when is that presented to the
7 victim, at what point?

8 And does it mean the victim can't come
9 back? And if there's additional issues, or they
10 change their mind, or they realize they want to
11 move forward, you know, that becomes problematic
12 maybe later on. So, I don't know if there's a
13 discussion about the requirement of having a
14 signed statement by the victim.

15 And then, the other question I had
16 was, if it is a third party report, and there's
17 contact made with the victim, is any of that
18 information documented in any sort of unofficial,
19 and maybe that's the wrong term, but sort of, is
20 it documented with the belief that hey, in the
21 future down the road, you know, if she's a victim
22 of somebody that she knows, and it occurs again,

1 there's documentation as to the fact that this
2 had occurred?

3 And maybe not like a formal police, a
4 formal MCIO report number. We would -- we
5 usually would do like an information only. Or
6 some sort of documentation that at least that
7 information was received and placed somewhere,
8 even though it wouldn't move anywhere in the
9 system.

10 MS. SAUNDERS: Mr. Markey, this is
11 Terri Saunders. To address this, the first part
12 of your question, the way that the policy
13 currently is, is if really in any situation, if
14 the victim of the sexual assault does not wish to
15 continue to cooperate with the investigation,
16 that's generally her option to not cooperate.
17 And the victim is not required to provide or sign
18 a statement about the sexual assault allegation.

19 Typically what we have seen in cases
20 like that, is if the victim stops cooperating, or
21 doesn't cooperate from the beginning, is that
22 case is going to go nowhere. It is not going to

1 be able to be prosecuted. So, despite the
2 thorough investigation into the allegation, if
3 the victim is not onboard, it will typically end
4 there and will not proceed forward to a
5 prosecution.

6 And Mr. Markey, I think you were
7 suggesting that perhaps the victim sign a
8 statement saying she understands the
9 consequences. I'm not sure if I misheard that,
10 or if I didn't get that part correctly.

11 SGT. MARKEY: Yeah. That's one of the
12 concerns that we've had with presenting a signed
13 statement. Both in the fact that when it's
14 presented, and how it's presented, and then maybe
15 the ramifications later on if the victim wants to
16 move the case forward, but there's this signed,
17 written statement.

18 And so, I didn't know if that was the
19 policy, or a practice, or a requirement that they
20 had to make this signed statement. And I'm only
21 saying that because we've seen it, or I've seen
22 it, I don't want to use the word abused, but I've

1 seen it, well, I'll use the word abused.

2 I've seen it abused in the civilian
3 world by folks that are trying to, you know,
4 eliminate their caseloads, get rid of cases they
5 don't think are very good, et cetera. So, that
6 was my only concern.

7 MS. SAUNDERS: Oh, okay. I think one
8 -- I think the way it is currently is, the victim
9 is -- we've seen a lot of different things.

10 I think some services have a more --
11 especially when they do go see the Special Victim
12 Counsel, they oftentimes the Special Victim
13 Counsel will submit a memo on behalf of the
14 victim saying, well this victim does not wish to
15 cooperate, and so on. But right now, I don't
16 think there's any kind of formal process within
17 DoD if a victim declines to cooperate. There's
18 not a particular form that would be signed, or
19 letter.

20 I think the idea of having the victim
21 go see the Special Victim Counsel, or you know,
22 perhaps someone else could advise her, would be

1 to make sure she's not being coerced, which
2 obviously they can't guarantee that. But, then
3 also to make sure that the victim does understand
4 that while if she does choose to come forward
5 later, maybe some time down the line she changes
6 her mind and decides yes, I do want to have this
7 investigated, they would certainly open up an
8 investigation at that point.

9 But under, you know, having her understand
10 that, you know, memories fade, evidence maybe
11 destroyed. And that it would be a much more
12 difficult proposition down the line to open an
13 investigation. Though they certainly could.

14 SGT. MARKEY: Jim Markey. Okay. I
15 totally understand that. But then I'm wondering,
16 with the statement, before signing the statement,
17 which almost sounds like we're going to require
18 to meet and then sign a statement, or before you
19 sign a statement to meet. So, the way you
20 explain it is like that's not a requirement.
21 But, it's to, when I read this, it's like, oh, so
22 that's part of the practice or policy that they

1 have to sign this statement as well.

2 I don't know if that maybe clarifying
3 that, or I'm not sure.

4 (Simultaneous speaking.)

5 CHAIR BASHFORD: This is Martha. I
6 want to make sure we're not conflating the two
7 things. We certainly saw lots of cases when we
8 were reviewing cases, where victims declined to
9 cooperate with the investigation, but the
10 investigation went on.

11 This is designed to address the sort
12 of clawback. Back to sort of a restrictive
13 report where the victim did not want a report to
14 be made in the first place, and up until now
15 would have no way of stopping the investigation,
16 because the investigation is tripped to go right
17 on forward.

18 So, to shut down the investigation,
19 which is something that will not happen, we put
20 all these other provisions into, because it's
21 something different.

22 MS. SAUNDERS: And in terms of -- this

1 is Terri Saunders again. In terms of the
2 statement, I think the idea was in the DoD
3 recommendation and their report, under this
4 limited circumstance that they envisioned,
5 allowing the victim to request that the
6 investigation be discontinued, and that would be
7 when the subject's identity isn't known.

8 What they proposed in their
9 recommendation in this situation, is they call --
10 they have something called a Section 540K
11 declination letter. 504K is the statutory
12 provision that's required DoD to look at this
13 issue. And basically what this letter would be,
14 would be -- from the victim to the investigators
15 requesting that they suspend the investigation
16 into the, into the allegations.

17 So, it would be, you know, a formal
18 letter that the victim would sign. And I think
19 probably in some ways to protect the
20 investigators. To say, you know, the victim made
21 her wishes known. She does not want this case to
22 be investigated at this point. And so she has

1 submitted this, what they call a 540K letter.

2 CHAIR BASHFORD: Other comments or
3 questions from the Committee Members?

4 MR. SULLIVAN: This is Dwight
5 Sullivan.

6 CHAIR BASHFORD: Go ahead, Dwight.

7 MR. SULLIVAN: Terri, I had one
8 question for you. When I was reading the report,
9 I was confused by one point. The lead into the
10 recommendation continually refers to third -- to
11 situations where a third party made the report,
12 and situations where there was an inadvertent
13 disclosure.

14 The actual recommendation refers to
15 situations quote, when the victim has disclosed
16 the assault to a member of the chain of command,
17 or to military law enforcement. So, that could
18 often be done, and in fact, you know, it is often
19 done in an instance where it isn't an inadvertent
20 disclosure. It's a very, it's a very deliberate
21 disclosure to an MCIO agent or to SF or to MPs,
22 you know, just depending upon your military

1 service.

2 So, was it intentional that the
3 recommendation wasn't limited to the inadvertent
4 disclosure situation? Or was that a narrative
5 where perhaps the wording should be clarified?

6 MS. SAUNDERS: Dwight, this is Terri.
7 Thank you for pointing that out. I think when
8 the -- I think it may be a wording issue. But
9 maybe that's something that the Committee can
10 discuss. I think when the Committee initially
11 looked at this, I think they were concerned with
12 the inadvertent disclosure.

13 Where perhaps the victim blurts
14 something out to her supervisor, whom she trusts,
15 for example. And of course now that person is
16 mandated to report the sexual assault. I think
17 that was what the Committee initially had in
18 mind. But, you're correct that the language here
19 does not put that qualifier in there. So, I
20 guess I'll let the Committee decide, do we want
21 to put that qualification back in? The word
22 inadvertent?

1 CHAIR BASHFORD: This is Martha. I
2 think yes. That's what we were trying to
3 address. That it was -- which was never intended
4 for an investigation to be opened. And now has
5 no redress.

6 BGEN SCHWENK: This is Jim Schwenk.

7 CHAIR BASHFORD: Go ahead, Jim.

8 BGEN SCHWENK: Thank you. I think we
9 ought to delete military law enforcement. The
10 reason I say that is the whole emphasis was on, I
11 talked to somebody in my unit that I'm not
12 thinking at all about they're a mandatory report
13 person. I'm just thinking about, I always go to
14 my unit leader to get help, and I need help.

15 That's inadvertent. Or, the third
16 party goes and reports it, and I had no intention
17 to ever report it myself. That's an inadvertent
18 disclosure.

19 But when I take it upon myself to walk
20 down to military law enforcement, and make an
21 appointment. Go in, see an agent, and tell them
22 what happened, it's hard for me to say that's

1 inadvertent.

2 So, I don't recall right off hand why
3 we added military law enforcement last year, but
4 we did. And but I think we ought to take it out
5 this year.

6 And I noticed that in the DoD policy,
7 that's not in there. They have the third party
8 disclosure. And they have to the people in the
9 chain of command. But not law enforcement.

10 So, I don't know how we would argue
11 that one. So, I'd just delete it.

12 MR. KRAMER: This is A.J. Kramer.

13 CHAIR BASHFORD: Go ahead, A.J.

14 MR. KRAMER: Thank you. So, I'm a
15 little confused now. I thought one of the
16 purposes was to allow the person to change their
17 mind. To turn a non -- a report that's not, that
18 wasn't originally restricted into a restricted
19 report. Or it was unrestricted, then it went
20 back to a restricted.

21 But, this wouldn't do that, because
22 this is, isn't changing their mind. This doesn't

1 just -- that would exclude, an inadvertent or
2 third party wouldn't be a person changing their
3 mind. It would just be a, in those two specific
4 instances.

5 So, I actually thought it was broader
6 to allow the person to change their mind. Which
7 would be consistent with the wording in the
8 recommendation. But I'm not clear on whether
9 that's one of the purposes.

10 MS. SAUNDERS: Mr. Kramer, this is
11 Terri Saunders. I think the emphasis for the
12 Committee, the Committee's original
13 recommendation was in those instances not whether
14 the victim changes her mind, but where the victim
15 never initially intended to report the offense.

16 So, it was taken, the decision was
17 taken out of her hands by a third party report or
18 an inadvertent disclosure by her to a member of
19 her chain of command. I think some of the DoD
20 recommendations, and I think it's important to
21 make the distinction here, there are two
22 different things going on. There's one of them

1 on the one issue, is the idea of a restricted
2 report.

3 So, for example, you can have
4 somebody, say a third party reports a sexual
5 assault to NCIS. Perhaps that victim has already
6 filed a restricted report. She can maintain her
7 restricted report even though a third party has
8 reported the allegation to NCIS. And then of
9 course NCIS would have to investigate that.

10 Some of the proposed DoD
11 recommendations expand situations for restricted
12 reporting in that instance. So, for example, if
13 you do have a third party -- if you do have a
14 third party who's made the allegation, the victim
15 could still then after that allegation, go in and
16 file a restricted report. Although it would
17 still be investigated.

18 The second issue is, whether or not
19 the victim can request that the investigation be
20 discontinued, or finished. And so that is -- the
21 DoD report and the DoD recommendations don't
22 really address that, except in that very limited

1 circumstance where the subject of the -- the
2 identity of the subject is not known.

3 And this recommendation that we're
4 putting forth as the proposed DAC-IPAD
5 recommendation, really addresses more the issue
6 of the, not so much of the restricted reporting,
7 but more the issue of requesting that the
8 investigation be discontinued.

9 But you're right, it does, it
10 specifically speaks to the situation where the
11 victim never intended to report the assault.
12 Where the decision was taken out of her hands.
13 It does not apply to, or it was not intended to
14 apply to a victim who reports it, for example, to
15 law enforcement, but then changes her mind.

16 MR. KRAMER: This is A.J. Kramer
17 again. Okay. That's fine. The way it's worded
18 right now would allow, as General Schwenk said,
19 it doesn't talk about, it would allow right now,
20 inadvertent.

21 But I thought a lot of the testimony
22 we had indicated that there was some feeling that

1 a victim should be able to change their mind.

2 But maybe I'm wrong about that.

3 And that that was one of the purposes.

4 MS. SAUNDERS: Mr. Kramer, this is

5 Terri Saunders again. I believe that the

6 Committee has heard -- I think you're correct.

7 The Committee has heard some testimony about

8 that.

9 I think there have been instances

10 where a victim, after initially reporting a

11 sexual assault, then changes her mind and does

12 not wish to proceed. The way the policy

13 currently exists is the victim can decline to

14 cooperate. She can decide if she doesn't want to

15 speak any more with the investigators, and

16 decline to cooperate with the investigation.

17 What we typically see in that instance

18 is then the case really can't go anywhere,

19 because DoD policy is generally not to force a

20 victim to cooperate with the investigation or the

21 prosecution. This particular recommendation, was

22 more narrow than that. It was -- and I will have

1 to, I've made some wording changes based on
2 General Schwenk's comments.

3 This recommendation was intended to be
4 more narrow than that. And it was intended to
5 speak to only those situations where the victim
6 never intended to report.

7 MR. KRAMER: I see. Thank you.

8 MS. SAUNDERS: The way -- this is
9 Terri again. The way that I have that sentence
10 written now, with a couple of the suggestions
11 that have been made, is let's see here.

12 It would allow the victim the option
13 to request termination of the criminal
14 investigation when a third party has reported the
15 sexual assault. Or that when the victim has
16 inadvertently disclosed the assault to a member
17 of the chain of command, period.

18 MS. GARVIN: Meg Garvin.

19 COLONEL WEIR: Go ahead, Meg.

20 MS. GARVIN: Sorry, I apologize. It's
21 just Terri, could you reread that one more time?
22 I was just making sure I was in the right place

1 in the document.

2 MS. SAUNDERS: Oh, absolutely. So,
3 this is in the first paragraph of the
4 recommendation. And then I'll skip over the part
5 about Secretary of Defense and Coast Guard.

6 Would have them establish a policy
7 that would provide adult sexual assault victims
8 the option to request termination of the criminal
9 investigation when a third party has reported the
10 sexual assault, or when the victim has
11 inadvertently disclosed the assault to a member
12 of the chain of command, period.

13 Are there any other comments or
14 concerns about the recommendation?

15 CHAIR BASHFORD: Hi, it's Martha. For
16 some reason my mute button sometimes gets stuck.
17 My earlier question was, apart from chain of
18 command, are there other people with whom out of
19 friendship, somebody might make a disclosure to
20 the mandatory reporter?

21 MS. SAUNDERS: All of the services, I
22 think possibly with the exception of the Coast

1 Guard, have -- and I don't recall whether the
2 Coast Guard has this or not, have an exception
3 for reporting for a family member or friend,
4 roommate, where they can disclose the sexual
5 assault, and that person is not required to then
6 report.

7 It doesn't prohibit them from
8 reporting the allegations. But they are not
9 required to.

10 However, anyone in the chain of
11 command of that victim, is a mandatory reporter,
12 as is law enforcement.

13 CHAIR BASHFORD: But no other like
14 sexual assault providers that somebody might
15 confide in? They're not mandatory reporters?

16 MS. SAUNDERS: The other people that
17 would typically be involved, the SAPR personnel,
18 victim advocates, medical personnel, are not
19 mandatory reporters.

20 CHAIR BASHFORD: Okay. I just wanted
21 to make sure we weren't missing anybody.

22 MS. SAUNDERS: Right.

1 CHAIR BASHFORD: Are there other
2 questions for discussions by the Committee
3 Members?

4 BGEN SCHWENK: This is Jim Schwenk.

5 CHAIR BASHFORD: Go ahead, Jim.

6 BGEN SCHWENK: Thank you. On
7 salesmanship, I'm looking at it from that
8 perspective, the recommendation. So, the -- so
9 the DoD has carved out a narrow exception on
10 closing the cases quickly. So that's a big deal,
11 because that's the time they've ever agreed to do
12 that across DoD.

13 But it's very narrow, as Terri has
14 pointed out. It's just when they can't identify
15 a suspect. Okay. But, when they wrote that,
16 here's what they wrote. They wrote, if I can
17 read it here in the dark.

18 Victims may request to decline to
19 participate with an investigation. The victim's
20 declination to participate has no compulsory
21 effect on the investigation. However, in
22 situations where victim testimony is required to

1 identify the suspect and/or essential to the
2 furtherance of the case, the victim's declination
3 to participate will most likely result in the
4 investigation being terminated.

5 So, to me, DoD in this document has
6 said, there are two bases for not being able to
7 go forward. One of them is, can't figure out who
8 the suspect is.

9 The other one is that the victim's
10 testimony is essential to the furtherance of the
11 case. And we all know, as Terri said earlier,
12 the first one, can't identify the suspect, small
13 number of cases. The second one, essential to
14 the furtherance of the case, gigantic number of
15 cases.

16 So, I think in selling our proposal,
17 we should specifically point out that in their
18 own document, they indicated there are two bases
19 for this problem. And yet they only implemented
20 one. Can't find the ID of the suspect.

21 And we should call upon them to be
22 evenhanded and also implement the other one. So

1 then that 540K declination letter should get the
2 same treatment if they look at their case file
3 and say man, if this victim doesn't testify,
4 we're tubed.

5 There is no reason in the world they
6 shouldn't just use the quickly close the case
7 process that they use when they look at the case
8 and say, oops, we can't figure out who the
9 suspect is.

10 And I think we really need to
11 emphasize that, because we're not asking for
12 something extra that they haven't already talked
13 about on their own in their own policy. We're
14 asking them to implement the other half of what
15 they talked about.

16 Does that make any sense?

17 MS. SAUNDERS: General Schwenk, this
18 is Terri. Yes, that does make sense. We have --

19 BGEN SCHWENK: It's on page seven
20 under discussion --

21 MS. SAUNDERS: Yes.

22 BGEN SCHWENK: Right now, about the

1 fourth line down.

2 MS. SAUNDERS: Yes. Absolutely, I can
3 add that to the letter. You're suggesting I add
4 it to the letter but not the recommendation?
5 Just as a support for the recommendation?

6 BGEN SCHWENK: Whichever way you think
7 is best.

8 MS. SAUNDERS: Okay.

9 BGEN SCHWENK: But we're trying to
10 make a -- I mean, I'm afraid they're going to
11 take this and say, we've seen this before. It's
12 virtually identical to what we looked at when we
13 had the big working group last year. And so,
14 let's just do what we have. Get it implemented.
15 Look at it for a couple of years. And then we
16 can go from there.

17 And so, I think it's really important
18 we point out to them, they opened the door, and
19 they only implemented half of what they opened.
20 And they need to implement the other half now,
21 not three years from now. Thank you.

22 MS. SAUNDERS: Thank you, General

1 Schwenk. And I can certainly add that aspect to
2 the letter.

3 CHAIR BASHFORD: Any other comments,
4 questions? So, with those amendments, is the
5 Committee ready to vote on the response letter to
6 the DoD draft suggestions?

7 Hearing no opposition, if anybody is
8 not in favor adopting the draft letter reply to
9 the draft DoD response to our last year's report,
10 would you please say you're not in favor of it?

11 Hearing no other -- hearing no
12 objections, then that's passed as amended.

13 MS. SAUNDERS: Thank you, ma'am. Oh,
14 and I'll change the language as suggested and
15 we'll recirculate that to you.

16 CHAIR BASHFORD: Thank you.

17 COLONEL WEIR: Ma'am, this is Colonel
18 Weir. I would like now to move to the Case
19 Review Working Group Update.

20 CHAIR BASHFORD: Great.

21 COLONEL WEIR: That will be Kate
22 Tagert, Theresa Gallagher, and Glen Hines.

1 Kate or Theresa?

2 MS. GALLAGHER: Kate, are you there?

3 This is Theresa. And the Case Review Working
4 Group, we're still hard at work drafting the data
5 report that we anticipate having you all see and
6 deliberate on at the August meeting. And that's
7 all we have for you.

8 CHAIR BASHFORD: Thank you.

9 COLONEL WEIR: This is Colonel Weir.
10 And I want to just add a little bit to that
11 abbreviated report.

12 The Case Review Working Group as well
13 as the staff members working on the, with them,
14 in conjunction with the Case Review Working Group
15 have an approximate -- approximately a 45-page
16 draft report, as well as, you know, we're in the
17 process of putting together almost 100 pages of
18 data.

19 So, all the data has been collected.
20 We're in the final leg of getting all the
21 multivariate, bivariate analysis done. And the
22 way ahead for the Case Review Working Group is

1 Kate and Theresa and Glen are going to coordinate
2 with the Case Review Working Group folks, or
3 excuse me, I should say subcommittee. And we're
4 setting up weekly meetings.

5 So, we'll be meeting weekly as we
6 approach the August meeting. So, that's where
7 the Case Review Working Group is right now. So,
8 let's move onto the Policy Working Group. That's
9 Meghan and Terri Saunders.

10 MS. PETERS: Yes, sir. This is Meghan
11 Peters. Can you hear me okay?

12 COLONEL WEIR: Yes.

13 MS. PETERS: Okay. I don't have any
14 slides to reference. But the Policy Subcommittee
15 is continuing its review of Articles 32, 33, and
16 34, and the issues around that preliminary
17 hearing and referral process, and actually
18 extending to the charging process as indicated by
19 the case review's observations from their, from
20 the annual report.

21 So, in order to further that, we have
22 been doing, composed a lot of research on the

1 history and purpose of Article 32. And Article 32
2 is the primary focus of the working group in the
3 immediate future. Then we'll expand upon that.

4 But in order to delve deeper into
5 Article 32, and build upon the previous testimony
6 and RFI responses received, we have expanded
7 first the review of Article 32 documents. The
8 staff is undertaking a review of all 32 hearings
9 in which a preliminary hearing officer found no
10 probable cause to support a penetrative sexual
11 assault for any 32s held in FY14 through FY19.

12 Terri Saunders has done all of the
13 cases in FY14. In addition to that, we've begun
14 reviewing all of the 32 documents regardless of
15 the probable cause finding or determination.
16 Just to look at whether witnesses were called,
17 did the victim testify. If a witness did
18 testify, who was the proponent of that witness?

19 And trying to look also at the
20 thoroughness of the report. And that's something
21 that we'll definitely be paying attention to once
22 we get into the FY19 cases. And that's something

1 the working group has asked us to look into. And
2 we did that for previous years. And obviously
3 that's going to be more important, given the
4 changes that went into effect January of last
5 year.

6 So, as we look at that data, that is
7 going to inform, I think the working group's own
8 observations. It doesn't explain the way. So,
9 the staff has put some additional research again,
10 into the history and purposes of Article 32, and
11 other issues around why we might see certain
12 patterns in the data.

13 And the other major undertaking of the
14 group, which we've just tried, started to set in
15 motion, is conducting interviews of federal and
16 state practitioners to get a look at analogous
17 procedures in federal and state court.

18 We want to look at how preliminary
19 hearings and grand juries compare with Article 32
20 in its current form. I know that we previously
21 asked for some suggestions from the members for
22 individuals and jurisdictions to contact, to sort

1 of round out that comparison in our list of
2 interviewees.

3 We've received several suggestions,
4 and appreciate that. We will be contacting all
5 of those individuals. And if any member does
6 have any other thoughts that come to mind, now or
7 at any point in the future, for prosecutors,
8 magistrates, or public defenders, federal or
9 state that we could contact, we will go ahead and
10 follow up with those suggestions.

11 We're going to have the Committee
12 Members and staff participating in all of the
13 interviews to the maximum extent possible. If we
14 can get at least one member on every interview,
15 because we do have a lot of time, we don't
16 anticipate issuing our report until next year on
17 this wide ranging topic.

18 So, I think the only addition to that
19 is that our other goal, given that we're now
20 working remotely, is to follow up on our previous
21 plans to interview military practitioners. And
22 that would include defense counsel, staff judge

1 advocates, convening authorities, and preliminary
2 hearing officers, about issues we've identified
3 with our Article 32 proceedings.

4 We previously wanted to have an in
5 person meeting in May to interview all of those
6 witness panels. And then obviously, that can't
7 happen. We want to undertake to do that by
8 remote means in the future. Probably after we
9 get done with our interviews and our comparative
10 study of our civilian proceedings.

11 So, I think that is a, that pretty
12 well sums up what the Policy Subcommittee is up
13 to. Sir, I give it back to you.

14 COLONEL WEIR: Okay. Thank you,
15 Meghan. And just to follow up to what she said
16 about the telephone conversation.

17 We're going to, Meghan and Terri are
18 going to set up this, and we hope that you all
19 will submit folks. And I know some of you have
20 already, submitted names of individuals that you
21 think we should talk to.

22 And obviously, we'll do that. But, we

1 also want to make arrangements so that members of
2 the Policy Working Group can also be on those
3 calls. So, we'll try to afford you the
4 opportunity to be in on those calls. I think
5 listening to what the guardian ad litem program,
6 those calls were very informative.

7 So, I think it would help everyone on
8 the Policy Working Group, as many as possible, to
9 be in on those phone calls, to get -- to hear the
10 information, and perhaps ask questions.

11 We're not going to be able to do, you
12 know, like we've done in the past where we'll
13 bring folks in for a policy working, or a, you
14 know, a working group/subcommittee in our
15 conference room there in Ballston. So, this is
16 the next best thing.

17 But, we're going to continue to drive
18 on doing what needs to be done. So, hopefully I
19 know that your schedules are, you're busy doing
20 things.

21 So, but we will allow you the
22 opportunity by sending you a, you know, an invite

1 to participate in the phone calls. And we'll try
2 to work around your schedules as much as possible
3 when contacting these folks.

4 So, let's go forward to the Data
5 Working Group and Chuck Mason.

6 MR. MASON: Thank you, sir. We are
7 currently operating without a database, as we've
8 discussed at previous meetings. We're still in
9 the process of developing proposals. Trying to
10 approach different companies that might be able
11 to assist us with this.

12 We've talked and also with the Marine
13 Corps OGC, different options that are out there.
14 But, at this point, nothing has come together for
15 us. So, in the meantime, Stacy and I are pulling
16 the FY19 cases. We'll try to have that by FY20.

17 And we're going to essentially do it
18 on a spreadsheet, and see how much information we
19 can get. And how we can put something together
20 to report to you. But, at this point, without
21 having the database, it's not going to be nearly
22 as robust as what we've done in the past. But,

1 we are moving forward.

2 And that's all I have.

3 COLONEL WEIR: Thank you, Chuck.

4 Chair Bashford, I don't know about Dale Trexler.

5 Mr. Trexler, did you receive any requests for
6 public comment?

7 MR. TREXLER: Sir, this is Mr.
8 Trexler. No, we didn't.

9 COLONEL WEIR: So we won't have any
10 public comments to publish today. I think that
11 will conclude. Absent, I'll turn it back over to
12 the Chair once I finish my remarks.

13 But, I just want to say I really
14 appreciate the work of the Committee. I know
15 this is a, we're operating under difficult times.

16 But, with the -- with telephones and
17 emails, we're going to make it happen. So, you
18 know, what I've told the staff here is that
19 communication is key. We've got to keep each
20 other informed and let each other know what's
21 going on, and what the other person is doing.
22 Because we just can't walk down the hallway and

1 say hey, how you doing? What's going on with
2 this issue?

3 So, I invite the Committee to do the
4 same thing with us. If you have an issue or
5 something that you want us to look at, or you've
6 got some suggestions, please don't hesitate to
7 send those to me or Julie, and we'll funnel them
8 out to the appropriate people.

9 You know, we're going to be operating
10 under this way for maybe some time. So, we just
11 can't stop and not do what the Secretary of
12 Defense wants us to do and what we're responsible
13 for doing.

14 So, once again, I just want to give a
15 shout out to the staff for the hard work they've
16 done under these circumstances. And they've done
17 a great job and they haven't missed a beat.

18 And I think, you know, the products
19 that are developed and the reports that are
20 developed, are an indication of that.

21 I also want to say I hope each and
22 every one of you is staying healthy and doing

1 what you have to do not to catch this thing. So,
2 with that, I'll turn it over to the Chair for her
3 final remarks and then adjournment.

4 CHAIR BASHFORD: Thank you very much,
5 Colonel Weir. When is our next meeting? The
6 next scheduled meeting?

7 COLONEL WEIR: Ma'am, that's scheduled
8 for 15 August.

9 CHAIR BASHFORD: Okay. Thank you.
10 The one thing I wanted to let the Committee know,
11 I this happened since our last public meeting, is
12 that you and I and Carson went and met with the
13 Secretary of Defense, the Secretary of the Army,
14 the Acting Secretary of the Navy, the Secretary
15 of the Air Force, and had a very interesting
16 discussion there.

17 The Secretary of Defense actually gave
18 us more time than had been allotted. So, I just
19 want -- I think that happened after our last
20 public meeting.

21 And that's all I have. So, Mr.
22 Sullivan?

1 MR. SULLIVAN: This public meeting of
2 the DAC-IPAD is closed.

3 (Whereupon, the above-entitled matter
4 went off the record at 2:56 p.m.)

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In the matter of: Public Meeting

Before: DAC IPAD

Date: 05-15-20

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