

UNITED STATES DEPARTMENT OF DEFENSE

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

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PUBLIC MEETING

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FRIDAY
NOVEMBER 6, 2020

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The Committee met via Teleconference,
at 11:00 a.m. EDT, Ms. Martha Bashford, Chair,
presiding.

PRESENT:

Ms. Martha S. Bashford, Chair
MG(R) Marcia M. Anderson
Hon. Leo I. Brisbois
Ms. Kathleen Cannon
Ms. Margaret A. Garvin
Hon. Paul W. Grimm
Mr. A.J. Kramer
Ms. Jennifer Gentile Long
SGT James "Jim" Markey (Ret.)
Dr. Jenifer Markowitz
CMSAF Rodney J. McKinley, USAF (Ret.)
BG James R. Schwenk, USMC (Ret.)
Dr. Cassia C. Spohn
Ms. Meghan A. Tokash
Hon. Reggie B. Walton

STAFF:

COL Laura J. Calese, Staff Director, JAGC, U.S.
Army

Ms. Julie Carson, Deputy Staff Director

Mr. Dale Trexler, Chief of Staff

Ms. Alice Falk, Technical Editor

Ms. Nalini Gupta, Attorney-Advisor

Mr. Chuck Mason, Attorney-Advisor

Ms. Marguerite McKinney, Analyst

Ms. Meghan Peters, Attorney-Advisor

Ms. Terri Saunders, Attorney-Advisor

Mr. Dwight Sullivan, Designated Federal Officer
(DFO)

Ms. Kate Tagert, Attorney-Advisor

Ms. Eleanor Vuono, Attorney-Advisor

ALSO PRESENT:

LTC Andrew C. Lee, USMC, Service
Representative

MAJ. Major Marquita Ricks, USAF, Service

Representative MAJ Ryan C. Lipton, USMC, Service
Representative

Ms. Janet Mansfield, U.S. Army, Service
Representative

Mr. James Martinson, USN, Service Representative

Ms. Asha Vaghela, USAF, Service Representative

LCDR Dan Wiltshire, USCG,
Service Representative

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

2 11:02 a.m.

3 MR. SULLIVAN: Hear ye, hear ye, hear
4 ye, draw nigh and give your attention for the
5 DAC-IPAD is in session. I am Dwight Sullivan,
6 the designated federal officer for the Defense
7 Advisory Committee on Investigation, Prosecution
8 and Defense of Sexual Assault in the Armed Forces
9 and this meeting is officially open.

10 Ms. Bashford, you have the com.

11 CHAIR BASHFORD: Thank you, Mr.
12 Sullivan. Good morning.

13 I would like to welcome the members
14 and everyone in attendance today to the 20th
15 public meeting of the Defense Advisory Committee
16 on Investigation, Prosecution and Defense of
17 Sexual Assault in the Armed Forces, the DAC-IPAD.

18 In accordance with the current
19 Department of Defense guidelines for operations
20 during the COVID-19 pandemic, today's meeting is
21 being held via teleconference.

22 Please note that non-DAC-IPAD

1 attendees will be muted by our teleconference
2 administrator in compliance with DoD's legal
3 guidance. And to prevent background noise or
4 disruptions during the meeting.

5 Committee members and Staff ask you to
6 please keep your phones muted as well when you
7 are not speaking.

8 Additionally, in case the current
9 conference line fails we will break for 15
10 minutes and move to an alternate conference line.
11 The alternate conference line dial in information
12 will be posted on the DAC-IPAD website with
13 instructions for rejoining the meeting.

14 We have taken attendance and we have
15 a quorum.

16 The DAC-IPAD was created by the
17 Secretary of Defense in 2016 in accordance with
18 the National Defense Authorization Act for Fiscal
19 Year 2015 as amended. Our mandate is to advise
20 the Secretary of Defense on the investigation,
21 prosecution and defense of allegations of sexual
22 assault and other sexual misconduct involving

1 members of the Armed Forces.

2 Today the Committee will deliberate
3 and vote on the draft DAC-IPAD report on racial
4 and ethnic disparities in the investigations,
5 prosecutions, convictions of Service members for
6 sexual offenses involving adult victims within
7 the Military justice system as required by
8 Section 540I of the NDAA for Fiscal Year 2020.

9 In addition to requesting this review,
10 Congress, in its joint explanatory statement
11 accompanying the 2020 NDAA, Congress also
12 requested that the DAC-IPAD examine two
13 additional topics. The developing field of
14 restorative justice and criminal cases and
15 whether this may be an alternative remedy in the
16 Military justice system for cases not resulting
17 in prosecution and whether too many limitations
18 are being placed on victim impact statements
19 during sentencing at courts-martial.

20 The DAC-IPAD Staff has presented an
21 introductory briefing to the Committee on
22 restorative justice. This briefing was scheduled

1 to also include testimony from Dr. Mary P. Koss,
2 an expert on the topic from the University of
3 Arizona. However, she unfortunately will be
4 unavailable for the meeting today.

5 Following the Committee's discussion
6 on restorative justice, the Staff will provide an
7 informational briefing about victim's statements
8 during sentencing at courts-martial. The
9 Committee will deliberate about how it wishes to
10 proceed with respect to both of these topics.

11 Finally, the Committee will receive a
12 presentation from the policy subcommittee on its
13 examination of civilian's preliminary hearing and
14 grand jury findings through interviews conducted
15 over the past six months with civilian
16 prosecutors and defense practitioners from across
17 the country. As well as its plans for further
18 study of the pretrial process.

19 This meeting is being transcribed and
20 the complete written transcript will be posted on
21 the DAC-IPAD website.

22 If a meeting attendee would like to

1 make a public comment, please submit your name
2 and the phone number you are calling from to
3 whs.pentagon.em.mbx.dacipad@mail.mil, no later
4 than 2:00 p.m. eastern time. Comments will be
5 heard at the discretion of the Chair. Written
6 public comments may be submitted at any time for
7 Committee consideration.

8 To assist the court reporter in
9 identifying speakers and to minimize confusion
10 caused by multiple people speaking, I request the
11 Committee Members signal when they have a
12 question or wish to speak by just stating your
13 name and waiting to be acknowledged by either me
14 or by the staff before proceeding.

15 Before we begin, I'd like to take a
16 moment to acknowledge and thank our outstanding
17 Service reps. And especially, to welcome those
18 who have recently transitioned to working with
19 the Committee since.

20 Thanks to COVID, we have not yet had
21 the pleasure of meeting you in person. I am
22 hopeful that will change before too long. The

1 Committee is enormously grateful for our Service
2 representatives, continued support, attentive and
3 prompt responses to all of our questions and
4 requests for information and for your
5 distinguished service.

6 If each of you on the call today could
7 briefly identify yourself so our court reporter
8 could note your participation, I would very much
9 appreciate it. Do we have the Service rep from
10 the Navy? Is there anyone from the Navy?

11 Coast Guard?

12 LCDR WILTSHIRE: Good morning. This
13 is Lieutenant Commander Dan Wiltshire from the
14 Coast Guard.

15 CHAIR BASHFORD: Welcome. Anyone from
16 the Marines?

17 LCOL LEE: Yes. This is Lieutenant
18 Colonel Lee from the VLCO.

19 CHAIR BASHFORD: Welcome.

20 MAJ LIPTON: Good morning, ma'am.
21 This is Major Ryan Lipton from the Marine Corps.

22 CHAIR BASHFORD: Welcome. Do we have

1 anyone from the Air Force?

2 MAJ HEREX: Good morning, ma'am, it's
3 Major Markie Herex from the Air Force.

4 CHAIR BASHFORD: Glad to have you.
5 And anyone from --

6 MS. VAGALES: Also, this is Asha
7 Vagales from the Air Force.

8 CHAIR BASHFORD: Okay. Welcome.
9 Army?

10 MS. MANSFIELD: Good morning. This is
11 Janet Mansfield from Army.

12 CHAIR BASHFORD: Thank you. Any other
13 Service reps? Okay.

14 I want to thank everyone on the call
15 for your attendance today. I'm going to turn the
16 floor over to the DAC-IPAD's racial and ethnic
17 disparities research and writing team. Ms.
18 Eleanor Vuono, Mr. Chuck Mason and Ms. Nalini
19 Gupta to begin their presentation and the
20 Committee's deliberation.

21 And I want to take just a brief moment
22 to give a special shout out to the team who have

1 put together some amazing work on a very, very
2 tight schedule. And with a lot of constraints on
3 their time.

4 So I want to thank everybody. And
5 let's begin the presentations.

6 MS. VUONO: Good morning. This is
7 Eleanor Vuono. The purpose of today's meeting is
8 to deliberate and vote on the race and ethnicity
9 report to Congress.

10 The draft report that we will discuss
11 today is located at Tab 2 of the meeting
12 materials for the public. And a copy of the same
13 was emailed to all of the Members later yesterday
14 afternoon.

15 As you all know, in the FY2020 NDAA,
16 Congress included Section 540I with the
17 requirement for the DAC-IPAD to review and
18 assess, by fiscal year, race and ethnicity in
19 three categories involving sexual offenses.

20 First, members of the Armed Forces
21 accused of a penetrative or contact sexual
22 offense in a unrestrictive report, including an

1 unrestrictive report involving a spouse or
2 intimate partner. Of that group of reports, the
3 race and ethnicity of those against whom charges
4 were preferred for a penetrative or contact
5 sexual offence.

6 And third, of those cases with a
7 preferred charge, those Service members convicted
8 of a penetrative or contact sexual offense.

9 The Congressional tasking was limited
10 to cases involving adult victims. And the report
11 is due to Congress next month.

12 Before we dive into the content of the
13 report for your deliberations and vote, I'd like
14 to take a moment to describe how we developed
15 this report.

16 First, Chair Bashford sent a request
17 for information to the Services asking the
18 Services to provide their race and ethnicity data
19 for contact and penetrative sexual offense cases
20 completed in FY2019. So all cases completed
21 between October 1st, 2018 and September 30th,
22 2019.

1 FY19 was chosen partly because it was
2 the most recent data available. Partly because
3 Congress asked for the report on a very short one
4 year timeline. But also, in recognition of the
5 data collection limitations in the Services up
6 until now.

7 As you all know, the DAC-IPAD case
8 review project that was published in a report
9 last month, investigated penetrative sexual
10 offenses closed in FY2017. In that most recent
11 study, the DAC-IPAD found it difficult to assess
12 race and ethnicity data because information in
13 the investigative files was often incomplete and
14 because the Services record this information
15 differently. If at all.

16 In the RFI, the DAC-IPAD asked the
17 Services to give us the requested data in a
18 standardized format for each of the three
19 congressionally mandated categories on three
20 separate worksheets.

21 First, the unrestricted reports. On
22 the second spreadsheet, those cases that had a

1 contact or a penetrative sexual offense charge
2 preferred against the Service member. And third,
3 from those cases with a preferral, a separate
4 spreadsheet with every conviction.

5 We did not ask the Services for their
6 source documents. Instead, we asked them to
7 report to us the race and ethnicity information
8 they had in their various databases. Including
9 their Military criminal investigative
10 organization databases and their Military Justice
11 database.

12 By early September we had received all
13 of the Service responses. In October, we hosted
14 a series of preparatory sessions and a public
15 meeting on October 23rd to present the data
16 results and develop the draft report. Today, all
17 of that hard work is before us for your final
18 deliberations and votes.

19 Here is the suggested plan to work
20 through the report. First, we will walk through
21 the body of the report to address those items
22 that you flagged yesterday for discussion.

1 Then we will discuss the findings and
2 recommendations. Finally, you will vote on the
3 revised report and adopt any findings and
4 recommendations that you decide on today.

5 So let's turn now to the draft report.
6 And we will scroll through it finishing up with
7 the findings and recommendations.

8 So if you start on Page 1, the first
9 item is to change the title to reflect that this
10 is a data report and not as much a disparities
11 report. And the proposal is to have the title
12 instead be, racial and ethnic data in the
13 investigation, prosecution, and conviction of
14 sexual offenses in the Military.

15 So, if the Committee wants to discuss
16 that, we can pause and talk about the title if
17 everyone is in agreement that it could be called
18 the racial and ethnic data report as opposed to a
19 disparities report, we will move forward.

20 MS. CANNON: Cannon here.

21 MS. VUONO: Yes.

22 MS. CANNON: I understand the desire,

1 I think, to being even-handed or objective in the
2 title of this report, but I believe that what
3 we're concerned with, and have been tasked to
4 look at, are the disparities in the Services and
5 in the question of sexual assault cases
6 specifically.

7 And I looked up the definition of
8 disparity and it doesn't have to have judgment
9 with it if there are differences. And that's
10 what we are looking at.

11 If there are disproportionate
12 differences to be noted. Which I think is the
13 task of this report.

14 And so, I would say we should leave
15 the title corresponding with the task. And even
16 some of what we found. Because what we're
17 looking at is indeed disparities.

18 DR. SPOHN: Cassia Spohn.

19 MS. VUONO: Thank you. Yes.

20 DR. SPOHN: I agree with Ms. Cannon.

21 I think that saying racial and ethnic data waters
22 down the report.

1 We were asked to determine whether
2 there were disparities. And as Ms. Cannon
3 correctly noted, a disparity is a difference, it
4 does not mean that there is evidence of
5 discrimination.

6 And simply saying that there are
7 disparities, we are concluding that there are
8 differences. And I agree, that the title should
9 stay as racial and ethnic disparities. Thank
10 you.

11 DR. MARKOWITZ: This is Dr. Markowitz.

12 MS. VUONO: Yes.

13 DR. MARKOWITZ: I would also like to
14 lend my voice to that as well. I feel like it
15 completely neutralizes it, to take the concept of
16 disparities out of that title, so I would be in
17 favor of keeping that in please.

18 MS. VUONO: Thank you.

19 BGEN SCHWENK: Jim Schwenk.

20 MS. VUONO: Yes.

21 BGEN SCHWENK: I would agree with the
22 three previous members. If indeed this report

1 talked about disparities, but we have no findings
2 that talk about disparities. We do summarize the
3 information we received, although we categorize
4 it as raising more questions than answers.

5 And so, since the data is so bad that
6 we can't even make a finding out of it, it would
7 seem to me that saying it's about disparities
8 when we don't have data to even, in a coherent
9 manner try to come up with whether there are
10 disparities, there is a good reason to say it's
11 just data. Because that's what we're providing
12 is data.

13 And then a bunch of findings and
14 recommendations to have better data so that you
15 could actually analyze disparities some day in
16 the future. But, if the majority want to have
17 disparities, fine with me.

18 MS. VUONO: Any other Members who want
19 to suggest that this should remain disparities or
20 be changed to data?

21 HON. GRIMM: This is Paul Grimm. I
22 have a question. Was the phrase disparities used

1 in the tasking? The Pentagon project.

2 MS. VUONO: The statutory tasking
3 includes the phrase, assessment of racial, ethnic
4 and gender disparities. Yes, sir.

5 HON. GRIMM: I think if the point is
6 made by all four of the prior Committee Members
7 are valid points. It is clearly a concern about
8 disparities that launched the tasking to our
9 committee.

10 And I think that that is a justifiable
11 reason not to want to. But the title seems as
12 though we are somehow not addressing what we were
13 asked to address.

14 But General Schwenk's point is a
15 critical point because we were not able to reach
16 conclusions for lots of reasons. But that is
17 primarily because of the nature of the data and
18 the lack of consistency and the inability to have
19 the underlying source of data prepared.

20 And so, there is a legitimate concern,
21 I think, that I agree with General Schwenk as to,
22 and that is, whether the title somehow transmits

1 some conclusions that we don't reach. I wonder
2 whether or not there is a way to square the
3 circle by saying something like racial, ethnic
4 data relating to disparities.

5 Whether something like that that shows
6 the data that we are talking about, but it is
7 data directed towards the tasking, which is
8 disparities. And we do, in the report, refer to
9 studies over the last 50 years that have
10 concluded that there were disparities.

11 Our challenge is, we can't reach any
12 conclusions about those because of the limited
13 nature of the statement.

14 MS. VUONO: So, sir, I hear a
15 suggestion that perhaps the title could use both
16 words to suggest racial and ethnic data relating
17 to disparities in the investigation, prosecution
18 and conviction of sexual offense in the Military?

19 Did I capture that proposal?

20 HON. GRIMM: So my, Grimm, this is,
21 from my point of view, yes.

22 MS. VUONO: Yes, sir. So --

1 (Simultaneously speaking.)

2 MS. VUONO: -- both words is what I'm
3 hearing. That it would read, racial and ethnic
4 data relating to disparities in the
5 investigation, prosecution and conviction of
6 sexual offenses in the Military.

7 CHAIR BASHFORD: This is Martha
8 Bashford. I agree with that amended title.

9 BGEN SCHWENK: Jim Schwenk, I agree.
10 (Simultaneous speaking.)

11 HON. WALTON: This is Reggie Walton.
12 I agree.

13 MS. GARVIN: -- I agree.

14 HON. WALTON: This is Reggie Walton.
15 I agree. I just think we need to, as Judge Grimm
16 indicated, note the fact that we weren't able to
17 reach any conclusions in reference to disparity
18 because of the inadequacy of the data that we had
19 available to us.

20 MS. VUONO: Thank you. This is
21 Eleanor. Is there anyone who would object to
22 making the title, racial and ethnic data relating

1 to disparities in the investigation, prosecution
2 and conviction of sexual offenses in the
3 Military?

4 Hearing none, we'll make that change
5 to the title.

6 Let's scroll down now to Page 2 where
7 a question was raised about how to characterize
8 previous findings on racial disparities in the
9 Military justice system. And specifically, the
10 three studies that we cite to there.

11 And given that the 2020 report, for
12 the FY17 data, had varying findings, the
13 suggestion was to delete the sentence that said,
14 including one study undertaken by the DAC-IPAD.
15 So as not to highlight findings that are not
16 correlated with the '17 and the '19 studies to
17 protect our defenders in the GAO.

18 So with that, the proposal was just
19 merely to mention that recent studies have
20 documented racial disparities without focusing on
21 the DAC-IPAD's 2020 report. So that phrase has
22 been deleted from that paragraph.

1 And the question to the Members is
2 whether they are in agreement with the deletion
3 of that one sentence. Or is there anyone who
4 would suggest that that sentence should remain?

5 CHAIR BASHFORD: Martha Bashford. I
6 agree with the deletion.

7 MS. VUONO: Thank you.

8 BGEN SCHWENK: Jim Schwenk. I agree.

9 MS. VUONO: Okay, great. Is there
10 anyone who would disagree with removing the
11 sentence?

12 Okay. So, it sounds like we will do
13 that and move forward.

14 As you'll note, when the DAC-IPAD has
15 voted on the findings and recommendations we will
16 insert the key recommendations that come out of
17 the vote on Page 3. So we'll skip over that.

18 And we will scroll down. You'll see
19 the next section of the report that begins on
20 Page 5 are the findings and recommendations that
21 you will discuss and vote on. But we'll skip
22 through those because those are based on really

1 the content and the basis of the report.

2 So we want to clean that up first and
3 then we'll move finally to the findings and
4 recommendations.

5 So, scrolling now down to pages,
6 starting at Page 8 of the introduction. The next
7 item for discussion is Page 9.

8 And there was a question about the use
9 of the term sex versus gender throughout the
10 report. And the way we would address that is to
11 add a definition in a footnote there explaining
12 that the term sex, when used, refers to
13 biological characteristics whereas the term
14 gender refers to social construction and
15 expression.

16 So, if that addresses the question
17 that was raised about why would we use sex in
18 some context or gender in others. And often, it
19 depended on how the report that we were
20 summarizing used them.

21 But it seemed appropriate to add a
22 definition section. And we did that through the

1 footnote at Footnote 14.

2 Do any of the members have any
3 concerns with adding that footnote? Or if
4 everyone is comfortable, we can move to the next.

5 BGEN SCHWENK: Yes, I think it's
6 confusing the way it is. This is Jim Schwenk.

7 I think it's confusing the way it is
8 because the sentence in the body says, the
9 Military Services will be required to maintain a
10 record of gender. But then the footnote says,
11 what you just said.

12 And it's clear that the memo means sex
13 rather than gender. And I sort of think the
14 reader might get confused with gender in the
15 body. And then down below, after we have cited
16 to the General Counsel's memorandum, we say
17 gender refers to social construction and
18 expression.

19 It seems to me the reader might think
20 we're meaning the General Counsel memo and using
21 gender refers to social construction and
22 expression. And I think it's pretty clear it's

1 not what is meant.

2 So, I think it's confusing. I'm
3 trying to think of an option to make it clearer.
4 And I'll get back to you when I think of
5 something. Thank you.

6 MR. KRAMER: Hey, it's A.J. Kramer.
7 I mean, based on what you just said, what General
8 Schwenk just said.

9 One way to do it might be to put a new
10 footnote after the word gender in the sentence
11 and have the last part of that, the last part of
12 the current Footnote 14 be that Footnote 13. Or
13 I guess it would be Footnote 14, this would turn
14 into Footnote 15 and would refer to the General
15 Counsel's memo.

16 That might be one way to do it, to
17 insert a footnote after the word gender in the
18 sentence.

19 MS. VUONO: Adding, yes. And I think
20 part, I don't honestly know that we know whether
21 the General Counsel memo refers to sex when it
22 says gender or whether it actually it means

1 gender as it's defined here.

2 I think what we were trying to address
3 is the fact that different memos, different
4 policies, different studies use the term
5 differently, as well as the legislation.

6 So, perhaps the fix is to not drop the
7 footnote as part of the DoD General Counsel memo
8 so as not to confuse the reader that we're
9 defining it for the General Counsel, but rather
10 just to make it, maybe even earlier in the
11 report, just a note to the reader that throughout
12 the report the terms sex and gender may be used
13 differently, because they are by different
14 studies, different policies. And for purposes of
15 understanding those terms, these are the typical
16 definitions.

17 The goal here was to try not to have
18 people wonder why we're using gender sometimes
19 and why we're using sex. It's used differently
20 in different places.

21 And they, so, perhaps the confusion
22 General Schwenk has raised is that it's embedded

1 as if it's defining the General Counsel memo and
2 we meant it to be broader than that.

3 MS. FALK: This is Alice Falk, the
4 editor. May I make a suggestion?

5 MS. VUONO: Sure, Alice.

6 MS. FALK: After, in the note, after
7 expression make that semicolon, however, gender
8 is the, used as an overarching term here. So
9 that makes clear that, I mean, because I think
10 that it's correct that really, they mean sex not
11 gender. But they're using that as covering
12 everything, what we usually think of as sex.

13 MS. VUONO: To address General
14 Schwenk's point that, that --

15 MS. FALK: Exactly.

16 MS. VUONO: Right. Right. General
17 Schwenk, does that answer the mail?

18 BGEN SCHWENK: This is Jim Schwenk.
19 I'm not sure, from my perspective, I sort of like
20 where A.J., where Mr. Kramer, I hate to say
21 anything positive about Mr. Kramer, but I think
22 he's got the right idea with having the two

1 footnotes and having the one about generally the
2 term going to the term gender.

3 And then I can think, what you were
4 saying, Eleanor, about a second sentence, it
5 says, in this report, and then whatever, we use
6 the term sex to refer to biological
7 characteristics. Just to clarify things. So,
8 that's --

9 MS. VUONO: Yes.

10 BGEN SCHWENK: -- so thank you.

11 MS. VUONO: Thank you. For my
12 intrepid note taker, Nalini, did you capture sort
13 of where we're landing on this?

14 It sounds to me like we are going to
15 have two footnotes. One that makes clear that
16 the use of the term sex means, refers to
17 biological characteristics and that gender is
18 used as an overarching term, even though it tends
19 to refer to social construction and expression.

20 MS. GUPTA: I got it. This is Nalini.
21 Thank you.

22 MS. VUONO: From the Members, does

1 anyone want to make any other points on that or
2 is the group satisfied with that correction?

3 MS. FALK: Excuse me, this is Alice
4 Falk again. I think you want to put that note on
5 page, oh, I'm sorry, it's in the recommendation.
6 I was looking, the first place that the word
7 gender appears.

8 MS. VUONO: Yes. I think this is the
9 first place, right here.

10 MS. FALK: Right. Right. It was a
11 recommendation so I'm, yes.

12 MS. VUONO: Thank you.

13 MS. FALK: Sorry.

14 MS. VUONO: Thank you. No, we always
15 appreciate Alice's inputs.

16 Indeed, if we're ready then, any other
17 thoughts before I move to the next item? Thank
18 you.

19 Okay. So this next one is on Page 10.
20 And Alice actually proposed, I think, a better
21 solution to address the question that was raised
22 yesterday about the definition of dyad.

1 Rather than drop a footnote, which may
2 not be the best way to approach the issue, the
3 suggestion is, and this is not in your draft
4 because it was made this morning, but I think I'd
5 like to suggest that there's a better fix. The
6 sentence would simply read, after the word dyad,
7 or pair, to help the reader understand that
8 that's what a dyad is.

9 So the sentence would now say, instead
10 of having a footnote it would merely say, studies
11 from the civilian sector suggest that criminal
12 justice response is to say sexual offenses differ
13 depending on the victim-accused, racial, ethnic,
14 dyad, or pair, so data on the race is essential.

15 So, the suggestion to the Members who
16 wanted to clarify what the word dyad means, we
17 would, instead of dropping a footnote just add
18 the phrase, or pair after that word.

19 Is there any discussion or
20 disagreement with that suggestion? Great, thank
21 you, Alice, for that helpful fix.

22 Moving down through the report we will

1 scroll to Page 16. Which is where the report
2 summarizes the DAC-IPAD's previous 2020 case
3 report on the investigative case file reviews for
4 Fiscal Year 2017.

5 And the issue was raised yesterday to
6 more effectively emphasize what that report found
7 with respect to race and ethnicity. As it was
8 written it was a paragraph.

9 And so, in order to better highlight
10 Dr. Wells' assessment, we have turned that
11 paragraph into a series of bullets which pulls
12 out each of the findings from that report. With
13 the purpose being to highlight and emphasize what
14 the 2020 report found.

15 So, as you can see, the content did
16 not change but instead the report now points out
17 that Dr. Wells made the following findings having
18 done this overall analysis of all the Services.
19 And that is the following four bullet points.

20 Are there any Members who would like
21 to discuss that change or disagree with that
22 change or is the DAC-IPAD comfortable with that

1 fix?

2 MS. CANNON: Kathleen Cannon here. I
3 had a question since I wasn't part of the
4 discussion on the development of the report,
5 which, by the way, is an incredible report. I
6 commend all of those involved.

7 What I have a question with is the
8 first bullet. The race of the subject was not
9 associated with the decision to prefer.

10 That seems a bold statement to me.
11 And I just wonder, is that an overstatement?

12 MS. VUONO: My understanding, and
13 Chuck and Kate can correct me if I'm wrong, this
14 was the language taken directly from the FY20
15 report, we didn't change it. So this was what
16 the DAC-IPAD reported as the findings from the
17 FY17 data, that the race of the subject was not
18 associated with the decision to prefer a
19 penetrative sexual offense charge.

20 So that was a sentence that had, that
21 was made and released in the 2020 report.

22 MS. CANNON: Okay, thank you.

1 MS. VUONO: So we did not summarize
2 the findings of Dr. Wells and we did not change
3 the language that the DAC-IPAD approved for that
4 report. Which is why we put it in the bullet
5 format to make it clearer, I suppose.

6 But as we point out in the previous
7 paragraph, this information was limited, often
8 incomplete. And so, the race and ethnicity
9 findings, not a lot was made of them in the 2020
10 report because of the limitations on the project.
11 As far as the race and ethnicity data collection
12 went.

13 So there's a big caveat, of course, in
14 this report as there was in the language of the
15 report as it was issued.

16 BGEN SCHWENK: Jim Schwenk.

17 MS. VUONO: Sir.

18 BGEN SCHWENK: The third starred thing
19 there, I'm having trouble understanding. I'm
20 having a lot of troubling understanding this
21 morning, but it says, the race of the victim had
22 a relationship in the bivariate analysis but when

1 other variables were introduced, race was not
2 significant in the multivariate analysis.

3 Could somebody explain what it means,
4 had a relationship means?

5 Is it a relationship with something
6 else that we need to add or does it have another
7 meaning?

8 So I'm sort of confused about what
9 that bullet, for lack of a better word, means.
10 Thank you.

11 MS. VUONO: So my understanding, and
12 Chuck will correct me, my understanding is that
13 when there was a bivariate analysis there was an
14 ability to compare two factors. And in the
15 bivariate analysis, race was one of the two
16 factors that there was a relationship found.

17 However, when they did the
18 multivariate analysis, which adds additional
19 factors in, their race was not as significant.
20 There was no finding that race was a significant
21 factor.

22 So, it's sort of a difference between

1 the levels of complexity of the analysis. It's
2 like the first, upon first review the bivariate
3 seemed to think, or reflect that there was a
4 relationship with the race of the victim.
5 Meaning, that had a significance.

6 But once other variables were
7 introduced and a multivariable analysis was done,
8 the race of the victim was not significant.
9 Statistically.

10 DR. SPOHN: So, this is Cassie Spohn.
11 I think the problem here is, it says the race of
12 the victim had a relationship. It doesn't say a
13 relationship to what.

14 And so, I think we need to add, the
15 race of the victim had a relationship to the
16 decision to prefer charges in the bivariate
17 analysis. Which I think is what --

18 MS. VUONO: I see. Yes.

19 DR. SPOHN: -- saying.

20 MS. VUONO: Yes.

21 DR. SPOHN: I mean, the victim had a
22 relationship, but it doesn't say had a

1 relationship to what.

2 MS. VUONO: That's right.

3 BGEN SCHWENK: Jim Schwenk. Thank
4 you, Cassia.

5 MS. VUONO: So, the proposal then
6 would be to make that third bullet read, the race
7 of the victim had a relationship in the decision
8 to prefer charges, but when other variables were
9 introduced race was not significant in the
10 multivariate analysis?

11 DR. SPOHN: This is Cassia.

12 BGEN SCHWENK: Jim Schwenk.

13 DR. SPOHN: I think it should say, a
14 relationship to the decision to prefer charges.

15 MS. VUONO: The decision --

16 DR. SPOHN: The race of the victim
17 affected or the decision to prefer charges in the
18 bivariate analysis.

19 MS. VUONO: Not had a relationship in
20 the decision to prefer charges but the race of
21 the victim affected the decision to prefer
22 charges in the bivariate analysis?

1 DR. SPOHN: That would be my
2 suggestion.

3 MS. VUONO: Affected the decision to
4 prefer charges. Okay. So, just to summarize
5 again that would now read, the race of the victim
6 affected the decision to prefer charges in the
7 bivariate analysis, but when other variables were
8 introduced race was not significant in the
9 multivariate analysis? Thank you.

10 Any other Members have a view on
11 making that change to the third bullet, as we
12 just described it?

13 CHAIR BASHFORD: Yes. This is Martha.
14 There were two things in his report, I just
15 pulled it up.

16 One was, as we stated there, and by
17 the way, thank you for the clarifications, Dr.
18 Spohn. I think that's much clearer.

19 One was that it had no impact on
20 courts-martial outcomes. But he also said
21 suspect race was not associated with the
22 likelihood of preferral. So we talk about victim

1 race at one point.

2 This is in the multivariate. And it's
3 the, "suspect race was not associated with the
4 likelihood of preferral."

5 I think we should just add that in as
6 well sort of as a different thing. We're talking
7 about the race of the victim for preferral, the
8 multivariate, race of subject had nothing. But a
9 little bit of apples and oranges but it's one of
10 his findings.

11 MS. VUONO: Yes, ma'am. And I think
12 you're referring to the first bullet then, or are
13 you referring to an additional point?

14 CHAIR BASHFORD: Yes, I'm sorry. I'm
15 sorry, you're exactly right, you've got it.
16 Sorry.

17 MS. VUONO: Yes. Yes. No, you pulled
18 that out and that should be the first bullet, but
19 I wanted to make sure you hadn't seen an
20 additional one that we missed. Thank you.

21 Sounds like everyone is in agreement
22 with that change then to the third bullet.

1 And now we are scrolling down.

2 MS. LONG: This is Jen Long.

3 MS. VUONO: Yes. Yes, Jen.

4 MS. LONG: I'm sorry. I didn't know
5 if this was the right time to ask. It's not
6 bullet related, it's just related to the
7 paragraph above and I realized I didn't --

8 MS. VUONO: Yes.

9 MS. LONG: Yes, I just have a question
10 if there is any clarity about what
11 disproportional affect race may have in the
12 investigative stage, is it the reporting?

13 Is there anything that can be said?

14 I know that this raises questions, but
15 that sentence sitting there raises, to me, starts
16 making conclusions I guess when I read it. And
17 I'm just wondering if there was any, a more
18 narrow way to describe what Dr. Wells found or
19 what the data might be suggesting. Or what part
20 of the investigative stage we're talking about.

21 MS. VUONO: Yes.

22 MS. LONG: And if we covered this

1 yesterday, I apologize.

2 MS. VUONO: No. This is a point,
3 there were earlier questions raised about the
4 phrase, may suggest that Black Service members
5 are disproportionately affected.

6 MS. LONG: Right.

7 MS. VUONO: Yes. And the views and
8 cite to the report, language itself, and not to
9 change what was found by the DAC-IPAD in the 2020
10 report.

11 But perhaps you're suggesting that
12 because, obviously this is, that's the language
13 directly from the FY17 data that was reflected in
14 the 2020 report. Are you looking for maybe some
15 sort of further explanation in the footnote that
16 tells the reader, if you go to this report you'll
17 see all the ins and outs?

18 MS. LONG: Yes.

19 MS. VUONO: And there's quite a bit in
20 that report.

21 MS. LONG: Yes. I mean, yes. Just
22 because investigative stage is so vast and vague,

1 I just feel like a little bit more direction to
2 what --

3 MS. VUONO: To explain perhaps in the
4 --

5 MS. LONG: -- we're talking about.

6 MS. VUONO: -- yes. So in the
7 footnote we could explain what that report meant
8 when it was assessing the investigative stage.

9 MS. LONG: Exactly. That's what I
10 would think would be helpful.

11 MS. VUONO: Almost a definition of
12 that, that kind of insider baseball term,
13 investigative stage.

14 MS. LONG: To me, I think that would
15 be helpful.

16 MS. VUONO: Does anyone on the
17 Committee oppose adding to the footnote a clearer
18 definition or explanation of what we mean when we
19 use the term investigative stage in that 2020
20 report?

21 We will do that. The Staff will work
22 up an explanation of what that phrase means and

1 add that to Footnote 49. Thank you.

2 scrolling down through the report, the
3 next place where there are edits to be discussed
4 will put a pause at Page 21.

5 CHAIR BASHFORD: This is Martha.

6 MS. VUONO: You'll see that we're,
7 yes?

8 CHAIR BASHFORD: I'm sorry, it's
9 Martha Bashford again. Just going back to that.

10 MS. VUONO: Yes.

11 CHAIR BASHFORD: I think the recurring
12 problem, I think we should bring that additional
13 footnote, addendum to the footnote, we should
14 make it clear that when we say, investigation, to
15 unrestricted reports only.

16 We don't know how the demographics
17 would breakout on restricted reports. And we
18 don't know, obviously, cases where no report is
19 made at all. Where somebody doesn't report, we
20 don't know what that would be either.

21 MS. VUONO: Thank you. Yes. So,
22 enhance the explanation of what the 2020 report

1 found by explaining what the limitations in that
2 assessment were. Meaning, we didn't look at
3 restricted reports and we don't know the
4 demographics of those who don't file reports.

5 CHAIR BASHFORD: Right.

6 MS. VUONO: Thank you. We'll, yes,
7 we'll work up a enhanced footnote explaining
8 those points. Thank you.

9 So, again, skipping over the findings,
10 which will be edited depending on your
11 deliberations and vote on those, we'll skip over
12 those on Page 21, and move to the methodology and
13 the data results, Section 3.

14 And in this section, there was a
15 question on Page 23 about the limitations of this
16 report and how the DAC-IPAD, this report, just
17 reviewed, reports the data presented by the
18 Services from their databases. That's not the
19 typical DAC-IPAD approach.

20 And we dropped a footnote to explain
21 why document-based verification is the better
22 approach, or has been used as the approach.

1 Because there was a question yesterday about
2 whether we were being clear enough about the
3 limitations on the data in this report.

4 So, to address that we added this
5 footnote to point out that even in the most
6 recent case adjudication report, a large
7 percentage of the cases that Services reported
8 were non-responsive to the DAC-IPAD request.

9 I'll give you a minute to read that
10 additional footnote and ask if you agree with the
11 addition of Footnote 75 or would like to edit
12 that or change that.

13 Hearing none, we will --

14 MG ANDERSON: Hi, this is --

15 (Simultaneous speaking.)

16 MG ANDERSON: Sorry. This is Marcia
17 Anderson. I just had a question --

18 MS. VUONO: Yes.

19 MG ANDERSON: -- about the wording
20 where it says, reasons for being non-responsive
21 included being, and then it lists the following
22 things. Is that includes but is not limited to

1 or is that list the complete list of items?

2 MS. VUONO: Chuck, should that say for
3 example, are those the only ways that a reason
4 might be non-responsive, Chuck, or would you say
5 that those are the universe of reasons?

6 MR. MASON: Those are generally the
7 reasons. The language from that footnote is
8 essentially verbatim from the case adjudication
9 report. It's the disclaimer language that we've
10 used in the past.

11 We could very easily add reasons for
12 being non-responsive, include but not limited to.
13 And that would give us enough wiggle room because
14 if there is a case that doesn't fit, it would
15 fall under the other areas. So, we could
16 definitely add a couple more words to that
17 without a problem.

18 MG ANDERSON: Okay, that helps me. I
19 don't know if it helps anyone else, that helps
20 me.

21 MS. VUONO: So, just to repeat, the
22 change for that footnote would now say, reasons

1 for being non-responsive include, but are not
2 limited to, being a non, qualified non-sex
3 offense, and then the rest of the list?

4 HON. GRIMM: Grimm.

5 MS. VUONO: Sir.

6 HON. GRIMM: If you say include is it
7 really necessary to say but not limited to?

8 Including means that there are
9 examples. It sounds too much like what we
10 lawyers and judges do all the time and --

11 MS. VUONO: Right.

12 HON. GRIMM: -- not necessarily the,
13 that's not necessarily --

14 MS. FALK: This is Alice. I'm sorry.
15 He's correct. I mean, that's what include means,
16 that there is something left over. As a matter
17 of usual English usage.

18 MG ANDERSON: Okay, that's fine with
19 me.

20 MS. VUONO: So, the resolution is that
21 the word include means when it's used typically
22 that this is a list but it's not an exclusive

1 list and there may be others?

2 MG ANDERSON: Okay.

3 MS. VUONO: Correct. Does that answer
4 the question then, ma'am?

5 MG ANDERSON: Yes, it does. It does.
6 I'm guilty of being a lawyer. I'll stop.

7 (Laughter.)

8 MS. VUONO: We're all guilty of that
9 on this team.

10 (Laughter.)

11 MS. VUONO: And thank you. No, thank
12 you for that.

13 Okay, great. So, scrolling down.
14 We've already addressed, the comment on Page 25,
15 that was just a flag, nothing has changed since
16 yesterday. I just forgot to delete the Staff
17 comment there so that, and the second, the next
18 page over, changes that were added to help
19 clarify the methodology of the data reporting so
20 we can delete both of those comments. Unless
21 anyone wants to discuss today.

22 Hearing none, then as we scroll down,

1 the next change was a comment made in the
2 drafting of the data narrative. For each of the
3 Services, after the chart on racial and ethnic
4 composition, excuse me, after the chart on race
5 of the subject for each of the Services, the
6 sentence had been written to have sort of a list
7 of two, but the conviction category, if it was in
8 contrast to the first two, was the word but was
9 used to sort of highlight that contrast.

10 And the suggestion was made that we
11 should keep all of those sentences neutral and
12 just use the word, and. To report to the reader
13 that if a subject accounted for 63 percent, for
14 example, looking at the Army one now on Page 30
15 it would simply read, White subject accounted for
16 63 percent of the documented unrestrictive
17 reports, 57 percent of the total cases in which
18 chargers were preferred, and 65 percent of the
19 cases.

20 And the proposal will be to change all
21 the sentences that were once read, item, item,
22 but now be sort of item, item, and. Just to keep

1 that phraseology neutral and not imply that this
2 is something that we can explain.

3 So, if you scroll through you'll see
4 that that word, but, was deleted in the middle of
5 those sentences, for each of the Services
6 narrative description of the race of the subject.
7 Is there anyone who would like to discuss that
8 change or disagrees with changing the word "and"
9 to the word "but?" Excuse me, changing the word
10 "but" to the word "and."

11 So that, I believe, concludes the
12 discussion of the content of the report. Do we
13 want to move now to the findings and
14 recommendations, do we take a break or do we just
15 power through? It's 11:52. I think we power
16 through.

17 CHAIR BASHFORD: This is Martha
18 Bashford. I would prefer to power through.

19 MS. VUONO: Yes.

20 CHAIR BASHFORD: We've only been on
21 the call for 50 minutes.

22 MS. VUONO: Great. So what we'll do

1 now is we'll turn to Page 5 of the draft report.
2 Which will be the findings and recommendations.

3 And as you'll see in the draft, that
4 we emailed out yesterday afternoon, that is
5 posted on the website, we re-ordered those
6 findings and flipped the grammar of it just so it
7 read better.

8 And that means, the first finding is
9 about 50 years of studies telling the Department
10 of Defense the importance of uniformity and data
11 collection.

12 Then the next finding, which was
13 previously the first finding but now is finding
14 number two, despite those recommendations, the
15 problem still exists. The data is inadequate,
16 incomplete and inconsistent.

17 Then the third finding, just to make
18 it read better, we flipped the sentence to say,
19 decades of studies have found these varying
20 degrees of racial disparities, despite those
21 inadequacies in the data collection.

22 And that, of course, is referring to

1 the conversation in the report about the 1972
2 studies and 2017 POD study. The 2019 GAO report.
3 And then to a limited degree, the DAC-IPAD
4 report. And then the final finding is the same.

5 So, let's pause now and discuss those
6 four findings. Are those, first of all, are
7 those the right four findings, and then if they
8 are, are there additional findings that the
9 members believe should be added?

10 So, first to the question, are those
11 the right four findings, in that order?

12 And, if those are the right four
13 findings, and it sounds like the Committee
14 agrees, the question is, are there other findings
15 that the Committee believes we should draw out of
16 this report or is that as far as we should go
17 with what this report can say?

18 Recognizing, of course, that there
19 will be a number of recommendations to follow.
20 So, it sounds like the Committee agrees that
21 those are the key findings of this report. We
22 can always go back and revisit if someone comes

1 up with another thought as we work through the
2 recommendations, but for now we'll move to the
3 recommendations.

4 So, we'll go through these one-by-one
5 and ask if this is the right person, for example,
6 should it be the Secretary of Defense the right
7 entity, should it be the Congress, who should be
8 doing this recommendation, if this is the right
9 recommendation, or how the recommendation should
10 be changed.

11 So for the first one, the first
12 recommendation essentially says, there should be
13 one place where this race and ethnicity data is
14 collected. Everyone else should use it and share
15 it and it should be the same.

16 As opposed to having one set of data
17 in the Military personnel systems, another set in
18 the MCIO system, a different set in the Military
19 justice system.

20 The second recommendation, if there
21 are no thoughts on that one, would be that the
22 Secretary of Defense clarified the need to have

1 the same --

2 CHAIR BASHFORD: I'm sorry.

3 MS. VUONO: Yes.

4 CHAIR BASHFORD: This is Martha
5 Bashford.

6 MS. VUONO: Yes, ma'am.

7 CHAIR BASHFORD: I just want to make
8 sure, I don't really know how it works. That the
9 MCIOs could get that data from the Military
10 personnel system? They have access to it?

11 MS. VUONO: That would be the
12 proposal, yes, that they all should get access
13 and use the Military personnel system for the
14 source of data collection because that's where
15 the information that's reported by each Service
16 member would reside.

17 CHAIR BASHFORD: So --

18 MS. VUONO: Obviously, everyone would
19 keep it as well. Maybe General Schwenk can speak
20 to that too. But yes. I think the answer is yes
21 in that recommendation.

22 BGEN SCHWENK: Yes. I think

1 Recommendation 1 is just the acknowledgment that
2 if you have three different systems collecting
3 data from three different people, you're looking
4 for, from the same person, you're looking for
5 inconsistencies in the process.

6 And since every member, and remember,
7 Recommendation 1 is limited to members of the
8 Armed Forces who are going to have to grapple
9 with, what do we do about civilian victims on
10 gathering information because that is not going
11 to be in a Military personnel database.

12 But Recommendation 1, just talking
13 about Military personnel, when you come into the
14 Military, everybody puts down their race and
15 their ethnicity. And if you want to change it,
16 you go back to the Military personnel system to
17 change it.

18 And so, looking at our 140A analysis
19 of one single system and everybody that wants to
20 use that, any information in that system, goes to
21 the source system to get it. This Recommendation
22 1 parallels that, that philosophy of how to do

1 things.

2 And that's it. Thanks.

3 MS. VUONO: Thank you, sir. Chair
4 Bashford, any other questions about
5 Recommendation 1 or any other thoughts to share?

6 CHAIR BASHFORD: No, I'm fine.
7 Thanks.

8 MS. VUONO: Thank you. For
9 Recommendation 2, the purpose here is to clarify
10 that the OMB Directive 15, minimum categories for
11 race and ethnicity, are standardized in the
12 Department of Defense.

13 Those are listed. And that there
14 should be this additional one for reporting two
15 or more or other. For those who choose to select
16 more than one race.

17 So it's a need to be clear because
18 there may be some who read various directives and
19 think the Services are free to create their own
20 categories in addition to those five racial and
21 two ethnic and six, two or more other category.
22 The idea is to create the same standard for all

1 the Services.

2 And this --

3 MR. MARKEY: This is Jim Markey.

4 MS. VUONO: Yes, sir.

5 MR. MARKEY: I'm sorry, go ahead.

6 MS. VUONO: No --

7 (Simultaneous speaking.)

8 MS. VUONO: -- experience of having 20
9 categories in one Service and only six in
10 another. Yes, sir.

11 MR. MARKEY: And the way you just
12 explained it, I don't see that exact wording in
13 the recommendation. Like, others say, number
14 one, should.

15 So, do we need to really point out and
16 articulate, you should identify and use these
17 categories and include options for reporting two
18 or more or other?

19 I don't, I just see this
20 recommendation now, as it's written as, this is
21 what the Secretary of Defense has directed. Are
22 we, as a Committee, supporting or recommending

1 that this recommendation be followed through
2 with.

3 So, what's the action that we want
4 them to do with the recommendation?

5 MS. VUONO: So, perhaps you're
6 suggesting it should say, should direct as
7 opposed to, usually we just say do this. I think
8 the way it's written is a convention where it
9 says, Secretary of Defense direct the reporting
10 in this fashion.

11 But it would, certainly we could
12 change it to say, the Secretary of Defense should
13 direct. But I think this was written because
14 that's the convention in these recommendations.

15 So, for example, in Recommendation 1
16 is not that the Secretary of Defense should
17 designate but just, SECDEF-designate, boom. But
18 I defer to the Committee on, obviously the
19 emphasis that, the way it's written may read to
20 you.

21 CHAIR BASHFORD: This is Martha
22 Bashford. I think the issue is that we say,

1 using the minimum category, which implies that,
2 okay, we have those minimums, we can add 16 more
3 if we want to. I think it should say, using only
4 the categories for race and ethnicity set forth
5 in the Directive 15.

6 MS. VUONO: And --

7 (Simultaneous speaking.)

8 CHAIR BASHFORD: -- to have the two or
9 more or other.

10 MS. VUONO: And part of the confusion
11 may be that, this is a recommendation on
12 reporting those categories.

13 So, the Services may, I believe right
14 now, and Chuck, correct me, right now the
15 Services may be free to collect as many as they
16 want. The issue, of course, is in the reporting
17 for purposes of data analysis.

18 So this was a recommendation to say,
19 however you do it in your data bases, you've got
20 to be able to report it out using these five.

21 And so, Chair Bashford, your suggestion is to
22 make it clear, use only these for reporting

1 purposes --

2 CHAIR BASHFORD: Yes.

3 MS. VUONO: -- not use the minimum
4 because that leaves too much wiggle room for the
5 Services to go, oh, we'll do the minimum, but
6 we'll do more.

7 I hear what you're suggesting, delete
8 the word using the minimum and say instead,
9 SECDEF direct the Services to report using the
10 following categories for race and ethnicity,
11 boom, boom, boom.

12 CHAIR BASHFORD: Using only. Only --

13 MS. VUONO: Using only, Roger. Okay,
14 using only the categories, only the, yes.

15 The problem is, OMB Directive 15 has
16 a minimum, and then they say you can go do more.
17 But we want them to report only the categories
18 listed here.

19 CHAIR BASHFORD: Yes.

20 MS. VUONO: Yes, ma'am. Okay.

21 MR. MARKEY: Yes. So I think
22 articulating that, like you did, you would be

1 clearer. Because the last time it was just -- it
2 doesn't really say. It just says in all
3 databases you should, you know -- what's the
4 action? I guess that's what I am looking for,
5 what's the action that we are recommending they
6 follow. I think the way you explained it just a
7 second ago was good.

8 Do we want to put that in the wording
9 so it's more -- For me it would be more, okay,
10 it's not just a recommendation that the SECDEF
11 directed, but we're also either supporting that
12 directive or telling you that these are the
13 things that you should be doing, if that makes
14 sense.

15 MS. VUONO: Yes, sir. And I almost
16 wonder if it should just say "The Services should
17 report" instead of telling the SECDEF to direct
18 them to do it just say each of them should report
19 these categories and adding the two or more or
20 the six, or, excuse me, seven, eight.

21 MR. MARKEY: Mm-hmm.

22 MS. VUONO: So just cut out the

1 Secretary of Defense directing it and just
2 recommend that they do it.

3 MS. CARSON: Eleanor?

4 MR. MARKEY: Go ahead.

5 MS. VUONO: Yes?

6 MS. CARSON: This is Julie Carson. I
7 think we usually put a decision maker as the
8 person we recommend to because who is it that has
9 to make the decisions requiring that to happen,
10 and that would be --

11 (Simultaneous speaking.)

12 MS. VUONO: Ah. So leaving the
13 Secretary of Defense is important?

14 MS. CARSON: Secretary of Defense,
15 exactly.

16 MS. VUONO: Roger.

17 MS. CARSON: Because if you just say
18 the department should there is nobody to direct
19 that they do it.

20 MS. VUONO: Okay. So if we leave
21 Secretary of Defense we just need to clarify that
22 this is a recommendation that the reporting be

1 the same for all the Services, and we can clarify
2 that by deleting the minimum, the use of the word
3 minimum, minimum categories for race.

4 Sir, do you think that would answer
5 the concern?

6 MR. MASON: I think so. As I looked
7 at three and four and five there is no action to
8 it.

9 I read it as we are just telling you
10 that the SECDEF directed people, you know,
11 whether they knew that or not already, and it is
12 our recommendation that you follow through with
13 that directive, I guess.

14 MS. VUONO: Yes. So I think what we
15 are trying just to clarify is that they need to
16 report out using the same and maybe we can make
17 it clearer by saying direct them all to report
18 using the same categories and they are listed as
19 follows.

20 The concern just being we have been
21 unable to assess this data because they don't
22 report the same.

1 MS. CARSON: Correct. Yes, that
2 sounds reasonable.

3 MS. VUONO: Yes. Okay, yes. Okay, so
4 we'll highlight the fact that this a reporting
5 consistently recommendation as opposed to that's
6 buried a little bit too much in this
7 recommendation.

8 Any other suggestions on how to make
9 that clearer or does that work for the committee?

10 BGEN SCHWENK: This is Jim Schwenk.

11 MS. VUONO: Yes, sir?

12 BGEN SCHWENK: Okay. So I think I am
13 tracking. So the recommendation would read "The
14 Secretary of Defense direct each military
15 department," and you don't have to say military
16 Service, say "each military department to report
17 race and ethnicity in military criminal
18 investigative organization databases, military
19 justice databases, and military personnel
20 databases using only," we're going to insert
21 "only," "only the minimum categories for race and
22 ethnicity set forth in the OMB directive."

1 The next sentence would then say "The
2 minimum to," you know, to match the two sentences
3 together, "the minimum racial categories from
4 OMB-15 are," the five, and then "The only two
5 ethnic categories from OMB-15 are," and then the
6 two.

7 MS. VUONO: Yes, sir.

8 BGEN SCHWENK: So if we put "only" in
9 the first sentence and we put "minimum" in the
10 second and "only" in the third it seems to me
11 that may take care of clarifying that's what we
12 mean, those and only those ones.

13 So if, indeed, the Air Force wants to
14 continue to have whatever Chuck found when he
15 opened his data, 17 different categories or
16 something for race, when they report them they
17 have to aggregate them and report them in one of
18 these five categories before --

19 (Simultaneous speaking.)

20 MS. VUONO: Yes, sir. That was the
21 intention of this recommendation.

22 BGEN SCHWENK: Okay.

1 MS. VUONO: So I will read what you
2 just said to clarify. So the edit would be "The
3 Secretary of Defense direct each military
4 department to report race and ethnicity in
5 military criminal investigative organization
6 databases, military justice databases, and
7 personnel databases using only the minimum
8 categories for race and ethnicity set forth in
9 OMB Directive 15," with the title.

10 "The minimum racial categories from
11 OMB Directive 15 are," with the list, and then
12 the next sentence, "The only two ethnic
13 categories are" these two, and then the last
14 sentence remains the same.

15 BGEN SCHWENK: Well, I want to talk
16 about the last sentence, but let's take care of
17 the first ones. I think that's a good idea, so
18 fine by me.

19 I will let other people have their
20 comments now. Thank you. Then I want to come to
21 the last sentence. Thank you.

22 MS. VUONO: Yes, sir.

1 CSMAF MCKINLEY: This is Chief
2 McKinley. I think that makes it pretty clear.

3 MS. VUONO: Thank you, sir. General
4 Schwenk, do you want to mention your thoughts on
5 this last sentence?

6 BGEN SCHWENK: Yes, thank you. The
7 last sentence, the way I read that OMB Directive
8 it's an instruction in how to fill out the form.
9 That's what it is.

10 It's not a separate category or
11 anything. It's an instruction for filling out
12 the form and it only applies to racial, not to
13 ethnic.

14 So I think the sentence as a
15 preliminary matter has to be moved after the
16 race, the second sentence, the one about the
17 racial categories.

18 It needs to express what OMB says,
19 which is that the instruction has to tell the
20 person mark one or more. That means you can mark
21 one of the five, two of the five, three of the
22 five, four of the five, or five of the five.

1 That's how I read the OMB Directive
2 and I think that's what that sentence needs to
3 say. I don't think there is anything in the OMB
4 directive about "other."

5 I think the OMB Directive as I read it
6 rejected the idea of having an "other" and ended
7 up with mark two or more.

8 So I would recommend that we move the
9 last sentence to right after the racial category
10 sentence and that it says something about in
11 addition the instruction regarding racial
12 categories should indicate that the individual
13 self-reporting must choose, may choose one or
14 more.

15 MS. VUONO: Yes, sir. And I think --

16 BGEN SCHWENK: Whatever the language
17 from the OMB thing is.

18 MS. VUONO: Yes, sir. I see the value
19 of moving the sentence because, obviously, it's
20 addressing race and so if it was moved -- The
21 challenge is you have described perfectly how the
22 OMB Directive discusses the selection process,

1 the self-reporting process on race and that there
2 is this ability to select more than one.

3 What we are trying to do here is say
4 regardless of how the Services collect that from
5 the individual when reporting there should also
6 be a category reported and we call it "two or
7 more" or "other" to capture all of those
8 categories that the Services currently report
9 out, which are all over the map as Chuck found.

10 So the goal here was to take this to
11 the step of reporting beyond what OMB allows for
12 collection and say, yes, while OMB says you can
13 collect this in various ways and you can check
14 various boxes, the Department of Defense, each of
15 these military departments, should report out
16 this category.

17 We came up with that title just as a
18 catchall for all of the various ways the Services
19 might capture that, so if someone checks two
20 boxes or three boxes or four they would report
21 that that individual was "two or more" or
22 "other."

1 So I agree with your clarification,
2 but I think what we were trying to achieve here
3 is creating an additional reporting category as
4 opposed to a data collection category, so that is
5 the struggle with capturing that.

6 DR. MARKOWITZ: This is Dr. Markowitz.

7 MS. VUONO: Yes? Thank you.

8 DR. MARKOWITZ: Is there a way to
9 simply just add a little -- I mean you just
10 obviously said quite a bit there, but is there a
11 way just to simply add a sentence or two to
12 clarify that that's the meaning there, because I
13 think the problem is that it's just simply not
14 clear what the meaning of that last sentence is
15 based on the explanation that you have just
16 provided the group?

17 MS. VUONO: Right.

18 DR. MARKOWITZ: Because I certainly
19 see with the fact that the information was all
20 over the map there, but it isn't clear from that
21 last sentence.

22 MS. VUONO: Yes. Yes. I don't know

1 how easy it is to drop a footnote on a
2 recommendation, but I think you are right.

3 We need to make it clear that we are
4 telling the Secretary of Defense to have a
5 category or report, allow individuals, or to
6 report individuals that have this additional
7 category.

8 DR. MARKOWITZ: Right.

9 MS. VUONO: So I wonder if the
10 sentence is moved is it good enough to say in
11 addition, so it would now read "The minimum
12 categories for race are the following in addition
13 to these minimum racial categories," include an
14 option for reporting a category for more than one
15 race called "two or more" or "other" or
16 something.

17 MS. CARSON: Eleanor, this is Julie
18 Carson. One thought, I think in the OMB
19 Directive it says it's not an option it is they
20 must report the number of instances in which two
21 or more races are selected. Does that make
22 sense?

1 MS. VUONO: As opposed to a category
2 but just say --

3 (Simultaneous speaking.)

4 MS. CARSON: Those are the five
5 categories. When it is self-reported you have to
6 select one or more of those five categories.

7 So your options are select one of
8 those categories, select more than one of those
9 categories, or nonresponse, don't select any.
10 That's the "other" essentially.

11 MS. VUONO: That's right.

12 MS. CARSON: So what you want to
13 report is the number in each category and the
14 number who selected more than one category or no
15 categories, right?

16 Maybe we can make that into a
17 sentence, but I think that's the explanation if
18 that makes sense to everybody.

19 MS. VUONO: Yes. Perhaps what we will
20 do is we'll play around with that sentence and
21 propose an edited version that makes that point.

22 MR. MASON: Eleanor, this is Chuck.

1 MS. VUONO: Yes, Chuck?

2 MR. MASON: Nalini and I have been
3 working on this as the conversation was
4 happening. We will draft up a revised
5 recommendation that will be in two parts.

6 The first part of the recommendation
7 will say that "OMB minimum categories should be
8 utilized for recording purposes." Then the
9 second part of the recommendation would be when
10 they report the information they would use the
11 five minimum categories and in addition they
12 include the two or more or other so they can
13 record it with the minimum standards and then if
14 they want to add any others to it, but when they
15 report it out they have to aggregate all those
16 others into, or the two or mores into that last
17 category so it's reported as a raw number.

18 But we can work on that and have it
19 for after the lunch break for everybody's review
20 if that is acceptable.

21 MS. VUONO: That seems like a perfect
22 approach. Does the committee agree to table

1 Recommendation 2 until we see the -- We'll
2 essentially re-write it in two ways, there is the
3 collection stage and then there is the reporting
4 stage.

5 That's a great, helpful suggestion,
6 Chuck, and we'll look forward to re-reading or
7 re-presenting Recommendation 2 after the lunch
8 break. Thank you.

9 Recommendation 3. Essentially this is
10 a recommendation that the DAC-IPAD made earlier
11 with how to approach the Article 140A process.

12 The Department of Defense response
13 back was that sounds like an idea for a pilot
14 project, and so this is that recommendation as a
15 pilot project, which would be Congress
16 authorizing and appropriating funds to develop a
17 single case management system that collects data
18 on contact and penetrative sexual offenses.

19 It would collect from a standardized
20 source. Yes? Is there a question? You can read
21 it.

22 So this pilot project would be a

1 recommendation that we try out what a single
2 uniform case management system would be for the
3 contact and penetrative sexual offenses that the
4 DAC-IPAD is taxed with considering.

5 MR. MARKEY: This is Jim Markey. Who
6 are we asking to participate in the pilot
7 program? Are we directing anybody or are we just
8 saying we agree with this pilot program and it
9 should be furthered or are we saying, or do we
10 want to make a more specific recommendation?

11 MS. VUONO: Yes. I think I don't know
12 the sensitivities of saying appropriate funds for
13 the DAC-IPAD to run a pilot program, but I think
14 it would be something that the DAC-IPAD would do,
15 but perhaps not.

16 MR. MARKEY: Okay.

17 MS. VUONO: I guess that's really the
18 question for the committee is I think the
19 committee had originally thought that it would be
20 a good idea to have a single system that we could
21 use to do our work and our assessment that was
22 not accepted, but the idea would be a pilot

1 project might show the feasibility of having a
2 single case management system rather than asking
3 through RFIs to get information that the DAC-IPAD
4 needs.

5 So I think embedded in this is does
6 the DAC-IPAD want to be the one to run that pilot
7 program or just suggest it needs to happen and it
8 could happen wherever Congress wants it to
9 happen.

10 MS. CARSON: Eleanor, this is Julie
11 Carson. Can I make one quick point? I think if
12 the DAC-IPAD was doing anything it would not be
13 case management.

14 It would be some kind of data
15 collection system, but the DAC-IPAD would be
16 involved in any kind of case management. That
17 might be an important distinction.

18 MS. VUONO: Right. So this is --

19 BGEN SCHWENK: Yes, this is Jim
20 Schwenk.

21 MS. VUONO: Yes?

22 BGEN SCHWENK: I'd say from my

1 perspective I don't think the DAC-IPAD should get
2 in the business of running pilot programs for the
3 Department of Defense. I think the DAC-IPAD
4 ought to stay in the business of doing DAC-IPAD
5 business.

6 If we were ever lucky enough that the
7 Department of Defense ran a pilot program that
8 collected the data we needed it would make
9 Chuck's life so much easier if they did it and
10 consistent with the 140A process.

11 But to me, boy, that's just jumping in
12 with both feet, so I think it ought -- But I
13 think Mr. Markey's point was well taken and I
14 think it ought to say Congress authorize and
15 appropriate funds for the Secretary of Defense to
16 establish a pilot program, da, da, da, da, da.

17 CHAIR BASHFORD: This is Martha. I
18 agree with General Schwenk. I think we are in
19 the business of evaluating programs and
20 evaluating data and I don't know how we would
21 evaluate data from a program that we ran.

22 MS. VUONO: Thank you. Just to

1 clarify that, so if this recommendation is a
2 recommendation for the Secretary of Defense to
3 establish a pilot program operating -- Julie,
4 what is it that you suggested the change be, not
5 a uniform case management system, but the pilot
6 program should be a uniform data collection
7 system or a database?

8 MS. CARSON: Well, I think that makes
9 a difference, you know, what is the purpose of
10 this system. The case management system I think
11 is understood and utilized by the Services, runs
12 their legal operations or their investigative
13 operations, whereas this wouldn't be a system or
14 would it, I don't know, be a system that is
15 running the operations or is it just a data like
16 the U.S. Sentencing Commission, doesn't run
17 anything other than collecting data from the
18 federal courts.

19 So I think that's a distinction that
20 needs to be hashed out.

21 MS. VUONO: Made, yes. Yes. And so
22 the question is whether if the committee agrees

1 that the pilot program run by the Secretary of
2 Defense, not the DAC-IPAD, would be to operate a
3 uniform database across all the Services for data
4 collection on the contact and penetrative sexual
5 offenses and then that database would collect its
6 information on all these sexual offense
7 allegations and then that could be used for
8 future studies.

9 So just to summarize the
10 recommendation would be "Congress authorize and
11 appropriate funds for the Secretary of Defense to
12 establish a pilot program operating one uniform
13 database across all Services for data collection
14 on contact and penetrative sexual offenses," and
15 then the rest remains the same explaining that it
16 collects data and includes race and ethnicity.

17 CHAIR BASHFORD: This is Martha. I
18 don't think it's one database. Isn't it for one
19 uniform system for data collection or are we --

20 (Simultaneous speaking.)

21 CHAIR BASHFORD: -- one database for
22 across that all the Services put their data into?

1 MS. VUONO: The system seems broader
2 than database.

3 BGEN SCHWENK: This is Jim Schwenk.

4 MS. VUONO: Yes, sir, General Schwenk?

5 BGEN SCHWENK: I would go back to read
6 our 140A report which I admit I have not read
7 recently, but I would go back and read that and
8 say what was it we said there and then
9 incorporate that as a pilot program here.

10 We said it once, we can repeat it, and
11 I am sure we worried about the language back
12 then, but for the life of me sitting here I can't
13 remember what we said, so I would defer to what
14 we said before so we are consistent. Thank you.

15 MS. VUONO: Yes, sir. And this
16 recommendation was taken from that so I am just
17 looking at it real fast, "to develop uniform
18 standards and criteria," and the recommendation
19 was require -- Yes, I'll just have to go back and
20 re-look at that.

21 MS. CARSON: This is Julie. I believe
22 that was for a single case management system, but

1 I think that's a bigger recommendation with much
2 bigger implications than -- So if you want, if
3 the recommendation is to go and do that that's
4 one recommendation.

5 If it's a pilot project to collect
6 data for statistical reporting purposes that's a
7 different project.

8 MS. VUONO: Yes. And that was a
9 proposal to have a single system. It was much
10 bigger, the Article 140, which is a September
11 30th letter, and we could email this letter back
12 around before we go farther on this
13 recommendation.

14 But to Julie's point, I guess that's
15 the question for the members is if they believe
16 there should be a pilot program to create a
17 system or a database, so either word I think
18 works for the collection of these critical data
19 elements, include the demographic data on race
20 and ethnicity.

21 Whether it's a database or system I
22 think it's definitely narrower than the Article

1 140 recommendation.

2 BGEN SCHWENK: Jim Schwenk.

3 MS. VUONO: Sir?

4 BGEN SCHWENK: Okay. Making an
5 analogy to crawl, walk, run, we, the DAC-IPAD, in
6 our 140A report suggested that the Department of
7 Defense "run to a big case management uniform
8 system. That would really be awesome."

9 We got a reply that said "Whoa,
10 running is a little bit hard. We might consider
11 walking with the pilot program for some aspect of
12 that. Standby for future events."

13 And I think Julie's point is well
14 taken. Maybe we need to think about nudging them
15 along by going to crawl. Any progress is better
16 than no progress at all even at a crawling pace.

17 So instead of saying uniform case
18 management assessment say uniform data, you know,
19 something system that sounds good and then the
20 rest of what we have here.

21 And recognizing it isn't the run we
22 recommended, it's not the walk that they

1 suggested someday they might be interested in,
2 but at least it would be progress if they even
3 did data management or data collection. Thank
4 you.

5 CHAIR BASHFORD: Martha Bashford.

6 MS. VUONO: Yes, ma'am?

7 CHAIR BASHFORD: Going back to what
8 this report is, which is a race and ethnicity
9 report, I think we should take out the part of
10 the recommendation for the case management
11 system.

12 It doesn't seem to me that that --
13 Yes, that's what we have recommended before, but
14 I don't think that that is what we need to
15 recommend for the purposes of this report.

16 MS. VUONO: Yes. And the proposal has
17 been to remove "case management system" from the
18 recommendation and just dial it back to being a
19 data system collection for data on --

20 CHAIR BASHFORD: Yes.

21 MS. VUONO: Yes, right. Yes, I think
22 that is what I am hearing from everyone. General

1 Schwenk, to be clear, for the recommendation to
2 work do you suggest including the caveat of, hey,
3 we told you this before or is that just part of
4 the understanding of it?

5 Is it enough to just say
6 Recommendation 3, authorize and appropriate funds
7 for pilot program operating a data system to
8 collect data on race and ethnicity in sexual
9 offenses?

10 BGEN SCHWENK: Yes. That works --

11 MS. VUONO: Or are you suggesting,
12 sir, more --

13 BGEN SCHWENK: General Schwenk. Yes,
14 that works fine for me. No, I was just doing --

15 MS. VUONO: Yes. Yes.

16 BGEN SCHWENK: I am just explaining
17 why I am backing off my original position which
18 was walking it.

19 MS. VUONO: Yes.

20 BGEN SCHWENK: I am going back to
21 crawling.

22 MS. VUONO: Yes, sir.

1 BGEN SCHWENK: Any progress is better
2 than no progress at all, so let's go to a data
3 collection system.

4 MS. VUONO: Yes, sir. Excellent. So,
5 Chair Bashford and General Schwenk, to address
6 both of your points it would now read "Congress
7 authorize and appropriate funds for the Secretary
8 of Defense to establish a pilot program operating
9 one uniform" -- Sir?

10 (No audible response.)

11 MS. VUONO: "Establish a pilot program
12 operating one uniform data system across all
13 Services for data collection on contact and
14 penetrative sexual offenses," and then the rest
15 stays the same.

16 CHAIR BASHFORD: Yes.

17 BGEN SCHWENK: Jim Schwenk.

18 (Simultaneous speaking.)

19 MS. VUONO: Yes, General Schwenk?

20 BGEN SCHWENK: No, it works for me.

21 Thank you.

22 MS. VUONO: Colonel Calese?

1 COL CALESE: I think I heard Mr.
2 Markey in there.

3 MR. MARKEY: Yes. I think that sounds
4 great. I guess I am thinking down the road where
5 we are running, General Schwenk. Is this pilot
6 program something that they are going to turn
7 around and ask the committee or the DAC-IPAD
8 subcommittees to develop?

9 I guess we call it a pilot program,
10 but who is going to be in charge and what will it
11 look like and is that something they may come
12 back and ask us and are we prepared to answer
13 those types of questions?

14 MS. VUONO: Chuck may have a thought
15 on the answer to that. That's a question I don't
16 think I have the history on enough to know what
17 does the DoD do if the Congress says do a pilot
18 program.

19 Do they have teams of data management
20 folks who say, oh, we can get one of these up and
21 running within a year? I don't know.

22 MR. MASON: If the recommendation were

1 to the Secretary and Congress then tells the
2 Secretary to do it the Secretary will figure it
3 out.

4 If they came back and asked for
5 additional guidance or further recommendations
6 from our organization I think through the Chair
7 we'd be able to come up with more suggestions and
8 provide feedback.

9 If they were to tell us to do
10 something, you know, if Congress is the one who
11 is telling us to do it, they have created this in
12 the first place, so it really depends on what
13 happens.

14 I think if further explanation were
15 required of us we would go through the Chair and
16 bring it back to the committee to figure out how
17 we can provide additional support to the
18 Secretary.

19 COL CALESE: Thank you, Chuck.
20 Eleanor, this is Colonel Calese. Everyone, it is
21 12:30 now and we have a healthy conversation
22 going on.

1 I am wondering if it might be helpful
2 to take a small break and let Chuck and Nalini do
3 a re-work of one of the findings, let Eleanor
4 assist with some re-works of Recommendation
5 Number 4, and then we come back at about 1
6 o'clock. Does that work for everyone? Chair
7 Bashford, your thoughts on that?

8 CHAIR BASHFORD: Yes, that's great.
9 But when we come back and when we are done with
10 discussions we haven't officially voted on any of
11 these so we have to go through and actually vote
12 on the report as a whole, the findings, and the
13 recommendations.

14 So we have been in concordance with
15 our discussions but we haven't had formal votes,
16 so let's not forget that.

17 MS. VUONO: Thank you, ma'am.

18 (Simultaneous speaking.)

19 CHAIR BASHFORD: Yes, ma'am?

20 MS. VUONO: This is Eleanor.

21 COL CALESE: Yes, ma'am. Eleanor,
22 just one quick second. I am keeping a rolling

1 tally here and Eleanor and I will work over this
2 break so that we can come back to clear that up.

3 I do have one question to the
4 committee and to our writing team regarding your
5 findings to think about over the lunch break.

6 I note that your findings and some of
7 the discussion in particular about the DYAD, that
8 pair relationship of sexual assault
9 investigations into more of a race and ethnicity
10 studies talk about that DYAD and our findings
11 seem to be really focused on military justice
12 writ large and our congressional tasking focused
13 on exclusively questions about the accused.

14 I am wondering if you all have any
15 thoughts you want to bring back after lunch on
16 how we connect any dots between racial and
17 ethnicity studies in general and racial and
18 ethnicity studies specifically to sexual assault
19 and whether we need to have anything that makes
20 that connection given what our limited task was
21 and where we think we have gone with it as we go
22 along.

1 So, with that, Eleanor, do you have
2 anything else to wrap up before we close?

3 MS. VUONO: No. Thanks. We'll be
4 back at 1:00.

5 (Whereupon, the above-entitled matter
6 went off the record at 12:33 p.m. and resumed at
7 1:02 p.m.)

8 MS. VUONO: Okay, we're driving on.
9 Here we go. Recommendation three, we just, I
10 think, wrapped up with the suggestion that it
11 read as follows, "Congress authorize and
12 appropriate funds for the Secretary of Defense to
13 establish a pilot program operating one uniform,
14 document-based data collection system across all
15 Services for data collection on contact and
16 penetrative sexual offenses," and then the pilot
17 program language would stay the same.

18 So, we eliminated this case management
19 system notion and we tasked it to the Secretary
20 of Defense to figure out who wants to establish
21 that program.

22 If there are no additional

1 suggestions, or edits, or comments, we can move
2 to recommendation four, and this one has been
3 edited to reflect the concern about clarifying
4 the recording and tracking of this data
5 throughout the system from the beginning to the
6 end.

7 The way it was written previously left
8 a few members confused, and so the draft here
9 changed the language just to clarify that this is
10 a direction to not only record, but also keep
11 track of that data for every case opened by the
12 MCIOs through final decision within the military
13 justice system, and the new edited language in
14 recommendation four comes directly from the
15 Secretary of Defense memorandum on Article 140A
16 implementation.

17 So, I think hopefully that addresses
18 the concern about the way it was previously
19 written, which you can see has been deleted in
20 that bubble comments on your draft.

21 Does anybody want to discuss
22 recommendation four? There were two issues

1 really with this one. The first was clarifying
2 the process, and then the second was making sure
3 that the list of race, ethnicity, sex, gender,
4 age, and grade was the right list.

5 CHAIR BASHFORD: It's Martha Bashford.

6 MS. VUONO: Yes, ma'am?

7 CHAIR BASHFORD: We have sex and
8 gender there. I don't know if that should be
9 sex/gender. I honestly don't think that the
10 military departments are going to be recording
11 gender expression. And you have a typo. It's
12 the last time you use military at the end of the
13 sentence.

14 MS. VUONO: Yes, ma'am, thank you. I
15 knew that and I saw it yesterday. Thank you.

16 CHAIR BASHFORD: Okay.

17 MS. VUONO: Thank you. Thank you. We
18 fixed it just now. I meant to do that earlier.

19 (Simultaneous speaking.)

20 MS. VUONO: Yes, Ms. Long?

21 MS. LONG: No, go ahead. Please
22 respond to Chair Bashford. Sorry about that.

1 MS. VUONO: The only reason we have
2 sex and gender in there is just anticipating that
3 that is an issue that would probably need to be
4 collected in the future, but you're absolutely
5 right, ma'am.

6 It is not currently an issue for the
7 Department of Defense, but anticipating that it
8 might be seems -- there is a difference, and if
9 indeed the Department of Defense policies change
10 on that, sex and gender are sort of two different
11 categories that the DoD would want to capture.

12 So, it was just sort of, you know,
13 building the train to handle the larger capacity
14 down the road, but it is obviously not something
15 that is currently required.

16 MS. LONG: This is Jen Long.

17 MS. VUONO: Yes, ma'am?

18 MS. LONG: I have a question about the
19 use of the term subject, and I apologize if I'm
20 missing the definition, but is that meant to
21 include both victim and accused?

22 MS. VUONO: No, subject is the term

1 that is used that's often interchanged with
2 accused.

3 MS. LONG: Right, so I was wondering
4 why we did not want to include victim in that as
5 well since that's one of the issues we're
6 tracking?

7 MS. VUONO: In recommendation four, we
8 do say that they should record and track victims
9 and accused.

10 MS. LONG: Right, and then why does it
11 just say -- oh, in which the Service member is
12 identified as a subject, okay, so, and that's --

13 MS. VUONO: Meaning because there may
14 be a --

15 (Simultaneous speaking.)

16 MS. LONG: -- military justice, yeah,
17 got it.

18 MS. VUONO: Right.

19 MS. LONG: I understand.

20 MS. VUONO: There may be a report, but
21 they don't know who the person was --

22 MS. LONG: Got it.

1 MS. VUONO: -- who the Service member
2 was, yeah.

3 MS. LONG: Now I understand.

4 MS. VUONO: Thank you.

5 MS. LONG: Thanks for the
6 clarification. Thank you.

7 MS. VUONO: Yeah.

8 HON. WALTON: This is Reggie Walton.

9 MS. VUONO: Sir?

10 HON. WALTON: The use of the term
11 gender, is that referencing gender preference?

12 MS. VUONO: Gender preference would
13 be, yes, different. So, if someone may be
14 transgender, their gender may be different from
15 their biological sex. That's correct.

16 HON. WALTON: Right, so it seems to be
17 that that would be information we would want to
18 capture, right?

19 MS. VUONO: Yes, sir, the proposal
20 includes it for that reason.

21 HON. WALTON: Okay, thank you.

22 MS. VUONO: Yes, the question was, of

1 course, raised, but right now, there are --
2 there's a transgender ban, and so that
3 information wouldn't be collected probably right
4 now, but recognizing that this recommendation is
5 moving forward and policies do change on that
6 topic, we put it in.

7 HON. WALTON: Right, thank you.

8 MS. VUONO: Yes, sir.

9 DR. MARKOWITZ: Jen Markowitz.

10 MS. VUONO: Yes, ma'am?

11 DR. MARKOWITZ: I would just like to
12 voice that I would really like to see both of
13 those categories stay. I don't know if there's
14 any conversation at this point about removing it,
15 but I would personally like to see sex and gender
16 both stay. I appreciate the fact that we're
17 looking forward on this, so I would love to see
18 both of those.

19 MS. VUONO: Yes, ma'am.

20 BGEN SCHWENK: Jim Schwenk.

21 MS. VUONO: Yes, sir?

22 BGEN SCHWENK: The one category we

1 don't have in this list that we may want to think
2 about is religion. You know, I'm thinking
3 particularly about Muslim people today and are
4 they -- although the numbers are probably fairly
5 small, especially in the military justice system.
6 I don't know how things are working out, and so I
7 think it's something we ought to think about.
8 Thank you.

9 CHAIR BASHFORD: This is Martha
10 Bashford.

11 MS. VUONO: Yes, ma'am?

12 CHAIR BASHFORD: I think tracking
13 religion is inappropriate.

14 BGEN SCHWENK: This is Jim Schwenk.
15 Why do you think it's inappropriate, Martha?
16 Thank you.

17 CHAIR BASHFORD: I think people's
18 religious beliefs should be private and you're
19 going to start asking victims, you know, what
20 religion are you? How is that possibly relevant?

21 HON. WALTON: This is Reggie Walton.
22 What is -- I don't know if it's the case or not,

1 but what if Muslims, for example, were being
2 targeted because they're Muslim?

3 CHAIR BASHFORD: Then I think we could
4 look at that as that comes up. I don't think you
5 have to ask everybody's religion to see that, and
6 you could have Muslims being targeted from their
7 ethnicity, not because of their religion. They
8 might not have a religion, you know. I just
9 think it's offensive.

10 MR. MARKEY: This is Jim Markey.
11 General Schwenk or anybody, is this being
12 collected at any point in the process from people
13 entering the military?

14 BGEN SCHWENK: Yeah, it's also in the
15 140A implementation by the -- this is Jim
16 Schwenk. The 140A implementation by the
17 Department of Defense captures religion.
18 Whenever you join the military, they capture your
19 religion.

20 They put your religion on your dog tag
21 so that they can make sure they can try to get a
22 chaplain to you when you're wounded on the

1 battlefield and you might need support from a
2 chaplain, and try to get a chaplain of the
3 religion that most closely matches yours. So,
4 yes, DoD does track religion. Thank you.

5 MS. CANNON: Kathleen Cannon here.

6 MS. VUONO: Yes, ma'am?

7 MS. CANNON: I understand -- I mean,
8 part of me feels the same way as the Chair in
9 terms of going into areas that may not be
10 necessary and are private.

11 On the other hand, there has been a
12 growing development in our country, let alone in
13 other countries, where there is hostility towards
14 people because of religion.

15 And so that may be not the main focus
16 of where we think we're going with this, but I
17 think that it might prove helpful in terms of any
18 kinds of changes or developments, as well as
19 things we may not know about discrimination or
20 disparities in treatment, so I'm leaning in favor
21 of adding religion to the mix.

22 HON. GRIMM: Grimm. Oh, do you want

1 me -- I was waiting for somebody to --

2 MS. VUONO: Oh, sorry.

3 HON. GRIMM: -- tell me to go ahead.

4 MS. VUONO: Oh, I'm sorry. Yes, go
5 ahead, sir.

6 HON. GRIMM: One of the issues that we
7 sort of hear about oftentimes more recently than
8 we did in the past, particularly when dealing
9 with discrimination, is that there is overt,
10 explicit discrimination and then there is subtle,
11 or implicit, or other types of discrimination.

12 There are other proxies. It's not
13 unusual in law that there are proxies used for
14 discrimination to avoid discrimination on the
15 basis of a protected category.

16 And to the extent that the committee
17 believes that certain religious beliefs could be
18 a proxy for discrimination on the basis of race
19 or gender/sex, then I wonder if it might not be
20 prudent to have that information. Otherwise, we
21 would have no way of knowing.

22 I'm not saying that it is, but I'm

1 just throwing that out there. You can have
2 proxies for discrimination as well as actual
3 explicit biases.

4 HON. WALTON: Reggie Walton again. I
5 have those same concerns. I mean, unfortunately,
6 there has been an environment created where
7 individuals who are certain religions,
8 specifically the Muslim faith, are, you know,
9 being targeted.

10 And to what extent that's a problem in
11 the military as it relates to sexual assault, I
12 don't know, but I think it's something that we
13 should know if that is, in fact, occurring, so I
14 don't think it's problematic to include it.

15 I'm not insensitive to not requiring
16 people, you know, or requiring people to identify
17 their religion, but it may be information that
18 needs to be captured because we know from recent
19 experience that, at least in other respects,
20 people of the Muslim faith have been targeted
21 because of the environment that's been created in
22 our country in reference to people who are

1 Muslim.

2 MR. MARKEY: This is Jim Markey. I
3 think if it were to be included, I think one of
4 the challenges would be similar to the racial and
5 ethnicity categories, you know, what religions
6 are they going to identify as a category and
7 which, you know, they take as reported to them?

8 And I think that might be a challenge
9 or something. I think they probably could work
10 through it, but I think that might be a challenge
11 as we've seen in categorizing, you know, other
12 information.

13 COL CALESE: This is Colonel Calese.
14 Given all of the conversation on the issue of
15 religion, as well as the specific task related to
16 race and ethnicity, I'm wondering if there may be
17 a way in this recommendation to pull out the word
18 religion and then include that as a sentence at
19 the end that talks about some of the policy
20 issues you all have been mentioning, but
21 acknowledges what the last input was, is that we
22 would have to come up with categories and go to

1 the different sources to help us determine how to
2 properly capture religion, which would also be
3 something that we'd have to endeavor across all
4 of the Services for consistency purposes.

5 CHAIR BASHFORD: It's Martha Bashford
6 again, and we don't any place mention religion in
7 our report, and to sort of throw it in a
8 recommendation just doesn't seem right either.

9 MS. VUONO: Is there any interest in
10 either -- I guess the discussion right now is to
11 either include religion in recommendation four or
12 not include it, or a third option would be to add
13 a sentence that says direct the, or, you know,
14 consider collection of religion as a category as
15 something that should be studied.

16 We just sort of punt it to the
17 Services to figure out or is that just punting it
18 and, you know, if it doesn't happen, then that --
19 I mean, it would not include it in here
20 originally. If we were to include it, I think
21 I'm hearing that some would say either do include
22 it, or don't include it, or perhaps the Services

1 need to study it a little more before deciding
2 how to include it.

3 CHAIR BASHFORD: It's Martha Bashford
4 again. To me, it just seems like it's coming out
5 of no place. I understand the potential for
6 discrimination based on religion, but certainly
7 in our case review, we did not see anything like
8 that as far as I could tell, but it just seems to
9 be coming out of no place to throw that into a
10 recommendation to the Secretary of Defense.

11 MS. VUONO: I suppose we could move
12 onto recommendation five and let folks kind of
13 think on it, and then when we get to
14 recommendation four, take a vote on having that
15 recommendation not include it versus including it
16 and see where the committee wants to go with
17 that?

18 CHAIR BASHFORD: Sure.

19 MS. VUONO: So, when we vote on
20 recommendation four, we'll vote on it as it's
21 written, and if there's more who would like to
22 see religion, we'll vote on that as well, so

1 we'll see where the committee wants to fall on
2 that topic, but we'll percolate on that a little
3 bit.

4 For recommendation five, the
5 suggestion was made that if the Services are
6 going to start looking at the system as a whole
7 and whether there are racial disparities among
8 the various institutions in the system, so the
9 investigators, police, prosecutors, we should
10 also include all of the players, including
11 defense counsel and victims' counsel, so that's
12 the addition of those two on recommendation five.
13 Any discussion? Yes, ma'am?

14 CHAIR BASHFORD: This is Martha
15 Bashford. Are we doing -- is this recommendation
16 for sexual offenses or for all offenses?

17 MS. VUONO: This one is broadly. This
18 one is like the first one. This is like
19 recommendation four, just saying that these are
20 the types of questions or data that needs to be
21 collected for future studies.

22 So, this is growing out of the sense

1 in this report that we really can't get a handle
2 on racial disparities unless we start collecting
3 data in the system, and the data needs to be
4 broader than just the victim and the accused.

5 So, for example, I think there was a
6 recent CAAF case looking at whether there was a
7 challenge that could be made to the racial makeup
8 of the panels, so that generated the thinking
9 that, you know, are there issues to be had with
10 the racial makeup of more than just the panels in
11 the system?

12 It's one of the things, I guess, that
13 the civilian world is looking at is the racial
14 makeup of police departments, and judges and
15 prosecutors as well.

16 HON. WALTON: This is Reggie Walton.
17 I don't know, but has the Batson decision which
18 prohibits the use of race and gender in the
19 selection of a jury, has that been applied to the
20 military as it relates to panels?

21 MR. SULLIVAN: Your Honor, Dwight
22 Sullivan. Yes, it has.

1 HON. WALTON: Okay.

2 MS. VUONO: Yes, and the challenge in
3 the recent CAAF case, I think, had to do with not
4 the traditional Batson challenge to a member,
5 sitting as a panelist member, but came as a
6 challenge to the makeup of the convening or the
7 order of members that was sent over for
8 selection, so sort of before the stage at which
9 Batson traditionally applies.

10 BGEN SCHWENK: Jim Schwenk.

11 MS. VUONO: Yes, sir?

12 BGEN SCHWENK: Okay, so these
13 categories, the first one, military
14 investigators, we're only meaning criminal
15 investigators, right? We don't mean the military
16 investigators that look at noncriminal things
17 like counterintelligence and stuff like that, so
18 we probably ought to put the word criminal in
19 there.

20 MS. VUONO: Yes, sir.

21 BGEN SCHWENK: Military police, I
22 mean, from the sexual offense standpoint, I guess

1 they could get a complaint, right, but once they
2 get it, they have to send it to the military
3 criminal investigative organizations.

4 They don't have any authority on their
5 own, although we tried to get it to them. I
6 guess they don't have any authority on their own
7 yet to investigate them, but okay, that's fine.

8 Prosecutors, do we mean trial counsel?
9 I don't know what we should say, but we just need
10 to be consistent.

11 Okay, defense counsel and SVCs, are we
12 talking -- do we want to know the composition of
13 staff judge advocates? That might be something
14 that's worth seeing what the composition is of
15 the staff judge advocates since they're, under
16 our recommendation there, the door to having a
17 general court-martial or not.

18 And then for convening authorities, we
19 might want to modify that with special and
20 general court-martial convening authorities. By
21 panels, I guess we mean members of court-martial
22 panels?

1 MS. VUONO: Yes, sir.

2 BGEN SCHWENK: Yeah, we don't mean
3 admin boards or any of that stuff.

4 MS. VUONO: Although --

5 BGEN SCHWENK: Military judges, by
6 judges we mean military judges and military
7 magistrates or whatever they're called?

8 MS. VUONO: Yes, sir.

9 BGEN SCHWENK: And then the last thing
10 is do we want to go into the appellate world,
11 appellate government, appellate defense,
12 appellate judges? I don't know, but that's sort
13 of the end of the process if it gets that far.

14 CHAIR BASHFORD: Martha Bashford
15 again.

16 MS. VUONO: Yes, sir? Oh, yes, ma'am?
17 Sorry, I was typing. Yes, ma'am?

18 CHAIR BASHFORD: Is this case by case
19 or is this in the aggregate? So, are we looking
20 at a particular proceeding where we want to know
21 the race and ethnicity of the investigators, the
22 trial counsel, the defense counsel, the panel,

1 the judge, et cetera, the convening authority,
2 you know, the PHO, like case by case or we
3 want to know, you know, across criminal and
4 military investigators what the racial
5 percentage is?

6 BGEN SCHWENK: This is Jim Schwenk.

7 MS. VUONO: Yes, sir?

8 BGEN SCHWENK: Yeah, I had exactly the
9 same thought when I read this. Are we talking
10 about -- so I sort of thought we meant a once a
11 year snapshot in time of here is the composition
12 of all of these things, and then over the years,
13 you could compare them and you could see whether
14 the makeup is representative of the Services or
15 not and, you know, go from there, wherever that
16 leads you, but Martha is right.

17 I mean, it's hard to tell from the way
18 it's written whether we mean what I thought,
19 which was once annually, a snapshot beginning in
20 2022 or whether the data collection system has
21 now got to be amended to reflect the race and
22 ethnicity of all of these different people

1 involved in the system.

2 So, and I don't know what the staff or
3 whoever came up with this idea was thinking at
4 the time, but I agree with her. I'm interested
5 in knowing what the thought was. Thank you.

6 MS. VUONO: Yes, sir, so you're
7 exactly right. The thinking on this was that it
8 originally was written as sort of baseline data
9 with the idea being collect the demographics of
10 these organizations to do the sort of high level
11 assessments, sir, that you described.

12 But Chair Bashford makes a very good
13 point that there's no reason you all couldn't
14 decide that you want to go bigger than that or
15 broader than that, which would be to clarify that
16 this recommendation either applies as a
17 demographic data question or on a case by case
18 basis.

19 I agree it's not written to
20 distinguish between those two, and the question
21 for the committee is either, A, do they want a
22 recommendation to do that demographic data

1 collection on these organizations and/or include
2 that in a case by case analysis?

3 That's a distinction that this
4 recommendation has not made, but it's certainly
5 something for the committee to discuss.

6 COL CALESE: Eleanor, this is --
7 (Simultaneous speaking.)

8 COL CALESE: Go ahead, sir.

9 BGEN SCHWENK: Go ahead.

10 COL CALESE: This is Colonel Calese,
11 and just from a feasibility perspective, from a
12 case by case aspect, one of the things that I
13 would want to just --

14 Yeah, as a former SJA, the number of
15 personnel who come and go in all of those things,
16 I wonder if you may want to have some more
17 thought about, before you look at that as a case
18 by case issue, the churn that you see on
19 installations for prosecutors and even defense
20 counsel sometimes, all of those different pieces
21 that you have in there, to include panel members.

22 I wonder if you may need to study a

1 little bit more whether that type of churn might
2 dilute some of the information that you're trying
3 to draw out of this.

4 BGEN SCHWENK: Jim Schwenk.

5 MS. VUONO: Sir, yes?

6 BGEN SCHWENK: I think that's a good
7 point and I do think that this is a big -- if we
8 do it case by case, that's a lot of information
9 to have to collect and then somehow it's got to
10 be compiled into some meaningful aggregate to
11 look at things.

12 So, I think if we do it, we ought to
13 start off with a once a year aggregate number,
14 you know, of these were the trial counsel on, you
15 know, whatever date they choose, 30 September, at
16 the end of the fiscal year. You know, on 30
17 September, here is how many trial counsel and
18 what their race and ethnicity was, defense
19 counsel, et cetera.

20 I think that's a way to begin and it
21 gives you a snapshot view of the composition of
22 those involved in the military justice process,

1 and then you could compare it to the next year
2 and see what's going on and then go from there.

3 So, I guess my recommendation is that
4 it say the Secretary of Defense directs the
5 military departments to record once annually or
6 whatever the race and ethnicity and then go on.

7 MS. VUONO: Yes, sir, that was the
8 original intent of this recommendation. I think
9 it was not clear, and I can reread this to you
10 with those changes in mind, the expanded
11 categories that General Schwenk described, and
12 you can discuss whether you think this is where
13 you want to go.

14 So, it would read the Secretary of
15 Defense directs the military departments to
16 record once a year the race and ethnicity of
17 military criminal investigators, military police,
18 trial counsel, defense counsel and victims'
19 counsel, staff judge advocates, special and
20 general convening authorities, military court-
21 martial panels, and military judges, or, I guess,
22 military judges, military magistrates, and

1 appellate courts beginning in fiscal year 2022.

2 The source information would be
3 collected from military personnel databases and
4 maintained as general data for future studies and
5 annual reports, just to make it clear that this
6 is a -- it's like their FY annual demographic
7 data reports on these categories.

8 HON. WALTON: This is Reggie Walton.
9 I understand the concern about the amount of work
10 it might be to collect this information on a case
11 by case basis, and I don't know if every category
12 needs to be collected on a case by case basis.

13 But we know in the civilian world that
14 the reality is that the authority that makes the
15 decision as to whether someone is culpable or not
16 and also sometimes, unfortunately, the judge that
17 the case may appear before can have an impact on
18 the ultimate impact of the case from a racial
19 perspective.

20 We know, for example, that if an
21 African American is tried before an all-white
22 jury, there's a greater chance that that person

1 is going to be convicted as compared to if you
2 have a racial mix on that panel, and it's
3 something I don't think you can put your head in
4 the sand in and not admit that that's a reality.

5 So, the information, I think, you
6 know, needs to in some way be collected because I
7 think it's relevant to the issue of whether all
8 people are receiving equal justice in the
9 military justice system.

10 HON. GRIMM: Grimm.

11 MS. VUONO: Yes, sir?

12 HON. GRIMM: Yeah, I think Judge
13 Walton is right that there are, that when you are
14 dealing with notions involving race and gender,
15 that these concerns about trying to figure out
16 what are the causal factors that impact
17 discriminatory outcomes, whether it's the
18 charging, whether it's the sentencing, whether
19 it's evidentiary rulings during a trial.

20 And so I understand that there's a
21 legitimate basis for debating any one over the
22 other and we don't necessarily have data, but I

1 do think that perhaps even if not in their
2 specific recommendations, that where we are of a
3 mind that there could be other factors that are
4 impacting the functions that we have been charged
5 with performing, other than the ones that are
6 currently being captured by collective data that
7 either we are recommending or exist under current
8 law, that there's nothing wrong at some point
9 saying although, for example, no specific
10 recommendations with regard to that, the
11 committee is concerned that there may be other
12 data points that would be relevant to determining
13 whether or not disparate effects of charges exist
14 based upon, you know, race or religion as a lot
15 of these things are so that we have identified
16 that we're concerned about that.

17 And while it is perhaps not the time
18 and place to sort of get a vote and vote up or
19 down all of these individual areas, I do think
20 that it is worth preserving the fact that these
21 are complicated issues. If they --

22 It goes back to that proxy factor that

1 I made reference to before and, you know, who the
2 -- I mean, we, in the context of the federal
3 courts and the sentencing commissions, we have
4 been told in the committee of judges that deals
5 with the lawyers who are approved for taking
6 criminal justice act appointments to be paid by
7 the government when the defendant has a right to
8 counsel and can't afford it, and Mr. Kramer can
9 echo this as well, that having predominantly
10 white male defense lawyers appointed is an issue
11 that has been raised within the judiciary as
12 something that is of concern.

13 And if we're going to -- I understand
14 that without information that allows us to
15 believe that these are things that we should
16 affirmatively recommend, there ought to be a
17 place in here where these other concerns that we
18 have are mentioned, and perhaps it's said that if
19 it was possible to collect data on those, it
20 might allow a more robust ability on the part of
21 the committee to be able to make future
22 recommendations. That's it. Thanks.

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

2 MS. VUONO: Yes, sir, Mr. Kramer?

3 MR. KRAMER: Yeah, I mean, I think
4 both are equally important, both the overall
5 number as well as the -- not the overall, the
6 overall categories, as well as the overall
7 numbers, as well as in a particular case.

8 I think from an institutional
9 perspective, if it's a lack of people of color in
10 an organization or an institution, that's
11 extremely important for the viewpoints, for lots
12 of reasons. Let me put it that way, and also the
13 organizational structure.

14 And I also think, as has already been
15 talking about in an individual case, it can be,
16 whether it's implicit bias or just the appearance
17 of how it all looks, if the defendant is a person
18 of color and all of the people around the
19 defendant are not, that's a -- or just from the
20 initial contact with the system, that that's also
21 extremely important, both for just, if nothing
22 else, appearances, but I think oftentimes more

1 than appearances.

2 So, I think that both the
3 institutional numbers and the specific case
4 numbers -- and I recognize the burden in the
5 specific case numbers, but I do think that's
6 where it really --

7 While the overall institutional
8 numbers are important and can be eye opening
9 sometimes, the individual case numbers are really
10 where the effect is felt by the participants in
11 the system. Thank you.

12 MS. LONG: This is Jen Long.

13 MS. VUONO: Yes, Ms. Long?

14 MS. LONG: I just wanted to, in
15 addition to this very important discussion, to
16 also make sure we're focused on the impact to the
17 victim.

18 I know this is something Dr. Spohn has
19 talked about a lot, but the race of the victim,
20 and therefore I think the racial composite of the
21 actors around them is also critical in how a
22 victim is responded to and the type of justice

1 that's received, and so I think everything that's
2 been raised is very, very important.

3 It's just as we look at all of this,
4 I don't want to forget the potential impact of
5 racial bias on victims and survivors in the
6 system and the importance of tracking that as
7 well.

8 CHAIR BASHFORD: Martha Bashford.

9 MS. VUONO: Yes, ma'am?

10 CHAIR BASHFORD: It seems to me that
11 we are, with this recommendation, we are kind of
12 really straying outside of the DAC-IPAD's lane if
13 we are considering for every single criminal case
14 throughout the military to require this, not just
15 on sexual assault cases, and for that matter,
16 even a snapshot.

17 I think it's all useful and could be
18 very illuminating, but I think it would be better
19 pushed into recommendation six that the Military
20 Justice Review Panel does this. I'm not
21 comfortable with the DAC-IPAD making
22 recommendations to collect data on everything

1 outside our --

2 I know we did make the recommendation
3 to immediately change the UCMJ, but we had hard
4 data showing that cases were being sent to court-
5 martial with insufficient evidence, but we had
6 hard data on that. I just, I think we are
7 outside of our lane on this one the more I think
8 about it.

9 BGEN SCHWENK: Jim Schwenk.

10 MS. VUONO: Yes, sir?

11 BGEN SCHWENK: And so I'm the one that
12 always says our lane is as broad as we want to
13 make it. I'm going to say that I agree with
14 Martha on this one, but I think we have two good
15 recommendations buried in recommendation five as
16 the previous speaker said.

17 One is the once a year snapshot in
18 time aggregate numbers and the other is case by
19 case who was involved, not names, but the
20 position and their race and ethnicity that could
21 be compiled in different ways through computer
22 manipulation.

1 So, I think we ought to just, rather
2 than try to bury all of it in recommendation six,
3 just have a series of three recommendations for
4 SECDEF to direct the Military Justice Review
5 Panel to look into, the one we have as six and
6 then the two that come out of five.

7 So, there would be three
8 recommendations there, each one separate and
9 distinct, and if the JPP could do that to us, we
10 can do it to the MJRP. Thank you.

11 MS. VUONO: Yes, sir. If
12 recommendation five becomes, I guess, 5A and 5B,
13 break it into two, the one would be to collect
14 the race and ethnicity data for all of these
15 categories on an annual demographic basis and
16 then the other recommendation would be to
17 actually collect that race and ethnicity data for
18 all of those individuals in each case on a case
19 by case basis, which means as part of the case
20 management system, so it would follow, or that
21 information could be tracked on a case.

22 Sir, I'm hearing you suggest that the

1 what -- which entity does what with that data is
2 a separate question. So, breaking recommendation
3 five into two separate recommendations just
4 merely says to the Secretary of Defense you need
5 to start collecting this information.

6 Then I hear you, sir, raising the
7 point, yes, and then once that data is available,
8 what does the DAC-IPAD do with it versus what
9 does the MJRP do with it?

10 And I think recommendation six is the
11 one that says MJRP should study racial and ethnic
12 disparities in the system as a whole. That's
13 their charter to do these periodic and
14 comprehensive reviews, and then recommendations
15 seven and eight are what the DAC-IPAD could do
16 with that information.

17 So, the way this kind of could be set
18 up depending on what the committee wants to do is
19 recommendation five, breaking it into two
20 different ones and directed the SECDEF that we
21 need to start collecting this stuff because right
22 now, we don't know the answer to those questions,

1 and then six suggests the MJRP can do a lot with
2 that, but the DAC-IPAD can do specific studies in
3 seven and eight.

4 BGEN SCHWENK: Jim Schwenk.

5 MS. VUONO: Yes, sir?

6 BGEN SCHWENK: Yeah, I'm sorry I
7 wasn't clear. What I'm saying is that I agree
8 with Martha. We're out of our lane in
9 recommendation five as it's currently written
10 because we're having the SECDEF direct the
11 military departments to do something for the
12 entire military justice system, not just sexual
13 offense cases.

14 So, I think that just like in
15 recommendation six where it says SECDEF directs
16 the MJRP to review and assess, then it ought to
17 say in the next recommendation to assess whether
18 the military departments should record once a
19 year, or whatever the correct terminology is, the
20 race and ethnicity of the recommendation five
21 stuff, and then the next recommendation would be
22 the SECDEF directs the MJRP to review and assess

1 whether the military departments should collect
2 race and ethnicity for all of these people for
3 each case in the court-martial case management
4 system.

5 So, that's what I meant. I don't
6 think -- I'm agreeing that we should not have
7 the DAC-IPAD make decisions about the whole
8 military justice process, so sorry I wasn't
9 clear.

10 MS. VUONO: So, you're suggesting that
11 the recommendation is for the SECDEF to have the
12 MJRP assess whether this should be collected?

13 BGEN SCHWENK: Correct, and we'd have
14 to go back into the body of the report and put a
15 paragraph in that says we think it should, but we
16 realize the scope is larger than our sexual
17 offense thing, so therefore, we recommend that
18 the SECDEF give the issue to the MJRP which has
19 all of military justice to look at.

20 MS. VUONO: Yes, sir. Do any other
21 members want to weigh in on the suggestion that
22 recommendation five be broken into two separate

1 recommendations, both of which would direct the
2 Military Justice Review Panel to look at the
3 question of collecting both case by case and also
4 collectively demographically on an annual basis
5 race and ethnicity in all of these different
6 categories of the investigators, trial counsel,
7 defense counsel, and so forth? And then
8 recommendation six remains -- well, we'll get to
9 that next.

10 MR. KRAMER: This is A.J. Kramer. Why
11 can't the individual, why can't -- whatever 5A or
12 5B. Why can't the individual case then, we
13 recommend that be limited to sexual assault
14 cases?

15 I recognize that overall, we'd be out
16 of it, but why can't we recommend this data about
17 in an individual case for just sexual assault
18 cases then? Wouldn't that take care of the
19 comments about we're imposing it on the entire
20 military justice system if we just limit it to
21 sexual assault cases?

22 MS. VUONO: Yes, sir, and what --

1 BGEN SCHWENK: Jim Schwenk.

2 MS. VUONO: Yes, General Schwenk?

3 BGEN SCHWENK: Yes, Mr. Kramer, I
4 think we would fall within the parameters of our
5 charter by doing that. Practically, I don't know
6 what it would mean because they would probably
7 have to set up a system for the whole military
8 justice process since they've gone to one case
9 management system per Service.

10 So, practically, it's still, you know,
11 burdensome, but it would be them making that
12 decision, not us, so I think technically we would
13 be staying in our lane, but --

14 So anyway, I would recommend that if
15 we do that, which is fine by me, that as a point
16 of emphasis, we think it's so important we say in
17 the body that and now we have this recommendation
18 to do it for sexual assault cases, we ought to
19 still keep the recommendation of the MJRP looking
20 at it for all of military justice just because,
21 at least from my point of view, I feel strongly
22 enough about it that it ought to be done for all

1 of the cases.

2 So, I would recommend -- so I think
3 your idea is a good one and so I would support
4 having one recommendation on sexual assault, on
5 the snapshot in time once a year, one
6 recommendation on sexual assault for the case,
7 each case, and then the three recommendations we
8 previously talked about for the MJRP if you count
9 six. Thank you.

10 MR. KRAMER: Can I just note that
11 twice General Schwenk has said that I have a good
12 idea?

13 (Simultaneous speaking.)

14 BGEN SCHWENK: Because the third
15 time's the charm and I can't -- there may be a
16 third time here today. He is really on a roll.

17 CHAIR BASHFORD: Martha Bashford.

18 COL CALESE: Eleanor, this is -- oh,
19 sorry, ma'am, go ahead.

20 MS. VUONO: Ms. Bashford, yes?

21 CHAIR BASHFORD: I think Mr. Kramer's
22 suggestion that we limit it to sexual assault

1 cases on individual court-martials is a good one
2 and I support that. I'm still not sure that if
3 we tried to do a once a year snapshot, I don't
4 know how we could limit that to sexual assault
5 cases.

6 I don't see how we could say convening
7 authorities, military panels, judges, you know,
8 could only do sexual assault cases. I think they
9 hear all sorts of things. So, I think on the
10 individual case level, I think that's a great
11 compromise in referring everything else to MJRP.

12 BGEN SCHWENK: Jim Schwenk. I agree
13 with Martha. I was wrong. Thank you.

14 HON. WALTON: This is Reggie Walton.
15 I actually was not suggesting anything beyond
16 what Mr. Kramer had suggested. I thought we were
17 talking exclusively about sexual assault cases,
18 so I was not advocating that this be done system
19 wide.

20 MR. MARKEY: This is Jim Markey. Is
21 the presumption that if this starts in 2022, that
22 the unified case management data collection

1 system will be in place? Because I'm thinking of
2 how they record --

3 You know, when you talk about
4 recording it, we're thinking about how they do it
5 now or they don't do it now, and are we out of
6 our lane to direct, maybe this is too much, to
7 direct whoever is going to build this unified
8 system, that they ensure that this data is
9 collected.

10 And you can build, you can query, you
11 can build a system that would be able to draw
12 both individual case information and then
13 aggregate information out, I'm pretty sure, and
14 I'm not a programmer, but I've talked to -- I was
15 at a Holiday Inn and talked to one of the
16 programmers. So, I'm just curious if that's an
17 issue that we even want to be concerned about.

18 MS. VUONO: Yes, sir, so the 2022
19 number came up because the Article 140A data
20 collection process will begin in December of this
21 year, so in fiscal year 2021.

22 So, it seemed that if the Department

1 of Defense was going to expand their data
2 collection on race and ethnicity beyond what --
3 you know, based on this recommendation, that they
4 would need to get to that next fiscal year before
5 it would be possible. That was the thinking.

6 MR. MARKEY: Okay, this is Jim again.
7 And so we're assuming they're building this
8 database with the ability to collect this or do
9 we know what metrics or data fields they're
10 using, or is that something we don't need to
11 worry about and they can figure it out?

12 MS. VUONO: I think this was not
13 premised on the pilot program, the single
14 database, is that's what you're referring to.

15 This was premised on the Services are
16 going to need to start collecting the 140A, 155
17 data points, so their systems have to be up and
18 running to expand their data management by
19 December of this year.

20 Recognizing that change, this
21 recommendation would say you guys will have built
22 the system with the databases that you've got,

1 and your MCIO databases and your criminal, excuse
2 me, criminal justice databases. You could expand
3 it to include these categories beginning in
4 fiscal year 2022.

5 They're not currently doing it to our
6 knowledge, but the idea is if these are important
7 questions, then they may need a year to -- it's
8 not about the data single process. We're not
9 aware that there is going to be a single process.
10 This is just in their individual personnel and --

11 MR. MARKEY: Okay.

12 MS. VUONO: -- criminal justice
13 databases.

14 MR. MARKEY: Okay.

15 MS. VUONO: They should start
16 collecting this too is what this recommendation
17 suggests.

18 MR. MARKEY: And then the last
19 sentence, are we limiting the information that
20 they're -- the source of the information just to
21 the military personnel databases? It seems like
22 we were telling them use this, use this, use only

1 this.

2 MS. VUONO: It was to track --

3 (Simultaneous speaking.)

4 MS. VUONO: -- recommendation one,
5 which is that -- the first recommendation says,
6 you know, collect this stuff for each military
7 Service member in your military personnel
8 databases, and everyone should use this.

9 MR. MARKEY: Okay.

10 MS. VUONO: So, it's just tracking
11 that first recommendation, yes, sir. So, it
12 sounds like the recommendation five -- yeah, did
13 someone else have a comment?

14 No, so it sounds like recommendation
15 five is to direct, or I guess it's really that
16 the DAC-IPAD -- well, no, that the Secretary of
17 Defense should direct the departments to record
18 this race and ethnicity information in all of
19 these various categories for use by the DAC-IPAD
20 in future studies on sexual offenses.

21 So, it's changing the recommendation.
22 The direction is so you got to go out and collect

1 this stuff, and then the DAC-IPAD could use it
2 for review and assessment of sexual offenses per
3 our charter.

4 CHAIR BASHFORD: Martha Bashford.

5 MS. VUONO: Yes, ma'am?

6 CHAIR BASHFORD: I think we have to be
7 very clear to collect it in what? Are we
8 collecting it in court-martials only? Are we
9 collecting it in all unrestricted reports of
10 sexual assaults?

11 I think we want to do the latter
12 because so few cases actually wind up at a court-
13 martial, but I think we have to be very clear
14 what kinds of cases they collect it in, you know,
15 and I think unrestricted reports would be the way
16 to do it.

17 MS. VUONO: Oh, so to record all of
18 these categories for all unrestricted reports of
19 sexual, of contact offenses?

20 CHAIR BASHFORD: Yes, as it moves
21 through the system. You know, I don't know how
22 to phrase it, but --

1 MS. VUONO: Well, we can phrase it the
2 same way we did in the report where we described
3 that process.

4 CHAIR BASHFORD: Okay.

5 BGEN SCHWENK: This is Jim Schwenk.

6 MS. VUONO: Yes, sir?

7 BGEN SCHWENK: What about the language
8 you pulled out of the 140A report that's now at
9 the end of recommendation four? For every case
10 opened by military law enforcement in which a
11 Service member is identified as the subject of a
12 sexual assault offense, allegation, or whatever
13 we would need to put in there, until completion
14 through the final disposition within the military
15 justice system, something like that, to use
16 language we previously used. Thank you.

17 MS. VUONO: Chair Bashford, would that
18 address the point?

19 CHAIR BASHFORD: That's actually
20 perfect.

21 MS. VUONO: Okay, so again, for this
22 DAC-IPAD specific recommendation, it's directing

1 the military departments to record the race and
2 ethnicity of these various categories, all of the
3 players in the system, for every unrestricted
4 report of a penetrative or contact sexual offense
5 opened by military law enforcement in which a
6 Service member is identified as the subject, and
7 then the 140 language that General Schwenk just
8 mentioned.

9 So, that would be a recommendation
10 limited to DAC-IPAD sexual offense cases, but the
11 recording of data would be for all of the
12 criminal investigators, police, trial counsel,
13 defense counsel, that whole list that we
14 currently have in five.

15 CHAIR BASHFORD: Yes.

16 MS. VUONO: Okay, so that makes
17 recommendation five now a specific direction.
18 It's really to record this information on a case
19 by case basis for DAC-IPAD use.

20 Then I guess I've lost the thread on
21 whether the committee also wants to have a
22 separate recommendation that goes broadly to race

1 and ethnicity data collection for annual reports
2 of the MJRP or any MJRP purposes that ask these
3 same questions for all nonsexual offenses, you
4 know, all cases in the military justice system,
5 or whether that is now outside of our scope and
6 we don't want to go there.

7 The original proposal from General
8 Schwenk was direct that to the MJRP, which we
9 could do as a snapshot in time type of data
10 collection as a separate recommendation or have
11 we moved away from that?

12 BGEN SCHWENK: Jim Schwenk.

13 MS. VUONO: Yes, sir?

14 BGEN SCHWENK: Yes, so I think we have
15 the new five, which is good because it has the
16 SECDEF directing the military departments to do
17 something.

18 Then I think we have the six, which
19 we'll talk about in a minute, but that's to
20 direct the MJRP to look at something, and I think
21 we want two more recommendations for the SECDEF
22 to direct the MJRP to look at something.

1 One is the once a year snapshot in
2 time of all of these different categories --

3 MS. VUONO: Yes.

4 BGEN SCHWENK: -- and the other one is
5 what's now our new five applied across the entire
6 military justice spectrum of cases.

7 So, it's an expansion of what our new
8 five would be to the entire military justice
9 system and the MJRP would look at whether they
10 should do that.

11 MS. VUONO: Got it.

12 BGEN SCHWENK: That's what I think
13 we're at, but I don't -- it's subject to A.J.
14 telling me I'm wrong again. Thank you.

15 MS. VUONO: My fearless scribes,
16 Nalini and Chuck, do we have that clear teed up
17 that we could type up maybe before we vote or do
18 we want to move --

19 COL CALESE: Eleanor, this is Colonel
20 Calese.

21 MS. VUONO: Yes?

22 COL CALESE: I'm going to offer a

1 suggestion because of the time.

2 MS. VUONO: Yes.

3 COL CALESE: What I would recommend we
4 do, subject to Chair Bashford or anybody else's
5 recommendation, is we're nearing 2:00 Eastern
6 Standard when we're going to be discussing
7 another topic.

8 So, what I propose we do is run
9 through the rest of the discussion and collect
10 any information on these remaining
11 recommendations.

12 Then, while we shift to hear our
13 presentation from those joint explanatory
14 statement issues, you and the writing team can
15 get together, pull these together, and then at
16 the end of that next session, we can come back to
17 capture the vote for each of these, and that will
18 give you an opportunity to kind of tease out or
19 flesh out those things that came up in this
20 session. Is that all right with --

21 MS. VUONO: That works.

22 COL CALESE: -- Chair Bashford?

1 CHAIR BASHFORD: Sure, and thanks --
2 (Simultaneous speaking.)

3 MS. VUONO: Okay, great so -- yeah,
4 thanks for that. So, we really only have the --
5 moving to six.

6 The idea here is that once 140A goes
7 into effect and the recommendations and hopefully
8 this report, the MJRP should look at racial
9 disparities in all aspects of the military
10 justice system, so it's tasking the MJRP to do
11 more than just what the DAC-IPAD would do.

12 And there's bracketed language in
13 there, so the idea would be it may not be enough
14 for them just to implement 140A. It may be that
15 they need to do both 140A and the recommendations
16 in this report because this report recommends
17 going farther than 140A does.

18 We've identified gaps and problems
19 because they don't require the collection of
20 victim data before a court-martial. So,
21 recommendation six in brackets, the proposal is
22 to make this extremely broad to say once the

1 Department of Defense --

2 (Telephonic interference.)

3 MS. VUONO: -- selection processes as
4 recommended in this report and as required
5 pursuant to Article 140A UCMJ, then the new MJRP
6 could start to study race and ethnicity broadly.
7 No thoughts or questions on that one? Should we
8 move onto seven?

9 CHAIR BASHFORD: Yeah.

10 MS. VUONO: Recommendation seven, the
11 DAC-IPAD incorporates studies on racial
12 disparities, or the language would be or
13 incorporate studies on or data on race and
14 ethnicity -- that was part of the discussion
15 about whether racial disparities was the term we
16 wanted to use -- into future reports and reviews
17 on sexual misconduct.

18 I think, given the conversation we've
19 heard, that racial disparities really just means
20 differences. Perhaps the best way to discuss
21 this one is to just keep it at the DAC-IPAD
22 incorporates studies on racial disparities into

1 future reports and reviews on sexual misconduct.

2 And that leaves open the question of
3 do we make recommendations to ourselves? Do we
4 even need to say this? We can do this anyway.
5 Is this a recommendation we need to have or don't
6 need to have?

7 BGEN SCHWENK: Jim Schwenk.

8 MS. VUONO: Yes, sir?

9 BGEN SCHWENK: Okay, I like the
10 recommendations in seven and eight, but not as
11 recommendations. As you just said, it seems sort
12 of silly to recommend to yourself.

13 So, but I would like to see a section
14 at the end of the body that incorporates these
15 two ideas, and then also a summary of it in the
16 executive summary that says, okay, and here is
17 what we intend to do in the future. We're going
18 to do the seven, studies in the future.

19 And I'd read it with something like
20 the DAC-IPAD intends to continue to collect
21 annual race and ethnicity data in cases involving
22 sexual offenses from the Services, assess that

1 data, and make findings and recommendations in
2 future reports as appropriate.

3 And write the next one, number eight,
4 in addition, once the Department of Defense
5 implements new military justice data collection
6 processes, the DAC-IPAD intends to conduct these
7 in-depth studies or an in-depth study.

8 So, we're going to look at it annually
9 and say what we want to say, and in a couple of
10 years, we're going to look at it in-depth once
11 there's data to allow an in-depth look.

12 So, I'd personally like to say that is
13 what we intend to do in the future and I sort of
14 support both of those ideas for the future
15 subject to whatever everybody else thinks. Thank
16 you.

17 MS. VUONO: So, the suggestion is
18 delete these as recommendations, develop these as
19 summaries that we include in both the EXSUM and
20 in the conclusion of the paragraph saying the
21 DAC-IPAD will do these things, and so say it, but
22 say it in a different place in the report.

1 Anyone have thoughts on that change?

2 MS. CANNON: Cannon.

3 MS. VUONO: Yes, ma'am?

4 MS. CANNON: I agree. I agree with
5 the general. I think that's a very good way of
6 putting it.

7 CMSAF MCKINLEY: Chief here. I don't
8 have any problems with that.

9 MS. VUONO: Great, anybody opposed?

10 CHAIR BASHFORD: I agree with General
11 Schwenk.

12 MS. VUONO: Is there anyone who
13 disagrees that we need to keep these as
14 recommendations or is everyone in agreement that
15 this makes more sense to describe and summarize
16 as what the DAC-IPAD will do in the EXSUM and the
17 conclusion? Great, with no disagreement, those
18 will be moved.

19 Finally, recommendation nine is a
20 direction to the Services to develop training on
21 racial bias for the various players in the
22 system, and that one could be edited to include

1 the players as described more clearly in
2 recommendation five as General Schwenk described
3 it, the military criminal investigators, military
4 police, trial counsel, and the rest.

5 HON. BRISBOIS: Brisbois here.

6 MS. VUONO: Yes, Judge?

7 HON. BRISBOIS: So, I don't see
8 anything -- I agree with including the additional
9 language in terms of participants, criminal
10 justice, but there's nothing particularly novel
11 here. This type of training is happening all
12 over the country, state, federal.

13 I mean, I've sat through a number of
14 these trainings for the federal judiciary. The
15 ABA is doing this. Prosecutors are doing it.
16 The Defense Bar is doing it. State judges are
17 training on it here in Minnesota.

18 I mean, what I would suggest though is
19 instead of saying racial bias training, we call
20 it implicit bias training because then they can
21 tap into a whole universe of programs and data
22 that use that implicit bias metric, and it also

1 incorporates not just --

2 It incorporates race, but also sex
3 discrimination, sex bias, gender bias, gender
4 discrimination, and that would be a broader
5 application for whether there's implicit bias
6 against the defendant, or implicit bias against
7 the witness, or implicit bias against the victim
8 for all of those different categories that we've
9 been talking about today.

10 So, I fully support recommendation
11 nine with the redline addition, and I would
12 further recommend that racial bias be changed to
13 say implicit bias.

14 And in fact, the Federal District
15 Court in Washington is showing, in its
16 preliminary instructions, it's showing juries a
17 video on implicit bias. We have that available
18 here in the District of Minnesota and a couple of
19 our judges have used it.

20 So, it's no different than, you know,
21 preliminary jury instructions. It doesn't
22 prejudice an outcome one way or another. It's

1 just another instruction to the jury or the
2 court-martial panel about how to go about
3 discharging their obligations. So, that's my two
4 cents worth from the Midwest.

5 MS. VUONO: Thank you.

6 HON. WALTON: This is Reggie Walton.
7 I don't, I guess, theoretically disagree with
8 that, but on the other hand, I don't think we
9 should just limit it to implicit bias because the
10 unfortunate reality is that there are actual
11 known biases that people have and exercise those,
12 so I don't think we can overlook that unfortunate
13 reality.

14 MS. VUONO: So, sir, you would suggest
15 changing it to say to develop training on
16 explicit and implicit bias for --

17 HON. WALTON: Yes.

18 MS. VUONO: -- the categories?

19 HON. WALTON: Yes.

20 CHAIR BASHFORD: Martha Bashford.

21 MS. VUONO: Yes, ma'am?

22 CHAIR BASHFORD: I would refer this to

1 the MJRP because we're not talking about sexual
2 assault cases only. We're talking about
3 everything.

4 I mean, we're talking about
5 discipline, and it seems to me that, again, we're
6 straying a little far afield. I think it's a
7 great recommendation. I just don't think we're
8 the ones that should be making it.

9 MS. VUONO: Is there anyone who wants
10 to discuss deleting recommendation nine because
11 it's not in our lane in the sense that we'd
12 rather not have it versus having it as edited? I
13 guess the debate is whether to have it or not.

14 HON. BRISBOIS: Well, Brisbois.

15 MS. VUONO: Yes?

16 HON. BRISBOIS: I would strongly
17 oppose deleting it, but, I mean, I agree that it
18 makes sense to add the explicit and implicit bias
19 in place of just race, and that we refer it as a
20 recommendation to the Military Justice Review
21 Committee, but deleting it all together, I would
22 strongly oppose that.

1 CHAIR BASHFORD: Martha Bashford.

2 MS. VUONO: Yes, ma'am?

3 CHAIR BASHFORD: I wasn't -- I don't
4 know where the concept of deleting it came from.
5 I'm in favor, but I would just -- my only thought
6 is to refer it to the MJRP. I think it's a good
7 recommendation. I don't want to delete it. I'm
8 just proposing a referral.

9 MS. VUONO: So, ma'am, your change
10 would be that instead of the Services developing
11 this training, the MJRP should develop the
12 training?

13 CHAIR BASHFORD: Yeah, I think it
14 should be standardized anyhow, so it seems that
15 they review what type of training. MJRP should
16 review what type of training. I just think
17 because it's broader than us, it should come from
18 them.

19 MS. VUONO: Any other thoughts on
20 whether the Services should develop the training
21 or whether this recommendation should direct the
22 MJRP to develop the training?

1 BGEN SCHWENK: Jim Schwenk.

2 MS. VUONO: Yes, sir?

3 BGEN SCHWENK: Yeah, I don't think the
4 recommendation should direct the MJRP to develop
5 the training. I think it should be like our
6 other ones with the MJRP.

7 The SECDEF should direct the MJRP to
8 assess whether this training, uniform training
9 should be provided to all of the people who
10 participate in the military justice process.

11 The MJRP is in no position to, as I
12 understand the MJRP, to be doing that kind of
13 specific stuff unless they want to, but I think
14 they are in the position to do the assessment of
15 what should be done in the parameters of the
16 entire military justice process as opposed to us
17 just in the sexual offense world.

18 So, explicit and implicit, I'm for
19 that, and I'm for going to the MJRP, but for them
20 to, just like we did in the others for the MJRP,
21 to assess whether on the training, and then in
22 the body, we saw we strongly endorse this kind of

1 training, and we've spoken our piece and maybe it
2 will get to them. Thank you.

3 CMSAF MCKINLEY: This is Chief
4 McKinley. I think that there needs to be some
5 type of guidelines put out to all of the Services
6 because when you start adding training, then you
7 say, okay, is this going to be CBT?

8 Is it going to be computer-based
9 training, a five-minute video, or is it going to
10 be in a classroom or, you know, and what is going
11 to be taught?

12 So, I think there should be some
13 guidelines which all branches of Service should
14 follow and link how it's going to be delivered,
15 and what it should be in, and cite it.

16 HON. BRISBOIS: Brisbois.

17 MS. VUONO: Yes, sir?

18 HON. BRISBOIS: You know, I think
19 that's just a level too far for right now. I
20 mean, at this point, there's no policy that would
21 endorse this idea.

22 This is step one to borrow, or

1 crawling, to borrow General Schwenk's analogy.
2 This is step one of the crawl, walk, run, and the
3 level of detail is beyond, I think, where we are
4 right now.

5 BGEN SCHWENK: Jim Schwenk.

6 MS. VUONO: Yes, sir?

7 BGEN SCHWENK: I think we could sort
8 of address Chief McKinley's concerns even at this
9 crawl stage by saying whether the military
10 Services should develop uniform training modules
11 on explicit and implicit bias, you know, for all
12 personnel who perform duties in the military
13 justice system, including our laundry list.

14 And that way, right up front, we're
15 saying uniform, that whatever it's going to be,
16 it's going to be the same across the Services and
17 not the Air Force goes left, the Marine Corps
18 goes right, et cetera. Thank you.

19 HON. BRISBOIS: Yeah, Brisbois. I
20 mean, as long as we're saying at this point that
21 it's uniform and then the MJRP is going to assess
22 whether that's appropriate or not.

1 If they say it is and if the SECDEF
2 then directs it, the uniformity will come out of
3 that working group when they're running. The
4 details will come out of the working group once
5 they're running.

6 MS. VUONO: Okay, I guess the one
7 thing I want to make sure I'm understanding is
8 sort of who is doing what? Who is on first?

9 So, at the crawl stage, we've got the
10 Military Justice Review Panel assessing the
11 military Services' development of uniform
12 training on explicit and implicit bias, the idea
13 being the Services are going to develop this, but
14 the MJRP will assess if it's good, bad, whatever
15 they want to assess about it, or I guess I'm just
16 not clear who is developing this training and who
17 is assessing it? It sounds like the MJRP is
18 assessing.

19 HON. BRISBOIS: Yes, Brisbois here.
20 So, go back half a phrase and put a period in it,
21 you know, that the SECDEF refers to the MJRP to
22 assess, to use General Schwenk's thing, to assess

1 whether a uniform system of training on explicit
2 and implicit bias should be developed for all of
3 these criminal investigators, et cetera, et
4 cetera, period.

5 MS. VUONO: Okay, so it's really just
6 to assess whether we need this training.
7 Originally, the thing was written to say we need
8 it and go do it. Now it's go assess whether a
9 uniform training system should be developed on
10 explicit and implicit bias.

11 HON. BRISBOIS: Well, and this is
12 Brisbois again. I mean, that's how it developed.
13 Chair Bashford's suggestion changed it from go do
14 it to, you know, it should be looked at, and then
15 the chief and the general brought up it should be
16 assessed as to whether it should be uniform
17 rather than all over the board, and so, you know
18 --

19 MS. VUONO: Yeah.

20 HON. BRISBOIS: -- taking all of that
21 together, those two changes, refer to the MJRP
22 and to assess whether a uniform system of

1 training should be implemented for all of these
2 people in the criminal justice system, period.

3 And then, you know, the next step then
4 is if the MJRP says it should be developed, then
5 whoever gets that job assignment will come up
6 with what the uniform details of that training
7 program should be, but again, we don't need to
8 talk about that today.

9 MS. VUONO: Yes, sir, okay, I think I
10 got it. So, what I heard was the Secretary of
11 Defense direct the Military Justice Review Panel
12 to assess whether a uniform training system
13 should be developed on explicit and implicit bias
14 for all military personnel who perform duties in
15 the military justice system, including the long
16 list, and that list was military criminal
17 investigators, police, trial counsel, defense
18 counsel, victims' counsel, staff judge advocates,
19 special and general convening authorities, et
20 cetera. Is that the --

21 HON. BRISBOIS: That's it.

22 MS. VUONO: That's the one. That's

1 it. We got it.

2 CMSAF MCKINLEY: Yeah, this is the
3 chief.

4 MS. VUONO: Yes, sir, Chief?

5 CMSAF MCKINLEY: I'm happy with that.

6 MS. VUONO: Okay, and before you all
7 vote on this later this afternoon, we will have
8 this all rewritten so that we can go through
9 these one by one so everybody hears it one more
10 time.

11 The only last item before we take a
12 break and turn it over to our next topic is to go
13 back up to the findings, which you've already
14 discussed, and to suggest or ask whether any
15 member would like an additional finding to
16 develop the notion of collecting -- excuse me,
17 let me pull it up real fast -- the notion of
18 victim data being essential for sexual offenses,
19 so making that link more explicit within the
20 fifth finding. So, the -- yes, ma'am?

21 CHAIR BASHFORD: I think we should
22 because our tasking was, well, suspect

1 preliminarily, and I think we need to -- I think
2 it's hard to make much -- our findings should be
3 that it's important to assess the victim portion
4 of this.

5 I'm not quite sure what we'd base it
6 on other than our sense that obviously this is
7 important. I think the studies are kind of, you
8 know, they're suggestive of this, and maybe all
9 we say is that, you know, in the context of
10 sexual assault cases, it's also important to
11 assess race and ethnicity of the victim. It
12 might be as simple as that. I mean, we have it
13 in the body of our report referring to the
14 civilian studies, but --

15 MS. VUONO: Yes, ma'am. So, the
16 question for the committee is whether we want to
17 pull out those important elements in the body of
18 the report for a standalone finding number five
19 that says to the effect in the context of sexual
20 assault cases, it is important to assess the race
21 and ethnicity of the victim as well as the
22 accused?

1 BGEN SCHWENK: Jim Schwenk. I agree
2 that recommendation, I mean, finding five should
3 be added.

4 CHAIR BASHFORD: This is Martha
5 Bashford. I would use assess. I would use the
6 same as in finding four. Collect information on
7 the race and ethnicity of the victim.

8 MS. VUONO: Oh, because four just said
9 there's a gap on collecting it and five says go
10 collect it, collect the race. Is that right,
11 ma'am?

12 CHAIR BASHFORD: Our finding is that
13 it's important to do it.

14 MS. VUONO: To collect the race and
15 ethnicity of the victim in addition to the
16 accused. Perhaps we'll come up with better
17 language, at every stage of the criminal justice
18 system, because we do know that they're required
19 to do it for courts-martial.

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

21 MS. VUONO: Yes, sir?

22 MR. KRAMER: Why wouldn't we just add

1 a clause or a sentence at the end of finding
2 four?

3 MS. VUONO: Right, because finding
4 four points out that right now there's a gap,
5 that the DoD doesn't collect victim data before
6 the court-martial. They are required to at the
7 court-martial.

8 So, we've identified the gap and
9 you're suggesting that the committee, in the
10 context of sexual assault cases, it's very
11 important to collect it at every stage?

12 MR. KRAMER: Including to collect
13 information on the race and ethnicity, do we want
14 to say the victim and the subject or, which is
15 especially important in sexual assault cases,
16 although I don't know if that's true or not?

17 MS. VUONO: Oh, right, so they are
18 required to collect the race and ethnicity of the
19 accused pursuant to Article 140A. The gap we've
20 identified is the DoD doesn't have a requirement
21 for that same data on the victim before the
22 court-martial. So, the finding here would be

1 stressing that need to close that gap, I guess.

2 MR. KRAMER: So, right, right, so at
3 the end of finding four, you could just add which
4 should be collected in sexual cases, something
5 like that.

6 CHAIR BASHFORD: This is Martha
7 Bashford. We have that in recommendation four.
8 I think we're just trying to figure out a way to
9 put a finding to support the recommendation.

10 MS. VUONO: Yes, and the question is
11 do we want a standalone finding five or do you
12 want to just make it as part of finding four
13 which identifies that there's a gap that needs to
14 be closed?

15 COL CALESE: Eleanor, this is Colonel
16 Calese. I think part of the -- you're discussing
17 a gap that's in the DoD policies on collection.
18 The statutory mission for this particular report
19 focused on accused. So, I think that might be
20 part of the amplification of victim data again if
21 that's, in fact, accurate from a studies'
22 perspective.

1 CHAIR BASHFORD: It's Martha Bashford
2 again. I think a very simple finding for it is
3 to just say it is important to collect
4 information on race and ethnicity of the victim
5 in sexual assault cases. The support --

6 MS. VUONO: So, you're suggesting --

7 CHAIR BASHFORD: Go ahead.

8 MS. VUONO: So, that we make that
9 statement that's important to collect the race
10 and ethnicity of the victim in the context of
11 sexual assault cases as a second sentence in
12 finding four?

13 CHAIR BASHFORD: No, I'm saying that
14 should be finding five.

15 MS. VUONO: Got it, finding five, I
16 apologize. In the context of sexual assault
17 cases, it is important to collect the race and
18 ethnicity of the victim in addition to the
19 accused at every stage of the criminal justice
20 system?

21 CHAIR BASHFORD: Yes.

22 MS. VUONO: Any other thoughts from

1 the committee members on the addition of finding
2 five? No? Okay, great, what we'll do is we'll
3 type up all of these very, very helpful edits and
4 changes, and revisit them for a vote later this
5 afternoon. Does that work for you, Chair
6 Bashford?

7 CHAIR BASHFORD: It certainly does.
8 Thank you.

9 MS. VUONO: Thank you.

10 CHAIR BASHFORD: So, we now have,
11 what, policy stuff, no restorative justice, is
12 that correct?

13 MS. VUONO: Yes, ma'am. Kate Tagert,
14 over to you.

15 MS. TAGERT: Thank you, ma'am. This
16 is Kate Tagert. Today, Meghan and I are going to
17 familiarize you with the two requests from
18 Congress that were contained in the joint
19 explanatory statement accompanying the 2020 NDAA.

20 To members of the public who may be
21 following along, the materials are located on the
22 DAC-IPAD's website, the materials for today, and

1 we will be reviewing the slides from tab nine,
2 and we will also be referencing the joint
3 explanatory statement which is located in tab
4 eight of the PDF materials.

5 Going to the first slide on the joint
6 explanatory statement overview, Congress passed
7 the NDAA and included that the DAC-IPAD would be
8 statutorily extended for five years.

9 Accompanying the NDAA is this joint
10 explanatory statement which requests that the
11 DAC-IPAD explore two issues, which is again
12 located in tab eight of your materials.

13 The first is whether restorative
14 justice programs could be utilized in the
15 military justice system, as well as whether
16 victim impact statements are being limited at
17 presentencing hearings.

18 If we move onto the next slide, the
19 first topic we are going to discuss is whether
20 other justice programs, for example, restorative
21 justice or mediation, could be utilized in cases
22 where it has been determined that there is not

1 enough evidence for a case to go to judicial or
2 other adverse action against the perpetrator. So

3 --

4 MR. KRAMER: I'm sorry, this is A.J.
5 Kramer. This is very bizarrely worded. It says
6 to assist the victim of an alleged assault or the
7 alleged offender in cases in which the evidence
8 is not sufficient against the perpetrator. I
9 guess it should be the alleged perpetrator of the

10 --

11 I don't know why the word alleged is
12 in front of offense instead of perpetrator in
13 that last line because if it's the perpetrator,
14 it seems to me there is enough evidence.

15 (Simultaneous speaking.)

16 MS. TAGERT: And sir, this is Kate.
17 That's going to be one of the issues for the DAC-
18 IPAD to deliberate on due to the standard of not
19 having enough evidence to take any adverse
20 action, to include less than judicial, which
21 would be an administrative action based on
22 preponderance.

1 So, exactly what type of cases
2 Congress is trying to put into a restorative
3 justice program is a question that the DAC-IPAD
4 should explore, but I agree that it is strangely
5 worded as it is.

6 MR. KRAMER: Yeah, it was more an
7 observation. Thanks, sorry.

8 MS. TAGERT: No, that's okay.

9 MS. CANNON: Kate? Kathleen here.
10 What page are we on? I'm trying to find the
11 exact slide you're on.

12 MS. TAGERT: So, it's on page 70 of my
13 materials, which is tab nine. Do you have --
14 Meghan, do you have an actual page number?

15 MS. CANNON: Well, I can get to 70.
16 That's fine.

17 MS. TAGERT: Okay, so restorative
18 justice as a concept can be utilized at various
19 points during the criminal justice system, during
20 an investigation or pre-charging diversion, as
21 well as post-charging or post-conviction.

22 But today, based on the joint

1 explanatory statement, the focus is going to be
2 exploring programs that the idea is that they're
3 taking place before any type of charging or trial
4 because of the sufficiency language from
5 Congress.

6 And if you go to the next slide on
7 restorative justice, it is an alternative to a
8 traditional criminal justice model, and the
9 Center for Justice and Reconciliation has found
10 that there are three main principles of
11 restorative justice.

12 The first is that crime causes harm
13 and justice should focus on hearing and repairing
14 that harm, that the people most affected by the
15 crime should be able to participate in its
16 resolution, and three, that the responsibility of
17 the government is to maintain order and of the
18 community to build peace.

19 There's no definitive definition of
20 what restorative justice is. As I was
21 researching, I found this explanation helpful
22 from an article published in the Dispute

1 Resolution magazine from 2019 which states, "One
2 possible interpretation of the phrase speaks
3 exclusively to the restoration, the return as
4 best as possible to the rightful pre-incident
5 state of those who have experienced sexual
6 harassment or assault, but a broader
7 understanding of restorative justice focuses not
8 only on the restoration and reintegration of a
9 victim, but of wrongdoers, and also addressed the
10 implications of the wrongdoing for the community
11 as a whole."

12 So, for example, in a retributive
13 justice system, a crime is an act against the
14 state based on a violation of law, whereas in a
15 restorative justice model, the crime is an act
16 against another person, but also against the
17 community at large.

18 If you go onto the next slide, as the
19 Chair has already explained, we were not -- there
20 was a scheduling issue with Dr. Mary Koss, but
21 Dr. Mary Koss is a professor at the University of
22 Arizona who actually was able to run a

1 restorative justice program in Arizona.

2 It was funded by the CDC and it was
3 instituted in Pima County, Arizona for
4 approximately four years, and I wanted to give
5 you some background as to logistically how the
6 program worked.

7 And essentially it was based only on
8 referrals from the county attorney's office.
9 These were cases that had been investigated by
10 law enforcement and then given to prosecutors for
11 review.

12 And the cases that could be referred
13 to the RESTORE program were those that there was
14 sufficiently provable evidence. So, they could
15 have been tried according to the prosecutor, but
16 for whatever reason, they were referred to the
17 RESTORE program.

18 I'm going to briefly describe the four
19 stages of the program so that the committee can
20 understand how the process worked in Dr. Koss's
21 study, but first is the referral as we just
22 talked about, and if --

1 A facilitator, they call them
2 facilitators, would contact the victim if they
3 received a referral from the attorney, and if the
4 victim was interested, a meeting was set up to
5 determine if the victim would like to participate
6 in the program.

7 If consent was provided by the victim,
8 then the accused in that case is also contacted
9 to determine whether or not they would want to
10 participate. In order to participate in the
11 program, both the accused and the victim have to
12 agree.

13 If there was consent, the second step
14 was for both parties to come in separately so
15 that the facilitator can explain what the rules
16 were on the program, as well as the options of
17 how, when they meet in person, what the process
18 would be.

19 And if they continue to want to
20 participate, they would go onto what is known as
21 the conferencing stage, and in the conferencing
22 stage, the victim may or may not choose to give

1 his or her recollection and may or may not have
2 the accused review their behavior during the
3 incident.

4 However, generally the accused does
5 have to describe their responsibility for the
6 incident and the victim may choose to describe
7 how the incident affected not only them, but
8 their friends and family.

9 Sort of like the issues that we're
10 going to be talking about in victim impact
11 statements, friends and family may also speak on
12 behalf of the victim, and the accused also has
13 the right to have family members and friends
14 there as well.

15 At the conferencing stage, there is
16 going to be a redress agreement between the
17 parties, and then the accused will have to follow
18 what the redress agreement explains, and it can
19 include many different things, community service,
20 counseling. They're very kind of specific to the
21 individual.

22 And then the final stage is the

1 accountability and reintegration stage, and that
2 is when the final step of accountability will be
3 a formal apology by the offender and the
4 reintegration back into society.

5 Again, this program ran from 2003 to
6 2007. There were 66 cases during that time that
7 were referred to RESTORE, and out of those, 42
8 were felony cases and 24 were misdemeanor, and
9 after accounting for the cases where a victim or
10 an accused declined or were denied access to the
11 program because they weren't able to pass --

12 They do like a psychological test of
13 certain perpetrators as well as doing a
14 background to see whether or not they've been
15 accused of sexual assault in the past. They're
16 not eligible for the program, if that is the
17 case.

18 There were 16 cases out of that body
19 that were completed in this program, and the
20 finding of Dr. Koss's report was that they had a
21 very high level of satisfaction with the results
22 from the victim's perspective.

1 So, that's kind of the background of
2 the RESTORE program that Dr. Koss was going to
3 talk about, and obviously she was going to get
4 into a lot more detail, but for those of you that
5 were not able to read the article, I just wanted
6 to logistically explain how it would work.

7 So, the next question is obviously we
8 understand that this is not -- restorative
9 justice is very different than the types of
10 things we've been talking about in the past, so
11 the first questions I had were whether or not any
12 of the committee members had experience in
13 restorative justice or some initial thoughts on
14 it?

15 MS. LONG: This is Jen Long.

16 MS. TAGERT: Go ahead, Ms. Long.

17 MS. LONG: Hi. And I wish Dr. Koss
18 was here so that I wasn't speaking without her
19 being able to respond.

20 Just some observations about this
21 particular program, and that's just some general
22 background on the sort of justice which really is

1 still, I would say, very much in the exploratory
2 season as it relates to domestic violence and
3 sexual violence.

4 Although certainly there is a push to
5 put it here through some avenues that I think, as
6 we saw almost by the definition or the charge by
7 the NDAA, I think that there is a question or
8 concern that it could be a dumping ground for
9 cases that may be perceived as bad but should
10 actually be proceeding through the system.

11 It also just, you know, kind of adding
12 on to what Mr. Kramer was talking about where
13 they were saying there's insufficient evidence
14 for someone to be a perpetrator, but the whole
15 principles of restorative justice are for people
16 to take accountability and to apologize. So
17 those two things seem very inconsistent.

18 But going back to Mary Koss' program,
19 I mean, it was very, very small. The cases were
20 very vetted and screened. It was a highly
21 resourced program. There was a lot of therapy
22 parallel to the process before going through the

1 RJ process. And it ended in 2007. And I do not
2 believe it's been replicated, that particular one
3 with those particular outcomes.

4 So I think there is a, when looking at
5 the RESTORE Project, there is a thought that
6 there is still a lot of evidence that needs to be
7 gathered to determine if these are positive
8 programs for survivors and for justice.

9 Given the dynamics of sexual violence,
10 I think people felt like there's a lot of
11 opportunity for manipulation given the, just the
12 backdrop of the culture we're in right now where
13 cases tend to be minimized.

14 I think there's some real concern as
15 to the individuals who are facilitating RJ or the
16 decision to put cases into there and whether or
17 not get on their cases that should be proceeding.
18 So I think that's piece of it.

19 I think that historically, whether
20 this is deliberate or just careless, some of the
21 historical practices that I think RJ has some
22 elements of, like mediation, diversion,

1 counseling, I mean, marital counseling if you
2 want to go back, anger management if you want to
3 talk about domestic violence, they haven't really
4 been mapped out.

5 And as a result, and that's something
6 we're trying to do at AEquitas, but as a result
7 it's been very difficult to know what might be
8 positive. And some of the RJ might have been
9 tried before and maybe had failed. But we can
10 learn from some of those failures.

11 So again, and I don't think that there
12 is uniform consensus among domestic violence,
13 sexual violence practicing prosecutors, advocacy
14 groups, survivor voices. I think that there's a
15 feeling that some survivor voices have been heard
16 but not all.

17 So I think it's still in the
18 exploratory phase. And I think, from my
19 perspective, rather than deciding whether or not
20 it should be instituted, I think there should
21 maybe be a more cautious approach of either the
22 DAC-IPAD doing an evaluation of this in a more

1 comprehensive way or partnering with places that
2 are really looking at both sides of this to
3 determine the efficacy.

4 And we are aware of some prosecutor's
5 offices that are doing it, certainly alongside of
6 the formal criminal justice system. And then
7 there are some, I can think of one pilot project
8 that I think is going on where these are cases
9 that weren't going to be reported to the system
10 anyway.

11 So that might be something sort of
12 akin to what the NDAA had in mind. But I just,
13 from my perspective, I feel like we need to step
14 very cautiously until there's more known.

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

16 MS. TAGERT: Go ahead, sir.

17 MR. KRAMER: Okay, thank you. Yes, in
18 addition to what I said earlier about the way
19 it's worded, and I don't disagree with really
20 much of what, or anything about what Ms. Long
21 just said, it's also, from a defense standpoint,
22 controversial.

1 While I think it's great in theory, a
2 great idea for both the victim and the defendant,
3 subject, whatever you want to call it, in that
4 the victim may feel better in the end. And the
5 defendant not only may feel better about having
6 reached a peace with the victim but also being
7 spared a conviction or a mark on their record.

8 There's a lot of controversy about it,
9 about what we talked about earlier, explicit and
10 implicit bias in the victim's consent being
11 required. And especially the way this statute is
12 worded, I mean, one of the incentives, not the
13 only, hopefully, there is also hopefully the
14 incentive to help the victim, bring peace to the
15 victim.

16 But one of the incentives is that the
17 defendant doesn't get a conviction on their
18 record. And this one is for, the way this
19 statute is worded, it's for people who wouldn't
20 have a conviction on their record in any event.

21 Because it's, particularly where the
22 evidence isn't sufficient, if you remove that

1 sometimes huge, sometimes not as large incentive,
2 I think it's really, it is subject to what Ms.
3 Long said about maybe it's a dumping ground for
4 cases that they just don't want to proceed on.

5 So I don't know if we want to take
6 this on, in all honesty. It does become quite a
7 controversial thing about, like I said, biases
8 too. That's it, I guess.

9 DR. MARKOWITZ: Jen Markowitz.

10 MS. TAGERT: Go ahead, Jen.

11 DR. MARKOWITZ: Thanks. On top of
12 what both of my colleagues have just expressed,
13 and I think tying into what Mr. Kramer was just
14 saying, in reading Dr. Koss' article on this, I
15 mean, one of the things that we do need to have,
16 I think, much more robust discussion about is a
17 note in the discussion portion of that article in
18 which she talks about the fact that disturbing
19 racial and ethnic trends occurred in this
20 particular program.

21 So I think that there, I mean, it's
22 certainly a concept that is an interesting one.

1 And, you know, certain communities have found
2 success with it. But it's definitely a topic
3 that does lend itself potentially to bias.

4 Dr. Koss certainly outlines that in
5 her discussion, even though this was a relatively
6 small program. And for that reason as well, I
7 think this really does require us to have a much
8 more thorough discussion on this topic. Thanks.

9 MS. CANNON: Kathleen here.

10 MS. TAGERT: Go ahead.

11 MS. CANNON: Hello? Well, I take all
12 these comments very to heart, and it's of
13 concern, some of the criticisms. But I am
14 interested, and I think we've been asked to kind
15 of look at the possibility of the pros and cons
16 of this, if I read the request right.

17 So what I'm hearing and what I would
18 like for us is an opportunity to hear more and
19 spend some time discussing what are the pros and
20 cons. And is there room for this in what we see
21 of the kinds of work we're looking at, the sexual
22 assault cases.

1 Because it has a lot of ramifications,
2 you know, re-abusing, or putting people who are
3 accused, now they're going through that instead
4 of having no charges filed and just walking. I
5 mean, there's all kinds of, you know, pros and
6 cons. But I don't feel comfortable making a call
7 until I have more information.

8 MS. SPOHN: Cassia Spohn.

9 MS. TAGERT: Go ahead.

10 MS. SPOHN: I agree with Kathleen
11 Cannon that, and with those who have some
12 concerns about restorative justice in the context
13 of sexual assault. I think that the efficacy of
14 these types of programs has not been
15 substantiated. And, you know, quite frankly,
16 they've primarily been used in the context of the
17 juvenile justice system.

18 That said, I think it's worthwhile at
19 least contemplating whether this is an approach
20 that could be effectively used in the military.
21 That's not to say that we need to agree that it
22 can be. But like Kathleen, I think that there is

1 enough ambiguity about these kinds of programs
2 that we should not dismiss them out of hand.

3 And I agree with Jen Long that there
4 are concerns about the ways in which these
5 programs might be abused. But nonetheless, I
6 think it's something that bears some
7 investigation by the DAC-IPAD. Thank you.

8 MS. TAGERT: This is Kate. So based
9 on the fact that there seems to be a mixed
10 opinion on whether or not the Committee would
11 want to explore this further, my first question
12 back to you is, if we were to explore restorative
13 justice, would it only be in regards to sexual
14 assault.

15 Because as Ms. Long said, and I should
16 have mentioned this earlier, is that there are
17 not many programs that restorative justice is
18 applied to sexual assault. RESTORE was one of
19 the few that I could find in this country. There
20 has been more experimentation in Australia and
21 parts of Europe. But for sexual assault,
22 restorative justice programs are not common.

1 So who would the Committee like to
2 hear on these programs if that is indeed where
3 the Committee would like to go?

4 DR. MARKOWITZ: This is Jen Markowitz.

5 MS. TAGERT: Go ahead.

6 DR. MARKOWITZ: So I guess the first
7 thing that I want to say is I'm not certain that,
8 I mean, I don't want to speak for anybody else,
9 but at least from my perspective, I don't know
10 that I would want to ever take this off the table
11 without further discussion.

12 It seems like most of my colleagues
13 are saying the same thing, that it bears further
14 discussion. So I would be very happy to be able
15 to hear from people who have that level of
16 expertise.

17 And certainly being able to hear from
18 Dr. Koss, who would be one of those folks that I
19 would love to be able to ask much more specific
20 and more detailed questions related to some of
21 the stuff that she found in this particular
22 program, and related to some of the findings and

1 some of the ancillary discussion points that she
2 writes about in the article that you provided us.

3 MS. TAGERT: Thank you.

4 (Simultaneous speaking.)

5 MS. TAGERT: Dr. Anderson? Go ahead,
6 ma'am.

7 MG ANDERSON: Hi, this is Marcia
8 Anderson. We have restorative justice programs
9 here in Wisconsin that primarily focus on lower
10 level offenses. And the major program here in
11 the county I live in, in Madison, Wisconsin,
12 focuses on youth offenders.

13 So while I think, yes, I agree with
14 the comments. We shouldn't take it off the
15 table. But again, my community has been with
16 lower level offenses and lower level drug
17 offenses as opposed to something of a, well, it
18 would be a significant felony here in Wisconsin.
19 That's all I have.

20 HON. GRIMM: Grimm.

21 MS. TAGERT: Go ahead.

22 HON. GRIMM: I think that the comments

1 that we've heard are all sort of an equal theme.
2 This is not a program that has been widely and
3 broadly used as an adjunct or an alternative to
4 the criminal justice system for the community.

5 It has been used in specific instances
6 where it may have been extremely successful for
7 juvenile cases, for example, where the goal is to
8 try to rehabilitate and not have a record,
9 stigmatize the youth. And this pilot project may
10 have given some guidance in terms of to where it
11 may have value.

12 But as Kramer said and others have
13 observed, there could be context in which it
14 would not apply.

15 I think that any program that has
16 promise to trying to provide avenues that will
17 allow victims, and I guess potentially even those
18 who may have been accused, some opportunity to
19 have voice, therefore feel as though the process
20 produced a fairer and less stigmatizing result is
21 worth hearing.

22 But there are serious questions that

1 it sounds like many of the members of our
2 Committee, other than me, have expertise in which
3 they could frame these questions in a way that
4 would allow us to get a sense of whether this is
5 something that could fit the inquiry from our
6 taskers and the role of this committee.

7 So I guess I'm saying, longer than it
8 needed to be said, that I agree that it should
9 not be removed from the agenda, but I don't know
10 that there's a way that we can make a
11 recommendation at this time other than to hear
12 more information about how it operates.

13 COL CALESE: This is Colonel Calese.
14 One option similar to what we did with the race
15 and ethnicity report, Chair Bashford, you had had
16 a subcommittee look at that, because it didn't
17 fit nicely, it didn't nest into any of our
18 existing committees and their particular
19 projects.

20 So I just throw that out for
21 discussion and you, ma'am, about whether that's
22 an option for a subcommittee or a working group

1 team to be stood up to support it.

2 MS. BASHFORD: It seems to me that
3 it's not something that the whole Committee can
4 take on. I mean, we meet every three months. So
5 I do think to take testimony and explore options
6 would be better done by one of the standing
7 subcommittees.

8 I think we're going to be hearing from
9 Policy soon. I think they've got enough on their
10 plate right now. I'm not quite, maybe we can
11 just stand up a working group as we did for race.
12 I don't have any particular insight into this.
13 But maybe later you can find out if we have
14 volunteers that would love to participate in
15 working on this further.

16 MS. TOKASH: This is Meghan Tokash.

17 MS. TAGERT: Go ahead, Megan. Are you
18 on?

19 MS. TOKASH: Yes, I am. Sorry, I
20 wasn't sure who I was interrupting. I apologize
21 for that.

22 Just one suggestion maybe in examining

1 this issue further is to get experts from systems
2 that look like the military system. And what I
3 mean is the military defendants are adults. And
4 so I think a lot of restorative justice programs
5 are geared towards juvenile offenders. And so we
6 might, going forward as we explore this, tap into
7 practitioners who are in court systems that deal
8 with adult offenders to see if restorative
9 justice is even something that they use in the
10 prosecution of adult members of society.

11 And then we should also see if we can
12 get viewpoints from other court systems that look
13 at things other than restorative justice, things
14 like pre-trial diversion where you actually have
15 charges preferred. And you have to complete
16 certain steps with probation in order to be able
17 to successfully complete pre-trial diversion.

18 It doesn't include these face to face
19 meetings between victim and perpetrator. But I
20 think that we should also see if there are
21 alternatives that might make more sense in the
22 military system of justice which prosecutes

1 adults only. Thank you.

2 MR. KRAMER: Hi, it's A.J. Kramer
3 again, just real quickly, if that's okay?

4 MS. TAGERT: Go ahead.

5 MR. KRAMER: So this is, and what
6 Megan said, yes, about consulting people and what
7 everybody said, it's a big thing in the Native
8 American Tribal justice system. So I think we
9 would want to try to get folks involved in that
10 system. It plays a big role in the Native
11 American justice system.

12 CHAIR BASHFORD: It's Martha Bashford.
13 Colonel Calese, I would suggest that when we're
14 done with this meeting that, at some time, you
15 send out an email to everybody seeing if anybody
16 is interested in working on this as a subgroup.

17 COL CALESE: Yes, ma'am. We can
18 certainly do that. I just want to thank Kate and
19 Megan publicly. They've worked very close, and
20 we were really disappointed when Dr. Koss
21 couldn't make it. But they have really done an
22 incredible job getting some background on this.

1 And I thank the committee members as well.

2 So yes, ma'am, I'll take that
3 direction from you. And does anybody, Kate, do
4 you have any closing thoughts on this before we
5 turn to the topic of the victim impact statement?

6 MS. TAGERT: No, I think I'm ready for
7 Meghan. Go ahead, Meghan.

8 COL CALESE: Hi, ma'am. I think,
9 Chair Bashford, did you have a comment?

10 CHAIR BASHFORD: Oh, you know, I read
11 the study very carefully. And apart from the
12 fact that it enhanced racial, the problems by
13 diverting so many white defendants, I also noted
14 that the bulk of the misdemeanor victims, they
15 called them victim survivors, were security
16 guards who witnessed a sexual misdemeanor on
17 their video surveillance. So I think there are
18 significant limitations in that study just in who
19 they chose as victims. But I think, you know, it
20 does bear another look.

21 Are we now on to victim impact
22 statements?

1 COL CALESE: Yes, ma'am.

2 MS. PETERS: Hi, this is Meghan
3 Peters. I am going to walk you through the
4 request from Congress that the DAC-IPAD looked at
5 how the impact statements are being handled at
6 courts-martial.

7 And for your reference, I am still
8 within Tab 9 if your materials are in a PDF or in
9 Tab 9, Slide 7. And if you're looking at the
10 materials through a link online, it is Page 74 of
11 the materials as posted in the reading room. And
12 so I'm on a slide that begins Joint Explanatory
13 Statements, Victim Impact Statement.

14 This came from, again, the same place
15 that restorative justice was mentioned in the
16 conference report that accompanied the FY '20
17 NDAA. And there was a three-paragraph statement
18 that at first discussed restorative justice and
19 then went on to mention the topic of victim impact
20 statements.

21 And so the first thing I wanted to do
22 was just highlight some of the language in that

1 request. And it says that the conferees are
2 concerned by reports that some military judges
3 have interpreted Rule for Courts-Martial 1001 too
4 narrowly and that the rule will -- I'll brief you
5 on in detail in a moment, but that implements the
6 prosecution's, the defense's, and the victim's
7 right to be heard and present material at
8 sentencing.

9 So it says that they're concerned
10 military judges are interpreting that rule too
11 narrowly and, in effect, limiting what survivors
12 are permitted to say during sentencing hearings in
13 ways that do not fully inform the Court of the
14 impact of the crime on the survivor.

15 So in order to get to where we want to
16 end up, which is a question to you all about how
17 you would want to begin assessing this issue. I
18 want to start with some background information.

19 And so my next slide is just a
20 reminder. I know the Committee has received some
21 of this information before, but it's good to tee
22 up this issue with a reminder of what the UCMJ

1 says on all of this already. And the law and the
2 rules that frame the issue, the Congress has asked
3 you all to look at.

4 And first, that is that victim's rights
5 are codified in Article 6B. And the pertinent
6 provision of that statute says that a victim has
7 the right to be reasonably heard at a sentence
8 hearing related to the offense of conviction.

9 Rule for Court-Martial, 1001,
10 implements Article 6B. And it provides that after
11 presentation by trial counsel, the crime victim of
12 an offense of which the accused has been found
13 guilty has the right to be reasonably heard.

14 And it goes into a lot of detail in
15 order to effectuate that right. Specifically, the
16 victim's portion, I'm sorry, the right to be
17 reasonably heard of the crime victim is in
18 Subparagraph C, Rule 1001. And it defines the
19 crime victim there as an individual who has
20 suffered direct physical, emotional, or pecuniary
21 harm as the result of the commission of an offense
22 of which the accused has been found guilty.

1 So moving off to the next slide, victim
2 participation in pre-sentencing proceedings, and
3 this is just, again, a reminder that in the
4 military sentencing rules, the victim can
5 participate in two different ways, as a
6 prosecution witness under 1001, Subsection B,
7 where they would be providing sworn testimony as
8 to matters in aggravation. And there would be a
9 prosecution witness subject to cross examination,
10 and the testimony is subject to the rules of
11 evidence.

12 Separately, the victim can exercise an
13 independent right to be reasonably heard under
14 1001C after the close of the prosecution's case.
15 So it is a distinct right for the victim to be
16 heard under 1001C that is personal to the victim.
17 One moment.

18 And just a quick overview, and I'm on
19 slide 12 here, the rules applicable to victim
20 statements, in general, victim statements may be
21 made orally or in writing at sentencing. Or the
22 victim can also choose to do both. They can be

1 sworn or unsworn, but they must be sworn in a
2 capital case. And the statement must relate to
3 the matters of victim impact or mitigation.

4 Regarding crime victim unsworn
5 statements, just a couple of notes that they are
6 not subject to cross examination by the defense or
7 by the court-martial. And if there's a written
8 unsworn victim statement, after findings, the rule
9 says the victim shall provide the parties with
10 either a written proffer of the matters that will
11 be contained in the statement or a copy of the
12 statement itself. And upon good cause shown, the
13 military judge can permit a crime victim's counsel
14 to deliver the statement.

15 And the other rules, I think,
16 pertaining to the delivery or the handling of
17 victim impact statements, are that the military
18 judge may take corrective action if the victim
19 statement raises new matters and that the parties
20 may also rebut any statements of fact in the
21 victim's unsworn statement they feel does not
22 represent the evidence, or whatnot, or they feel

1 is factually in dispute.

2 All right. Moving on to the next
3 slide, the DAC-IPAD has received some information
4 already on this topic. And I'm just going to give
5 you a brief recap of that.

6 As a public comment at the February
7 2020 public meeting, the DAC-IPAD received a
8 public comment that restrictions are being placed
9 on victims at sentencing. And the military judges
10 are severely limiting, in some instance, what a
11 victim may include in their victim impact
12 statement and that the judges are regulating how
13 those statements are delivered.

14 And some of the examples cited in the
15 public comment and in, I think, the committee
16 members' discussion with the individual, was that
17 there was noted instances of red-lining of
18 statements before they're presented in court, the
19 victim maybe not being allowed to complete the
20 statement, and also a prohibition on saying
21 anything about a particular sentence.

22 So more on that in just a moment.

1 On the next slide you'll note that the
2 DAC-IPAD did receive some information on this
3 topic from military judges who testified at a
4 public meeting or spoke with you at a public
5 meeting earlier this year.

6 When asked about the handling of victim
7 impact statements specifically, among the panel of
8 military judges one judge said he did not limit
9 any victim statements in his experience at
10 sentencing. Some military judges though who were
11 there and spoke to the committee about instances
12 in which they did exclude portions of a victim's
13 statement.

14 And so when asked to expand upon that
15 they said that they would exclude material that
16 they found unfairly prejudicial, I guess, under
17 Rule 403, or problematic for some other reason and
18 they didn't elaborate on those specific instances,
19 but it was material that was unfairly prejudicial
20 was the primary reference there.

21 And the other was a specific judge said
22 any reference with specific sentence cannot be

1 made by a witness and that is something that is
2 established in military case law. The military
3 judges benchbook of instructions to members
4 specifically says that a witness may not comment
5 on or recommend a specific sentence and so that's
6 how military juries are always instructed, and the
7 only exception to that is that an accused may
8 request a specific sentence.

9 But other than that, a witness can't
10 testify to what the sentence should be. That's
11 considered under military case law the province of
12 the sentencing authority.

13 All right. On the next slide, I looked
14 at some military case law, and we can provide the
15 cases or the citations to you as, you know, we
16 move forward. So just in some of the issues that
17 military appellate courts are seeing on this is
18 just again instructed to see a little bit of
19 what's going on in the field.

20 First of all, with the caveat that
21 cases that arise in the military appellate courts
22 generally come up because an accused objected to

1 the victim impact statement, and then on appeal
2 they raised it as maybe the improper admission of
3 a statement.

4 So you're not going to see,
5 necessarily, in a lot of appellate cases -- in the
6 military it's hard to find an instance where it's
7 the victim saying my statement was improperly
8 limited.

9 So this is not an expansive way at all
10 to review the topic, but it's interesting to see
11 the way the military appellate courts have had to
12 assist practitioners with implementing this rule.
13 And I say that because it has only been around, I
14 think, since maybe the 2016 MCM. It was
15 relatively new for practitioners in the last few
16 years.

17 So the things that military case law
18 spoke to were the issues around things like the
19 right is personal to the victim and it requires
20 either the victim's presence or the request of the
21 victim, with the caveat that a military judge can
22 have -- appoint a designee to assume the rights of

1 the victim if they're under 18, and in some cases
2 an incapacitated or incompetent or deceased victim
3 can have a representative who assumes the rights
4 of the victim to include the right to be heard at
5 sentencing.

6 In addition, I think as the rule said
7 earlier, an SVC, a Special Victim's Counsel, could
8 upon showing a good cause actually deliver the
9 victim impact statement in court.

10 The issues that the courts are dealing
11 with are that sometimes the trial counsel, it
12 seems, is trying to facilitate that right of the
13 victim to be heard and they were putting in the
14 victim impact statement marked as a prosecution
15 exhibit and then they were resting their case, or
16 doing the Q&A with a victim giving an unsworn
17 statement orally on the witness stand. All of
18 that was objected to and the courts would find
19 that was error but harmless.

20 But those are the kind of things that
21 were coming up in the cases that we saw. So I'll
22 move to another important part of the Joint

1 Explanatory Statement.

2 As they started this briefing, there
3 was an initial paragraph where Congress expressed
4 the general concerns about unfair limitations
5 being placed on victim impact statements so that
6 the court isn't fully aware of the impact on the
7 victim. And they want to ensure that that is the
8 goal of the victim's right to be heard at
9 sentencing, that the rules facilitate that
10 opportunity.

11 And in the final paragraph of the Joint
12 Explanatory Statement -- I have it here on the
13 slide -- and the specific issues, the actions that
14 they would request DAC-IPAD take are to assess
15 whether military judges are recording appropriate
16 deference to victims and, separately, whether
17 judges, and I guess the rules, are appropriately
18 permitting other witnesses to testify about the
19 impact of a crime on the victim pursuant to Rule
20 for Court-Martial 1001.

21 So here is where on, I guess, the last
22 part of this I would ask the committee what do you

1 want to assess and how. I think the -- what we
2 propose here is under step 1, determine somehow
3 whether limitations are being placed on these
4 victims' statements appropriately or
5 inappropriately, sort of the extent of the problem
6 and identify what the specific issues are.

7 So one way to do that would be to bring
8 in Special Victims Counsel and maybe other
9 practitioners to talk about anecdotally how these
10 things are being handled, what comes in and what
11 doesn't, what seems problematic and what doesn't.

12 And separately we would do the same
13 thing, question the same types of witnesses
14 regarding whether witnesses besides the victim are
15 permitted to testify, I guess, maybe as a
16 prosecution witness. That issue again is a little
17 bit vague in the Joint Explanatory Statement but
18 it doesn't mean we can't develop that issue
19 through some presentations with military
20 practitioners.

21 The staff would recommend that we have
22 initially, we bring in some witnesses from the

1 military to kind of expound upon what they've seen
2 and to see what the nature of the issues really
3 are, bring some clarity to it.

4 And depending on what you, information
5 you receive and what you assess as the nature of
6 the problem or the extent of it, the next step,
7 possibly, if you want, is to do more of a deep
8 dive into records of trial. And we would
9 recommend that, as maybe a phase 2 or a subsequent
10 phase, because the tasking also had said -- or,
11 the request had also said that the committee would
12 look at this issue adjunct to its review of cases.

13 So we were thinking that if the DAC-
14 IPAD was collecting records of trial in the future
15 pursuant to its case review project and its future
16 iterations that then we would also, while
17 examining those records, determine the extent of
18 the problem regarding the admission of impact
19 statements, military judges' ruling, and then that
20 kind of analysis and information could really
21 inform any potential recommendations for
22 improvement to practice.

1 But I guess the first question is, how
2 do you want to assess this? Do you want to hear
3 from some military practitioners in the future?
4 Do you want us to pull records for you now? We're
5 just looking for a little bit of direction on how
6 the committee would like to assess this topic.

7 HON. GRIMM: Grimm.

8 MS. PETERS: Yes, sir. Go ahead.

9 HON. GRIMM: Yeah, it seems to me that
10 this is a broad topic. There are lots of
11 different ways about slicing into it to try to get
12 information that would be helpful.

13 Obviously, from the perspective of
14 defense counsel's, Special Victim's Counsel,
15 prosecution, there may be groups that are victims'
16 groups that have concerns about that.

17 There are clear analogues, I suspect,
18 in the state system, but in the federal system
19 there is federal legislation that requires that
20 there be information made available and we have to
21 -- the judges, each judge has to report instances
22 every year when there has been a request by a

1 victim to present information that has either been
2 denied or been restricted. And there are, in the
3 U.S. Attorney's Office is, there are
4 victim/witness assistance folks who help at
5 various aspects.

6 You know, it seems to me that one
7 possibility that would be worthy of considering is
8 a lot along the lines of having a subcommittee
9 perceive the way in which the staff did a
10 fantastic job of getting interviews arranged with
11 state practitioners in federal court and state
12 court when we were looking at preliminary hearings
13 and the Article 32 and other aspects of it, so
14 that a working group sort of took the laboring oar
15 of trying to identify information that would be
16 helpful for the full committee to have in order to
17 be able to get their arms around it.

18 As opposed to, as Chair Bashford said,
19 we have four full committee meetings a year and if
20 we were to go into an area that has as many moving
21 parts as this, I'm not sure how much could be
22 accomplished in that fashion. So those are just

1 my thoughts.

2 CHAIR BASHFORD: Martha Bashford.

3 MS. PETERS: Yes, ma'am.

4 CHAIR BASHFORD: I think the DAC-IPAD
5 should refer this to General Schwenk's Case Review
6 Subcommittee. It seems like it would sit there.
7 And then General Schwenk working with the staff
8 can decide do we want to start with testimony or
9 does he want to start with transcripts, however he
10 would like to do it. I think it would be well-
11 handled in his capable hands.

12 BGEN SCHWENK: Jim Schwenk.

13 COL CALESE: Yeah, this is Colonel
14 Calese.

15 Oops, go ahead, sir.

16 BGEN SCHWENK: I really appreciate the
17 offer, Madam Chair, but I'll have to defer to
18 anybody else and let them do it.

19 But no, it makes sense because one of
20 the issues for the CRWG -- or no, not the CRWG.
21 The CRSC is looking at records of trial to finish
22 our case analysis from 2017. And so -- and I have

1 the perfect person on the subcommittee to put in
2 charge of this, Marsha Bashford, so it'll be
3 perfect.

4 COL CALESE: Sir, ma'am, I think I have
5 two-time marching orders for both our victim
6 impact statements and our restorative justice
7 opportunities for the subcommittees to explore
8 some more given some of those guidelines so we'll
9 follow up with that very shortly.

10 Ma'am and committee, I wanted to give
11 you a quick note on some times. Number one, we
12 have a race and ethnicity team that if they
13 haven't already you will see an updated draft with
14 your comments very shortly in your mailbox, and
15 they are ready to walk through and do some of the
16 voting on that.

17 But before we turn that over to them,
18 we have a Policy Subcommittee that has been doing
19 some incredible work that Judge Grimm just
20 discussed. I know it's going to be an abbreviated
21 presentation.

22 Ma'am, with your permission I'd like to

1 go ahead and give them a minute here to talk about
2 what they've been working on.

3 CHAIR BASHFORD: Yes, please.

4 COL CALESE: Okay. Go ahead, team.

5 MS. PETERS: Okay. I'm going to move
6 on to the Policy Subcommittee update. This
7 follows -- well, a few tabs down from the other
8 update. It looks like this is tab 12 for you all,
9 and the Policy Subcommittee update is going to
10 cover four topics today.

11 First, we'd like to summarize for you
12 the purpose and the takeaways from interviews that
13 the members of the Policy Subcommittee have
14 conducted with civilian prosecutors and defense
15 counsel.

16 We'd also like to update you on the
17 staff collection of data concerning no-probable
18 cause determinations that are made at Article 32
19 preliminary hearings and then review a brief on
20 our planned next steps for continuing our review
21 and a proposed timeline for completing our report
22 on topics around the pretrial process encompassed

1 in Article 32, 33 and Article 34, primarily.

2 And then, finally, we'd like to note
3 for you just where the Policy Subcommittee has
4 made a preliminary assessment regarding Article
5 32.

6 So I'm going to move on to the next
7 slide, Slide 3, the Policy Subcommittee
8 Interviews. We undertook these interviews in
9 order to get background information on the
10 civilian criminal justice systems and their
11 pretrial procedures. And we thought that that
12 would inform the Policy Subcommittee's review of
13 our Article 32 procedures and help us make
14 recommendations regarding the military pretrial
15 process, generally.

16 Okay, on Slide 4, you'll see that we
17 have interviewed ten prosecutors, seven defense
18 counsel--we're going to talk to civilian victims'
19 counsel next. And the way we approached this was
20 the subcommittee members developed and approved a
21 standard list of questions and topics to discuss
22 with the interviewees.

1 One or more subcommittee members
2 participated in every interview. I think there
3 was one that was -- involved staff leadership and
4 Terri and I as the staff. But other than that,
5 the Policy Subcommittee members were integral to
6 every interview and sometimes they were the
7 subject of the interview.

8 We were fortunate enough to be able to
9 leverage the expertise of various members of the
10 committee, not just on the subcommittee, and tap
11 into their wealth of experience prosecuting and
12 defending sex assault cases.

13 And the way we conducted these
14 interviews, we did not record them but the staff
15 took notes and we would write up a summary or some
16 minutes of the interview and circulate it to the
17 members. And again this can assist us with
18 providing background information on comparative
19 systems as we analyze Article 32 and other
20 military procedures.

21 On Slide 5, the interviews with the
22 prosecutors, we surveyed nine jurisdictions,

1 federal and state. And our federal jurisdictions
2 represented by our prosecutor interviews largely
3 touched on areas where, or jurisdictions that
4 prosecute cases arising in Indian country and that
5 way we were able to get a good representation of
6 the federal prosecution of sexual assault offenses
7 which frequently occurs in those districts and in
8 other districts where there's ample state
9 jurisdiction over a lot of those offenses.

10 Our topics were to discuss the
11 practicalities around charging decisions, how
12 preliminary hearings reviews how often, the
13 strategies employed and presenting evidence there.
14 And then plea negotiations, because often charging
15 decisions, either the grand jury presentment or
16 preliminary hearings, are often impacted by
17 decisions through heated decisions on both sides
18 around how to best resolve the case.

19 Sometimes plea negotiations are obvious
20 and easy to facilitate with those procedures and
21 sometimes it goes otherwise, but we thought it was
22 all interrelated.

1 So I'm going to hit the highlights of
2 what we have learned from the prosecutors and the
3 defense counsel and I invite any members of the
4 Policy Subcommittee to have any other thoughts or
5 comments or impressions from the interviews that
6 they want to add to the briefing, please go ahead.

7 So when we talked about how a
8 prosecutor begins to develop a case, we learned
9 from a majority of the state prosecutors that
10 practices vary around whether an investigator has
11 to bring a case to a prosecutor in order to close
12 it. In fact, a majority of the prosecutors said
13 in their jurisdiction an investigator could close
14 a case without a prosecutor's approval.

15 And we thought that was interesting
16 because we know that in the military every
17 unrestricted report must have a full investigation
18 and those investigations can't be closed without
19 a prosecutor's, military prosecutor's review.

20 They also said that -- and their
21 practices vary, I should say, there, because in
22 some jurisdictions a particular DA with a good

1 relationship developed with the chief of police
2 may have that all sex assault offense cases are
3 brought to the SVU unit for review, or that may
4 not be the case depending on the size of the
5 jurisdiction and the resources. Most prosecutors
6 said though that once a case is with them for
7 review and for a charging decision, only a section
8 chief or a deputy have the authority to decline to
9 charge a sex assault case, but practices varied
10 around whether a written memorandum would be
11 generated to explain declination decision and from
12 the level of oversight that the development of
13 that memorandum, that case closure memo received.

14 Prosecutors also said that they tended
15 to apply a sufficient evidence to convict standard
16 at charging, or basically when they were deciding
17 to charge someone with a crime or seek indictment,
18 they would ask whether there was a reasonable
19 likelihood of conviction.

20 Now the state prosecutors with whom we
21 spoke did not have any mandatory guidelines or
22 standards to apply, but they still used that

1 standard of whether there's sufficient evidence to
2 convict before charging somebody, even though
3 there's no rule or policy or law that required
4 them to do so.

5 Federal prosecutors apply that same
6 standard because it's in the justice manual, and
7 when we would discuss with the prosecutors the way
8 they went about applying that standard,
9 understanding that it's subjective and that the
10 ability to appraise the evidence, you know, can
11 depend on your experience with these cases and
12 what not, so we would get into a very nuanced
13 discussion there.

14 And I'll try to quickly go through on
15 slide 7, there are a lot more detailed takeaways,
16 but I think for our purposes the most relevance at
17 preliminary hearings was that in a jurisdiction
18 like California they use preliminary hearings more
19 frequently and the victim may be on the stand
20 giving sworn testimony.

21 But in a lot of other jurisdictions,
22 the procedures pretrial work out such that a

1 prosecutor has a choice whether to go to the grand
2 jury or preliminary hearing. And again, the
3 prosecutors with whom we spoke especially the
4 state level would choose to indict by grand jury.

5 So, overall, it seemed like there
6 weren't a lot of -- unless you were in there
7 talking to the right jurisdiction, there wasn't a
8 whole lot of preliminary hearings from which they
9 could draw experience and speak to and we just
10 talked about what was common to both.

11 And then we would discuss it then,
12 well, what does presentment to the grand jury look
13 like? Often, in most jurisdictions they would
14 allow hearsay at the grand jury and so they would
15 just have the investigator testify to the elements
16 of the offense. And again, practices vary around
17 that.

18 We did talk with a few prosecutors who
19 said there were instances where it was advisable
20 to put the victim on the stand before the grand
21 jury and there were others who said they would
22 almost never do so. In fact, some prosecutors

1 said they would develop a case in such a way to
2 avoid putting the victim on the stand for a
3 variety of reasons.

4 So I think we had a very interesting
5 time discussing charging standards and the factors
6 that went into the decisions to charge with the
7 prosecutors and then got a good sense of how
8 things worked from that charging phase, whether a
9 case proceeded from a grand jury indictment or
10 from complaint and preliminary hearing.

11 Next, the defense counsel, I want to
12 quickly hit the highlights there. We talked about
13 strategies at the pretrial phase, the frequency
14 with which they went through a grand jury or their
15 case proceeded through grand jury or preliminary
16 hearing and the rules applicable in their
17 jurisdictions.

18 I think some of the major takeaways
19 were that they didn't use preliminary hearing or
20 whether they had one as a bargaining chip in plea
21 negotiations, but they, generally, the defense
22 counsel felt that the value in preliminary

1 hearings was that both sides would get to see the
2 evidence in the case, and that in itself can
3 facilitate a prompt resolution whether by plea
4 bargain or by dismissal.

5 I'm going to go on to slide 10 with a
6 few more takeaways. And we talked about,
7 generally, where these cases resolve even after
8 the preliminary hearing stage.

9 And I think I'm going to be -- I'm
10 going to get a hook if they could have one and
11 pull me off of the stage because I'm going to be
12 told shortly that I need to wrap up. I apologize.

13 I'm being told remotely that we have to
14 make sure that you all have time to vote. In
15 order to do that we can brief you on the rest of
16 the interviews either later today or at another
17 date. You all have benefit of the slides.

18 But I want to turn it over to staff
19 leadership who have been polite enough to let me
20 talk and make sure that we do have time for the
21 vote on the report before we continue with the
22 update.

1 So Colonel Calese, I'll turn it over to
2 you.

3 COL CALESE: Thanks so much, Meghan.
4 And, first of all, I just want to say a huge
5 thanks to you and to Terri Saunders who we didn't
6 hear from today. I also, as part of my
7 onboarding, got to hear the Policy Subcommittee.

8 Chair Bashford, ma'am, I think you had
9 some thoughts on their highlights and their
10 spotlights in the pretrial process and some, if
11 you would like to share with the full committee
12 what we're looking at in terms of, or if you'd
13 like Meghan to or Terri to share what we're
14 looking at going forward with kind of a
15 comprehensive report on some of their processes.

16 CHAIR BASHFORD: I'll defer to Terri.

17 MS. SAUNDERS: Do you want me to go
18 ahead and complete the policy update?

19 CHAIR BASHFORD: Yes, please.

20 MS. SAUNDERS: Okay.

21 COL CALESE: Terri, I think if you
22 could let them know what your plan is for February

1 and going forward. Unfortunately, we do have to
2 try to get our vote in before we lose quorum.

3 MS. SAUNDERS: Absolutely. I'll just
4 cut to the chase. So going forward --

5 CHAIR BASHFORD: I'm most concerned --
6 Chair Bashford, again. I'm just most concerned
7 with when are we going to see the results of all
8 of this great work.

9 MS. SAUNDERS: Okay. Understood,
10 ma'am.

11 So the couple other things we have
12 coming up, December 3rd, we're going to have a
13 Policy Subcommittee meeting in which the members
14 are going to hear from Article 32 preliminary
15 hearing officers and staff judge advocates to talk
16 about the pretrial process.

17 We're also going to -- we're also
18 working with the Service reps to try to figure out
19 the best way to get the input from general court-
20 martial convening authorities on those processes.
21 And so we're working toward being able to produce
22 some findings and recommendations on the whole

1 gamut of pretrial processes from preferral to
2 referral in August of 2021.

3 CHAIR BASHFORD: That's great.

4 MS. SAUNDERS: Okay. One additional
5 thing I'll say is that the Policy Subcommittee did
6 meet in October, October 16th, actually, to
7 deliberate on some of these things, primarily on
8 Article 32.

9 And although we don't really have time
10 to -- we did make a preliminary assessment and I
11 think that's probably important to let you know,
12 which is that a determinate -- the preliminary
13 assessment of the subcommittee is that a
14 determination of no probable cause by a
15 preliminary hearing officer should be binding on
16 the staff judge advocate and the convening
17 authority.

18 And by binding, that means that that
19 should be without prejudice so that the government
20 still has the ability to seek another hearing if
21 they have new evidence. And this assessment also
22 presumes that a military judge or magistrate who

1 is serving as the -- should serve as the military,
2 the preliminary hearing officer, or under
3 exceptional circumstances another judge advocate
4 with extensive military justice experience.

5 They also made some additional, or they
6 also were reviewing some additional issues but we
7 can brief that at a later date.

8 CHAIR BASHFORD: Thank you.

9 COL CALESE: Thank you, Terri. So
10 that's the big teaser for the February meeting for
11 some of the policy issues.

12 But for now, I think we need to turn
13 this back over to Eleanor Vuono and the race team
14 so that we can vote on the content of the report.
15 Is that correct, Chair Bashford?

16 CHAIR BASHFORD: Yes.

17 MS. VUONO: Great, thank you. So we
18 have made all of the -- we've heard all the edits
19 and changes to the body of the report which we
20 will type up and -- but they'll be exactly as we
21 discussed today in the conversation with the
22 committee.

1 Chair Bashford, I assume you want to
2 vote on that first and then we can turn to the
3 findings and the recommendations for the vote on
4 those separately, or do you want to do this, do
5 the findings and recommendations first and then
6 vote on the whole report?

7 COL CALESE: Eleanor, my recommendation
8 is you go through the findings and recommendations
9 because that will help us get the rest of the
10 content and we'll do our normal procedure on
11 extending that out and as long as it's captured
12 everything --

13 MS. VUONO: Yep.

14 COL CALESE: -- we're good without
15 another meeting. If not, we'll open up another
16 meeting.

17 MS. VUONO: Great. Okay, so --

18 COL CALESE: Is that okay with you,
19 ma'am?

20 MS. VUONO: -- we'll vote on the
21 findings and recommendations as we discussed them
22 today.

1 And I assume, Julie, did you send the
2 updated draft to the members or should I just walk
3 them through what's on their computer screens?

4 MS. CARSON: I did, Eleanor, send it to
5 them, but I think you should walk through each
6 one.

7 MS. VUONO: Okay. Okay, so as you'll
8 see, the findings have not changed as -- that we
9 discussed this morning when we got on at 11:00
10 based on the conversation that we had to reorder
11 findings 1 and 2, flip those.

12 And then the addition, the one that we
13 have added as finding number 5 and that reads, "In
14 the context of sexual assault cases, it is
15 important to collect the race and ethnicity of the
16 victim, in addition to the accused, for every case
17 opened by military law enforcement in which a
18 Service member is identified as a subject through
19 the final disposition within the military justice
20 system."

21 I noticed between sending the draft out
22 to you and what I just read to you, I had a sort

1 of duplicative phrase called "until completion,"
2 so I pulled that out.

3 So the phrase again just reads, "In the
4 context of sexual assault cases, it is important
5 to collect the race and ethnicity of the victim,
6 in addition to the accused, for every case opened
7 by military law enforcement in which a Service
8 member is identified as a subject through the
9 final disposition within the military justice
10 system."

11 CHAIR BASHFORD: Right. I'm back.
12 Martha Bashford. My call failed a moment ago.

13 I think that we've had a lot of
14 discussion of these. I'm going to vote whether we
15 adopt findings 1 through 5, and I think, is there
16 a motion to approve findings 1 through 5?

17 HON. GRIMM: Grimm. So moved.

18 CHAIR BASHFORD: Okay. Is there a
19 second?

20 MS. TOKASH: Tokash, second.

21 CHAIR BASHFORD: Okay. I think since
22 we've had a lot of discussion I'm simply going to

1 ask if there's anybody opposed to adopting
2 findings 1 through 5 for purposes of this report.

3 Hearing no opposition, then the
4 findings are approved.

5 MS. VUONO: Thank you. Now we'll go
6 through each recommendation.

7 Recommendation 1 is unchanged from your
8 conversation. Recommendation 2 has been rewritten
9 to clarify the need for the Department to record
10 race and ethnicity using the same categories and
11 then a second sentence directing them to report
12 the race using the same categories explained or
13 described explicitly.

14 So again, the Secretary of Defense
15 directs each military department to record race
16 and ethnicity in military criminal investigative
17 organization databases, military justice databases
18 and military personnel databases using the same
19 racial and ethnic categories. So they've just got
20 to use the same categories.

21 Then the second sentence reads, "The
22 Secretary of Defense directs each military

1 department to report race using the following
2 categories," and they're all listed -- American
3 Indian/Alaska Native, Asian, Black or African
4 American, Native Hawaiian or other Pacific
5 Islander, Two or More Other and White, and then to
6 report ethnicity using the following two
7 categories, Hispanic or Latino and Not Hispanic or
8 Latino.

9 That's a typo. That should be Hispanic
10 or Latino. So that is the change for
11 Recommendation 2.

12 Recommendation 3 -- oh, yeah. Any
13 questions?

14 CHAIR BASHFORD: No. Go ahead.

15 MS. VUONO: Okay. Recommendation 3 is
16 -- oh, no. That's changed as follows. Congress
17 authorize and appropriate funds for the Secretary
18 of Defense to establish a pilot program operating
19 one uniform, document-based data collection system
20 across all Services for data collection on contact
21 and penetrative sexual offenses.

22 This is the pilot project, pilot

1 program, so that recommendation has been updated
2 with that changed first sentence.

3 The next recommendation has not
4 included religion, but it has been changed to
5 read, "The Secretary of Defense direct the
6 military departments to record and track race,
7 ethnicity, sex, gender, age and grade of the
8 victim and the victims and the accused for every
9 case opened by military law enforcement in which
10 a Service member is identified as a subject until
11 completion through the final disposition within
12 the military justice system."

13 CHAIR BASHFORD: Martha Bashford.

14 MS. VUONO: Yes.

15 CHAIR BASHFORD: Was the intent of this
16 to do it for every single criminal case across the
17 departments or just for sexual assault cases?

18 MS. VUONO: This one was to do it in
19 every. This was not limited to sexual offense,
20 again because it was identifying the gap by not
21 requiring the victim to be included at every
22 stage. So this was a broad one and it has been

1 written as a broad one.

2 CHAIR BASHFORD: Got it.

3 Recommendation 5 has now been broken
4 into two recommendations, the first one being
5 Recommendation 5 and the new one is now
6 Recommendation 6. The first -- the Recommendation
7 5 was rewritten to be a case by case approach for
8 DAC-IPAD-specific sexual offenses.

9 And it now reads that "The Secretary of
10 Defense directs the military departments to record
11 the race and ethnicity of military criminal
12 investigators, military police, trial counsel,
13 defense counsel, victims' counsel, staff judge
14 advocates, special and general convening
15 authorities, military court-martial panels,
16 military magistrates and military trial and
17 appellate court judges."

18 Broken into two sentences for clarity,
19 the next sentence reads, "Beginning in fiscal year
20 2022, this information should be recorded for
21 every case opened by military law enforcement in
22 which a Service member is identified as a subject

1 through the final disposition within the military
2 justice system.

3 "The source information for this data
4 should be collected from the military personnel
5 databases and maintained as general data for
6 future studies by the DAC-IPAD on racial and
7 ethnic disparities in cases involving contact and
8 penetrative sexual offenses."

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

10 MS. VUONO: Sir.

11 MR. KRAMER: I'm not sure I understand
12 the second sentence beginning in fiscal 1992
13 should be recorded for every case. I thought this
14 was just a general direction to maintain that to
15 publish that or whatever information once a year.
16 I'm not --

17 MS. VUONO: Yes. Yes. That's --

18 MR. KRAMER: How would it be recorded
19 in every case? I don't understand that.

20 MS. VUONO: So there was a -- I heard
21 a decision to break Recommendation 5 into two new
22 recommendations, so one, the new Recommendation 5

1 is the case by case assessment so that the DAC-
2 IPAD can study the racial and ethnic disparities
3 of these various players for each sexual offense
4 case.

5 And then your high-level annual review
6 of the race and ethnicity of these various
7 categories is the next recommendation.

8 CHAIR BASHFORD: Martha Bashford.

9 MS. VUONO: Yeah.

10 CHAIR BASHFORD: I think this got
11 jumbled. I thought we were having the Secretary
12 of Defense refer to MJRP, the global -- whether
13 they should adopt the global trial ones.

14 MS. VUONO: Yes.

15 CHAIR BASHFORD: We were to look only
16 at the sexual assault cases and stay within our
17 lane. So --

18 MS. VUONO: Yes. And the new MJRP one
19 is the next one. I haven't gotten to it yet, so
20 maybe I could reverse the order to make it
21 clearer. And maybe it's hard to see because you
22 don't have this in front of you.

1 CHAIR BASHFORD: I have it in front of
2 me. Then you emailed it, right?

3 MS. VUONO: Yeah, it's the one with an
4 email. So Recommendation 6 is the MJRP
5 recommendation that they should study on an annual
6 basis or do a periodic review of the race and
7 ethnicity of these various players. So that's the
8 MJRP.

9 CHAIR BASHFORD: I thought we -- asking
10 the Secretary of Defense to refer two different
11 things to MJRP as to whether they wanted to look
12 at every trial and if they wanted to do sort of
13 the snapshot of all of this, and that the
14 recommendation was that we were only going to do
15 that the trials, the cases for sexual assault
16 cases.

17 MR. KRAMER: This is --

18 MS. VUONO: Sir.

19 MR. KRAMER: Yeah, I thought
20 Recommendation 5 was for the general information
21 not having to do anything with specific cases --
22 that's why I didn't understand the second sentence

1 -- and refer right to them the other panel.
2 Whereas, Recommendation 6 was as it says, to
3 record in sexual assault cases.

4 Chairman Bashford is right about that,
5 about both parts. I think she's right about both
6 parts, but I still don't understand the second
7 sentence in Recommendation 5, beginning in fiscal
8 year '22 should be recorded for every case.

9 If it's out there as a general notion,
10 I don't, I guess I don't understand. Sorry.

11 MS. VUONO: Yeah. Maybe that we need
12 to rewrite these in maybe two -- we may not be
13 able to get them in the next few minutes to
14 clarity. I think what we were trying to do is
15 break it into -- for Recommendation 5, this is the
16 DAC-IPAD specific recommendation which says we
17 want to study the race and ethnicity of all these
18 various individuals. And you --

19 CHAIR BASHFORD: But it's not -- Martha
20 Bashford. But it's not limited to sexual assault
21 cases. It's global.

22 MS. VUONO: Well, and so we could --

1 yes, and it was to collect the information and
2 then the DAC-IPAD would study it in the context of
3 the sexual assault cases.

4 But if you want to limit it even
5 further, then it could be limited that they only
6 record it in sexual assault cases. Not record it
7 in all of them, except Recommendation 6 says
8 recorded it in all of them. So if they're going
9 to have to --

10 CHAIR BASHFORD: I thought we were
11 referring two things to the MJRP. One was
12 Secretary of Defense refer to them whether they
13 wanted to do this globally for all cases and
14 whether they wanted to do the snapshots, but that
15 we were going to look at -- we are going to have
16 the Secretary of Defense direct the military
17 departments to do all of this for the list of
18 players for sexual assault cases so that we could
19 look at that.

20 MS. VUONO: Okay, so I did not write it
21 up that way and that I misunderstood that. So
22 your Recommendation 6 is just telling the MJRP to

1 decide or to direct the MJRP to assess whether
2 they want to study these things.

3 Recommendation 5 is telling them record
4 this information only for sexual offense cases and
5 the DAC-IPAD will review these players.

6 CHAIR BASHFORD: Yes. There was
7 another one where they want to do these global for
8 every case open, that that's something that the
9 MJRP should decide as well.

10 MS. VUONO: Okay.

11 CHAIR BASHFORD: That's my recollection
12 of it. So what I suggest is we table --

13 MS. VUONO: Yeah.

14 CHAIR BASHFORD: -- 5 and 6 for right
15 now and move on to the others and see if we can
16 vote on the ones we're clear on.

17 MS. VUONO: Yes, okay. That works.

18 So the new Recommendation 7 is just
19 directing the MJRP -- it's saying that once the
20 Department of Defense implements the new systems
21 recommended -- the new data collection recommended
22 in this report and the new requirements of Article

1 140A, then the MJRP should assess racial and
2 ethnic disparities in all aspect of the military
3 justice system.

4 So telling the MJRP to look at race and
5 ethnicity once the new data systems are in place,
6 that one I don't think changed.

7 Then, finally, what was the last
8 recommendation is now Recommendation 8 and that
9 has been edited to direct the MJRP to assess
10 whether a uniform training system on explicit and
11 implicit bias should be developed for all military
12 personnel who perform duties in the military
13 justice system using that same list.

14 That was Recommendation 9, now it's
15 Recommendation 8. And the other two
16 recommendations for the DAC-IPAD to undertake
17 studies on racial and ethnic disparities will be
18 rewritten into the body of the report and EXSUM
19 and the full body.

20 So all we have now are eight
21 recommendations with the need to rewrite 5 and 6
22 to narrow 5 so that it's only recording the

1 information for the DAC-IPAD cases, the sexual
2 offense cases. And then --

3 CHAIR BASHFORD: I think 5 and 6 are --
4 have to be broken down into three recommendations.
5 One is all the players in the sexual assault cases
6 for the DAC-IPAD and that's a directive from the
7 Secretary of Defense.

8 Second is, all the players in all
9 criminal cases that they refer that sex offense,
10 refers that to MJRP if that's what they want to do
11 and then the recommendation for MJRP to do the
12 snapshots, annual snapshots, if that's what they
13 want to do.

14 MS. VUONO: Okay.

15 CHAIR BASHFORD: That's how I recall
16 the discussion.

17 MS. VUONO: Okay, so the three are all
18 the Services record the data on all the players
19 for sexual offense cases for the DAC-IPAD to
20 review.

21 CHAIR BASHFORD: Yes.

22 MS. VUONO: Number two is Services

1 record all the players' data and the MJRP reviews
2 that information as it sees fit.

3 CHAIR BASHFORD: The MJRP decides if
4 they want the military departments to record all
5 of that data for every criminal case.

6 MS. VUONO: Okay, so that's really
7 asking whether the MJRP wants to record it. Not
8 directing the reporting --

9 CHAIR BASHFORD: Yes.

10 MS. VUONO: -- to be used by the MJRP.

11 CHAIR BASHFORD: Yes.

12 MS. VUONO: Okay.

13 BGEN SCHWENK: Jim Schwenk.

14 CHAIR BASHFORD: We're staying inside
15 of our lane then.

16 MS. VUONO: Sir.

17 BGEN SCHWENK: Yeah, use the same
18 language you have in 7 and 8 for this 5A, if you
19 want to call it that. The SECDEF directs the MJRP
20 to assess, review and assess, whatever you want to
21 --

22 MS. VUONO: Yeah.

1 BGEN SCHWENK: That's what that one is.

2 MS. VUONO: Okay.

3 CHAIR BASHFORD: And then the final one
4 is direct the MJRP to review and assess the
5 snapshots, annual snapshots of the combination of
6 all players.

7 MS. VUONO: Okay. So case by case and
8 then snapshot are the two MJRP ones.

9 CHAIR BASHFORD: Right, because those
10 are global.

11 MS. VUONO: Right.

12 Okay, we can write those up and we have
13 a transcript to ensure that we write those as we
14 just discussed them. But 5 and 6 will become 5,
15 6 and 7, and 5 will be a narrower direction to
16 collect this information for the DAC-IPAD purposes
17 for DAC-IPAD cases and then 6 and 7 will become
18 SECDEF directing the MJRP to review and assess
19 either case by case or the full snapshot, whether
20 MJRP wants to do that.

21 CHAIR BASHFORD: Yes.

22 MS. VUONO: Okay, we can rewrite those

1 with your approval and send it out when we send
2 the final draft that also incorporates all of the
3 edits you've made today. And if we get it wrong,
4 we'll get it right. But we're confident we'll get
5 it right because we've got the transcript and we
6 can type it up exactly as we've just discussed.

7 CHAIR BASHFORD: Yes.

8 Then, Eleanor -- go ahead.

9 COL CALESE: Go ahead, ma'am. I wanted
10 to ensure that we had the vote on the remaining --

11 CHAIR BASHFORD: Yes.

12 COL CALESE: -- recommendations and
13 then any commentary from the comment of the
14 report, please.

15 CHAIR BASHFORD: So subject to those
16 changes, and we'll have a chance to review them
17 but assuming they are tracked exactly what we
18 said, is there a motion to adopt Recommendations
19 1 -- now it'll be 1 through what?

20 MS. VUONO: 9. There will be nine.

21 HON. GRIMM: So moved. So moved.

22 CHAIR BASHFORD: We're adding two so

1 there should be ten.

2 HON. GRIMM: So moved.

3 CHAIR BASHFORD: Right? Okay, moved.

4 Is there a second to adopt Recommendations 1
5 through 10?

6 DR. MARKOWITZ: This is Jen Markowitz.
7 I second.

8 CHAIR BASHFORD: Okay. Let me just
9 add, just as I did last time, if I don't hear
10 anything, I assume you're voting to approve them.
11 Is there anybody opposed either whole or in part?

12 Hearing no opposition then,
13 Recommendations 1 through 10 for this report on
14 the race and ethnicity are approved and we'll be
15 seeing the final version within a day or two.

16 Lieutenant Calese, I turn it over to
17 you. Colonel Calese, rather.

18 COL CALESE: All right. That's okay.
19 I think I'd much rather be a lieutenant.

20 All right, so, first of all, thanks to
21 everyone, particularly our Policy Subcommittee
22 team who really did a gracious part to present

1 some very important things to you. I believe that
2 there is actually a potential for a public comment
3 from that; am I correct, Dale?

4 MS. CARSON: I think that will be --

5 MR. TREXLER: Sorry.

6 MS. CARSON: This is Julie Carson. I
7 think that will be in February. Is that right,
8 Dale?

9 MR. TREXLER: Yes. We sent her an
10 email and let her know that today's probably not
11 the best time and we're going to align her with
12 the rest of the victim impact statement briefing
13 and so forth.

14 COL CALESE: Sure. Just to bring
15 everybody up to date on this, we did have -- we
16 received a public comment who is a representative
17 with the Survivors United who was listening in to
18 the victim impact statement, and we'll make sure
19 that we invite an opportunity for them as we
20 develop that with the subcommittee at the
21 direction of the chair.

22 But I did want to acknowledge that we

1 did receive a public comment today.

2 All right. With that, I think the next
3 couple of things before we adjourn, I did want to
4 acknowledge publicly our three-year birthday for
5 the Trial Defense Service. I do want to let
6 everyone know that we're working on some bylaws
7 and we're working through our DOD General Counsel
8 colleagues to set those up and to ensure that
9 they're legally compliant with all of the things
10 involved with the Federal Advisory Committee Act.

11 I wanted to give you several dates to
12 be looking at for future meetings and we'll firm
13 this up. One is a little bit of a shift from our
14 normal third week similar to this, and that is
15 we're looking at the 5th of February 2021 as our
16 next meeting with a heavy focus on policy and the
17 works there.

18 21 May would be our spring meeting and
19 20 August is what we are looking at for our next
20 meeting.

21 CHAIR BASHFORD: Can you send those out
22 via email?

1 COL CALESE: Yes, ma'am. We surely
2 will.

3 All right. And then, finally, ma'am,
4 before turning it back over to you, I just wanted
5 to say a big thank you to everybody out there. A
6 Veterans weekend is coming up and I wanted to say
7 thank you to all of my colleagues who I've had the
8 distinct privilege of serving with and serving for
9 and to all of you on this committee who do such
10 important work to help everyone who's a veteran,
11 particularly in one of the most challenging topics
12 that we see to Service members, so I am personally
13 very thankful for all of your commitment to all of
14 this.

15 So with that, ma'am, I'll turn it over
16 back to you or I'll turn it over to Mr. Sullivan.

17 CHAIR BASHFORD: Well, thank you. I
18 want to again thank the staff and the Service
19 members -- the Services for giving us the
20 information in the best form that they could and
21 the staff for taking that and digesting it,
22 writing the report, Chuck for doing all of the

1 data crunching. I appreciate it all.

2 I want to let you all know that
3 Veterans Day is, in fact, my birthday, and beyond
4 that this would normally be the time I think I
5 would be heading to the airport and having a glass
6 of something at the Delta Lounge. So I will not
7 be heading to the airport, but I will be having a
8 glass of something soon.

9 It's been a long meeting. Thanks,
10 everybody.

11 And, Mr. Sullivan, can you take us
12 home?

13 MR. SULLIVAN: Happy birthday, Madam
14 Chair. And this marathon meeting of the DAC-IPAD
15 is closed.

16 (Whereupon, the above-entitled matter
17 went off the record at 3:55 p.m.)
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In the matter of: Public Meeting

Before: DAC IPAD

Date: 11-06-20

Place: teleconference

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Court Reporter

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