

UNITED STATES DEPARTMENT OF DEFENSE

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DEFENSE ADVISORY COMMITTEE ON INVESTIGATION,
PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT
IN THE ARMED FORCES

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PUBLIC MEETING

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FRIDAY
JULY 21, 2017

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The Panel met in Suite 1432, One
Liberty Center, 875 North Randolph Street,
Arlington, Virginia, at 8:30 a.m., Martha
Bashford, Chair, presiding.

PRESENT

Martha Bashford, Chair
MG(R) Marcia Anderson
Hon. Leo I. Brisbois
Ms. Kathleen Cannon
Hon. Paul W. Grimm
Dean Keith Harrison
Mr. A.J. Kramer
Ms. Jennifer Gentile Long
SGT(R) James Markey
Dr. Jenifer Markowitz
CMSAF(R) Rodney J. McKinley
Dr. Cassia Spohn
BGen(R) James Schwenk
Ms. Meghan Tokash*

Hon. Reggie Walton

WITNESSES

Captain Joseph Ahlers, U.S. Air Force - Service Representative

Mr. Michael J. Defamio - Division Chief for Family and Sexual Violence, U.S. Naval Criminal Investigative Service

Lieutenant Alexandra Nica, U.S. Navy - Service Representative

Mr. Paul Garst - Senior Advisor, Department of the Navy Sexual Assault Prevention and Response Office

Mr. Kevin Poorman - Associate Director, Criminal Investigations, U.S. Air Force Office of Special Investigations

Mr. Christopher Redmond - Department of Defense, Office of the Inspector General

Lieutenant Colonel Mary Catherine Vergona, U.S. Army - Chief, Policy Branch, Army Criminal Law Division

Ms. Beverly A. Vogel - Senior Special Agent, U.S. Coast Guard Criminal Investigative Services

Ms. T.L. Williams - Deputy Chief, Policy Branch, U.S. Army Criminal Investigation Command

STAFF

Ms. Julie K. Carson - Legislative Analyst/Attorney

Ms. Meghan Peters - Attorney Advisor

Ms. Stayce Rozell - Senior Paralegal

Ms. Terri Saunders - Attorney Advisor

Captain Tammy P. Tideswell, U.S. Navy - Staff Director

Dale L. Trexler - Chief of Staff

DESIGNATED FEDERAL OFFICIAL

Mr. Dwight Sullivan - Designated Federal Official (DFO)

* Present via telephone

C-O-N-T-E-N-T-S

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

2 8:35 a.m.

3 MR. SULLIVAN: Good morning. The
4 third public meeting of the Defense Advisory
5 Committee on Investigation, Prosecution, and
6 Defense of Sexual Assault in the Armed Forces is
7 now open.

8 I am Dwight Sullivan. I am the
9 designated federal officer for the Committee.
10 Ms. Bashford, the last time I began with a Naval
11 phrase, you have the con.

12 Well, today I am going to begin with
13 a decidedly legal phrase. The gavel is yours.

14 CHAIR BASHFORD: Thank you.

15 Thank you, Mr. Sullivan. Good
16 morning. I'd like to welcome the members,
17 participants, and everyone in attendance today to
18 the third meeting of the Defense Advisory
19 Committee on the Investigation, Prosecution, and
20 Defense of Sexual Assault in the Armed forces, or
21 DAC-IPAD.

22 The Secretary of Defense appointed 16

1 members to the committee, 15 of whom are
2 participating here today. Committee Member
3 Meghan Tokash is participating by phone.

4 The DAC-IPAD was created by provisions
5 in the National Defense Authorization Acts for
6 fiscal years 2015 and 2016. Our mandate is to
7 advise the Secretary of Defense on the
8 investigation, prosecution, and defense of
9 allegations of sexual assault and other sexual
10 misconduct involving Members of the Armed Forces.

11 Please note that today's meeting is
12 being transcribed, and the complete written
13 transcript will be posted on the DAC-IPAD
14 website.

15 We will begin today's meeting with the
16 presentation on the mechanics of a military
17 sexual assault investigation by officials from
18 the criminal investigation organizations of the
19 Military Services, followed by a Committee
20 strategic planning session.

21 Each public meeting of the DAC-IPAD
22 will include time to receive input from the

1 public. The Committee received no request for
2 public comment at today's meeting.

3 Thank you for joining us today. We
4 are ready to begin the meeting. Our presenters
5 from the military criminal investigation
6 organizations are Mr. Kevin Poorman, Associate
7 Director of Criminal Investigations for the U.S.
8 Air Force Office of Special Investigations; Ms.
9 T. L. Williams, Chief of the Policy Branch of the
10 U.S. Army Criminal Investigation Command; Mr.
11 Michael Defamio, Division Chief of the Family and
12 Sexual Violence Division of the Naval Criminal
13 Investigation Service; and Ms. Beverly Vogel, Sex
14 Crimes Program Manager and Senior Special Agent
15 for the U.S. Coast Guard Investigative Service.

16 Thank you all for joining us today,
17 and we look forward to hearing from each of you.

18 MR. POORMAN: Well, good morning,
19 Madam Chair --

20 CHAIR BASHFORD: Good morning.

21 MR. POORMAN: -- and distinguished
22 members of the Committee. We represent the four

1 Military Criminal Investigative Organizations,
2 and we look forward to introducing to you, at our
3 first presentation, an overview of the military
4 criminal investigative agencies and how we --

5 MR. KRAMER: I am having trouble
6 hearing.

7 CHAIR BASHFORD: Yes, I don't know if
8 you're turned on or not.

9 MS. TREXLER: They should all be live.
10 It may be dependent on how close you are.

11 MR. POORMAN: Is that better?

12 MR. TREXLER: I'll check for you. Go
13 ahead. Just speak up a little.

14 MR. POORMAN: Okay. In your read-
15 ahead materials, you were provided with DoD
16 Instruction 5505.18, which deals with sexual
17 assault in the Military Services.

18 You were also provided with a summary
19 of other instructions that directly relate to how
20 we conduct investigations in the Department.

21 Additionally, the results of three DoD
22 IG assessments have been provided to you --

1 summaries of those assessments that have been
2 conducted of our organizations over the last few
3 years.

4 We have provided here an overview
5 already in terms of introductions. We had some
6 introductions that we had prepared, but Madam
7 Chair has already provided those, and so we have
8 been introduced.

9 We today hope to go over and provide
10 you with an overview of some of our organization,
11 our training, some data, and some trend
12 information that gives you an initial
13 introduction to who we are, what we do, and some
14 of the policies and process, and some of the
15 issues that we have in common between our
16 organizations and within our agencies.

17 We decided to try to present this in
18 an integrated way, going over organization first,
19 training, then going into some of the data and
20 information we have, because we do have four
21 different agencies presenting. And while we have
22 a lot of similarities, there are some structural

1 dissimilarities in how we organize our delivery
2 of services.

3 CHAIR BASHFORD: Mr. Poorman, I am
4 just going to ask you to try to keep your voice
5 up. You tend to trail off a little bit.

6 MR. POORMAN: So organization, that we
7 will go into, first starting with CID, Ms.
8 Williams. Please.

9 MS. WILLIAMS: Good morning.

10 Again, I am T.L. Williams with Army
11 CID, and CID is headquartered at Quantico and co-
12 located with OSI and NCIS. The Coast Guard
13 decided to stay closer to the water, so they
14 didn't come with us.

15 We are commanded by a major general
16 who reports directly to the Secretary and the
17 Chief of Staff of the Army to help reduce any
18 undue command influence.

19 The CID structure is listed on the
20 slide. It's only representative of our agents
21 that investigate sexual assault since that's what
22 we are talking about today.

1 There are the 3rd -- we have the 3rd
2 and the 6th groups that have responsibility
3 worldwide fulfilling investigation mission for
4 the Army.

5 3rd group is at Hunter Army Air Field.
6 6th group is at Joint Base Lewis-McChord. The
7 groups' area of responsibility is divided at the
8 Mississippi.

9 There are eight battalions that have
10 command and control over five to ten CID offices.
11 In 3rd group, there are five battalions, and in
12 6th group, there are three battalions.

13 CID is also the executive agency for
14 the U.S. Army Laboratory. So we also have that
15 responsibility, and they are commanded out of
16 Gillem Enclave, and they are responsible for --
17 they come under the Defense Forensic Science
18 Center, which is a branch of the Defense Forensic
19 Science Center -- the U.S. Army Criminal
20 Investigation Laboratory is a branch under that,
21 and they are the ones with responsibility for the
22 sexual assault investigations.

1 And from that we have -- they also are --
2 they have all the forensic examinations
3 concerning drugs, chemistry, trace evidence,
4 urology, DNA, CODIS, latent prints, forensic
5 documents, digital evidence, and tools and
6 firearms.

7 And we have a strength of
8 approximately 834, as it shows on the slide, and
9 we have 30 civilian sexual assault positions
10 throughout the command, too.

11 They focus mostly on sexual assaults
12 in their positions as civilians, but the other
13 agents are also trained in those areas, too.

14 And after that is NCIS, Mike Defamio.

15 MR. DEFAMIO: Thank you.

16 Good morning. Mike Defamio at the
17 NCIS.

18 I will quickly go through the
19 organization of the Naval Criminal Investigative
20 Service. First, am I coming through okay? Okay.

21 CHAIR BASHFORD: A little louder.

22 MR. DEFAMIO: A little louder? Okay.

1 All right. NCIS -- we report directly
2 to the Secretary of the Navy -- through the Under
3 Secretary of the Navy.

4 A difference between NCIS and the
5 other MCIOs is we are a 100 percent civilian
6 special agent force. There are no active duty
7 military in the NCIS chain of command, so our
8 civilian director is a special assistant to the
9 Secretary of the Navy.

10 Similar to the other MCIOs, NCIS may
11 initiate any investigation. That is within our
12 charter, which is basically felony-level
13 investigations -- of which sexual assaults are
14 all considered a felony-level investigation --
15 without the concurrence or request of the
16 command.

17 So we can initiate. Only the
18 Secretary of the Navy can shut them down.

19 Briefly about our structure, NCIS is
20 divided into two regions: the Atlantic region and
21 the Pacific region, roughly divided at the
22 Mississippi on the CONUS. But we also have four

1 overseas field offices, one in Yokosuka, Japan,
2 Singapore, Bahrain, and Naples, Italy.

3 So the rest of the CONUS are divided
4 pretty much around the Mississippi into east and
5 west.

6 That's a total of 14 field offices, so
7 10 in the States, four overseas. Our current
8 agent strength, we have 164 special agents that
9 are dedicated to our family and sexual violence,
10 or F&SV, investigations. That is out of a total
11 of 461 criminal investigating agents.

12 NCIS has a dual mission in addition to
13 investigating criminal allegations. We also have
14 another half that investigates
15 counterintelligence matters.

16 So 461 of those agents are what we
17 call general crimes investigators. 164 of them
18 are assigned specifically to F&SV cases.

19 We also have a U.S. Navy and a United
20 States Marine Corps active duty program in which
21 active duty Members of those forces are assigned
22 to NCIS offices, and they participate in

1 investigations also. So a lot of those in our
2 different field offices support F&SV
3 investigations.

4 With that, I'll turn it over to Ms.
5 Beverly Vogel from the Coast Guard Investigative
6 Service.

7 MS. VOGEL: Good morning. I am Bev
8 Vogel with Coast Guard Investigative Service or
9 CGIS. CGIS is organized as an independent and
10 centralized investigative agency reporting
11 directly to the Vice Commandant of the Coast
12 Guard.

13 It's led and managed by an OPM Series
14 1811 Senior Executive Service Director. All CGIS
15 personnel report through the CGIS chain of
16 command to the Director of CGIS.

17 Special agents are credentialed by the
18 Director of CGIS to exercise law enforcement
19 authorities derived under and contained in United
20 States Code Title 14 and Title 10.

21 There are 35 resident agent offices,
22 so CONUS and OCONUS, that report to their

1 respective region offices. There are eight CGIS
2 region offices that report to the Assistant
3 Directors of Operations. The Assistant Directors
4 of Operations report to the Deputy Director of
5 Operations and the director of CGIS respectively.

6 Regarding agent strength, CGIS has 381
7 special agent billets. 340 of those billets are
8 filled. That includes 102 civilian, 89 active
9 duty, and 149 Reserve CGIS special agents.

10 There are 35 special agents designated
11 as family and sexual violence investigators.
12 They are also CONUS and OCONUS including Alaska,
13 Puerto Rico, Hawaii, Guam and Bahrain.

14 And on that note, I'll turn it over to
15 Mr. Kevin Poorman.

16 MR. POORMAN: The OSI commander
17 reports directly to the Inspector General of the
18 Air Force and, in turn, the Secretary of the Air
19 Force, and we, like the other agencies, we have
20 statutory authority for the Commander of OSI to
21 initiate an investigation.

22 Only the Secretary of the Air Force

1 may delay, suspend, or terminate an OSI
2 investigation once it's been initiated by --
3 under authority of the Commander of OSI.

4 We have a broad mission spectrum as
5 does, I think, NCIS and CID in that we have
6 counterintelligence, cyber, special security. So
7 when we get to the agent strengths of 1,800 down
8 at the bottom, only about half of those are
9 funded along funding lines to specifically work
10 criminal -- traditional criminal investigations.

11 The other half are funded through
12 intelligence lines and have to do with -- they
13 are specifically designated to work in
14 counterintelligence and special security
15 operations.

16 Our headquarters, like NCIS and CID,
17 were all housed at the Russell-Knox Building on
18 Quantico since 2011, a BRAC decision, base
19 relocation decision, and as a result, we
20 collaborate quite often, and it's been very
21 helpful to kind of drive some synergy and
22 discussions in policy and training.

1 We have eight regions headed by O-6s,
2 colonels in the Air Force, five in the United
3 States, one in the Pacific, one in Europe. And
4 then we have one global operation center that
5 oversees all major operations that are occurring
6 throughout the Air Force, and it also has some
7 specialty support skills in it that we can use
8 throughout the United States and throughout the
9 world. Like we have two clinical psychologists
10 that are investigators that assist in any case
11 where there are issues where their expertise may
12 be helpful, which oftentimes, in sexual assault
13 cases, is something our agents draw on.

14 75 main offices that we have -- we
15 have over 200 locations where we have
16 investigators, some one-deep in task forces and
17 things around the world, but 75 where we have
18 significant Air Force populations that result in
19 sexual assault kinds of cases that our folks are
20 very busy working in.

21 1,800 agents authorized. Again, we
22 are a mixed force of officers, enlisted, and

1 civilian investigators. As you can see on the
2 slide there are 290 officers and enlisted there
3 are 1,053, which comprise most of our front line
4 investigators, our enlisted investigators, and
5 special agents. Civilians number 475 throughout
6 the command.

7 24 of our investigators are
8 specifically designated full-time and fully
9 trained to oversee and assist in sexual assault
10 investigations. We also have 23 security force
11 investigators that have been detailed to OSI to
12 help us work some of the sexual assault contact,
13 the nonpenetration investigations, that our
14 office has worked. We still supervise those
15 investigations. They just work under our
16 direction.

17 So with that, we would like to turn to
18 an overview of training, with our basic and our
19 advanced training, and staying in line with the
20 process we have established, Ms. Williams.

21 MS. WILLIAMS: All CID agents,
22 military and civilian, attend a 15-week training

1 course on felony-level investigations on violent
2 crimes.

3 Our training is several weeks less
4 than what you'll see on the other slides because
5 we don't have the counterintelligence mission.
6 So it looks like we have less weeks trained. But
7 ours are all on felony-level investigation.

8 All CID agents receive 15 hours of
9 classroom sexual assault investigation, which
10 includes practical exercises, scenario-based
11 exercises, and in-classroom interviews and
12 interrogation-type processes, and they are also
13 taught by the same instructors that our advanced
14 training is taught by.

15 CID has a two-tier approach to our
16 investigations -- or training. We have
17 established a basic sexual assault investigator
18 and a senior level sexual assault investigator.

19 So the basic-level sexual assault
20 investigator will be a person who has been a
21 fully accredited special agent and has attended
22 the sexual assault -- advanced sexual assault

1 training, which is the 80-hour training at the
2 U.S. Army Military Police school.

3 Then we have the senior-level sexual
4 assault training who receives the advanced sexual
5 assault training, domestic violence training,
6 child abuse training, and then they also receive
7 -- we send them to training at the Violence
8 Against Women International, Conference on Crimes
9 Against Children, and Conference on Crimes
10 Against Women.

11 From that, all of them receive what is
12 an additional skill identifier so we will be able
13 to track them throughout their career. So it
14 makes it -- and we can keep track of how many we
15 have at each level and where we have them. And
16 that's given to us on a monthly basis on how the
17 turnover is so we can keep up on that.

18 We are also trying to work on a pilot
19 program, and it's in August at the last -- the
20 last week in August, we are having the civilian
21 sexual assault investigators that I said on the
22 other slide, that we are having the CONUS ones

1 come into -- come into our Headquarters, and they
2 are going to be trained along with the sexual
3 assault prosecutors.

4 And so they can collaborate together,
5 and they can talk about best practices, lessons
6 learned, and understand one another's roles
7 better.

8 So we are bringing them in together to
9 do that training. We are hoping from that we can
10 develop that into a yearly basis.

11 Of course, our agents will be the
12 civilian agents who've been on site longer, but
13 they will have new sexual assault prosecutors
14 come in to them all the time. So it'll be a
15 constant rotation, so we will need to do the
16 training often. So we are hoping that works out
17 well.

18 And to that, it will be Mike Defamio.

19 MR. DEFAMIO: Okay. Overview on the
20 NCIS training. All of our agents upon coming
21 aboard with NCIS attend the Criminal Investigator
22 Training Program. That's at the Federal Law

1 Enforcement Training Center in Glynco, Georgia.

2 It's the same course that's attended
3 by most other federal investigative agencies
4 minus the FBI and DEA.

5 At that course, they learn the basics
6 of criminal investigation. After that, it's
7 immediately followed by a 12-week NCIS special
8 agent basic training program.

9 It's during this course that our
10 agents are first introduced to basic sexual
11 assault investigations, as that'll be one of the
12 scenarios that they handle during those courses.

13 After that, they are required to
14 complete a 15-week field training program. After
15 that, they will be certified as a full special
16 agent able to take cases on their own.

17 We offer several organic advanced
18 training courses that were developed specifically
19 for investigating family and sexual violence type
20 offenses. The first one is our advanced adult
21 sexual assault training program. We run
22 approximately nine to ten of those a year.

1 The goal is to get our entire agent
2 corps through that course by the end of fiscal
3 year '19 so that all of our agents, including the
4 ones who are primarily assigned to
5 counterintelligence matters, will be able to
6 respond to and effectively handle a duty call for
7 a sexual assault offense.

8 Right now, we have approximately 650
9 of our 1,028 agents who have been trained in the
10 course. So we are well on track to complete that
11 goal.

12 We also have the advanced family and
13 sexual violence training program. That one
14 expands upon the advanced adult program in that
15 it also incorporates crimes against children and
16 other domestic nonsexual type offenses that occur
17 within the family, and that is a requirement for
18 all. There are 164 agents who are in those F&SV-
19 specific billets.

20 Recently, in the last couple years, we
21 started to have all our agents go through an
22 advanced interrogation training, and we run that

1 usually in the summer of every year. And then we
2 also sponsor agents to attend the professional
3 conferences similar to what the Army CID is also
4 attending.

5 MS. VOGEL: Thank you.

6 Similar to the other Services, CGIS
7 agents attend basic agent training at FLETC
8 Glynco for 12 weeks, a total of 464 hours and an
9 additional 22 after hours training, 82 hours of
10 law, 34 hours of interviewing.

11 The training also includes a
12 continuing case that extends the length of the
13 training and includes a sexual assault scenario
14 as well.

15 As far as advanced training, that
16 includes but is not limited to advanced crime
17 scene, also at FLETC. Advanced interviewing at
18 FLETC. Advanced family and sexual violence
19 training, that's the NCIS course. Child abuse
20 training, which is Army. As well as, since July
21 2012, CGIS agents began attending the Special
22 Victims Capabilities course. At the time, it was

1 called Special Victims Unit Investigations
2 Course.

3 Currently, we have had 222 CGIS agents
4 and 70 Coast Guard attorneys go through the
5 Special Victims Capabilities course.

6 With regard to annual refresher and
7 professional development training, the family and
8 sexual violence agents also attend the End
9 Violence Against Women, Conference on Crimes
10 Against Women, and Conference on Crimes Against
11 Children.

12 We also have -- we created the
13 embedded agent program where all CGIS agents have
14 the opportunity to shadow sex crimes or family
15 violence investigators with five different police
16 departments that participate with us right now.

17 It's Austin, Boston, Philadelphia,
18 Phoenix, and Los Angeles Police Department. And
19 that's generally a two-week period that the
20 agents shadow those sex crimes investigators.

21 And on that note, I'll turn it over to
22 Kevin Poorman.

1 MR. POORMAN: So we also, OSI, go to
2 the Federal Law Enforcement Training Center, and
3 in addition we have -- after 11 to 12 weeks of
4 the FLETC training, we have a basic follow-on
5 course for OSI agents of about six to seven
6 weeks.

7 You might ask why do you need a
8 follow-on course, and it's because not everything
9 that's required to be a new agent in the military
10 is provided at CITP.

11 The CITP course was designed by the
12 partner agencies that participate in FLETC, and
13 many of those agencies don't even investigate
14 violent crimes.

15 Some are IG 1811s, that's a job series
16 for criminal investigators within the Department,
17 and actually it's kind of unique for the Military
18 in that we run cases. By and large, violent
19 crime in America is handled by state and local
20 police agencies for the most part.

21 But we have violent crime cases in our
22 communities, and we have to train to that -- to

1 that standard and to those requirements.

2 In addition, we have to introduce the
3 Uniform Code of Military Justice in the CITP
4 course. It's federal law. It's Title 18,
5 largely, discussions that go on with those
6 investigators.

7 So we have additional information
8 specific to our investigators that has to be
9 covered in the basic training.

10 Advanced sexual training. Like the
11 other Services, we have an advanced course in
12 sexual assaults, started it up in 2012, trained
13 almost 600 investigators.

14 589 investigators have flowed through
15 that training. And that's a very -- it's a good
16 course in that our investigators get a lot of
17 additional insights into memory with trauma, how
18 that works, counterintuitive behaviors that
19 victims may have under sexual assault.

20 We have a specific block on cognitive
21 biases for investigators, which some of these
22 biases can get in the way of how investigators

1 think about cases, and we have to walk through
2 that with them and help them understand how that
3 could negatively, in most instances, affect a
4 case.

5 We have cognitive interviewing, a
6 different interviewing style that's more open-
7 ended, designed to elicit -- and research shows
8 does elicit -- more information and more accurate
9 information.

10 And so we have introduced that. We
11 work through actual training scenarios with
12 investigators where they get to practice and are
13 scored on their ability to use that.

14 Advanced crimes course is mostly for
15 supervisory level, supervising cases. It's one
16 thing to be able to run a case. It's another to
17 be able to organize and supervise a complex
18 investigation. And we have a course for that.

19 And like the other Services' crime
20 scene training and professional development, it
21 includes crimes against women, attendance in
22 those courses and that training, those

1 conferences to round them out on an annual basis.

2 Turning from training then to some
3 case data, that is, we are organized and we are
4 trained. What kind of case numbers and trends do
5 we see? We will work through each of the MCIOs
6 to discuss that, starting with CID.

7 MS. WILLIAMS: CID has, as you can see
8 from the slide, CID had over 11,000 felony crimes
9 for FY '16 and over 2,500 sexual assault
10 investigations for 2016.

11 Right now, our average length for an
12 investigation is 154 days, and the mean is 120
13 days. It may seem like that's a long period of
14 time, but with the transient nature of Soldiers,
15 deploying, redeploying, moving from different
16 stations, leaving the Military, we have to send
17 leads out to several different areas around the
18 world to get the victim's witnesses and subjects,
19 in most cases, interviewed.

20 So we have to send that out, and it
21 does take some time from those cases. And it
22 usually is the cases that the reporting happened

1 later, maybe after the person left Basic Training
2 and went into another unit is when they reported
3 the case. So then we have to go back and do a
4 lot of work on those.

5 So it may seem like a long period of
6 time, but from the times when I first was an
7 agent, this is way better than what it was.

8 BG SCHWENK: Is that for all
9 investigations or just sexual assault?

10 MS. WILLIAMS: This is sexual assault
11 data, only sexual assault data right now, sir.

12 BG SCHWENK: Thank you.

13 MS. WILLIAMS: Yes, sir.

14 And with the laboratory, as you can
15 see from the slide, we have -- the days have gone
16 up in FY16. FY16 was a combination of events
17 that happened at the lab. They ended up having
18 their five-year reaccreditation that happened
19 during that time.

20 They changed over their systems for
21 processing and tracking evidence throughout the
22 lab. They had several individuals on extended

1 leaves so there was a lot of personnel -- a
2 shortage during that time.

3 But as of yesterday, they are at 62
4 days and for FY17, they are at 74 days. So they
5 are going down with it, and they think they
6 should be under 60 days here by the -- in the
7 next few quarters.

8 And Mike Defamio.

9 MR. DEFAMIO: Thank you.

10 All right. I'll review the NCIS stats
11 for fiscal year '16. Overall as an agency, we
12 initiated just over 6,000 total criminal
13 investigations at the felony level, not including
14 our CI investigations.

15 Roughly 1,940 of those were sexual
16 assaults investigations. Now, of course, NCIS is
17 responsible for both the U.S. Navy and the U.S.
18 Marine Corps, so I've divided the chart into
19 those two separate Services. They are roughly
20 around the same rate. Marine Corps maybe a
21 little bit higher in overall population rate of
22 sexual assaults reported.

1 But since the active duty Navy is just
2 a little under twice the size of the Marine
3 Corps, they are pretty close.

4 Also, the percentages that I am going
5 to go through are roughly the same for the Navy
6 and Marine Corps. Navy had 893 total cases and
7 ran about 129 days on average for completion of
8 that investigation to where we turn it over to
9 the prosecuting attorney, and the Marine Corps
10 ran about 453 cases and just a few days higher:
11 132 days for the average investigation.

12 As you can see from the chart, there
13 are also -- over half of our cases are reported
14 one month or more after the incident, and just
15 over, roughly, 78 percent on each Service are one
16 year or more after the incident.

17 That, of course, contributes
18 significantly to our turnaround time of
19 completing an investigation, as Ms. Williams was
20 saying.

21 When that much time has gone by, most
22 of our active duty personnel have moved. They've

1 PCS'd. They've left the Navy, and then we have
2 to track them down, send leads around the world
3 to try to wrap up. So that does contribute a lot
4 to our turnaround time.

5 Most of our cases occurred off base.
6 Again, that affects jurisdiction. We still, if
7 it's an active duty subject, we still have
8 jurisdiction over the subject. But when it
9 occurs off base, we have to coordinate with the
10 local authorities, whether it's foreign or
11 domestic, to arrange for that investigation. And
12 most of our reports, well, exactly 10 percent of
13 each Service, most of our reports are active duty
14 subjects.

15 Ten percent were civilian subjects that
16 we took the lead on investigating for a variety
17 of reasons, that we would have been the head
18 agency on that.

19 MS. VOGEL: Thank you.

20 You'll notice that the Coast Guard's
21 numbers are a bit lower than the other Services.
22 We had, in fiscal year '16, 1,962 total

1 investigations initiated.

2 Of those, 122 were adult sexual
3 assault investigations, which was 20 less than
4 fiscal year '15.

5 On average, as far as the
6 investigation length, and when I say
7 investigation length, I refer to case predication
8 to the adjudication. So cradle to grave is 133
9 days. Again, of those 122 cases, 57 percent of
10 the cases were reported one month up to a year
11 after the incident, and 24 percent were a year or
12 more after the incident. And again, of those 122
13 cases, 40 percent occurred off military
14 installation and 10 percent involved civilian
15 subjects or suspects.

16 And I'll turn it over to Kevin
17 Poorman.

18 MR. POORMAN: So OSI, a total of -- we
19 run between 2,300 and 2,600 total investigations
20 per year, about a thousand sexual assault
21 investigations. About 40 percent of our caseload
22 is sexual assault investigations. 105 days is an

1 average case for sexual assault turnaround time,
2 with a 75-day median on those cases.

3 Again, very similar numbers when you
4 compare across the MCIOs in terms of cases where
5 the report is more than a month, more than a
6 year.

7 Similarly, 69 percent of our cases,
8 when you combine one month, one year, 69 percent
9 are dated in terms of reporting, and 48 percent
10 of our cases occur off installations, which
11 affects -- jurisdiction plays a role then, and
12 I'll talk about that in a moment. And 20 percent
13 of our cases involve civilians as suspects. We
14 have civilian defendants. Civilian contractors,
15 civilian employees on our installations, we have
16 visitors on installations. And that's who the 20
17 percent would involve.

18 So we have talked about some of the
19 differences in terms of how we are structured,
20 how we train, and then some of our case trends,
21 some of the issues in common that we have with
22 regard to issues that can impact our

1 investigations.

2 And turning to jurisdiction, as we
3 presented, many of the cases we investigate take
4 place off installations, and because active duty
5 Military Members are subject to the Uniform Code
6 of Military Justice regardless of where the
7 offense occurs, which is a little different than
8 what many state and local investigators --
9 because it's usually geographical confines of a
10 county or a state where the penal code would
11 apply.

12 We have violations and we can pursue
13 those violations against active duty Members
14 anywhere in the world. And because of that, we
15 oftentimes run into situations where jurisdiction
16 enters the picture very early in an investigation
17 where we are trying to work with local police who
18 may have taken lead on an investigation because
19 the offense occurred in the community and we have
20 that law enforcement agency involved as lead
21 agency, but we have an active duty Member who we
22 also could -- to prepare a care for presentation

1 in a military courtroom should that be the
2 option.

3 And so we oftentimes find ourselves
4 trying to resolve jurisdiction in cases, and it
5 gets even more complicated in overseas
6 environments.

7 Just in the States, we end up with
8 exclusive federal. We end up with concurrent
9 proprietary jurisdictions, and then when we get
10 overseas, and we have many installations
11 overseas, we are now working in a foreign country
12 where the status of forces agreement is going to
13 affect our relationship with how a case is
14 handled with the host law enforcement
15 organization.

16 So while we may have active duty
17 suspects in some cases, we don't always control
18 the full investigative plan and progress of an
19 investigation because we are not the ones that
20 are deciding which activities will be done in
21 which order.

22 And that's a fairly complicated issue

1 for all of us. We work through it well, but it
2 is a complexity that many law enforcement
3 agencies do not have to work through in handling
4 investigations.

5 From an investigations process
6 standpoint, our policies and our processes are
7 very similar.

8 Many of those similarities extend to
9 when we take evidence, how we handle evidence,
10 which laboratories we use to process evidence.
11 What our reports of investigations look like are
12 very similar in content and structure.

13 Our processes, I think we collaborate
14 rather regularly. Again, one of the benefits of
15 us all being in the building is we can -- and
16 then with Coast Guard sometimes coming down and
17 otherwise working through it with emails --
18 collaborate on best methods and processes for
19 working investigations. It has worked very well
20 for us there.

21 We have some challenges that we share
22 in common. We have all experienced an increase

1 in sexual assault investigations, just the number
2 of investigations, over the last few years.

3 We accommodated many changes as a
4 result of NDAA actions and, I know, the
5 Committee's recommendations. We have worked
6 through and are working on our third version of
7 Article 120, rape, sexual assaults since 2007.

8 We have developed a stand-up of
9 residents and resident courses to help train our
10 investigators.

11 We all opened on all adult victim
12 sexual assault investigations as -- from January
13 2013 and DoD 5505.18, which you have, came about
14 that required the MCIOs.

15 Before, security forces, for example,
16 in the Air Force could run nonpenetration cases.
17 Those came to us. And so much of our caseload,
18 not necessarily because the Service had
19 experienced a significant increase in the
20 reporting to law enforcement, it's just we are
21 now the investigative agency that is handling all
22 of those numbers.

1 So if you see data that would suggest
2 a spike in 2012, it's because we took on cases
3 that otherwise had been worked by the security
4 forces or Military Police or others out there.

5 Although we have had an increase in
6 numbers, it's just that the -- we now investigate
7 all.

8 We have a mandate to retain evidence
9 for five years in all sexual assault cases, which
10 has impacted the storage of evidence in our
11 evidence rooms.

12 We get frequent requests, many
13 requests, almost regular requests for data, for
14 case file reviews and we have accommodated all of
15 them.

16 For the development of policies and
17 protocols, we have worked through the arrival of
18 special victim investigations and prosecution
19 requirements, the collaboration with attorneys
20 early and often through an investigation. And,
21 more recently, we have worked the process and
22 protocols for accommodating the special victims'

1 counsel or the victims' legal counsel within the
2 Services, which is extended to include allowing
3 those legal supports to be present during
4 interviews with victims that are being
5 interviewed with certain conditions on the
6 interview.

7 But being available to have an actual
8 discussion with their client and be present
9 during a law enforcement interview, and there are
10 many other accommodations that we made as a
11 result of recommendations through the years.

12 We have had a significant increase in
13 the oversight of all aspects of how we handle
14 sexual assault investigations.

15 Since 2012, DoD IG has conducted three
16 major assessments of the DoD MCIO sexual assault
17 investigations for policy compliance and for
18 investigation sufficiency.

19 They conducted another assessment of
20 how we train agents to conduct sexual assault
21 investigations. A fifth assessment focused on
22 MCIO policies related to adult victim sexual

1 assault investigators.

2 And we had a sixth assessment
3 evaluating how we, the MCIOs, handle violent
4 crimes investigations from a Headquarters level
5 in terms of compliance oversight, quality
6 control, and inspection process.

7 We have integrated these findings from
8 these assessments to revise our processes, our
9 protocols and, again, summaries of some of these
10 assessments are in the read-ahead materials that
11 you have been provided.

12 In closing, we realize this
13 presentation provides an introductory kind of
14 macro-level overview of our agencies.

15 We look forward to working with the
16 Committee and the professional staff over the
17 next years to further assess ways we can continue
18 to improve and evolve how we work with victims,
19 how we service our Services and how we service
20 the Department of Defense.

21 And we want to thank you for your time
22 and attention and wanted to leave some room at

1 the end of our presentation for questions and
2 discussion. And we do that now.

3 CHAIR BASHFORD: Thank you all for
4 appearing. I've got a few questions that I'd
5 like to start off with, and I am sure the rest of
6 the Committee members do, too.

7 Mr. Poorman, at the very beginning,
8 when you were talking about agent strength, it
9 seems to me about 15 percent, roughly -- you have
10 834 authorized positions but only 706 filled.

11 Is that because you don't have people,
12 you don't have funding, or you don't have the
13 need?

14 MS. WILLIAMS: Is that me?

15 Actually, the Army keeps us about at
16 85 percent, and so it's how the Army is keeping
17 everybody, at the same level, at about 85
18 percent. So we -- I don't know if that's funding
19 or just how the Army is at this point.

20 We are actually increasing our sexual
21 assault investigators, the civilian side, by 15
22 in FY18. But funding is always something that we

1 can use.

2 CHAIR BASHFORD: And my other
3 question, I think, is for all of you.
4 Considering you're only dealing with adult cases,
5 what we are talking about -- not children victims
6 -- you're either close to 50 percent or over 50
7 percent of your cases being reported more than a
8 month later.

9 That seems extraordinarily high. Do
10 you have any thoughts on why that would be? Is
11 there -- I don't know what -- why that would be
12 so high? Is there a barrier to reporting sooner?

13 MS. WILLIAMS: We have had some that
14 have been reported to us later just because they
15 had a restricted report before they became
16 unrestricted.

17 So then, of course, that's reported to
18 us, like, a month later. Some talk to people.
19 They just don't feel -- you know, they make their
20 decision to report later.

21 It may be, like I said earlier, that
22 the soldier was at Basic Training and then

1 decided to report it once they ended up at their
2 next duty station instead of while they were at
3 their Basic Training.

4 I don't have the stats to tell you
5 exactly what those reasons are, and it would take
6 an extensive review to determine that but --
7 because we don't have that readily available.

8 CHAIR BASHFORD: It just seems very
9 high, in particular since you don't have children
10 victims included in that which, of course, are
11 often very, very delayed.

12 MS. VOGEL: It's also, generally
13 speaking -- and you know this, I know -- it's a
14 very confusing time for a victim, especially if
15 you introduce alcohol into the situation.

16 They may not know what happened, so
17 they may be trying to figure it out themselves.
18 So it's very -- it's many reasons why victims
19 don't initially report: am I going to be judged?
20 Am I going to be viewed as the trouble maker?

21 So, I mean, there are so many reasons
22 why victims don't immediately come forward, and

1 oftentimes the victim is acquainted with -- I
2 won't say knows -- but is acquainted with that
3 person who reportedly sexually assaulted them.
4 So I'll offer that.

5 MR. POORMAN: Yes. I think that may,
6 to some extent -- I don't know that the
7 relationship between victim and subject
8 influences, necessarily, the reporting time
9 period.

10 But RAND at -- the Air Force just had
11 the RAND Corporation look at our cases, and they
12 concluded 85 percent of our cases, the victim and
13 the subject know each other, work with each
14 other.

15 There is a relationship that exists,
16 and I don't know to what extent that influences a
17 decision to come forward or not. Of course, they
18 are a military model which many times these
19 incidents are occurring between co-workers within
20 a shop.

21 We know that most of our reports that
22 occur as a result of incidents that happened in

1 deployed locations, they wait to make the report
2 when they come back to their home units.

3 Very good question. I don't know that
4 we have specific answers to that. But it would
5 be interesting to sort that out.

6 MR. DEFAMIO: And on the NCIS side --
7 and I apologize up front, I don't have exact
8 numbers that I could offer you right now -- but
9 we have seen an increase in the number of our
10 reports that have gone from initially being
11 restricted reports of sexual assault to going
12 unrestricted, which reflects upon that the
13 victims are feeling comfortable coming forward to
14 get the services and maybe using that time period
15 to kind of sort out what happened and learn about
16 well, you know, I if do report this to law
17 enforcement, what will be the process? What will
18 be the result of that? We have seen more victims
19 changing those reports in the recent year or two.

20 MR. POORMAN: And I do think, and this
21 was '16 data, there was quite a push within the
22 Department in that period of time to report

1 regardless of when it happened. And we did see a
2 spike in the number of reports that came in, and
3 many of those were reports from 10 years ago or
4 as a result of individuals no longer even in the
5 Military Service that were coming forward to
6 report during that period.

7 So a cross-check to that number might
8 be looking at years before and after to see the
9 extent to which that may represent an emphasis
10 issue in that '16 data.

11 CHAIR BASHFORD: I'm sure many of the
12 Committee members have questions.

13 MR. KRAMER: I have several questions.
14 I am sorry. I'll try to -- I've never been
15 accused of speaking softly, I guess, so I hope
16 you can hear me. If you can't, let me know.

17 The first question is, maybe, to ask
18 about that. So if a case is restricted, it never
19 gets to these investigative agencies? It's kept
20 where?

21 I know we talked about it last time,
22 at the last meeting. Where is it kept if it's

1 restricted?

2 MR. DEFAMIO: Restricted reports, they
3 would go through the sexual assault response
4 coordinator, and that would be the victim
5 advocate seaside. They would keep the report
6 there, and then they would have access, of
7 course, to a victims' legal counsel or a special
8 victims' counsel that they could talk to about
9 it.

10 Also chaplains. There are several
11 medical personnel who could take the restricted
12 report without it being reported to law
13 enforcement which would, of course, include all
14 the MCIOs.

15 MR. KRAMER: And I --

16 MR. POORMAN: Oh, sorry. Just if
17 there is evidence in these cases, which can get
18 kind of complicated, that we retain that. Now,
19 the way that works is we will be told, OSI --
20 each Service does it a little different -- but
21 OSI will be called and told that they are
22 restricted -- there is a restricted kit -- sexual

1 assault kit to pick up. It has a number on it.
2 We don't open it. SARC has the real name behind
3 the number.

4 We retain it under processes and
5 procedures and then if it does go unrestricted
6 then we convert it to an unrestricted.
7 Otherwise, there is disposition instructions of
8 the kit if the individual decides never to go --

9 MR. DEFAMIO: And on that note, too,
10 NCIS -- the SARC will send the kit directly to
11 our evidence facility in Norfolk. So the local
12 office won't know about it. But it's a similar
13 process. It will just be a number. We retain it
14 and then if the victim unrestricts they give us
15 the number and we go get it out of evidence.

16 MS. WILLIAMS: And the MPs keep our
17 kits -- the restricted kits. They go from the
18 SARC to the MPs and we just -- it would just be
19 too much for us to handle in our evidence rooms.

20 MR. KRAMER: So I guess this is a
21 question maybe for Ms. Williams or all of you.
22 Does only the Army have a forensics laboratory?

1 MS. WILLIAMS: We are the executive
2 agency for it, but they all --

3 MR. KRAMER: That was my next --
4 everybody uses --

5 MS. WILLIAMS: Yes. Everybody uses
6 it, even the Coast Guard. We have other agencies
7 -- federal agencies that use it also. But yeah,
8 it's just we are the executive agency for it.

9 MR. KRAMER: And is it right -- the
10 same area as the FBI lab?

11 MS. WILLIAMS: No, it's at a Fort
12 Gillem Enclave --

13 MR. KRAMER: Oh, okay.

14 MS. WILLIAMS: -- in Atlanta, Georgia.

15 MR. KRAMER: So it's not at Quantico?

16 MS. WILLIAMS: No, sir.

17 MR. KRAMER: And if a case like -- I
18 am sorry, Defamio?

19 MR. DEFAMIO: Yes, that's correct.

20 MR. KRAMER: I'm sorry. Mr. Defamio
21 -- I apologize. If -- you talk about, like,
22 happening overseas. So, say, if something

1 happens in Japan, is that shipped over to -- I am
2 sorry, what --

3 MS. WILLIAMS: Fort Gillem.

4 MR. KRAMER: For Gillem. Sorry.

5 MR. DEFAMIO: Correct. If it's
6 unrestricted, NCIS will send it to the lab. If
7 it's restricted it -- the SARC will send it to
8 our Norfolk evidence facility.

9 MR. KRAMER: I'm sorry. I was talking
10 about unrestricted.

11 MR. DEFAMIO: Unrestricted. Correct.

12 MR. KRAMER: They all -- everybody --
13 all four -- all the Services send it all to the
14 Army lab?

15 MR. DEFAMIO: Correct.

16 MS. WILLIAMS: Yes, sir.

17 MR. KRAMER: Okay. And so when the --
18 when the National Academy of Sciences' forensic
19 science report came out a few years ago, did that
20 affect the lab at all?

21 MS. WILLIAMS: Well, the lab started
22 getting -- there used to be we did only ones

1 where consent was not an issue. But now we are
2 doing work whether there is consent or not
3 consent has been sent to the lab -- is allowed to
4 be sent to the lab.

5 Now, whether the -- everybody is --
6 you know, I don't have the numbers on all that.
7 But so it did increase it a little bit but there
8 -- and that probably some of the increase in FY
9 '16 they were sending some of the backlogs into
10 there. So that could be also one of the -

11 JUDGE GRIMM: Just to follow up on
12 that question, maybe the -- you were talking more
13 about forensic analysis methodology rather than
14 numbers.

15 Maybe another way to get at that is
16 who accredits your lab? Where is the
17 accreditation of procedures used for lab
18 analysis?

19 MR. POORMAN: So the American Society
20 of Crime Lab Directors, the ASCLD, does their
21 certifications and I think last year that's what
22 they periodically go through and they had ASCLD

1 accreditation I think well past 18 years. It's
2 been around for some time.

3 So I don't know the extent to which it
4 impacted not Army but I think they had in place
5 accreditation standards and processes that met
6 the requirements leading up to that. They've
7 been kind of a leader. I am Air Force,
8 complimenting the Army. But for some time and
9 very impressive, the ASCLD -- American Society of
10 Crime Labs.

11 MR. KRAMER: So I think this is my
12 last question. It may again be for Ms. Williams.
13 Everybody else trains at Glynco but -- except for
14 the Army. Is that because just the Army is large
15 enough to have its own training program or -

16 MS. WILLIAMS: Well, yes. For the
17 most part, yes, and plus we have had that
18 training for a long time and it doesn't require
19 us to go to another training to get specific
20 training for the Army.

21 So we are able to do all the training
22 across from -- you know, to start getting right

1 at the U.S. Army Military Police school.

2 JUDGE BRISBOIS: Madam Chair, just a
3 follow-up on the numbers in a different way.

4 There are restricted forensic kits
5 that are collected and forwarded for anonymous
6 retention pending an unrestricted change in
7 status potentially at some point. Do you have
8 those numbers? Do you know how many unrestricted
9 kits you're holding right now?

10 MS. WILLIAMS: Restricted.

11 JUDGE BRISBOIS: I am sorry. The
12 restricted kits that you're holding. Yeah.

13 MR. DEFAMIO: I don't have the numbers
14 here.

15 JUDGE BRISBOIS: I mean, is that
16 collected? Do you --

17 MR. DEFAMIO: We have -- yeah, that we
18 logged in when they come to the evidence facility
19 so we know how many. We just don't know who they
20 belong to.

21 JUDGE BRISBOIS: Well, no. I know
22 that but --

1 BG SCHWENK: He wants to know how
2 many.

3 JUDGE BRISBOIS: Yeah. We were just
4 -- I am wondering about volume, not identity.

5 MR. DEFAMIO: I can get that number
6 for you. I don't have it right now.

7 MR. POORMAN: We can -- we can get
8 that too for you. We have -- we track. There is
9 a number within our management system that
10 identifies it being a restricted kit in our
11 inventory and we can certainly get you those
12 numbers.

13 JUDGE BRISBOIS: I mean, that plus the
14 cases that have been opened for unrestricted
15 reports kind of provides a bigger -- bigger
16 picture than just the cases that are being
17 investigated. So -

18 DR. SPOHN: So I am interested in the
19 protocol for conducting the forensic medical
20 exams.

21 With 50 percent or more of your
22 reports occurring a month or more after the

1 event, I am assuming you don't do a forensic
2 medical exam with those victims.

3 So the forensic medical -- is there
4 some -- I've worked with Los Angeles and theirs
5 was within 72 hours. I don't know. What -- what
6 is your standard for when you would conduct a
7 forensic medical exam?

8 MR. POORMAN: Well, it varies. If we
9 had our choice, it would be out probably about 10
10 days out. So we get into what is an exam and
11 what could it yield.

12 A lot of -- a lot of folks realize
13 it's, of course, swabs and how long sperm can be
14 found in the -- in the vaginal wall certainly
15 impacts that data. But so do physical injuries.
16 And so it depends on the circumstances but you
17 can end up with bruising and other scratches and
18 things that are well outside of the 72-hour
19 window.

20 So we would like to go to the 10 --
21 this brings us into it varies who does our
22 examinations. And so while we don't have the

1 same nurses at every location, we don't -- and
2 some of our medical facilities were, in many
3 places, more robust in their abilities to handle
4 sexual assault cases. And where they aren't,
5 then the guidance in the DoD and within the Air
6 Force, for example, there is guidance that says
7 you'll establish a medical facilities, treatment
8 facilities. You will establish capabilities with
9 the local community, contract as needed. And, of
10 course, those services vary by how robust those
11 services are in the local community. And they
12 have their standards for when they will conduct
13 and how long they would -- when they will conduct
14 out to a certain --

15 So it varies for us. Our forensic
16 consults with forensic folks for that training.
17 And for the most part, we try to go for 10 days.
18 Seventy-two hours is very preferable if we can
19 work those, but it depends on circumstances.

20 But to your question, yes, when you
21 get beyond that, it starts to diminish in terms
22 of return on the amount of information that we

1 would typically see.

2 But others have helped us develop
3 those protocols for -- like Dr. Markowitz -- in
4 the development of the protocol.

5 DR. MARKOWITZ: So just to add to
6 that, the training that's done that is tri-
7 Service at the AMEDD Center and School, seven
8 days is the time frame that is taught for --
9 within the DoD and medical facilities.

10 But Mr. Poorman's right that a lot of
11 the sexual assault medical forensic exams are
12 going to the civilian component. So right now,
13 the average nationally is 96 to 120 hours for
14 that.

15 MR. DEFAMIO: At NCIS we mandate our
16 -- the agents have to do the exam or request the
17 exam if it's under seven days with the victim's
18 consent, of course. But we had that as a firm --
19 they have to try to collect the exam if it's
20 within a week.

21 DEAN HARRISON: Madam Chair.

22 CHAIR BASHFORD: Yes.

1 DEAN HARRISON: This is for all of
2 you. Since you essentially have worldwide
3 jurisdiction for -- under the UCMJ and the
4 statistics you get are basically worldwide, I am
5 wondering if there is any requirement in the
6 military that statistics be kept by military
7 installation, like crime reports for civilian
8 police departments or campus crime reports for
9 educational institutions.

10 Do you know, for example, either
11 informally or formally, that Fort X or Air Force
12 Base Y has a higher rate of sexual assault than
13 the next one down the road?

14 MR. DEFAMIO: NCIS has conducted -- we
15 conduct an annual crime report that we put out
16 for both the -

17 DEAN HARRISON: By installation?

18 MR. DEFAMIO: -- and we can break it
19 down by installation. The report we put out will
20 be overall for Navy and Marine Corps but we do
21 keep those stats for our investigations per
22 installation.

1 DEAN HARRISON: That's your initiative
2 or does the DoD require that or --

3 MR. DEFAMIO: That's -- they require
4 the annual crime report but we do the -- we keep
5 those stats ourselves.

6 MR. POORMAN: And we do, too. We all
7 collect crime data. We call it DIBRS, Defense
8 Incident-Based Reporting. That feeds into NIBRS,
9 the National Incident-Base Reporting. That feeds
10 the Uniform Crime Reporting. So we all maintain
11 that.

12 In fact, our case file numbers start
13 with a number that's a DIBRS number that collates
14 with a NIBRS number that then ensures we can
15 capture cases by type, and then we have it by
16 location.

17 So we can provide that for our
18 investigations, which are the felony-level cases.

19 DEAN HARRISON: Is -- oh, I am sorry.

20 MS. VOGEL: The Coast Guard also
21 captures that data but you need to remember that
22 it's wherever they are stationed that may not be

1 where it occurred. So we capture that data as
2 well.

3 MS. WILLIAMS: We do also but we try
4 not to compare installations to installations in
5 an reports because it tends to not -- well, you
6 could have a commander say, my installation is
7 better than yours kind of thing. Yeah. Okay, so
8 you don't want to do that.

9 DEAN HARRISON: It seems to me that
10 when there is a change of command the incoming
11 commanding officer will be told you need to
12 improve readiness or you need to improve this or
13 that.

14 Are they told that there's a crime
15 problem on your base?

16 MS. WILLIAMS: Well, our agents -- the
17 special agent in charge at the installation level
18 they will give a report to that commander.

19 Now, they won't compare it to another
20 installation but they will give it to that
21 commander what's happening on his installation,
22 what's going on now, where -- you know, if there

1 is a trend here or not a trend there, you know --
2 you know, they explained all that to him and they
3 usually give it to the commander.

4 They can monthly, depending on what
5 the commander wants because they can pull all
6 that data out of our Army Law Enforcement
7 Reporting and Tracking System, ALERTS, and they
8 can get all that data from them -- from that.

9 DEAN HARRISON: Is this data available
10 generally to the public or to Members of the
11 military?

12 MS. WILLIAMS: Once it's published in
13 the crime report.

14 DEAN HARRISON: And so if I am trying
15 to choose my next duty station, and I've got a
16 bunch of dependents with me, will I know that I
17 might be choosing a duty station that has a crime
18 problem?

19 MR. POORMAN: I don't know of a -- of
20 a product out there that speaks to that issue,
21 and it's -- there is some complexities to that,
22 and it's the demographics largely of populations.

1 Our bases aren't equal. We have --

2 DEAN HARRISON: I ask because I have
3 to annually submit a report to the Department of
4 Education about crime on my campus even though I
5 don't have a police department.

6 And prospective students and their
7 families use them to judge whether or not they
8 want to attend my school.

9 And civilian police departments do it,
10 and I choose whether or not I want to buy a home
11 in a neighborhood. Now, granted, military people
12 don't have total choice, but it seems to me that,
13 you know, when they are choosing what's on the
14 list for their next duty station, that might
15 become an issue.

16 MR. POORMAN: Yeah, I need to -- so a
17 training installation where we have a very young
18 population is very different than some of our
19 installations that have a very high percentage of
20 married population.

21 So it'll vary by base. But we can
22 make available -- the data available to the

1 Service. It would be up to the Services to
2 decide how they -- how they handle it.

3 CMSAF MCKINLEY: I appreciate you all
4 being here and you have great organizations,
5 personnel. We respect you all very much.

6 Our military is continuing to evolve.
7 We are more joint than ever. We have joint
8 basing.

9 We deploy together to joint locations,
10 live together in joint locations. You know, our
11 family housing, joint -- in local communities,
12 joint.

13 But, you know, I know you do a lot of
14 collaboration and that's a great thing but, you
15 know, you all have different training on sexual
16 assault -- different levels, different links and
17 different schools.

18 You know, and Mr. Poorman, as you
19 said, you all do things in different -- a little
20 bit differently. As we are more joint and we
21 have cases that go forward in court with Army
22 versus Air Force or whatever, and we have our

1 agents that go out and investigate, you know, all
2 these cases, is there anything collaboration wise
3 that would move them forward to make sure that we
4 all receive the same type of training and get
5 that done so we can be more efficient and not
6 have the big differences between the branches and
7 Services.

8 MR. POORMAN: Well, if you look at our
9 training, and then more importantly perhaps you
10 look at the product, you look at the
11 investigative sufficiency associated with that, I
12 think it's probably the best major to the extent
13 to which our training and our policies.

14 DoD IG has looked at that. And so I
15 would defer to perhaps that assessment that was
16 done with regard to what our differences and
17 similarities are and then what the outcomes are
18 in terms of sufficiency of what we're producing.

19 There are different numbers in terms
20 of amount of time spent on courses, perhaps even
21 slight differences in context. But I would
22 suspect, and subject to you all taking a look at

1 that, is that a lot of what we do is very, very
2 similar and equally sufficient to handle these
3 kinds of cases.

4 As far as joint base and the assets,
5 it's created opportunities to actually
6 collaborate and work together. In fact, we have
7 an MOU between our agencies on how we handle
8 cases in joint base environments because the
9 potential conflicts and complexities of that.

10 And generally, it boils down to, the
11 Service for the individual who's accused takes
12 lead agency under those circumstances. The other
13 providing support is necessary sometimes on a
14 joint base with NCIS. They may get the call and
15 respond and handle the initial crime scene, and
16 sort out the initial.

17 And then once it becomes evident that
18 it's an Air Force person who's being identified
19 as responsible, they'll contact us. We'll assume
20 lead and they'll provide a supporting role for
21 that.

22 And I think that's another example of

1 where I've not heard, and in fact I've heard
2 quite the opposite, that our folks work
3 seamlessly largely in the response and handling
4 of those cases, which would reflect to some
5 extent on the similarities of our processes and
6 our policies.

7 MS. CANNON: Good morning. I wanted
8 to follow up on Dean Harrison's questions. Is
9 there a comparative analysis of the numbers or
10 percentage of cases that come out of different
11 locales regarding each of your agencies? Do you
12 understand my question?

13 Okay, there was a question about
14 whether you know what locations, what
15 installations have what percentage of your cases.
16 And it seems like you do have that information
17 and it's forwarded to higher up. Forgive me, I'm
18 a civilian, though I'm an Army brat.

19 So my question is has anybody analyzed
20 that for each of your different organizations as
21 to where the percentages come from and what that
22 might mean?

1 MR. DEFAMIO: I don't know of us
2 putting out any product where we analyze, you
3 know, comparing bases or locales. But of course,
4 like, our manpower will be based off of which
5 offices have a higher percentage of cases across
6 the board.

7 So we use it for tracking it for those
8 purposes. I can't recall any product that came
9 out and said, like, you know, Naval Station
10 Norfolk has X amount of violent crimes compared
11 to Naval Station Jacksonville or anything along
12 those lines.

13 But theoretically, the data is there
14 to do that because we do have each case tracked
15 what office was handling the investigation.

16 MS. VOGEL: And as you mentioned
17 earlier, the information that is passed or
18 exchanged, we do that, Coast Guard does that as
19 well. We have a SAPRO crime analyst that, for
20 about a year and a half now she's been with us.
21 And she actually has compared some of that
22 information for us and it has been reported up

1 the chain.

2 CHAIR BASHFORD: Judge Walton, did you
3 have a question?

4 JUDGE WALTON: Yes, in regard to your
5 investigator staffs, how diverse are they based
6 both upon gender and race?

7 MR. DEFAMIO: I do have that.

8 MS. WILLIAMS: I have that. Somewhere
9 around here.

10 MR. DEFAMIO: The numbers are very
11 small. Yes, for NCIS we're broken down for our
12 special agents only investigation, 815 male and
13 214 female. And for, did you ask by race, too?

14 JUDGE WALTON: Yes.

15 MR. DEFAMIO: Race we have females one
16 Native American, 14 Asian/Pacific Islander, 29
17 African American, 20 Hispanic, and 150 Caucasian.
18 And for male agents, 3 Native American, 32
19 Asian/Pacific Islander, 64 African American, 71
20 Hispanic, 3 Hawaiian, 640 Caucasian.

21 JUDGE WALTON: Let me just ask this
22 question also. Once somebody is actually accused

1 as charged, do they have access to investigators
2 to do a defense investigation on their part, on
3 their behalf?

4 MR. DEFAMIO: Currently we do not have
5 assigned defense investigators, but that is in
6 the process. I don't know exactly when that will
7 be set to come online, but as of right now, no.

8 MS. VOGEL: Coast Guard has a process
9 by which defense can request, and I think you've
10 got a copy of the Commandant Instruction 5520.5
11 series instruction, and it's actually denoted in
12 there.

13 MS. WILLIAMS: And if the defense
14 requests something from us, we will actually do
15 that portion of the investigation for them.

16 CHAIR BASHFORD: I know Mr. Kramer
17 had, Judge Grimm, did you have a --

18 JUDGE GRIMM: No, I think it has been
19 responded to by one of the other members of the
20 committee's question.

21 CHAIR BASHFORD: Well, I had one more
22 question which is we heard from the JPP, and I

1 think we've seen, but it's anecdotal data that
2 some MCIOs felt that their initial access to a
3 complainant was delayed substantially by the
4 appointment of counsel, or the introduction of
5 counsel for a victim.

6 Do you have data on that, or what have
7 your various experiences been?

8 MS. WILLIAMS: That is definitely
9 anecdotal data, ma'am. We don't have exact data
10 on that. But we have been working directly with
11 the special victim counsel and working with our
12 agents. We had joint training recently with the
13 special victim counsel program manager with our
14 sexual assault investigators to try to, you know,
15 get the understanding of each side's job.

16 CHAIR BASHFORD: There's, nobody keeps
17 data between date unrestricted report filed --

18 MS. WILLIAMS: No.

19 CHAIR BASHFORD: -- and data first
20 interview of the victim?

21 MS. WILLIAMS: Not easily pulled by
22 our database. I mean, it would have to be

1 probably looked at each case to pull that out on
2 its own. I mean, we would be able to get when
3 was initiated, but the interview would be
4 actually have to by hand go over the case to
5 figure that one out. Yes, ma'am.

6 MR. DEFAMIO: That's true for us as
7 well, but we do keep track of, our analyst
8 actually will read the case when it comes out and
9 mark if it's restricted to unrestricted, the
10 dates. But correct, our database, we can't just
11 query that to pull it. We actually have to have
12 it tracked.

13 CHAIR BASHFORD: But anecdotally, do
14 you then feel that the introduction of the
15 counsel for the victim has delayed that initial
16 interview?

17 MR. DEFAMIO: Well, anecdotally I'll
18 say when it first came out about for years ago,
19 we did have some significant issues with cases
20 with delays. A lot of that in the counsel's
21 defense was they were trying to get their program
22 set up.

1 But we did have some cases where the
2 counsel wasn't available for up to two weeks
3 before they could talk to their client and we
4 were able to actually do an interview.

5 We've engaged that in many ways,
6 especially at the headquarters level. We hold
7 regular meetings with the VLC program. And
8 overall, we've seen it, we've actually put out to
9 our agency too when there is a significant delay
10 to annotate that in their open report.

11 And I haven't seen that come across
12 significantly in well over a year. And I think a
13 lot of that is just engagement, the VLC program
14 maturing and getting online and just more
15 engagement at both the headquarters and field
16 levels with the VLCs. But it's really turned
17 into a very positive relationship that I think
18 has been very beneficial to the victim.

19 MR. POORMAN: Yes, we would agree at
20 the Air Force. We've had it the longest. And at
21 first it was like any new program you roll out.
22 You've got some significant hurdles to work with.

1 It has significantly matured to the better.

2 At the beginning, folks that were
3 assigned, now all volunteers, all want to do the
4 job. The relationships with investigators and
5 the special victims' counsels is, I would
6 characterize, very good.

7 Some of it's normalizing for
8 investigators, appreciating this is a new entity
9 in play and that there are protocols and
10 processes and working through that and
11 normalizing those relationships.

12 I think it's very positive. There are
13 occasions -- and the ones where you would run
14 into circumstances where there could be a little
15 friction would be a fresh report. Happened last
16 night. We had concerns for getting to the
17 evidence, getting to the suspect, getting to the
18 crime scene, getting the examinations done.

19 But there's a provision within the
20 legislation that drove -- within DoD policy --
21 for exigent circumstances in which we may need to
22 get access. And now that all of the special

1 victims' counsel here have cell phones,
2 understand the sense of urgency necessary under
3 some circumstances, they've largely resolved
4 themselves.

5 And we're fans of the special victims'
6 counsel. We've heard victims, when they do
7 decide to come forward, and many are delayed
8 reports, they come with greater confidence, and
9 they feel comfortable in sitting down with
10 investigators. And we have an understanding of
11 each other's roles and expectations. And it
12 seems to have worked itself out quite well.

13 MS. VOGEL: Very similar to the other
14 Services, the SVC program is new for us since
15 2013. So we had some growing pains. And there
16 are still some very few instances where we'll
17 hear that, hey, I was delayed getting access to
18 speak with a victim.

19 But like the other Services, I think
20 for us, the SVC -- I'm pointing to Ms. Christa
21 Specht, who is over at the SVC program. The SVCs
22 come to our trainings, you know, for our special

1 agents in charge, our assistant special agents in
2 charge.

3 They reach out to the CGIS units to
4 speak with the agent. So I think while there are
5 some hiccups, I think we're working through it
6 fairly well.

7 JUDGE BRISBOIS: I have a follow up
8 question about resources for defense
9 investigations. For CID, trial defense counsel
10 comes and asks for some investigative work. Is
11 that done confidentially? Is the agent that's
12 assigned to it the case agent? I mean, you know,
13 or is there part of the prosecution team
14 generally?

15 MS. WILLIAMS: Well, we're an
16 independent investigation agency. So we do, we
17 investigate the case to the truth, not
18 necessarily for the prosecution and not
19 necessarily, you know, we investigate the leads
20 as they come across.

21 JUDGE BRISBOIS: But the results of
22 that support aren't confidential just to the

1 trial defense service?

2 MS. WILLIAMS: No, it's for all of
3 them, yes, sir.

4 MR. POORMAN: For Air Force when we,
5 and so I will say up front we don't approve many
6 where we provide defense services in terms of
7 investigations. But we do on occasion. They're
8 generally homicides or fairly major cases.

9 We have very specific guidance,
10 investigators are not working for either side at
11 the time. They don't have law enforcement
12 authorities to exercise warrants and do searches.

13 They do, depending on the convening
14 authority's appointment, they can get
15 confidentiality and they can work for the defense
16 under that confidentiality in which they are
17 effectively working as a defense investigator.
18 We don't get any information back from them.

19 But during that period, they're
20 effectively detailed outside of our organization
21 with some specific guidance on what they can and
22 can't do.

1 MG ANDERSON: I have a question as
2 related to career progression. So when you gave
3 us the overview of your organizations, you
4 mentioned the number of investigators you have.
5 And I think for the Army they get an individual
6 skill identifier.

7 But is that a, are they handling a
8 variety of cases or are they focused on sexual
9 assault investigations? I'm just trying to get a
10 sense of whether or not there's a career path or
11 if someone might specialize in handling these
12 kinds of investigations, or is it an additional
13 duty that's assigned based on the training that
14 they receive?

15 MS. WILLIAMS: It actually depends on
16 the size of the office. It depends on the size
17 of the office. If I'm at Hunter Army Airfield
18 where we hardly have any sexual assaults, or if
19 I'm at Fort Bragg, we would have at Fort Bragg
20 which has more agents, more sexual assaults, we
21 have a team there.

22 And that person may work that team at

1 Fort Bragg, but then they may go to Hunter Army
2 Airfield where they wouldn't have a team but they
3 would be a person who has had more experience and
4 may take that one or two cases that comes in at
5 Hunter Army Airfield.

6 And so we don't have a specific track
7 for sexual assaults except for the civilians that
8 we have because that's all they do. But the
9 agent is all trained up so that no matter which
10 office they go to, they're ready to go as they go
11 through their career. It doesn't hinder or, I
12 mean, it could help their career.

13 MG ANDERSON: I was just trying to
14 think in terms of people who may be more
15 proficient than others. And so you may have some
16 variety across the installations.

17 MS. WILLIAMS: Yes. And we discuss
18 the ones that aren't as proficient and get them
19 proficient, or find another place for them.

20 MR. POORMAN: With 40 percent of our
21 caseload being sexual assaults, many of our
22 agents get some proficiency just because they get

1 a lot of cases that come in.

2 I think this all though is a good
3 question in that I think there's a perception
4 sometimes that you have to be a specialized
5 sexual assault investigator to handle a sexual
6 assault case.

7 It's a violent crime. We train all of
8 our investigators to handle responses to violent
9 crime. As I mentioned, responding to a crime
10 scene and the collection of evidence, we can have
11 this in a robbery, we can have this in a
12 burglary.

13 There's some specific evidence issues
14 associated with sex offenses. There's some
15 specific concerns with counterintuitive behavior
16 involving victims of sex offenses. There's some
17 concerns with how memory gets laid down with
18 victims of violence and how that gets -- those
19 are additional areas where we have to talk to
20 investigators.

21 But we provide a lot of basic
22 investigative skills to handle violent crime

1 cases to include sexual assaults in our basic
2 course. The advances just kind of allow for
3 additional cognitive interviewing, practical
4 exercises that hone those skills to do that.

5 But we, like the others, it varies by
6 location. A deployed location and have an
7 investigator who happened by luck of the draw to
8 end up being a deployed individual, and have
9 counterintelligence background and I have to lean
10 on that, basic skills.

11 But the reach back, it's always there
12 at any of our locations for those individuals to
13 get specialty support, sometimes flying in to
14 assist in those cases if they don't have that
15 capability. So triaging is a big part of what
16 they need to do and then reach back is a solution
17 in many instances.

18 JUDGE WALTON: During the
19 investigation, is there any coordination between
20 investigators and the prosecutor? At what point
21 does that coordination take place?

22 MS. VOGEL: I'm not going to speak for

1 the rest of the Service, although I think I
2 could. That's early and often. You know, we're
3 not asking permission, can we do this with the
4 investigation. But we are coordinating with them
5 early and often.

6 MR. POORMAN: DoD instruction 5505.19
7 which requires within 24 hour notification of the
8 team which includes the attorneys and the victim
9 advocates, SARCs, and investigators, notification
10 and within 48 hours of collaboration.

11 And so because of these requirements,
12 so we had these I think in many instances before
13 the requirement came in because it's an essential
14 part of developing a case is having the
15 prosecutor involved and trying to help scope what
16 violations are we even looking at and then to
17 what extent do we, what elements are we trying to
18 pursue in all to go with it.

19 So it is mandated, we have some
20 specific guidance.

21 JUDGE WALTON: And as far as defense
22 counsel is concerned, what percentage of

1 individuals charged are represented by members of
2 the military as compared to the --

3 MR. POORMAN: We don't have those
4 numbers. My experience is that the majority of
5 active duty members are represented by military
6 defense attorneys. It's fairly rare to have a
7 civilian defense attorney in my experience.

8 We occasionally will, it's up to the
9 client to decide. But in most instances we see
10 military defense attorneys associated with active
11 duty suspects in our cases.

12 JUDGE WALTON: Do you have statistics
13 regarding the conviction rate in sexual assault
14 cases?

15 MR. POORMAN: We don't. I think for
16 Air Force at least we would defer to our JAG
17 Corps to provide those kind of numbers.

18 MR. DEFAMIO: NCIS does track the
19 conviction rates. I don't have them on me, but
20 we do track that.

21 MS. WILLIAMS: And Army CID does too.

22 MR. KRAMER: I'm sorry, can I ask, I

1 appreciate your answering all our questions, it's
2 very helpful. Can I ask you a couple of
3 questions about the statistics? It seems like
4 the Air Force and the Army, 20 percent of the
5 cases involved with civilian suspects whereas the
6 Navy, Marine Corps, and Coast Guard it's only 10
7 percent. Does anybody have any idea why there's
8 that huge difference?

9 MS. WILLIAMS: They're in the water.

10 MR. DEFAMIO: We don't have many on
11 the ships with us. But I can't really speak to
12 what the difference. I do know when we have a
13 civilian subject, it's usually because it
14 occurred on base or some other exclusive federal
15 property, like for example Camp Pendleton is
16 exclusive federal, so there's no local
17 jurisdiction to take it.

18 Otherwise, usually if it's a civilian
19 we will have a civilian agency take the lead and
20 we'll provide whatever assistance as the case may
21 be.

22 MR. KRAMER: So kind of connected to

1 that, it doesn't say how many of the victims were
2 civilians or uniformed. Do you have the stats on
3 that too?

4 MR. DEFAMIO: I do have those stats.
5 I don't know if I got them in here.

6 MR. POORMAN: We can certainly get
7 them, we have to track it.

8 MR. KRAMER: And connected to that I
9 guess is one more question I have about the
10 stats. Is there a record how many of them the
11 victim and the suspect are known to each other as
12 opposed to strangers?

13 MR. POORMAN: Well, as I think I
14 mentioned, RAND Corporation in a contract with
15 the Air Force looked at that recently. And the
16 number they came up with was 85 percent was --

17 MR. KRAMER: Known to each other?

18 MR. POORMAN: -- known to each other
19 of our cases. That's just Air Force cases they
20 looked at, 85 percent were acquaintances.

21 MR. DEFAMIO: I do have those numbers
22 right here. If you would like, I can give you a

1 copy. But it breaks down for the different types
2 of sex offenses and then the different
3 relationships, spouse, acquaintance, coworker.

4 MR. KRAMER: And then I just have one
5 last question back to investigations. So do I
6 understand that the Air Force is the only one
7 that if a suspect wanted their own investigator
8 so to speak, independent, whatever you want to
9 call it, the Air Force is the only one that
10 currently provides something akin to that?

11 MR. POORMAN: No, we don't, it might
12 have been Army that mentioned. You're talking a
13 defense investigator?

14 MR. KRAMER: Defense, somebody for the
15 suspect, right.

16 MR. POORMAN: They may request one of
17 the convening authority. And then if the
18 convening authority comes to us and asks, the
19 commander will most likely make a decision
20 whether to provide one or not. But the only
21 cases that I can remember recently where we've
22 done that have been murder investigations.

1 MR. KRAMER: So only the convening
2 authority can authorize that?

3 MR. POORMAN: I believe so, but I
4 would have to defer to one of our attorneys on
5 that. It's worked through that side of the
6 house, and then we get a request. And I think in
7 all instances I recall it's come to us from the
8 convening authority asking us to provide the
9 assistance.

10 I think the request is for a defense
11 investigator and then they sort through what the
12 options are in providing that. And sometimes it
13 comes to us, and other times it may go elsewhere.

14 JUDGE WALTON: So you wouldn't know
15 what percentage of individuals who are accused
16 have defense investigators?

17 MR. POORMAN: That's correct, I would
18 not know.

19 CAPT TIDESWELL: I'm sorry, maybe this
20 can help. The Judicial Proceedings Panel
21 identified this as an issue. And right now,
22 imbedded in Navy legal offices in the defense

1 shops there are defense investigators.

2 We could argue whether or not there's
3 enough of them, but the Navy actually has a pilot
4 program, and is the first and only Service that
5 provides ostensibly investigators for clients,
6 for defense clients.

7 The JPP has a report and has made a
8 recommendation that that program should be
9 adopted by all the Services and that the Services
10 should look into having defense investigators
11 assigned through the defense shops.

12 MR. KRAMER: Thank you.

13 MS. VOGEL: I'll refer you again to
14 the Commandant Instruction 5525 series where on
15 Page 18 we specifically address investigative
16 assistance to defense counsel.

17 MR. KRAMER: Thank you.

18 CHAIR BASHFORD: Now, I know until at
19 least recently you only had subpoena power once
20 charges were preferred. Has that changed?

21 MR. DEFAMIO: We can use the DoD IG
22 subpoena for certain violent crimes that we can

1 apply for that through the Department of Defense
2 to get that subpoena. Otherwise --

3 MR. POORMAN: Yes and that's, we still
4 use it frequently. It's a subpoena that we use
5 only in the investigate phase so we are able to
6 get that done. The DoD IG subpoenas during the
7 investigations.

8 CHAIR BASHFORD: What's the
9 turnaround? Like, if you have to get video at an
10 off-site bar, what's the turnaround time on
11 getting a subpoena?

12 MR. POORMAN: I don't have the
13 numbers. It's not been an issue --

14 CHAIR BASHFORD: Twenty four hours,
15 two weeks?

16 MR. DEFAMIO: Again, I don't have
17 specific. I can give an anecdotal.

18 MR. REDMOND: Chris Redmond,
19 Department of Defense Office of Inspector
20 General. I am not in the subpoena branch, but I
21 have been there during recent briefings where
22 they talked about the IG subpoena program. It

1 has increased over the last several years.

2 Every year, the IG subpoena program
3 has received more and more requests. I believe
4 the latest turnaround is 72 hours. But it also
5 depends on the complexity of the case. Each case
6 is different on its own merits. But the standard
7 that they're shooting for is either 48 or 72
8 hours.

9 MR. SULLIVAN: Ms. Bashford, so
10 Congress and the Military Justice Act of 2016
11 authorized investigative subpoenas issued by the
12 military judiciary. The effective date of that,
13 it hasn't yet taken effect.

14 The effective date is going to be on
15 a date to be prescribed by the President no later
16 than January 1st, 2019. There is a proposed EO
17 out for public notice and comment right now that
18 proposes a January 1st, 2019 implementation date.

19 So if the President were to go that
20 route on that date, a new form of investigative
21 subpoena would take effect within the military
22 justice system.

1 CHAIR BASHFORD: Thank you.

2 JUDGE GRIMM: Mr. Sullivan, what's the
3 enforcement mechanism of that if our Chair has
4 asked the question, it might come up frequently
5 in these cases, it's at a location, a bar for
6 example.

7 There's a question that there's a need
8 to get a videotape before the loop tapes over it
9 again and it may be lost. You have a subpoena,
10 administrative subpoena issued by a military
11 magistrate or a judge, and then it's not complied
12 with.

13 In federal court we all the time get
14 agencies come into our court to ask us to issue
15 show causes on contempt as to what it's not been
16 enforced. What's the enforcement mechanism if
17 you do have someone who wants to quash the
18 subpoena?

19 MR. SULLIVAN: So there's two
20 different tracks there. So one of the other
21 provisions of the Military Justice Act of 2016 is
22 authorizing military judges to take certain pre-

1 referral actions for which they currently do not
2 have authority.

3 One of those actions is for an entity
4 that wants to challenge the subpoena being
5 issued. So if the recipient of the subpoena
6 authoritatively challenges it, there's an avenue
7 there.

8 If on the other hand the recipient of
9 the subpoena simply doesn't comply, then the
10 remedy is you, Your Honor. Congress has
11 authorized the United States to go into US
12 District Court to try to enforce that subpoena
13 against a civilian.

14 JUDGE GRIMM: Where it's challenged,
15 does the challenge initially get heard by the
16 issuing authority?

17 MR. SULLIVAN: So that will be in the
18 implementing regulations that are out for public
19 comment. So there's no definitive answer to that
20 yet. But the recommendation will be exactly
21 that, that --

22 JUDGE GRIMM: And then if that results

1 in a denial of the motion to quash, the
2 enforcement of that if resisted would go to
3 Federal District Court?

4 MR. SULLIVAN: Exactly, Your Honor.

5 BG SCHWENK: I have a couple of
6 questions, if you don't mind. On the restricted
7 reporting program, when that was first bandied
8 about, there was concern through the DoD IG from
9 the MCIO community about the downside of that,
10 which is somebody that has committed a sexual
11 assault is not being arrested and being held
12 accountable, and there were some concerns. Where
13 does that stand in the MCIO world now? What's
14 the attitude towards restricted reporting now
15 that we've had it for a number of years?

16 MS. VOGEL: I'll speak -- I'll start
17 by speaking to that. In 2007 was when the Coast
18 Guard implemented restricted reporting. And my
19 first thought, as a law enforcement officer was,
20 I'm not going to find out about this?

21 And I was reminded by my director at
22 the time that, hey, we're not finding out about

1 these. So if we can at least get these victims
2 in so they can speak to someone, those
3 individuals can hopefully help them understand
4 what the process is and get them services. Then
5 maybe they can move forward.

6 So initially I think -- and there was
7 concern about victim advocates, you know, being
8 entered into the -- they'll being in the room
9 with the investigator and potentially -- if the
10 victim chooses that. So there was concern about
11 that.

12 I think again, like the SVC program,
13 there were some growing pains when that was first
14 implemented. I see it as a positive thing now,
15 and I think generally speaking, it's seen as a
16 positive thing because we're actually getting
17 those people in so they can understand what
18 services are available to them.

19 And even if they're not ready to move
20 forward with the criminal investigation, which we
21 would want, the investigators would want, but we
22 need to get them in so they can at least get

1 help.

2 MR. POORMAN: Anybody else? So I
3 remember that it was very controversial. And I
4 think we all as law enforcement officers felt
5 that we should get it, and we should be able to
6 act on it.

7 I still think it's great when we get
8 information and we can act on it. I think to
9 Bev's point is before we had victims that just
10 didn't come forward at all. And so we don't know
11 what we didn't get before that we are now getting
12 at least as restricted cases.

13 What we want is victims that want to
14 participate. I mean, we need victims that want
15 to participate in the military, in the criminal
16 justice system. So without that, not much
17 happens.

18 So we have victims that come forward
19 and they're unrestricted and they decide they
20 don't want to participate. The consequences are
21 almost the same in that there's very little we
22 can do outside of trying to package a case around

1 them, and that doesn't work so well.

2 So now that the SVC's I think are
3 onboard and our confidence is improving that not
4 only they can go restricted or they can do it
5 with some legal advice and assistance to make
6 informed decisions if and when to come forward.

7 Are they accumulating? Yes, the
8 numbers are accumulating and certainly there
9 could be cases in there that are solvable,
10 workable. But we can work with what we get.

11 BG SCHWENK: Thank you. Anybody else?

12 MR. DEFAMIO: Yes, pretty much along
13 the same lines.

14 BG SCHWENK: The expedited transfer
15 program as I understand it, you know, the victim
16 has a right to ask the commander to be
17 transferred to some other place so they're away
18 from the alleged perpetrator.

19 And the question is what effect does
20 that have on the investigations if, you know, one
21 minute the person is here and the next minute
22 they're 500 miles away or 1,000 miles away or

1 wherever they are. Are there any views on that?

2 MR. DEFAMIO: Anecdotally on there, I
3 think it can extend our timeline as far as
4 getting to witnesses, especially the victim. I
5 think the bigger impact I've seen is on the back
6 end as far as providing the victim services and
7 updates because the case, our case will stay with
8 the subject.

9 If it happened in San Diego that's
10 where our case will remain. And if the victim
11 moves to Norfolk, the victim services will shift
12 over there. And of course, our requirement to
13 keep the victim updated on the case progress.

14 So some challenges on that end. But
15 as far as the actual investigation, I don't think
16 it's had a major impact on our timelines or
17 getting the investigation complete.

18 MS. WILLIAMS: And with the re-
19 interviews of the victims, you know, the initial
20 person may have built some type of rapport with
21 them and so that, you know, they have to go
22 through the whole thing over again if they need

1 to get some more information from a different
2 agent down the road.

3 BG SCHWENK: Thank you. Could you, I
4 know you talked about the relationship with the
5 trial counsel, and I think the Army said that
6 you're going to have a joint class for training
7 or something with investigators and trial counsel
8 together in August.

9 And we talked about the beginning and,
10 you know, early and often for the relationship.
11 How about at the end? You know, one of the
12 anecdotal things that came out of talking to
13 agents was those trial counsel will never stop
14 asking for more information.

15 We just want them to make a decision
16 and move on with the case. And you know, it's
17 not beyond a reasonable doubt, it's beyond a
18 shadow of a doubt. What about the end of the
19 investigator phase and the relationship with the
20 trial counsel, how does that work?

21 MR. POORMAN: We have a requirement,
22 it's in Air Force instruction pertaining to sort

1 of our attorney friends and then from us that
2 they meet early and often, and then there's a
3 closure session.

4 There's a discussion at the end,
5 what's allowed. What haven't we anticipated,
6 what defenses haven't we anticipated, what
7 closures we need on it. And we do the best we
8 can to then at that meeting decide that the case
9 is sufficient, prepare it for closure, and we
10 move forward.

11 It is inevitable that after closure
12 things arise. And we attend to them the best we
13 can depending on how probative they are, how
14 serious they are, how much they would change an
15 outcome to the case. And that's kind of how we
16 work that.

17 MR. DEFAMIO: NCIS is required to keep
18 our cases open until final adjudication. We do a
19 thing we call active investigation complete
20 pending adjudication. But after that the case is
21 still open.

22 The agent is still of course

1 corresponding with the trial counsel, and if
2 trial counsel has specific requests, the agent
3 will, you know, handle them through the open
4 case. So we would continue that all the way
5 until we get our results at trial.

6 MS. WILLIAMS: Yes, and our cases are
7 considered in a final report state so the
8 prosecutor has something to go on with. But if
9 they ask for more investigative activity, we do
10 the more investigative activity if it's
11 reasonable. Sometimes, you know, we have to make
12 some judgement calls on that too.

13 MS. VOGEL: Very similar for us.
14 Ours, once the investigation is completed, it's
15 closed, referred. And then again same. If there
16 are leads that they're asking to be followed up,
17 then they'll look at those.

18 BG SCHWENK: On timelines, so as I
19 understand it, the rule when we first reacted we
20 went way over one way and said only an MCIO agent
21 can interview the victim. And not only that,
22 only the MCIO agent can work the case, even the

1 contact case.

2 And then that policy is now changed I
3 guess. And so a number of you indicated that you
4 have some of the non-MCIO criminal investigators
5 now working with your installation MCIO offices.

6 Is that going to help on timeliness do
7 you think that now there's extra resources, and
8 if I'm an MCIO person, you know, agent, I can
9 take the contact cases and call in my buddies
10 from wherever, Marine-CID or, you know, whoever
11 they are and give those to start working and I
12 can focus on the felony cases or --

13 MS. VOGEL: Just for clarification
14 sake, CGIS works all those cases. We don't turn
15 them over to non-CGIS personnel.

16 BG SCHWENK: Well I think everybody's
17 got to keep working them. It's just a matter of
18 who you can use for it.

19 MS. VOGEL: Right.

20 MS. WILLIAMS: We have the MPs that
21 assist us in the office, so it's kind of taken
22 out of hide. They're not assigned to us

1 necessarily. They may be either ADCON or, you
2 know, some type of support to us.

3 We had some, we had DST team members
4 that were assigned to the offices and we were
5 able to then transfer them to sexual assault
6 investigators depending on where they were at
7 and, you know, what they needed.

8 But it's more of a taken out of hide
9 from the MPs to come over and help us. But they
10 all work with CID. It's not like they're over at
11 the MP station working it. They're at the office
12 working with somebody.

13 BG SCHWENK: Do you think that will
14 have a helpful effect on getting things done in a
15 more timely manner?

16 MS. WILLIAMS: Well most, a lot of the
17 cases are contact cases and it does assist. The
18 more people we have to help with the
19 investigations of course the better, and the
20 least amount of time we'll have on those
21 investigations.

22 MR. DEFAMIO: I think it will get us

1 improvement on timeliness on the front end, I
2 mean, within the first 72 hours knocking
3 interviews, crime scene, figuring stuff out.

4 I don't know if we'll see it reflected
5 in the overall timelines because a lot of those
6 are extended by, you know, sending leads and lab
7 time and things like that. But it will
8 definitely have a front end effect to the
9 investigation.

10 JUDGE WALTON: Do you know what
11 percentage of your cases are male on male sexual
12 assaults?

13 MR. DEFAMIO: I do have that data,
14 whether it's in here at my fingertips right now.
15 I don't have it on me right now, but I can get
16 that.

17 MS. WILLIAMS: Yes, we can get it.

18 MR. POORMAN: In 2016 out of our
19 almost 1,000 cases, 128 I believe were male
20 victims. I can't tell you how many were male on
21 male and how many were female on male, but it was
22 about a ten percent or so.

1 CMSAF MCKINLEY: I think along these
2 cases I saw some recently that those cases were
3 mostly on duty, and they were associated with
4 hazing, am I right?

5 MR. POORMAN: There's a strong
6 correlate to that, yes.

7 MS. WILLIAMS: Yes.

8 MR. POORMAN: They were sexual
9 assaults, but they were, the context was hazing.

10 MS. WILLIAMS: Yes, exactly.

11 BG SCHWENK: If you guys were the
12 Secretary of Defense and you had the authority
13 that Secretary Rumsfeld always wished he had,
14 which meant no law was in your way, no
15 regulation, you can do whatever you wanted --

16 MS. WILLIAMS: No Constitution?

17 BG SCHWENK: -- what things would you
18 do to try to make the system better, however you
19 define better. Do you have any ideas of the
20 things you would like to see happen? More
21 people, less something, I don't know. Change
22 policy, add a new policy, get rid of a policy.

1 MS. WILLIAMS: More people, more
2 money.

3 MR. DEFAMIO: I think a simple more
4 surveillance cameras on our bases. I've run into
5 that repeatedly in investigations where we didn't
6 have a camera in the barracks hallway which could
7 have been key to, you know, was that person in
8 the room or were they not.

9 DEAN HARRISON: Ms. Vogel, I have a
10 question for you. You say that 49 of your agents
11 are Reservists. Are most of them in law
12 enforcement in their civilian lives?

13 MS. VOGEL: They are all law
14 enforcement. That's actually how I started with
15 the Coast Guard Investigative Service. I was
16 with Saint Tammany Parish Sheriff's Office in
17 Louisiana full time. And I was in Reserve with
18 the Coast Guard, and I became a Reserve agent
19 with CGIS.

20 DEAN HARRISON: So are those agents
21 required to go through the same training as
22 the other agents, or is anything waived for them?

1 MS. VOGEL: They do not go, typically
2 they do not go to CITP. We actually do have a
3 few Reserve agents who are full time with other
4 federal agencies. We actually have an NCIS agent
5 full time and he's Reserve with us.

6 They go to state, you know, post
7 academies. But a fair bit of the training that
8 we have is open to them. Some of the trainings
9 that I mentioned are open to Reserve agents as
10 well.

11 DEAN HARRISON: And is the Reserve
12 obligation the same as a typical Reservists?

13 MS. VOGEL: It is. It is, you know,
14 the two days although it's not on the weekend. I
15 mean, they can typically drill during the week
16 and whenever needed.

17 BG SCHWENK: Okay. And you had
18 retrained that NCIS agent --

19 CMSAF MCKINLEY: There were some cases
20 where a member will be allowed to have separation
21 in lieu of court-martial or non-judicial
22 punishment. And the records that you have on

1 those people, do you keep those records? And if
2 they are allowed to separate, is there any
3 communication with the community that they may be
4 going to?

5 MR. DEFAMIO: Yes, first part yes. We
6 will have those records of what the disposition
7 was. So if it was separation of duty, we'll have
8 that. If they are not required to register as a
9 sex offender, which would have to be through a
10 special or general court-martial, then no we
11 wouldn't communicate that with the local
12 community.

13 We will do regular sex offender
14 notifications though to those that are convicted.

15 MR. POORMAN: That's convicted sex
16 offenders. So a conviction would have to be a
17 military courts-martial.

18 MR. DEFAMIO: Non-judicial, we
19 couldn't report that.

20 MS. LONG: On that, I apologize, I
21 wasn't here. So if this were asked and answered,
22 please let me know. It's about how you know if

1 you're doing a good job, basically what your
2 performance.

3 Did anyone ask about do you keep --
4 when I say performance, I mean what, I don't
5 necessarily mean it in the research sense
6 although there's some research component but how
7 you know if you're doing a good job, how do you
8 try and keep track of it. How do you try to
9 know? How do you try to improve?

10 MR. POORMAN: Very good question. Do
11 we make a difference and is it positive. I think
12 up until 2012, so has it been painful having the
13 Department of Defense IG looking through our
14 work? Yes, it has.

15 I think it's been great. It's peer
16 review. So I would say starting in about '12
17 with the assessments is the first time we
18 probably had interagency and external peer review
19 of our products.

20 So we're kind of new to this, about
21 five years into this. It has been helpful, and I
22 would defer to the reports where they looked

1 three times at our cases for sufficiency using
2 standards that they identified as to how we're
3 doing on that.

4 And the last two assessments we had
5 cases with no major investigational deficiencies
6 in any of our cases. It's minor deficiencies in
7 several cases that would not have affected the
8 outcome of the investigation in the opinion of
9 the assessor.

10 So external and internally for OSI
11 probably for each we have a quality control
12 process which senior investigators with a lot of
13 experience, we randomly select, today they will
14 be selecting a random number of cases closed,
15 investigation closed last week. And they will go
16 through and look for sufficiency.

17 There's a science side to this if you
18 do the right interviews, and then there's the art
19 side at how well were those interviews done. And
20 that's very different kinds of measures, a
21 qualitative and quantitative kind of a look.

22 We have that data and we do do that.

1 And so those are our processes externally and
2 internally.

3 MS. LONG: I would love to hear from
4 the others. I just that I want to know do you
5 sit down as part of that then with the SARCs or
6 the prosecutor, the trial counsel and perhaps
7 others to say okay, let's talk about our data or
8 your data and sort of a how are we doing moment?
9 Do you do that, is that helpful?

10 MR. POORMAN: We don't do that. It
11 might be helpful.

12 MS. VOGEL: I would say --

13 MR. POORMAN: Formally.

14 MS. VOGEL: For the Coast Guard, it is
15 weekly if not daily that I am communicating with
16 my counterparts if you will at headquarters, the
17 SVC who have done inspections over the SVC
18 program, the SARC program manager, legal.

19 We coordinate often. We just recently
20 did an SVC, a review regarding SVC and offering
21 SVC. And that review was CGIS director had us do
22 this review to see how many times SVC was

1 offered. And that was done with Ms. Beck and I.

2 So it's often that we coordinate with
3 each other. And of course, the SARCs and the
4 SVCs, they oftentimes are the individuals who
5 have information about what was good, what was
6 perceived as bad, that kind of thing.

7 And I think it's very helpful for us
8 to collaborate with the other worlds at work
9 here.

10 JUDGE GRIMM: Could I follow up with
11 Ms. Long's question just because she raises a
12 good point. We learned at the last session that
13 there's a roughly 25 percent acquittal rate when
14 sex related offenses are tried or courts-
15 martialled.

16 And I think the comment was made then
17 that in the federal criminal justice system, if
18 you were prosecuted with a 25 percent acquittal
19 rate, you would probably have some questions
20 asked about that. That's a high number compared
21 to conviction rates in the federal system.

22 Ms. Long asked how you all evaluate

1 whether or not you're doing the right things. Is
2 there any coordination among the investigators
3 and the legal and the command to try to get a
4 handle on what is it that if you have an
5 acquittal, why that happened.

6 Was that because the command made the
7 decision to go forward against advice by JAG?
8 Was it because a victim recanted? Was it because
9 of some forensic flaw in the analysis of the
10 evidence, much about whether or not the forensic
11 science meets scientific criteria and whether or
12 not it can withstand the scrutiny required by the
13 legal system before it can be admitted.

14 Something to allow an overview of why
15 is it that a number which, at least to the
16 civilian population, seems like a high acquittal
17 rate.

18 MS. VOGEL: We will do hotwashes with
19 legal to specifically look at that. I think one
20 thing that people need to understand is that each
21 case is on its own merits. A rape is not a rape
22 is not a rape.

1 So it's kind of unfair to say well,
2 you've got 25 percent, you're blowing it
3 somewhere. You know, each case is different. So
4 you have to really look at each case on its own
5 merits.

6 JUDGE GRIMM: But that's my question
7 is it may be just that the victim had a change of
8 heart and did not testify in a way that was found
9 to be sufficient to convince the jury beyond a
10 reasonable doubt.

11 The question is not well, each one is
12 different so we can't draw any conclusions from
13 that. It's what do you learn from that that
14 might inform how you act and where, if there are
15 lessons to be learned, what part of the process
16 is best to address it.

17 MS. LONG: I feel like I just need to
18 jump in. I understand what a federal conviction
19 rate might be from the state and local
20 perspective. The conviction rates when you're
21 actually doing what you're supposed to be doing
22 are unfortunately quite low based on the research

1 just given what the law and the appropriate
2 application is and trying to avoid the
3 speculation that can sometimes happen in the
4 downstream orientation.

5 I think from the state and local side,
6 and again it's very hard because there's 58
7 jurisdictions, and I know you're here to answer
8 questions. But just to put this in context, we
9 know that cases that should be going forward are
10 often weeded out for the very factors that are
11 common in all of these cases.

12 And so we are trying to look at
13 complexity because a jurisdiction is not the same
14 as another jurisdiction. So if you're going
15 forward on what would be a very straightforward
16 case, that should be compared at a much different
17 layer than if you're going for a case with a lot
18 of variables, as a lot of the adult sexual
19 assault cases have, and we try to come up with a
20 method with Urban Institute, with RAND evaluating
21 rates to look at maybe we can capture this.

22 I only say that because I do want to

1 put it in context because it could also be a flag
2 in the state and local world if there's a high
3 conviction rate that too many are being pulled
4 out. And we just don't have the data right now
5 to know. We would think, I think, that we should
6 see a higher layer of cases being prosecuted.

7 Perhaps not great outcomes, but then
8 as these get tried more, we should then see a
9 higher level of convictions which is not there
10 yet. Obviously you are your own microcosm so
11 it's easy for us to look at you because you have
12 all the data that we don't have across the
13 country.

14 But I wanted to put it in that
15 perspective too because one of the follow up
16 questions I was going to ask is do you see
17 trends. Are you capturing the factors like the
18 kind of cases that are going forward to try and
19 see okay, there's continued negative outcome,
20 maybe we need training or maybe there's something
21 that we could try and close the gap on, that
22 would be my follow up.

1 I didn't mean to interject, I just
2 wanted to put that other information with you.

3 MR. POORMAN: I don't think we do a
4 cradle to grave assessment of our investigations
5 and how they contribute to or detract from the
6 ability to work those.

7 We do it anecdotally, and to some
8 extent I think it's effective. We have for
9 example at our advanced training our senior Air
10 Force trial counsel comes in and who sees a lot
11 of cases at various military installations, and
12 in general gives us feedback as to processes and
13 procedures and techniques we're doing well and
14 areas where we could improve.

15 But it is at that level and it's in
16 that way that it's done. Specific correlations
17 between convictions and not and whether it was a
18 bad interview that contributed to that or a lack
19 of collection of evidence, no hard data.

20 MS. WILLIAMS: CID has an IG team that
21 goes out and they look at the cases. Now of
22 course they're not looking at every case. They

1 do a random pull. And they'll look from the
2 beginning to the prosecution to see if there's
3 anything that they can help the office with on
4 what they did.

5 Now like Kevin said, we don't have the
6 data, and it probably would be a great thing to
7 see what, you know, what the problems were with
8 the 25 percent that, you know, if we had each
9 individual case that we're talking about.

10 MR. POORMAN: Yes. For example, I was
11 at the last session, heard the data presented,
12 and talked to my counterparts in the JAG
13 community, to what extent are we contributing to,
14 if you will, in any way that rate.

15 And if it's right or wrong, to what
16 extent our case is sufficient or insufficient.
17 Is there a correlation to that. And other than
18 anecdotally, that's all we kind of, we talk
19 through specific cases where it happened, but in
20 general as a body, no.

21 MS. LONG: And still on a good path
22 and trying to talk through it.

1 CHAIR BASHFORD: Mr. Markey, did you
2 have any questions?

3 SGT. MARKEY: Yes. First of all,
4 thank you so much for being here and sharing this
5 information of course, and with an investigative
6 background I can appreciate your positions that
7 you're in.

8 A couple of things, so in the context
9 of this Committee where we're, and I think that
10 the question about have we seen a cradle to grave
11 assessment, perhaps that's something within the
12 context of this Committee that we can, you know,
13 consider and look at and identify an opportunity
14 to improve gaps in response, accessibility to
15 more resources. I think that would be awesome.

16 I also want to go back to a couple of
17 comments that Mr. McKinley and Ms. Anderson had
18 made. Kind of dabbled into the consistent effort
19 across the different agencies in their response
20 to sexual assault.

21 And I think part of what we're all
22 trying to do, especially in the civilian world,

1 it would be so important that no matter where a
2 victim might present, to whatever organization
3 with the system, that they get the same response.

4 And I think that's everybody's goal.
5 I think that's what we should be striving for and
6 I think that's what they deserve. And so I
7 started looking, or I started asking, and this is
8 some of the things we did within our own
9 organization, whether we were able to effect it
10 or not, but how effective, efficient, and
11 consistent are we in our response.

12 And I think those are some of the
13 questions that we have to critically take a step
14 back and look. And hopefully that part of the
15 review process of what this Committee wants to
16 do.

17 But there's a lot of variables, and
18 I've got a whole page of stuff. And I won't go
19 into it. If you want to do a sidebar, that would
20 be great. But some of the highlights though, you
21 know, investigator caseload.

22 And I look at the numbers, and I won't

1 pick on you, I shouldn't say pick on. I'll
2 identify CID with when in a fiscal year you had
3 2,521 reported sexual assaults. And I'm just
4 curious how many investigators were there that
5 handled those 2,521 assaults.

6 I'm looking at the number of
7 investigators and you have 706. And I'm thinking
8 that comes out to about three cases per
9 investigator for sexual assault. I don't know if
10 that's accurate or not. Maybe I'll give you an
11 opportunity to explain.

12 MS. WILLIAMS: Okay.

13 SGT. MARKEY: If I could interject.
14 The second one is assignment length. And this
15 came up at the last meeting with the prosecutors
16 and JAG. And part of the response, part of the
17 effectiveness of the response is having a multi-
18 disciplinary team that works together and
19 understands each other.

20 Maybe they're not friends, but they're
21 this team that has the same mission and goal.
22 And I don't know if it can be effective, if

1 there's any way. But assignment length seemed to
2 be an issue with turnover of personnel and
3 getting somebody new or getting somebody that has
4 maybe a different, I don't want to say agenda but
5 a different goal.

6 That may be problematic, that may be
7 something that I don't know how that can do. The
8 other thing that really was important to me is
9 the selection process of the investigator. And
10 even more important, those first line supervisors
11 who are overseeing those investigations and
12 investigators and determining whether the quality
13 and efficiency and effectiveness and consistency
14 within their own command.

15 You know you have the circle of
16 influence and the circle of concern. So that
17 influence is so critical. And so I'm curious
18 about the selection process and the oversight of
19 the investigators as you're doing the transfer
20 with those first line supervisors.

21 And then I had a question about the
22 crime lab. And this was happening, this is

1 happening in the civilian world. But yes, all
2 sexual assault kits are being submitted to the
3 lab. Not all sexual assault kits are being
4 tested.

5 MS. WILLIAMS: They're all being
6 tested.

7 SGT. MARKEY: And that became
8 problematic for the civilian world because, you
9 know, with the backlog. So those are just some
10 things. And the only other --

11 Just thought process. How do you
12 process this information.

13 MR. POORMAN: Did you want to answer?

14 MS. WILLIAMS: Do you want to answer?

15 SGT. MARKEY: Whichever one you feel
16 like would be the most effective.

17 MS. WILLIAMS: Well, all sexual
18 assault kits that are sent to the lab are tested,
19 and probably tested more extensively than tested
20 by a local lab. They test everything in the kit.
21 They don't just test like the swab or anything.
22 They test everything. And if you have a chance

1 to go to the lab, you'll see that.

2 The case agent load, well taking that
3 number and dividing it by that number, yes it
4 sounds like three cases each. But it depends on
5 what installation they're at.

6 If I'm at Fort Bragg, Fort Hood, Fort
7 Lewis, Fort Campbell, I have a bigger caseload
8 than I do at maybe Redstone Arsenal, which we do
9 have -- you know, we have agents there. So the
10 caseload differs for that.

11 Our supervisors that we have are
12 warrant officer supervisors. And they have about
13 -- the ones that are doing the first line have
14 about six years' experience on for
15 investigations, up to the special agent in charge
16 could have 15-16 years which. And also, the
17 sexual assault investigator, the civilian that we
18 have in the office, they have about 15 years or
19 maybe more, because they were usually agents
20 before, or some other law enforcement before they
21 came to CID so they have about 15 years.

22 For a sexual assault investigator,

1 they have about three years' experience before
2 they start investigating the sexual assaults.
3 And I can't remember what else you asked.

4 SGT. MARKEY: I'll follow up on the
5 lab. So if they do get a foreign profile, what
6 do they do with that? Is it uploaded into your
7 database, or is --

8 MS. WILLIAMS: CODIS.

9 SGT. MARKEY: -- it shared with the
10 civilian FBI database?

11 MS. WILLIAMS: Yes, it's CODIS.

12 MR. POORMAN: It goes to the
13 investigator side of CODIS. So it would be
14 loaded as an unknown. We're suggesting it's an
15 unknown. Or known.

16 MS. WILLIAMS: Well, it depends on
17 known, because I could have two samples, and it
18 could be husband and offender.

19 SGT. MARKEY: So that DNA profile is
20 shared with the FBI's CODIS?

21 MR. POORMAN: CODIS.

22 MS. WILLIAMS: Yes it is.

1 SGT. MARKEY: Okay.

2 MR. POORMAN: Yes. For cold cases
3 later, hopefully that gets put in. To just
4 answer your question on suitability of
5 investigators, we have for OSI at least, we have
6 a very, we have an entire instruction on the
7 selection process.

8 So while all agents have to have top
9 secret clearances, that's for trust in order to
10 handle classified. Quite separate from that we
11 have 20 suitability standards that we go through
12 in assessing every investigator.

13 And it's quite varied to include
14 flexibility, adaptability. Some of our agents
15 are in remote locations. So we work through all
16 that. It's a scoring and adjudicative standards
17 that we use, I'm happy to share and discuss that
18 with you.

19 MR. DEFAMIO: On the same lines with
20 us. We have a security.

21 MS. LONG: Is there a, I think
22 temperament is the wrong term but, like, some

1 sort of we know that there are personalities that
2 are better suited or perspectives. It's hard to
3 quantitatively capture that. But I understand it
4 needs to be, have some sort of consistent. Is
5 that part of your factors or how do you tease
6 that out so the right people to work with
7 victims.

8 MR. POORMAN: So the head of our
9 clinical psych, our behavioral psych shop, Dr.
10 Ray, looks at this regularly. And so we study
11 whether there are instruments, psychological
12 instruments that measure this well. There are
13 some that parallel what we want. Temperament is
14 a big part of investigation, certainly.

15 We've not broken the code, if you
16 will, on that particular. We think that it's not
17 one particular test. It's a combination of
18 factors and indicators that are in. But it would
19 take quite a bit to go in, but we have that
20 material.

21 We have folks that would be happy to
22 sit down and talk through that because I think

1 we, as in other law enforcement, struggle with
2 selection of the right people to do the job is
3 critical in this business. So we think we do
4 pretty well but trying to find a community
5 standard for that is elusive.

6 CHAIR BASHFORD: Well, I'm going to
7 thank you all for coming. I'll allow us to have
8 a ten minute break before we begin our
9 deliberations. Thank you so much, it's been very
10 informative.

11 (Whereupon, the above-entitled matter
12 went off the record at 10:35 a.m. and resumed at
13 10:52 a.m.)

14 CHAIR BASHFORD: So I asked for a
15 strategic planning if Captain Tideswell and Ms.
16 Carson sort of launch us by looking at some of
17 the same materials provided to us.

18 CAPT TIDESWELL: Yes, ma'am. If you
19 will look on the left hand side of your folder,
20 there are two documents that I would like to draw
21 your attention to. The first one begins with the
22 title legislative history.

1 There's been a lot of questions as to
2 the purpose or how should the panel proceed. We
3 were able to determine that in fact the original
4 language in the bill that actually created the
5 DAC-IPAD was originated from Senator Gillibrand's
6 office.

7 And although the language that you see
8 highlighted on the second page in yellow did not
9 end up in the original bill, it may in fact
10 provide you with some insight. And so that is
11 the original language that was proposed.

12 And it talks about the Panel looking
13 at things like the criminal investigation
14 reports, looking into the Article 32s that are
15 conducted which are preliminary hearings in the
16 military justice system, looking at
17 recommendations of the staff judge advocates in
18 the initial disposition authorities, sort of what
19 the convening authority decides to do, the
20 findings and sentences of the court-martial, and
21 also any legal reviews that recommends that cases
22 not be referred for prosecution.

1 So although this language did not make
2 it into the bill, I thought you all might find it
3 informative that that was what was original put
4 in. Yes, sir?

5 MR. KRAMER: I'm sorry, do you know
6 why it didn't make it in to the --

7 CAPT TIDESWELL: Yes, sir. We've
8 looked back at the language and we believe
9 Congress wanted to give you as much room to do
10 the task as possible, as opposed to defining how
11 you all should do it. Is what people --

12 MR. KRAMER: Because the concern of
13 course is if it was taken out, maybe there was a
14 reason that they didn't want us to do that. But
15 you're saying maybe the opposite, they didn't
16 want to constrain us?

17 CAPT TIDESWELL: Yes, sir. As you
18 read through this, they say they took it out to
19 help clarify it for you, which in an odd twist
20 almost made it less clear.

21 CHAIR BASHFORD: Thank you.

22 CAPT TIDESWELL: Yes, sir, I mean

1 ma'am. And then the second item I wanted to draw
2 your attention to because I think a lot of the
3 discussion we've been, that I at least have been
4 hearing, revolves around the collection of data
5 and percentages and, you know, what data do we
6 have, what data should we collect.

7 I just wanted to draw your attention
8 to the Military Justice Act, although this talks
9 in terms of summary of a proposal, it's this
10 Article 140a. The language that you read here
11 has actually been enacted, and it has advised the
12 Services to basically develop and implement a
13 case management system that involves the
14 collection of data and making that data
15 accessible. You know, what's going on in the
16 military justice process.

17 Right now this Act was just passed.
18 The Department of Defense has been tasked through
19 the SECDEF to implement it, and they have until
20 December of 2020 to set the standards and
21 criteria of what will be collected.

22 I would just comment to you all that

1 one of the things you may want to consider is
2 helping the Secretary of Defense in providing
3 recommendations with expertise on perhaps what
4 those standards and what those criteria for this
5 particular program might be. And again, it would
6 merely be recommendations, but I think they would
7 be informative.

8 CHAIR BASHFORD: I think that gives us
9 a big opportunity to help shape going forward
10 what should across all Services be collected and
11 what we think is important data for them to
12 collect. So thank you for pointing that out to
13 us.

14 So we have a strategic plan discussion
15 for the rest of our meeting today that I hope
16 will launch us forward, going forward. And the
17 first one is really the scope of misconduct that
18 we want to look at, the kinds of cases.

19 And Staff sent out some requests for
20 information, some of which came back. And what
21 tab are they at, Captain?

22 CAPT TIDESWELL: The results are

1 actually in your same day folder.

2 CHAIR BASHFORD: Same day folder?

3 CAPT TIDESWELL: Yes, ma'am.

4 CHAIR BASHFORD: Okay.

5 CAPT TIDESWELL: So the request came
6 out when we did the read-aheads, but we actually
7 now have the answers to the questions which are
8 in your same day folder.

9 CHAIR BASHFORD: One that we got back,
10 and I just wanted to highlight this, is the JPP
11 looked at their analysis of cases where charges
12 had been brought, charges preferred. And that's
13 the data that they collected. And our staff has
14 been collecting that data going forward as well,
15 building on what the JPP did.

16 But I would suggest to this Committee
17 that we are losing a lot of information if we
18 restrict ourselves to charges preferred because
19 on some of the data that we got back from the
20 Navy, when they talked about adult sexual
21 offenses case data for fiscal year '16, by the
22 time you get down to military subjects in which

1 at least one sex offense was preferred, we're
2 going down to about, for the Navy about 20
3 percent of the reports, for the Army about 15
4 percent of the reports, and for the Coast Guard
5 about 15 percent of the reports.

6 The Air Force was not able to give us
7 that data because they're -- the MCIOs version
8 doesn't track that. So I think if we were to
9 continue to track only what the JPP had done,
10 charges preferred, we are artificially limiting
11 ourselves.

12 And I think one of the things this
13 Committee needs to find out is why, what is
14 happening to these charges. Is the right thing
15 happening, is the wrong thing happening. But
16 these strike me as we're leaving if we only look
17 at preferred, 80 to 85 percent of our cases we're
18 leaving behind. And I think we should really
19 look at it in a more wide ranging view.

20 The other thing I think we need to
21 decide is the scope of misconduct of Section 3 of
22 our planning session outline. They've listed

1 rape, sexual assault, forcible sodomy, and other
2 misconduct. I think there's a big distinction
3 between the penetrative assaults and the contact
4 assaults.

5 Now some of them we might want to look
6 at, aggravated sexual conduct, abusive sexual
7 contact, but there is a big distinction between I
8 think contact and penetrative assault because
9 contact can run a whole gamut from, I don't mean
10 to be dismissive in any way, but we would call
11 the difference between felonies and misdemeanors
12 between a clap on somebody's clothed buttocks
13 versus, you know, choking and penetrative
14 assault.

15 So if there is a way to winnow out
16 from our looking in depth at some of the more
17 less egregious contact, I don't know if there is.
18 But I think that it would be good to know the
19 numbers.

20 They're sort of all put in as sexual
21 assaults and I don't think that that's probably
22 the best way of looking at it. Does anybody have

1 any thoughts on that? Dr. Spohn, do you --

2 DR. SPOHN: No, I agree that we should
3 be looking at the penetrative offenses. The
4 contact offenses are very different. And my data
5 analysis showed that the outcomes are very
6 different as well. And so we would really be
7 comparing apples and oranges I think if we
8 focused on those contact offenses.

9 CHAIR BASHFORD: And could you
10 clarify, because I think something got misspoken
11 in our earlier discussion with the panelists who
12 were here. There was reference to a 75 percent
13 conviction rate. My recollection is that it's
14 different.

15 DR. SPOHN: Of the cases that were
16 referred to trial, referred to court-martial, I
17 believe for the penetrative offenses the
18 acquittal rate was 21 percent.

19 CHAIR BASHFORD: Total acquittal rate.
20 And then we have the charges where a penetrative
21 offense was convicted was much lower, wasn't it?

22 DR. SPOHN: Yes. So of those who were

1 convicted, a relatively small proportion of those
2 who were charged with penetrative offenses were
3 convicted of penetrative offenses.

4 CHAIR BASHFORD: That was my
5 recollection. Sorry to put you on the spot.

6 DR. SPOHN: No, that's okay.

7 MS. LONG: I have a question. Do we
8 have reason to think that the penetrative, the
9 charges going forward on non-penetrative crimes
10 are mischaracterizing things.

11 For example, sometimes we see in the
12 civilian world that still for example a tongue
13 contact with the penis. That can be considered
14 penetrative in many jurisdictions because you're
15 breaking the lips but it may not be charged as
16 such.

17 Is there any utility or do we have any
18 sense of the things going forward or being
19 charged inappropriately?

20 I feel like that's less of an off
21 chance here because we have so many eyes on
22 these, or downgrade charges because you feel like

1 you can't prove the penetrative crimes, and do we
2 want to look at that category because I feel like
3 there's a grey area, not a grey, there's a
4 massive area between the obviously contact crimes
5 and those penetrative crimes that might be
6 charged as contact crimes. That still may be
7 worth looking at.

8 CAPT TIDESWELL: I don't really have
9 that.

10 MS. LONG: I just know it comes up as
11 a challenge to establishing penetration and/or
12 recognizing it for the reports sometimes.

13 CHAIR BASHFORD: And I think we're
14 using that as a little bit of shorthand because I
15 think they say rape, sexual assault, forcible
16 sodomy.

17 MS. LONG: Right.

18 CHAIR BASHFORD: So I think that
19 example you gave would probably, if there was
20 force involved would be sodomy?

21 MS. LONG: If it would, right, if they
22 would charge it. Okay.

1 CHAIR BASHFORD: Right.

2 (Simultaneous speaking.)

3 CHAIR BASHFORD: But I definitely,
4 because we don't have data --

5 MS. LONG: Exactly, okay.

6 CHAIR BASHFORD: We should see
7 certainly how you charge things can lead to a
8 different end.

9 MS. LONG: Exactly.

10 CHAIR BASHFORD: But do we have a
11 sense of the Committee that we would want to look
12 beyond just those cases where charges were
13 preferred to try to capture some of this 80 to 85
14 percent of reports?

15 DR. SPOHN: Absolutely.

16 CHAIR BASHFORD: Okay, good. So that
17 kind of takes us through case review options. I
18 think we want to look at, then, option one and
19 option two as opposed to just the charges
20 preferred. And I want to thank our staff for
21 getting out those RFIs and getting that
22 information to us for this.

1 Four B, category of cases to be
2 reviewed, we have a lot of different options
3 here. I think one of the things is if we are
4 going to review acquittals or dismissals, we need
5 to put out an RFI for various Service branches to
6 keep some information that they might not
7 normally do.

8 But given what we've heard about the
9 conviction rate on penetrative, and again I'm
10 using that shorthand, when a penetrative charge
11 is preferred and the conviction rate for that, I
12 think we would want to look at the cases where
13 that doesn't hold up. So that would be
14 acquittals and dismissals.

15 DR. SPOHN: Well, and if we're going
16 to step back and begin the process with cases in
17 which an investigation was opened, wouldn't we
18 also want to look at whether the case was
19 unfounded? And then whether charges were
20 preferred in addition to acquittals and
21 dismissals because those would be, I guess
22 dismissals can occur both before and after

1 referral, correct?

2 JUDGE GRIMM: I have a question. This
3 area where we're looking at in terms of
4 categories of cases that were reviewed, in our
5 materials here, I don't know if anybody had a
6 chance to read it, if it was part of the advanced
7 screening then I must have missed it.

8 But there's a Subcommittee on Judicial
9 Proceedings Panel, and I understand this is just
10 a subcommittee and that this is not final, but
11 it's in our materials and I looked at it. And it
12 may be that one of our members is General Schwenk
13 who is on that might be able to sort of give us -
14 -

15 But if you look at Page, well the
16 pages aren't numbered. But it has a list of
17 identified problems with how the military justice
18 system treats sexual assault offenses. It's
19 about two or three pages in.

20 And there's a list of things that tie
21 right into this notion of the scope of what we
22 want to investigate and number of

1 recommendations. It may not be the final
2 recommendations of the Committee itself, but
3 certainly were important enough to the
4 Subcommittee that was tasked with coming up with
5 those recommendations to tie into recommendations
6 of what this Committee should look at.

7 But they've got a number of
8 identified, seven perceived problems with how the
9 military justice system treats sexual assault
10 offenses to include pressures on what the
11 convening authority may feel is necessary to
12 charge that may not be a sustainable charge
13 because the decision not to charge has to be
14 reviewed by such a high command, observations
15 about restraints that may be imposed on the Judge
16 Advocate giving candid advice about the
17 possibility of success of proving a charge
18 because that recommendation goes to the defense
19 attorney as well, notions about training that may
20 go to individuals who will sit as members on
21 courts-martial in terms of what the proper legal
22 standard is to consent, and a number of things

1 that tie into this larger issue about the number
2 of cases that may be charged as the most serious
3 cases but are not being resulting in convictions.
4 And they may be charged as a serious offense but
5 with a lesser offense and they're convicting on
6 the lesser offense.

7 But it gets into this entire dynamic
8 about how the system operates. If you look at
9 these line items of things that they're talking
10 about, perceived problems, it gets into the
11 notion not just of what was charged, but what was
12 investigated because the decision as to what is
13 or is not going forward at trial takes into
14 consideration matters in which cases were open.

15 So when I look at these, this seems to
16 be to be something that causes me to have a
17 desire to discuss among ourselves where these
18 recommendations by this Subcommittee which has
19 already started looking at this fit into how we
20 should be looking at what we want to take a look
21 at.

22 JUDGE WALTON: Excuse my ignorance,

1 but is there plea bargaining in the military?
2 And if there is plea bargaining, are there
3 standards that have been created in assessing
4 what type of plea offer would be made in certain
5 types of cases?

6 CHAIR BASHFORD: I believe we've heard
7 a presentation where, I may have this wrong but a
8 member can agree to take a certain sentence, and
9 that's kept in a sealed envelope. And then if
10 there's something that --

11 CAPT TIDESWELL: So we have process
12 and it's a pre-trial agreement. And it's an
13 agreement between the accused and the convening
14 authority. And they reach a level of terms. But
15 I think where our system sort of differs is the
16 accused almost gets the benefit of one of two.

17 So the pretrial agreement controls,
18 but then the military judge, or usually the
19 military judge will hand down a sentence, and
20 then the accused gets the better of the two.
21 That's where our system sort of deviates I think
22 from the civilian sector.

1 MR. SULLIVAN: And Your Honor, that's
2 another area where the Military Justice Act of
3 2016 is going to change things. So at the
4 moment, what Captain Tideswell just referred to,
5 there's this concept known as beating the deal.

6 So let's say I'm a defense counsel and
7 my client is being tried for an unlawful entry to
8 a barracks room. So I enter a deal with the
9 convening authority that says my client will
10 plead guilty, and in exchange you'll approve no
11 sentence greater than 18 months confined.

12 So he goes to court-martial. If the
13 court-martial sentence is greater than 18 months
14 confined, then the convening authority has to
15 knock that sentence down to the pre-defined
16 level.

17 On the other hand, if the sentence of
18 the court-martial is six months, the accused gets
19 the six months. So again, it's known as beating
20 the deal. As Captain Tideswell said, the accused
21 gets the better of the two.

22 The Military Justice Act of 2016 is

1 going to change the entire plea bargaining
2 structure of the military which by the way grew
3 organically. The plea bargaining system is not
4 provided for under the Uniform Code of Military
5 Justice.

6 It grew up organically, and so it was
7 sort of fit into the existing structure which led
8 to that beat the deal concept. Under the new
9 provision, the accused and the convening
10 authority would reach a sentencing range. So
11 under the new deal it would be, you know, you'll
12 be sentenced to somewhere between 16 months and
13 20 months.

14 And then the sentencing authority
15 must, a judge's sentence within that range. So
16 that, the whole plea bargaining is going to
17 change effective probably January 1st, 2019.

18 JUDGE WALTON: They're going to be
19 subject to Constitutional challenge where you've
20 got mandatory guidelines? I mean, in the
21 civilian world that's been ruled
22 unconstitutional.

1 MR. SULLIVAN: Well right, but it's
2 going to be just by agreement. So in other
3 words, it would be open to negotiation, you know,
4 what that range would be.

5 And then if the accused doesn't want
6 to be governed by whatever range the Government's
7 offering, then their remedy is either to plead
8 guilty without a deal in which case it would be
9 unconstrained sentencing except for the very few
10 mandatory minimums in military law, very few of
11 them. Or alternatively, obviously they could
12 contest it.

13 But so the range will be defined not
14 by the equivalent of sentencing guidelines or
15 Sentencing Guideline Commission. It's going to
16 be a case by case, ad hoc negotiated range.

17 CHAIR BASHFORD: In addition to that
18 though, there's also all of the cases that are
19 diverted with separation from service, what type
20 of discharge, non-judicial punishment. We have
21 the NJPs. Administrative punishment. Some of
22 those need approvals at higher levels. But I

1 think I would characterize that as plea
2 bargaining.

3 MR. KRAMER: And another part of plea
4 bargaining seems to be -- that was about the
5 sentence. But if somebody's charged with say
6 rape, can they plead to an assault? That's a
7 much bigger question. So that's similar to
8 civilian.

9 CAPT TIDESWELL: And the requirement
10 to register as a sex offender has sort of changed
11 the landscape as to what the defendant is trying
12 to now plead to.

13 JUDGE WALTON: And who's approving
14 those agreements? Commanding office?

15 MR. SULLIVAN: It's the convening
16 authority who is, in the case of a penetrative
17 sexual assault allegation, it must be a general
18 court-martial convening authority. So it's a
19 commanding general or an admiral who is making
20 that deal.

21 If it's a special court-martial case,
22 so for less serious offenses, in the Marine Corps

1 it might be a battalion commander. But once
2 again, it's the commanding officer, not a lawyer
3 that's making the decision.

4 The commanding officer is advised by
5 lawyers, but it's the commanding officer or
6 commanding general that makes that decision.

7 CHAIR BASHFORD: So I think one of the
8 things that comes up then is, and I believe the
9 JPP did some of this work, is there any disparity
10 based on rank, based on race, Service, which
11 Service of how these are handled?

12 And I believe there was some, Dr.
13 Spohn's work has addressed that. Again, I don't
14 mean to put you on the spot.

15 DR. SPOHN: No, when we're able to
16 look at Service and rank of the accused, and the
17 relationship between the victim and the accused,
18 but not any demographic information other than
19 sex of the accused and the victim.

20 CHAIR BASHFORD: And I believe there
21 were no huge disparities there. But I think we
22 can look at further demographic information. And

1 also, since they were only looking at once
2 charges were preferred, one of the concerns might
3 be that rank might be taking into account before
4 charges are preferred because they never get to
5 that point.

6 So once charges were preferred, I
7 believe they found it was fairly even playing
8 field on the demographics they were looking at.
9 But that's a very much later stage. The JPP was
10 very busy giving us recommendations.

11 CMSAF MCKINLEY: They were.

12 CHAIR BASHFORD: It's not just here.
13 It's been throughout a lot of different, some of
14 their actual reports, not just Subcommittee
15 reports and things that would be a useful thing
16 for us to be looking at as well.

17 CMSAF MCKINLEY: Generous with their
18 suggestions.

19 CAPT TIDESWELL: So Judge Grimm, you
20 were kind enough to point out that this is merely
21 a Subcommittee report. Right now the JPP will
22 hold its last two meetings next week on Wednesday

1 and Thursday. They will have a final opinion on
2 these recommendations.

3 And we are gathering up everything
4 they're recommending we refer to the DAC-IPAD for
5 you all to review at the next, well I guess we
6 could send it out once it happens by email.

7 JUDGE GRIMM: That would be nice to
8 have before our next meeting.

9 CAPT TIDESWELL: Yes, sir.

10 JUDGE GRIMM: Because I would be
11 interested in knowing, for example, on the seven
12 areas that they perceived as problem areas what
13 the final report was in terms of where that may
14 have changed because if you look at the list just
15 descriptively, it cuts across a number of the
16 specific areas that our Chair has correctly
17 raised as topics that we might want to be
18 interested in focusing our attention on.

19 CHAIR BASHFORD: It seems to me that
20 one of our primary goals has to be why once we
21 get down to that area, why is the conviction rate
22 where penetrative offenses are charged and a

1 penetrative offense is substantiated by the
2 verdict, why is that so low?

3 And there could be all sorts of
4 reasons. I mean, it could be that there's too
5 much pressure being put on authorities to bring
6 these cases. It could be that the member juries
7 don't like these cases. It could be that the,
8 you know, we just don't know.

9 JUDGE GRIMM: Right.

10 CHAIR BASHFORD: We don't know.
11 There's clearly something going wrong, but we
12 don't know what the answer is because that's just
13 very low. That's just not in, I don't think it's
14 near what the civilian rate is.

15 I'm also, was very interested to see
16 the almost half or more than half of the cases
17 are reported after a year, that has not been my
18 experience in the civilian world if you take out
19 children who reported years later, something that
20 happened when they were young.

21 CMSAF MCKINLEY: Could we also look
22 at, you know, since the pressure has been on the

1 military on sexual assault, rightfully so for
2 well over a decade now, that command feel a
3 responsibility that if there's an allegation that
4 comes forward, that they will go to court versus
5 in the civilian community, they probably would
6 not take a case to court that military will take
7 to court today.

8 CHAIR BASHFORD: Well, except for the
9 information we got back from these RFIs, the
10 actual -- where a sex offense charge was
11 preferred is in the 15 to 20 percent range, which
12 could be right but would seem to cut against the
13 feeling that they feel compelled to bring these
14 because there's certainly a big winnowing out
15 process.

16 MS. LONG: And you really can't
17 generalize in this data at all. It's individual
18 prosecutor, individual office, individuals
19 elected, and it then changes. And we were doing
20 the best we can to try and get a hold of that
21 data, but there's no comprehensive data. So we
22 just don't know.

1 I would also say, Chairwoman Bashford,
2 that we were trying to get numbers on a number of
3 delayed reports. If you think that two thirds of
4 victims don't report, adult in civilian world,
5 the delays, I don't know if we know enough to
6 know if it's a week or a month. But it is a
7 substantial number that's delayed as well.

8 DR. MARKOWITZ: Well, what I was
9 saying, I mean I think we heard from our speakers
10 this morning. And I think it's really important
11 to keep this in mind, the difference between our
12 patients in the military and our patients in the
13 civilian world, the military provides a
14 tremendous number of resources to patients who
15 come forward, or I'm sorry, victims who come
16 forward with a restricted report that the
17 civilian world does not.

18 And so I do think that if we, that
19 there is an enormous, that that's really one of
20 the reasons why we're seeing such a disparity in
21 terms of the delayed reports with adults. So it
22 may be worth looking at specifically a number of

1 cases that go from restricted to unrestricted to
2 take a look at that and pin that down.

3 But when you think about what is
4 offered to a sexual assault victim who comes
5 forward with a restricted report, I mean,
6 jurisdictions would be hard pressed to be able to
7 offer those same kinds of immediate resources
8 that sort of gather around the victim with very
9 little effort compared to what a civilian victim
10 would have to do.

11 JUDGE GRIMM: That's right.

12 JUDGE WALTON: And I wonder if that 25
13 percent acquittal rate is really an indication of
14 a low conviction rate if you compare it to a
15 similar environment like a college campus. I
16 mean, because you have people who are being, you
17 know, put in contact with each other under
18 similar circumstances.

19 I would suspect you probably have a
20 lower conviction rate when you're talking about
21 young people on a college campus as compared to
22 other environments where sexual assaults take

1 place. And so I don't know if that 25 percent is
2 really a significant indication of something
3 different than an analogous situation in the
4 civilian world.

5 CHAIR BASHFORD: Well, I think that's,
6 and I do believe we have data on the number of
7 unrestricted, excuse me, I'm saying it wrong, on
8 the restricted reports that turn into
9 unrestricted reports.

10 DR. MARKOWITZ: Right. So then the
11 question is do we need to do sort of the deep
12 dive to find out, you know, is that why we're
13 seeing a delay, because victims feel like they're
14 being given the space and the resources to make
15 an informed decision to report, or is there
16 something else at play.

17 But I do think that the services that
18 are provided to restricted report victims in the
19 military does have a substantial impact on how
20 quickly people are coming forward.

21 CHAIR BASHFORD: So on categories of
22 cases to be reviewed, I mean, I do think we need

1 to look at acquittals and dismissals. And then
2 the question is how best to do that. We had some
3 other options, whether installations, regions,
4 Service, Service branches.

5 I mean, I think we have some data on
6 disparities within Service branches, there are
7 some. I don't think we have the ability to
8 review all of the acquittals and dismissals.

9 But we should have, be able to devise,
10 and we don't have to do it here but we should be
11 able to devise a statistically significant way of
12 doing it to get a cross section of these which I
13 believe we talked about forming a data
14 subcommittee or a data working group. And I
15 think that they would be best suited to decide
16 how best to capture some of that information.

17 And that again would also follow into
18 the number of cases to be reviewed. I don't know
19 what a statistically significant sample is, but
20 there are people here who do.

21 My understanding, though, the
22 difficulties in reviewing dismissals and

1 acquittals is the record keeping is very
2 different. There are transcripts that can be
3 gotten, but, or they can be provided I guess.
4 But there's really just audio recordings.

5 CAPT TIDESWELL: If the conviction
6 results, the record of trial is a verbatim
7 transcript. If there's an acquittal, it's
8 usually let on tapes, and it's a very abbreviated
9 record.

10 And so we would do the RFI or request
11 of the Services once we decide what you all would
12 like to review, basically erase the tapes and we
13 could have them transcribed if so desired.

14 JUDGE GRIMM: Captain, do you have a
15 sense of how quickly after the JPP has its final
16 meetings next week their final recommendation
17 will come out?

18 CAPT TIDESWELL: Yes, sir. I suspect
19 the report will be final and I can forward it to
20 you sometime in the middle of August toward the
21 end of the month, to the end of August.

22 JUDGE GRIMM: Which is really a pretty

1 fast turnaround because to the extent that
2 they're identifying what they perceive to be
3 barriers or problems or impediments, or however
4 they come out phrasing it at the end, it seems to
5 me that that's a good starting place for us so
6 that we don't duplicate what they've already
7 done, but it might help us get our arms around
8 how big a sample we need to look at, where we
9 should start to do our focus.

10 A lot of the things that they list
11 deal with factors that don't look at the outcome
12 of specific cases but talk about systemic
13 pressures on convening authorities, on advising
14 Judge Advocate General officers on the scope, on
15 the training, and the perceptions of the members
16 who may be sitting on these court-martial panels.

17 All of them are interrelated. And if
18 their recommendation, their final recommendations
19 based upon the process that they went through,
20 are finalized and given to us as we are forming
21 what we think we need to do to go forward, I
22 think that would be very helpful.

1 CHAIR BASHFORD: And they have made a
2 number of the final reports that are there. And
3 this is the Subcommittee report, I believe they
4 have made a number of recommendations to us
5 already, is that correct?

6 CAPT TIDESWELL: Yes. You mean, like,
7 directly to the DAC-IPAD?

8 CHAIR BASHFORD: On some of, this is
9 the Subcommittee report. But they had issued
10 actual reports where they have made suggestions,
11 right, that the DAC-IPAD continue, or to continue
12 to look at the various things already.

13 CAPT TIDESWELL: I would have to look.
14 I think most of them are --

15 MS. CARSON: Most of them are going to
16 be --

17 CAPT TIDESWELL: -- in this report.

18 MS. CARSON: -- in this report.

19 CHAIR BASHFORD: This one?

20 CAPT TIDESWELL: Yes, ma'am.

21 MS. CARSON: There's one. I think
22 data has one and --

1 MS. PETERS: Right, the data report,
2 well that's a JPP --

3 MS. CARSON: This is something --
4 (Simultaneous speaking.)

5 MS. PETERS: That JPP report has a
6 recommendation. And as it pertains to the topic
7 of military criminal investigative organizations,
8 the Subcommittee I believe issued one
9 recommendation that the DAC-IPAD monitor the
10 resourcing issue where they now have non-MCIO
11 assistance in sexual assault cases. At least
12 that's permitted.

13 I mean, there's going to be Service
14 differences, but I think they recommended that
15 the DAC-IPAD continue to monitor the
16 implementation of that policy.

17 MS. PETERS: The data recommendation
18 was that the DAC-IPAD continue to do the data
19 analysis that pertained to either one.

20 CAPT TIDESWELL: And Chair Bashford
21 was kind enough to sign off on a request for
22 information and we're already in the process of

1 collecting that data and following the process
2 that Dr. Spohn was kind enough to get into place
3 for us.

4 (Simultaneous speaking.)

5 CHAIR BASHFORD: And again, that was
6 once charges were preferred.

7 MS. CARSON: Yes.

8 CHAIR BASHFORD: So they did that for
9 fiscal year 2016, and we're doing it for 2017.

10 MS. PETERS: No, we're doing it for
11 2016. We just completed the 2015 and that report
12 will be coming out in August as well.

13 CHAIR BASHFORD: So we'll have the
14 next year's worth of data.

15 CAPT TIDESWELL: But Judge, we'll do
16 a chart for you all so you can literally see.
17 And I believe in of the chapters, the JPP is also
18 doing a final report, and one of the chapters in
19 their final report is going to outline what
20 they're referring others to do. And really the
21 same for you all, for the DAC-IPAD.

22 JUDGE GRIMM: Thanks, Captain. That's

1 really helpful.

2 CAPT TIDESWELL: Thank you.

3 DR. SPOHN: It seems to me that one
4 initial sort of conversation that we need to have
5 is what do we mean by case review. I mean, we're
6 tasked statutorily with doing case review, but
7 what does that really mean.

8 Does that mean that we physically
9 collect the investigative files and the
10 disposition files, we create a database and enter
11 data, is it more of a qualitative kind of review
12 of these files?

13 What exactly are we as a Committee
14 going to be doing? Are we going to be going to
15 different installations and looking at case
16 files? Are we going to request files?

17 MS. CARSON: I think in your strategic
18 planning, if you don't mind my interrupting, in
19 the strategic planning document, if you look at
20 letter E under the Section 4, it talks about the
21 case review process options which is actually the
22 looking at cases.

1 And then if you look at number,
2 Section 5 is the statistical data collection
3 option. So it's kind of breaking that into two
4 different pieces.

5 DR. SPOHN: Right, right. It just
6 seemed to me that those were conversations we
7 needed to have before we had conversations about
8 the kinds of data we're going to collect.

9 Do we have the ability to hire
10 graduate students at criminology programs or
11 other sociology programs to collect the data, or
12 are we going to be collecting the data? Is the
13 data subcommittee going to be doing that? I
14 mean, if we're going to be doing a comprehensive
15 case review, that's going to take manpower.

16 CAPT TIDESWELL: So like all things in
17 DoD, we have a budget. It's a limited budget,
18 and we do have the ability to hire and contract
19 out on a limited basis. So that is --

20 MS. CARSON: If you're doing it the
21 way it's sort of laid out here after the
22 decision's made to start with the unrestricted

1 reports or investigations, to narrow it down to
2 cases with acquittals and dismissals, and then to
3 take a random sampling subset of those cases.

4 Then the next question is for the case
5 review process, will you break into a
6 Subcommittee of the group to do that, will you
7 have a Subcommittee of outside people do that,
8 will you have contractors to do that.

9 So I think that's kind of the
10 progression of these decisions. So I think
11 you've gotten through to the random sampling of
12 acquittals and dismissals and the types of
13 records to be reviewed which I think you've
14 already discussed a little bit.

15 DR. MARKOWITZ: And if it was
16 discussed at the last meeting, I apologize I
17 couldn't be here. But I do want to bring up the
18 issue that I think I brought up at the first
19 meeting which is I do have some concerns about
20 what are in those investigative files.

21 There is sensitive, confidential
22 medical information that patients did not agree

1 to release for this purpose. And so I just want
2 to make sure that we are aware of the fact that
3 there are these medical records, not just the DD-
4 2911s that go with the medical forensic exam, but
5 a lot of other health records including mental
6 health records that may have never been sealed
7 because it was dismissed and what have you.

8 I want to make sure that as we think
9 about what records we're reviewing, we're
10 building in a process by which we can also
11 protect that kind of confidential information
12 that patients never agreed to have discussed in
13 this kind of a forum.

14 MR. KRAMER: Can I ask a basic
15 question about a case file? First of all, do you
16 know of most of them in hard copy paper or are
17 they electronic, many of them, or do you have a
18 sense of that?

19 CAPT TIDESWELL: I would say the
20 majority of them are hard copy paper.

21 MR. KRAMER: And then, and I know
22 there's a big difference between a case that is

1 dismissed and a case that is referred and went
2 through the court-martial. Do you have a sense,
3 are we talking a banker's box, are we talking
4 multiple boxes for each file? Do you have a, of
5 an average file?

6 CAPT TIDESWELL: I think it can range,
7 sir. You know, the dismissals and acquittals are
8 probably much smaller than I think the
9 convictions. But I've seen records of trial that
10 are literally, because they're verbatim
11 transcripts from cases that go for days.

12 MR. KRAMER: Right.

13 MS. PETERS: So, sir, most of the
14 files that Stacy and I collected are reviewed in
15 the data collection process were fitting in the
16 banker's box, maybe half of it to a third. But
17 you're talking two to three volumes per case, and
18 each volume is about three inches thick.

19 CAPT TIDESWELL: But that probably
20 does not include an investigative file.

21 MS. PETERS: Not the complete
22 investigative --

1 CAPT TIDESWELL: Right, or the Article
2 32 piece.

3 MS. PETERS: It will include pre-trial
4 papers include a portion of the investigative
5 file that seemed relevant, any exhibits marked,
6 motions filed, and the Article 32 record is in
7 there, plus the transcribed trial.

8 CHAIR BASHFORD: One thing, and I
9 think this goes back to some of the JPP
10 recommendations are these prosecution memos filed
11 for types of records to be reviewed, that
12 certainly the perception is as those are given to
13 the defense, there is less and less candor from
14 the prosecution in those, and that is being
15 replaced by a one on one conversation sometimes
16 with the preferring authority.

17 But I still think it would be useful
18 to see what is being provided in those. I think
19 the cases that are going to have the largest
20 records are the court-martials where everything
21 has been transcribed because there has been a
22 conviction.

1 And I don't mean to say that every
2 conviction, the right thing has happened, but
3 certainly it seems like the process has gone
4 forward. I'm more concerned where the process
5 hasn't gone forward.

6 I don't know that we're going to be
7 looking at so much at exonerations because
8 there's so few of the cases that seem to be going
9 forward. I would think our focus would be more
10 on the ones that are going to have the smaller
11 records because really not that much has
12 happened.

13 And again, I don't mean to say that
14 there can't be exonerations, but I think in an
15 ideal world, your court-martial rate should be
16 100 percent because then only truly guilty people
17 are being prosecuted, right?

18 But we're far from that. So what is
19 going wrong? Again, just because so many cases
20 aren't even making it there, it doesn't seem as
21 though the pressure is on to bring cases that
22 shouldn't be. But I suppose that's one of the

1 things we'll be able to find out.

2 MS. CANNON: But maybe the exoneration
3 cases would give us insights as well because we
4 would see what's lacking and that maybe cases
5 shouldn't have gone to courts-martial if they had
6 been handled correctly. And so you may see some
7 of that evident in those files.

8 CHAIR BASHFORD: So that would be
9 looking at cases that were reversed then maybe by
10 the CAAF? Or acquittals.

11 MS. LONG: An acquittal isn't an
12 exoneration, right. It just means that we
13 haven't met our burden. They are good to look at
14 though because they do give you an idea of what's
15 in there.

16 For example, if we were sending
17 forward cases on innocent people, which again
18 like you mentioned not enough of these are going
19 forward. It doesn't seem like that's the issue,
20 but you would see that there.

21 You would also see if a certain type
22 of case kept getting acquitted. But I think it's

1 important to just keep in mind the difference
2 between an exoneration and a not guilty. Well,
3 from the prosecution standpoint.

4 CHAIR BASHFORD: Legally there's no
5 difference because somebody has been deemed not
6 guilty by law.

7 MS. LONG: Right, but from a practical
8 standpoint versus knowing the wrong person was, a
9 wrongful conviction I guess I would say versus a
10 not guilty.

11 CHAIR BASHFORD: But again, going back
12 to what are we looking at. I think it depends on
13 what type of case we're looking at. So a record
14 of trial where there was an acquittal is going to
15 be more substantial in some ways, but needing
16 more work to be done before it's ready to be
17 looked at. We can't sit around and listen to
18 audio tapes.

19 And I think the actual case review
20 should not be in this group but in a group that
21 could do it and report, a subcommittee or a
22 working group that could report back. And a

1 working group cannot make recommendations but
2 they can report back, is that correct, Captain?

3 CAPT TIDESWELL: Yes, ma'am.

4 CHAIR BASHFORD: And we do have
5 members who have volunteered to be part of a
6 working group or a subcommittee for different
7 things. Do you have that list, Captain?

8 CAPT TIDESWELL: Put everybody on the
9 spot.

10 MS. CANNON: Is this volunteer in the
11 military sense?

12 CHAIR BASHFORD: No so fast, Chair.

13 (Laughter.)

14 CAPT TIDESWELL: It might be over at
15 my desk there.

16 For case reviews, I believe what we
17 talked about, Ms. Bashford, was yourself, Mr.
18 Markey, Ms. Long, General Schwenk and potentially
19 Mr. Kramer if they were willing and available.

20 MR. KRAMER: But which one --

21 CAPT TIDESWELL: And Ms. Cannon.

22 MR. KRAMER: Which subcommittee was

1 that on?

2 CAPT TIDESWELL: The non-data one,
3 sir.

4 CHAIR BASHFORD: The case review.

5 CAPT TIDESWELL: The case review one.

6 Not a data --

7 MS. CARSON: And I think the idea was
8 to have someone with prosecution experience,
9 investigation, and defense.

10 CHAIR BASHFORD: So I would suggest if
11 the Committee is agreeable then that we start
12 with a working group that can look at some of
13 these cases early, August, September, to have an
14 idea that could then when we have the
15 subcommittees formed, they could say these are
16 the challenges, these are the best ways of doing
17 it.

18 And I think the people that you named
19 would be for the case review working group,
20 ideally to be supplanted by a subcommittee but
21 that's still a work in progress. I think the
22 people who need to approve it aren't necessarily

1 appointed yet.

2 CAPT TIDESWELL: No, ma'am. What we
3 need to do is develop what subcommittees you all
4 would like to have --

5 CHAIR BASHFORD: Okay.

6 CAPT TIDESWELL: -- who would like to
7 be on what subcommittee, and then we have to seek
8 permission from the Department of Defense for
9 those subcommittees to be established.

10 JUDGE GRIMM: So some things that may
11 be useful in terms of deciding this, we don't
12 have a good idea what these files actually look
13 like, so what we're talking about looking at.

14 So we don't know whether they'll be at
15 five or six pages, or five or six hundred pages.
16 And the notion that if you do a statistically
17 significant sampling, you're going to have at
18 least several hundred if you're looking across
19 the military.

20 And the notion of having this
21 Committee level have a subcommittee of five
22 people look at 300 files that may involve 50,000

1 pages of paper seems to me to be, and report back
2 in a short period of time seems to me to be a
3 recipe for disaster.

4 But that subcommittee would have the
5 ability to look at representative samples of the
6 type of files that are available and be able to
7 come back here and say whether a working group
8 that would be staff or people who are hired or
9 graduate students or someone else could come back
10 and do the initial cut through these data and
11 package it in a way to where the people with the
12 experience level here can then make some
13 intelligent decisions and then look at the
14 individual files that may be representative of
15 others, that's the kind of information.

16 We don't have a sense of what the data
17 pile is. We don't have a sense of whether it's
18 digitized and so it can be searched for in some
19 sort of a useful fashion. And you know, the
20 notion of asking a subcommittee to go into a
21 warehouse, you know, with an MRE pack and a
22 bottle of water and come out, you know, four

1 months later and give us a report seems
2 unrealistic.

3 SGT. MARKEY: Thank you. I was just
4 going to ask the IG folks, in that experience --

5 MR. REDMOND: Some insight as to the
6 population we're talking about. The last
7 evaluation we did, we did a two year look, '14
8 and '15, calendar years '14 and '15. And the
9 population we evaluated, nearly 400 cases of the
10 three Services, the three MCIOs. It took us
11 approximately eight to ten weeks.

12 And we're looking just at the criminal
13 case files. And we look at hard copy, OSI
14 maintains hard copy. The other Services have a
15 combination of electronic and hard. And we spend
16 weeks at each location, well each location
17 meaning Russell-Knox facility down at Quantico
18 because we're all co-located.

19 But we take up a conference room in
20 one organization, do theirs, move to another
21 organization, do theirs until we're done.
22 Depending on the case, each case is different.

1 There's been cases where it's only
2 ten, twenty pages. But there have been cases
3 where it's been two boxes.

4 MR. KRAMER: And how many people are
5 you talking about that did that?

6 MR. REDMOND: We had six people,
7 mainly. On average, probably four to six people
8 per day. And it took us eight to ten weeks.

9 MR. KRAMER: To do 400 cases?

10 MR. REDMOND: Yes.

11 CHAIR BASHFORD: Full time?

12 MR. REDMOND: Full time.

13 SGT. MARKEY: Can I ask a follow up on
14 that? You look at the investigative files, so
15 you really weren't looking at outcomes of those
16 investigations, but whether they were in
17 compliance or followed best practices. Is that
18 correct, or did you look at the adjudication of
19 cases as well?

20 MR. REDMOND: We looked at all cases.

21 SGT. MARKEY: Well, I mean the file,
22 what was in the files?

1 MR. REDMOND: It was the MCIO files
2 from cradle to grave, the investigative file.
3 And each organization, they don't close a file
4 until adjudication is complete. And we don't
5 look at a case until adjudication is complete,
6 whether that adjudication was no action taken or
7 court-martial action.

8 It was irrelevant to us as to what the
9 action was in the case, and we did not consider
10 the action as part of the quality of the case.
11 We looked at the case from victim initiation,
12 whether it was a fresh complaint or a three year
13 old complaint, we looked at that case and
14 evaluated its efficiency and compliance with the
15 established DoD, Service, and Agency policy, and
16 provided our feedback based upon that criteria.

17 SGT. MARKEY: And you also created a
18 set of data metrics and case characteristics,
19 that you evaluated those cases based on a set of
20 criteria that you were looking for certain things
21 to make it consistent on your case review, which
22 is something we'll have to consider what are we

1 going to look at when we do a case review, what
2 are we evaluating and what standards can we
3 support that evaluation. This is a national,
4 this is a standard of response in these cases.

5 MR. REDMOND: Yes, our evaluation was
6 I would refer to CID and we can look at CDS but
7 we strive very much so to be a very objective
8 evaluation based upon established requirements.
9 Now when you get into victim interviews, some
10 interviews where it's very difficult to have an
11 objective criteria as to how it's done, there is
12 some subjective evaluation going on.

13 The people that we have doing these
14 evaluations are all prior MCIOs with ten, twenty,
15 thirty, forty years' worth of experience running
16 criminal cases. They're the ones conducting the
17 evaluation.

18 And we run the evaluation, a quick
19 analysis or a quick breakdown. When we go in to
20 do an evaluation, we pick one case and we all
21 look at it. Everyone on the team looks at that
22 one case to establish a norm.

1 So we all have the same perspective as
2 to what we're looking for in that particular
3 case. We do that for a number of cases until we
4 are confident, each individual's that we're all
5 on the same page, we all understand what we're
6 looking for.

7 Then we all start evaluating cases
8 individually. And part of the process, the team
9 leader and the project manager then does a
10 quality assurance review and goes over cases
11 randomly that have already been evaluated to
12 ensure that consistent standards are being
13 applied across the population.

14 That's our process, and we've done
15 that the last two times we did quality assurance
16 process. And it's been very successful from our
17 perspective, and the MCIOs have done a phenomenal
18 job taking our feedback and taking our
19 recommendations and approving the processes.

20 And if you look at the three reports
21 we've published on the particular subject, you'll
22 see that the first evaluation, there were some

1 issues we identified, but the second and the
2 final evaluation they had come leaps and bounds
3 in their investigative process.

4 But that's, you know, I just wanted to
5 give you a perspective as to just how long, if
6 you're just, I'm just talking the criminal case.
7 I'm not talking about records of trial, I'm not
8 talking many transcripts. I'm just talking about
9 the criminal case itself which could be 20 pages,
10 could be 500 to 1,000 pages depending on the case
11 because we randomly selected, we don't know which
12 one's getting picked. It took us eight weeks to
13 do from all three Services.

14 SGT. MARKEY: And did you, I'm sorry.
15 Did you review audio or videotape interviews of
16 some of the victims or witnesses or --

17 (Simultaneous speaking.)

18 MR. REDMOND: If the material is
19 available in the case file, yes we will do that.

20 SGT. MARKEY: And so all of the
21 discipline that was in that room is basically
22 investigative background?

1 MR. REDMOND: Correct.

2 SGT. MARKEY: So I think, what I think
3 is I guess an advantage of this team is we have
4 multi disciplines here that say somebody who's
5 never investigated a sexual assault case but has
6 the perspective from a prosecutor or from the
7 bench view looking at a case and saying hey, from
8 my set of glasses I'm seeing this in the
9 investigative case, which I think is important to
10 get that other perspective, as well as anybody
11 else that might do a case review that hasn't
12 actually been an investigator doing investigative
13 work on a case from front to back, but to have
14 that perspective.

15 So I don't know if we're looking at a
16 multidisciplinary team that would come in and
17 look at these cases from those different
18 viewpoints, or whether it would be more
19 advantageous to have just investigative experts
20 do it.

21 MR. REDMOND: But there's benefits
22 both ways. Having someone who has not conducted

1 a criminal investigation in their life looking at
2 a criminal case, as Mr. Poorman had mentioned,
3 there's science to it, but there's art to it.
4 There's a lot of art put into how do you conduct
5 a witness interview or conduct a victim interview
6 that you're not going to get from someone who's
7 not had that experience or that training.

8 So yes, a multidisciplinary team would
9 be beneficial, but you've got to put it in
10 context because that could skew the analysis, the
11 outcome, of what you're looking at if you don't
12 have the right mix of people doing those
13 evaluations.

14 MS. CANNON: Did you ever create any
15 guidelines after the first or second time that
16 you went through this investigation of cases?
17 Did you develop something that you could follow,
18 some kind of guidelines or principles?

19 MR. REDMOND: We follow -- yes, we
20 have a normal process, the OIG process. We
21 developed the project planners, project guides.
22 And those, we grew from each one. The first

1 evaluation was the first of its kind.

2 Inspector General Heddell recognized
3 the issue after a JRR report that, you know, we
4 weren't doing, the IG wasn't doing its due
5 diligence in evaluating these cases. Created the
6 Violent Crime Division, which I'm one of the team
7 members for.

8 Our first evaluation, we learned from
9 that. The second evaluation, we improved upon
10 our processes. And the last evaluation we just
11 did, we improved even more. So we've been
12 evolving our process from the very beginning.

13 And each thing we do, every project we
14 have, we have a very robust documentation process
15 where our working papers are documents that
16 guides us for the next one.

17 So we haven't published anything for
18 the MCIOs because that's published in our DoD
19 Instructions and DoD Directives as to what
20 they're required to do, DoD instruction 5505.19
21 which Mr. Poorman talked about, the 5505.19 he
22 talked about.

1 That's the guidelines for the NCOs to
2 follow, and that's what we hold them accountable
3 to when we perform our oversight mission.

4 MS. CANNON: Thank you.

5 DR. SPOHN: So I think this raises
6 again the question about what we mean by case
7 review because what they're talking about is sort
8 of the quality of the investigation. And I mean,
9 that's one road we could take. But it seems to
10 me that what we're really looking at is what
11 explains why cases move from one place to the
12 next.

13 And are there certain kinds of cases
14 that are unfounded, and if so are there ways that
15 those cases could be improved so that they could
16 move forward.

17 And so we're not going to be
18 evaluating the quality of the investigation
19 that's done so much as collecting data that can
20 tell us, you know, what explains why cases result
21 in an acquittal or in a dismissal, or what
22 explains why cases are unfounded or charges are

1 never preferred so that we can reach some
2 conclusions about where the process is working
3 effectively and where it's not working
4 effectively.

5 CHAIR BASHFORD: And I think --

6 DR. SPOHN: And those are two very
7 different kinds of questions.

8 CHAIR BASHFORD: One of the things we
9 might find that's implicated a lot is alcohol, is
10 an incapacity to consent because of alcohol or
11 drug. Is that the, like, what's the basis for
12 the lack of consent. Is it visible force or is
13 it incapacity? I suspect, but I think that's one
14 of the things that we will --

15 DR. SPOHN: Or delayed reporting, you
16 know --

17 (Simultaneous speaking.)

18 CHAIR BASHFORD: One of the things
19 we'll find, like, what are the common threads.
20 Is it incapacity to consent as opposed to
21 physical force, is that a common thread. Is the
22 delayed reporting, is there a difference in

1 outcome when the report is after such amount of
2 time or if it's prompt.

3 Is it because of what the medical, you
4 know, what was the corroboration, was there
5 external evidence. I think these are kind of the
6 things we will see broad patterns of if we look
7 at the cases, particularly ones that don't go
8 forward.

9 MR. KRAMER: Can I ask you, I'm sorry,
10 why do you think that quality of the
11 investigation is not connected to the --

12 DR. SPOHN: Well, I'm just saying you
13 collect different kinds of data to answer those
14 two kinds of questions.

15 MR. KRAMER: Oh, sure. But I mean,
16 one of the reasons a case might not be preferred
17 is because evidence was mishandled by the
18 investigators. So that's many times intertwined
19 --

20 DR. SPOHN: So we could collect data
21 on whether there was physical evidence, whether
22 there was corroborative evidence. We can collect

1 data on evidence and then look at whether the
2 presence or absence of evidence influences the
3 case.

4 JUDGE GRIMM: I mean, as long as we're
5 talking about what we have to look at, the
6 Subcommittee of the JPP that came out with its
7 identification in seven areas of concern, they
8 had, that was based upon information they got.
9 They --

10 CAPT TIDESWELL: Anecdotal.

11 JUDGE GRIMM: Right.

12 CAPT TIDESWELL: And site visits.

13 JUDGE GRIMM: That's right. So what
14 would be helpful if we're trying to get away from
15 anecdotal evidence and trying to actually look at
16 whether we want to look at an investigative file
17 to talk about whether the investigation was
18 incomplete and therefore you couldn't prove, you
19 couldn't establish if you're making the
20 recommendation to the convening authority but the
21 essential elements of this offense can be
22 sustained, then that suggests that there's

1 different types along the chronology of what has
2 to happen from the time that you have an
3 unrestricted report to the time that the case is
4 over what you might want to look at to get some
5 big picture ideas about what is or is not working
6 in the system.

7 But it wouldn't hurt to know sort of
8 what it was that was the data input to the JPP
9 Subcommittee that caused them to say, hey, we
10 have these questions that some of which we think
11 the DAC-IPAD should go ahead and take a look at.

12 Even if it's just some general
13 information, that would be helpful too because we
14 don't want to repeat work that someone else has
15 done. But if their methods were based upon
16 something. Anecdotal information is very
17 different than, you know, the hard files that
18 compose the individual cases that might lead to
19 the experiences that cause people to have
20 opinions that they express anecdotally.

21 MS. CANNON: Are there questionnaires
22 given to jurors after a verdict? No?

1 CAPT TIDESWELL: Now I know a lot of
2 trial counsel or defense counsel will approach
3 them and see if they're willing to talk. And
4 it's typically about stylistic things and how
5 they did in court. But there's no formal polling
6 of them.

7 DR. MARKOWITZ: I would say that
8 because there is so much training that is done of
9 trial counsel in successfully being able to move
10 forward with these cases and prosecute these
11 cases, I would hate for us to not take a look at
12 sort of the spectrum of cases.

13 I would hate for us to not also look
14 at what successful convictions also have in
15 common. I mean, the amount of education that is
16 happening for trial counsel across the Services
17 is significant.

18 And so I think that being able to look
19 not just at the acquittal piece but also are
20 there some themes related to successful
21 conviction. And it may have nothing, I mean it
22 may have more to do with things like victims

1 feeling supported and continuing to go forward at
2 trial and being willing to testify and all of
3 those kinds of things.

4 But I think that there are these
5 pieces in convictions that we also should take a
6 look at. And I would hate for us to stop at the
7 acquittal cases. So maybe I misunderstood and we
8 were planning to do that all along.

9 CHAIR BASHFORD: I think we should see
10 common themes. We should see if those types of
11 charges that are more often sustained and other
12 types of charges that aren't.

13 DR. MARKOWITZ: Sure.

14 CHAIR BASHFORD: Numbers of witnesses,
15 I think there are data points that can be
16 collected. I think though that there is still an
17 advantage of having a working group look at a
18 handful of cases before the next meeting and just
19 sort of coming back with what's available to look
20 at, how hard is this to look at a couple cases
21 from each Service.

22 What are the real challenges at

1 looking at a case, what data is collected, what
2 data isn't collected while we're setting up a
3 subcommittee, a data subcommittee and a review
4 subcommittee. And the review subcommittee can be
5 supplemented by external people.

6 And we have a Staff, too. We don't
7 want to forget that we have a Staff.

8 SGT. MARKEY: Just, and I've done
9 civilian case review and evaluation of the
10 investigative process. And I think we can look
11 at hard data like they didn't follow up, they
12 didn't interview these witnesses, they didn't
13 collect this evidence when they had the
14 potential.

15 I think the key to especially the
16 sexual assault investigations is that interaction
17 between the system and the victim, and that first
18 contact with first responders, that interview
19 with the detective.

20 And the language, the non-verbal how
21 that victim was, for lack of a better term
22 treated, the questions they may have been asked

1 that we know they drop out of the system shortly,
2 a lot of times shortly after they first report
3 because of the non-support within the system.

4 And so if an investigator as you
5 review these interviews, and I had investigators
6 do it, they're asking inappropriate questions
7 that are placing the blame perhaps in some way
8 back on the victim or questioning the victim's
9 actions or those subtle things that you don't
10 have a hard qualitative piece of information that
11 you can judge, but it's that nuance within that
12 contact.

13 And is it something we're doing in our
14 process of that contact with the victim when they
15 come to the system that's creating that fallout.
16 And so how do we measure that and look at is that
17 something we're creating within the victim's
18 response.

19 DR. MARKOWITZ: The one thing that I
20 would just, I guess, remind all of us is that
21 it's not a complete one to one comparison when it
22 comes to obviously the military process versus

1 the civilian process.

2 So for instance the thing that comes
3 to mind for me is the potential for a case to
4 become unintentionally unrestricted. Right? And
5 so that may impact a victim's desire to
6 participate in the process.

7 And it has nothing necessarily to do
8 with how anybody reacted. It was simply the
9 information was provided to somebody who could
10 not maintain a restricted report.

11 And so there are going to be I think
12 some of these nuanced components that we also
13 need to keep in mind that it won't be an exact,
14 you know, what works in the civilian world is how
15 we should be evaluating these cases and that
16 these are the only data points we should be
17 looking at.

18 SGT. MARKEY: Yes, I agree.

19 DR. SPOHN: Can I just, in response to
20 your comment about conviction, from a data
21 analysis point, if we want to know why certain
22 cases result in acquittals, we have to collect

1 data on convictions because we have to have
2 something to compare it to.

3 And same with cases that are
4 unfounded, we have to look at the cases that were
5 founded to be able to identify what predicts one
6 outcome as opposed to the other. So we have to
7 look at the convictions as well as the
8 acquittals.

9 CHAIR BASHFORD: Is unfounded an
10 actual military category? Will there be a
11 category of cases that say, where charges were
12 not preferred where they say unfounded? It's
13 like a loaded word in the civilian world, so I
14 don't know if that's used.

15 DR. SPOHN: They talk about founding.

16 SGT. MARKEY: So there must be
17 unfounding, right?

18 MR. REDMOND: The MCIOs no longer have
19 the latitude to found or unfound a case. That
20 founding happens at adjudication when the person
21 was taken to court-martial and convicted, then
22 it's a founded case. Or non-judicial punishment

1 or some type of adjudication for it.

2 If there's no action taken, that's
3 where it gets a little more sticky because you've
4 got, you know, the MCIOs brought a case developed
5 what they believe to be evidence sufficient for
6 action to be taken. But the commander decides
7 not to take action for whatever reason the
8 commander decides.

9 So the MCIOs have a case where they
10 closed with sufficient evidence based upon
11 probable cause established and discussed with the
12 prosecuting attorney. But the prosecuting
13 attorney discussions with the convening authority
14 determines not to take the case to court.

15 CHAIR BASHFORD: But there surely must
16 be some cases where the MCIOs have decided there
17 isn't sufficient evidence to go forward.

18 DR. SPOHN: What if they think it's
19 false or baseless?

20 MR. REDMOND: The MCIO's report, the
21 facts are in the report and then it's up to the
22 convening authority, the commander to make a

1 determination as to what that means. The MCIOs
2 don't have that latitude.

3 BG SCHWENK: Can an MCIO on its own
4 say this is a bunch of garbage and close it up on
5 sexual assault case?

6 BG SCHWENK: They have to --

7 MR. REDMOND: They have to, if a
8 victim reports a sexual assault, they are
9 mandated by DoDI and 5505.18 to run a sexual,
10 well 5505.3 is the initiation, 5505.18 requires
11 an initiating, an active open investigation of
12 all sexual assaults. And they have to follow
13 them through the investigative route.

14 BG SCHWENK: Regardless of --

15 (Simultaneous speaking.)

16 MR. REDMOND: Regardless of their
17 opinion.

18 BG SCHWENK: -- what they think.

19 MR. REDMOND: They do interviews and
20 establish the facts.

21 JUDGE BRISBOIS: So let me just ask
22 for a real thumbnail comparison now to, I hate to

1 say it, 30 years ago when I was a trial counsel.
2 CID, MPI would come with their investigation and
3 there was a meeting with trial counsel, is there
4 probable cause or not.

5 And if there was no probable cause
6 based on their completed investigation, at least
7 pre-trial investigation, they called it an
8 unfounded case and the case was closed.

9 I mean, it's a very simple explanation
10 of the process. That was historical process.
11 Compare that now to what you're talking about
12 now. Is there no longer any prosecutorial
13 discretion as to whether a case is closed or not
14 if it involves an Article 120 offense? Or does
15 it have to go to --

16 (Simultaneous speaking.)

17 MR. REDMOND: All three MCIOs are
18 independent investigative organizations and they
19 get advice from the prosecution. But they are
20 still required to --

21 JUDGE BRISBOIS: And so, but if they
22 give it to the trial counsel and they get advice

1 and they say that, you know, you've talked to
2 every witness, you've done this, there's no
3 probable cause, is that still an endpoint, or
4 because it's Article 120 now since 2012 it has to
5 go to the convening authority?

6 MR. REDMOND: We're talking two
7 different areas of expertise here because I can
8 speak to the MCIO process, the investigator
9 process. They have to run the case, present the
10 case to the commander.

11 JUDGE BRISBOIS: Which is the same --

12 (Simultaneous speaking.)

13 MR. REDMOND: Which it's then the
14 commander's purview what to do next, whether he
15 takes it to Article 32 or takes it to the general
16 court-martial convening authority and asks for a
17 verdict. I would say that it's not changed much
18 since before. The JA is still in the loop. The
19 JA still makes that --

20 (Simultaneous speaking.)

21 JUDGE BRISBOIS: But the difference is
22 that there's no prosecutorial discretion. You

1 know, 30 years ago if I had found a lack of
2 probable cause based on a completed investigation
3 by CID, that was the end of it.

4 MR. REDMOND: I can't speak to --

5 JUDGE BRISBOIS: That's not the case
6 anymore.

7 MR. REDMOND: I think now the policy
8 is -- I think that the policy now is it has to go
9 to the general officer in the chain to decide
10 whether or not it's actually going to be ---
11 sorry, first O-6 in the chain.

12 BG SCHWENK: To some extent, they're
13 preferring charges.

14 JUDGE BRISBOIS: So that's why we used
15 to use the word, it's unfounded, when it would
16 come to me and stop at my desk. That's why I
17 didn't understand why we're labeling -- it's not
18 a term of art anymore. So there wouldn't be data
19 points to collect on that.

20 DR. MARKOWITZ: There's no category of
21 cases that are labeled unfounded.

22 LTC VERGONA: Sir, this is Lieutenant

1 Colonel Mary Catherine Vergona. I'm with the
2 Army. And what you're referring to I think is in
3 the past a trial counsel could kill a case. So
4 it would come from, for us, CID.

5 We would, trial counsel would look at
6 the case and say there's not enough to go
7 forward. They would talk to the victim of
8 course. But the trial counsel could make that
9 decision.

10 That is not the case any longer. Now,
11 at least -- now, the case must go forward to at
12 least an O-6. So for us, a colonel is the one
13 that is in a position to not go forward.

14 CAPT TIDESWELL: And that's a non-
15 lawyer.

16 JUDGE BRISBOIS: I mean, in the
17 vernacular of the time, whether it was formal or
18 informal, we would say it was unfounded when we
19 talked to our Chief of Justice or something.

20 BG SCHWENK: Yes. But in the CID
21 report --

22 CHAIR BASHFORD: Again, since about 80

1 to 85 percent of reports are not going forward
2 with the charge preferred, is the O-6 -- if the
3 complainant says, I do not want to go forward
4 anymore, does it get to the O-6 still?

5 CAPT TIDESWELL: Yes, ma'am.

6 CHAIR BASHFORD: Okay, does the O-6
7 issue a finding as to why something's not going
8 forward or simply says it's not going forward?
9 I'm not preferring this.

10 MS. CARSON: From what we've heard in
11 testimony before, in that final, with convening
12 authority action, they could give you that
13 information, but they often don't. They give you
14 their decision. They could give you the
15 information as to why, but they don't
16 necessarily, so there wouldn't be a consistent
17 place to get it.

18 SGT. MARKEY: Do we have time to talk
19 about the O-6 because that seems like a pretty
20 critical position and I'm just curious about
21 their knowledge skills and experience in making
22 those decisions. And I don't know if that's for

1 lunchtime or -- and I don't know if that's
2 something --

3 CHAIR BASHFORD: We're set to go until
4 12:45 for lunch.

5 SGT. MARKEY: Oh. I don't know if
6 that's within the scope of what this Committee,
7 you know, task is because that seems like it just
8 came up and I'm realizing that's a huge position
9 to be in to make that decision. And so where are
10 they in --

11 BG SCHWENK: It used to be a more
12 junior person. The O-6 is now, that's one of the
13 changes, was to raise the level to make the
14 initial disposition.

15 SGT. MARKEY: Did that make it better?

16 BG SCHWENK: It was perceived that the
17 people less junior had less experience --

18 SGT. MARKEY: Okay.

19 BG SCHWENK: -- so raised it up to O-
20 6.

21 JUDGE GRIMM: So a question that I
22 have is in the Subcommittee recommendations from

1 the JPP about things that need to be looked at,
2 it makes reference to a change to Article 33 of
3 the Uniform Code of Military Justice that will
4 result in Service-wide uniform recommendations
5 regarding when convening authorities and staff
6 judge advocates make determinations not to go
7 forward.

8 So we are, my question is are we
9 working at cross purposes. We're looking at
10 cases that are out there before this guidance was
11 in affect trying to look at what happened and
12 what didn't happen.

13 This policy is being made, these
14 policy determinations which will in the future
15 affect what that O-6 does and what that staff
16 judge advocate does and whether a copy goes to
17 the defense counsel and whether there's candid
18 assessment, whether the juries are, whether the
19 people who make the jury pools are being
20 overtrained.

21 There's a number of interrelated
22 factors that the JPP Subcommittee identified.

1 And some organization, ultimately approved by the
2 Secretary of Defense, is going to come up with
3 this new guidance. And that process is going to
4 happen.

5 Are we, is our task to provide
6 information that will assist them in making those
7 determinations? Or are they going on an
8 independent track, and we're off taking a look at
9 a series of things that cause us to make
10 recommendations that are irrelevant because the
11 policy decision has already been made? Because
12 once that policy decision's been made, that's
13 where all of the people in the military are going
14 to salute the flag and walk forward.

15 CAPT TIDESWELL: Dwight, should I
16 defer to you on the executive order? I'll defer
17 to you on that.

18 MR. SULLIVAN: I do have some
19 information on that. So as Judge Grimm points
20 out, the Military Justice Act of 2016, among the
21 many other things it did, it amended Article 33
22 of the Uniform Code of Military Justice to call

1 for non-binding disposition authority.

2 And it may be helpful just to let you
3 all know what the language of 33 is as amended.
4 And once again, this will probably take effect
5 January 1st of '19.

6 The President shall direct the
7 Secretary of Defense in the issue in consultation
8 with the Secretary of Homeland Security, that's
9 not what it actually says but it's saying the
10 Secretary of Homeland security because the Coast
11 Guard is of course in the Department of Homeland
12 Security.

13 So the President shall direct the
14 Secretary of Defense, in consultation with the
15 Secretary of Homeland Security to issue non-
16 binding guidance regarding factors that
17 commanders, convening authorities, staff judge
18 advocates, and judge advocates should take into
19 account when exercising their duties with respect
20 to disposition of charges and specifications in
21 the interest of justice and discipline under
22 Sections 830 and 834 of this Title, in other

1 words, Articles 30 and 34 of the UCMJ.

2 Such guidance shall take into account
3 when appropriate consideration of military
4 requirements and principles contained in official
5 guidance of the Attorney General to attorneys for
6 the Government with respect to disposition of
7 federal criminal cases in accordance with the
8 principle of fair and even handed administration
9 of federal criminal law, in other words, consider
10 the U.S. Attorney's manual.

11 And so just one thing for those of you
12 familiar with the system, you would no doubt
13 recognize the reference to Article 34 which is
14 the advice that the staff judge advocate provides
15 to the general court-martial to the convening
16 authority.

17 There is also a new requirement for a
18 special court-martial convening authority before
19 making a formal decision to get advice from a
20 judge advocate. So that's the language that you
21 and I discussed on the break, Your Honor.

22 And so the Joint Service Committee,

1 which would have some of the people lined up
2 behind you, has proposed at issue for public
3 notice and comment proposed non-binding guidance
4 to be issued under that authorization.

5 So a federal register notice on that
6 went out on July 11th, and then it has, because
7 the proposed changes are so voluminous, the
8 changes themselves aren't reported in the federal
9 register, there's a link to them. I'm sure the
10 Staff can provide that to all the members of the
11 Committee.

12 And the closing date, Your Honor, for
13 public comment is September 11th. And then by
14 statute, the President, so this doesn't affect
15 what I just read because that's the SECDEF
16 requirement.

17 The President has to issue
18 implementing regulations no later than December
19 23rd of this year. Now those implementing
20 regulations need not take effect until our
21 familiar date of January 1st, 2019. But the
22 President will act by December 23rd. And then at

1 some point between then and January 1st, 2019,
2 SECDEF will issue that guidance that's required
3 by Article 33.

4 CAPT TIDESWELL: Well, what's
5 interesting, sir, the JPP Subcommittee deviates
6 from what you read in the Executive Order. When
7 you look at what the Subcommittee was
8 recommending, they use language like probable
9 cause, reasonable likelihood of proving the
10 elements of the offense beyond a reasonable doubt
11 using only admissible evidence at trial.

12 And I believe the way the Executive
13 Order is currently out for comment, it's really
14 tied to probable cause with the convening
15 authority still allowed to consider evidence that
16 may or may not ever make it into a trial.

17 So I would call the JPP Subcommittee's
18 sort of probable cause plus, where the Executive
19 Order I don't think really quite goes that far.

20 JUDGE GRIMM: That may be true, but it
21 sounds to me like the JPP Subcommittee was
22 looking to add, you know, you can always

1 recommend the case go to trial with evidence that
2 will be suppressed.

3 And then that puts the, that makes the
4 villain out of the military judge that says the
5 evidence doesn't come in, there's an acquittal.
6 I mean, I think that doesn't sound to me like
7 sound policy to allow a decision to be made, or a
8 wise policy anyway, based upon evidence that's
9 not going to be admissible.

10 Now if there's a debate about whether
11 it could be admissible or not, and that's a
12 different thing.

13 CAPT TIDESWELL: I think that was the
14 issue the Subcommittee was trying to address.

15 CHAIR BASHFORD: I'm just going back.
16 So the non-binding guidance will be coming.

17 JUDGE GRIMM: So conceivably we could
18 ask them what those might be.

19 CHAIR BASHFORD: And I think we'll,
20 yes. But I think probably the 140a which is one
21 of the problems I think we've been seeing as a
22 Committee is the data collection that exists uses

1 different criteria.

2 They're measuring different things.
3 Different Services do it differently. You've got
4 the RAND studies, you've got SAPR, you've got the
5 SAPRO. Everything seems to be somewhat ad hoc.

6 I think one of our opportunities to
7 really make a lasting effect is on the 140a which
8 is to try to as a Committee put on that of what
9 should they be measuring across all Services.
10 And I think that, what is that, two year out.

11 MS. CARSON: For the standards and
12 criteria. And then for it to actually implement
13 it in four years.

14 CHAIR BASHFORD: Four years? So it's
15 almost kind of coterminous with us at this point.
16 But I think that's one thing we want to keep in
17 mind, that that's a place we can have a lot of
18 input is on what should they be measuring.

19 MS. CANNON: I was thinking that I
20 would be interested in seeing the investigative
21 report they did, even though it was broader than
22 perhaps the cases we want to look at. But it

1 might give us some insight if that's available.
2 Apparently it is.

3 MS. CARSON: In your read-ahead
4 materials at Tab 4, there's a link to that report
5 in the digital version. Or you can take it from
6 here.

7 JUDGE GRIMM: Which item is that?

8 MS. CARSON: Pardon?

9 JUDGE GRIMM: Which item --

10 MS. CARSON: If you look at Section B,
11 reports, you'll see the relevant DoD IG reports.
12 And the February 14, 2017, number 1 is the DoD IG
13 evaluation of the MCIOs that was done in -- well,
14 is that the right one? Let's see. I think it's
15 number 2. That's your 2014 report that you
16 referenced.

17 MR. REDMOND: There's one early this
18 year as well.

19 MS. CARSON: Is that this February
20 2017?

21 MR. REDMOND: Yes.

22 MS. CARSON: Okay, so the most recent

1 one is number one.

2 MR. REDMOND: That must mean previous
3 is number two.

4 MS. CARSON: So we didn't provide you
5 the whole document, but the link so you can go
6 and read it.

7 CAPT TIDESWELL: We have been working
8 closely with the DoD IG's office, and they were
9 very kind in that they've handed us their
10 protocols and the screenshots of the data that
11 they're collecting. We have it, we did a request
12 for information.

13 We just received it recently. You
14 know, it's an internal document to them so we're
15 sort of riddling through, you know, I think it
16 would be best served by handing it to a
17 subcommittee or a working group to sort of look
18 and see if we wanted to adopt the approach or how
19 we could extend it out to the legal field. But
20 we do have some go-bys for either the working
21 group or the subcommittee.

22 CMSAF MCKINLEY: I would like to

1 really to piggyback on what Sergeant Markey said
2 a little bit and something I think is really
3 important for us to consider in this whole thing
4 that really has an effect on everything, that's
5 training.

6 And that's training of our leaders at
7 the squadron level. When we have someone that,
8 you know, becomes a squadron commander, now has
9 UCMJ authority to make decisions, you send
10 someone to squadron commander's course and that
11 squadron commander's course is a week long.

12 And how much UCMJ training do they get
13 on how to make these decisions on what goes
14 forward, what does not go forward? I know for
15 instance in that one week's training they may get
16 one hour of sexual assault training, you know,
17 and that's it.

18 So if you have a sexual assault that
19 goes on in your squadron, you know, how much
20 training has that leader in that squadron been
21 given to be able to make the right decision
22 somehow to take care of that member, you know, so

1 forth and move forward.

2 And I would be very interested to see
3 for each branch of Service what type of training
4 do we provide the people in the leadership
5 positions how to deal with a sexual assault, how
6 to make the proper recommendations going forward
7 and what should be referred and what shouldn't be
8 referred and so forth.

9 But is one branch of Service doing it
10 better than the other? You know, and I think
11 right now that's a big question mark.

12 CHAIR BASHFORD: Perhaps, Captain, you
13 can remind me, everything has to go to the O-6.
14 And if the O-6 says no, I don't want to prefer
15 these charges, isn't that reviewed at a higher
16 level, then?

17 CAPT TIDESWELL: Yes.

18 CHAIR BASHFORD: Or only referred at
19 a higher level --

20 CAPT TIDESWELL: Well, not for some
21 cases.

22 MR. SULLIVAN: So I think what you're

1 thinking of is, if a general court-martial
2 convening authority declines to refer a charge
3 alleging a penetrative sexual assault, that's a
4 penetrative sexual assault under the rule.

5 If the staff judge advocate in the 34
6 advice had recommended that the convening
7 authority refer it, and the convening authority
8 declines, that must be reviewed by the Secretary
9 of the Military Department. Since that
10 obligation was put into effect, zero cases.

11 On the other hand, if the SJA said
12 don't go, and the CA doesn't go, that goes up to
13 the next superior in command who exercises
14 general court-martial convening authority.

15 That has happened. Interestingly in
16 the instances where that review has happened,
17 there have been no referrals by that superior.
18 And then if it's a situation where the SJA says
19 don't go but the convening authority goes, no
20 further review necessary.

21 LTC VERGONA: Mr. Sullivan, I do just
22 have to make one correction. In the Army, we

1 have had one that went into, when it went to a
2 superior commander, that commander did refer that
3 case to a court-martial. We had one.

4 CAPT TIDESWELL: What was the result?

5 LTC VERGONA: It was an acquittal on
6 the sexual offenses.

7 DEAN HARRISON: The communications
8 between the staff judge advocate and the
9 convening authority, whether it's the O-6 or a
10 rank officer, it's not always in writing, is it?
11 I mean, there are some oral communications I
12 would assume --

13 CAPT TIDESWELL: Yes, sir.

14 DEAN HARRISON: -- that individuals
15 who have been referenced in the room might
16 remember in terms of whether or not a case should
17 be referred.

18 CAPT TIDESWELL: Yes, sir, that's
19 true.

20 DEAN HARRISON: Would it be, in
21 addition to all of the paper data review, is it
22 feasible to speak to a select group of staff

1 judge advocates and convening authorities who
2 have been through this process?

3 CAPT TIDESWELL: We can always ask the
4 Services, yes, sir.

5 CHAIR BASHFORD: And I think one of
6 the issues has been that those written
7 recommendations are getting less and less candid
8 because of discovery obligations. And that's one
9 of the things I know that the JPP, I think the
10 JPP, maybe it's just the Subcommittee wanted us
11 to take a look at it if anything other than
12 reading material existed which obviously would
13 have to be turned over.

14 But it's sort of the would you get a
15 more candid assessment of weaknesses of a case if
16 it didn't have to be revealed. Now I think
17 that's being done orally, at least anecdotally.

18 DEAN HARRISON: And we have to follow
19 up with Dr. Markowitz' comments earlier. Is
20 there a way to review investigative files without
21 invading the privacy of the individuals involved?

22 CAPT TIDESWELL: I would say yes. You

1 all would redact out. They would pull the
2 documents.

3 SGT. MARKEY: Could you do that
4 electronically at all through AMRAC or something
5 like that?

6 MR. REDMOND: Even redacting
7 electronically still takes a good amount of
8 effort.

9 MR. KRAMER: DO you have a sense how
10 often the documents, the doctors are talking
11 about are in the file?

12 MR. REDMOND: During our reviews, we
13 came across a number of documents that had
14 medical files. Not a lot of mental health files
15 anymore due to the strict changes in the
16 instructions. But you will find copies of
17 medical information in the file, yes.

18 MS. LONG: Captain, can you remind me
19 again when is the action that we take that
20 happens that makes things public? Is it any time
21 we look at something that it then has to become a
22 public document? So with respect to the files,

1 what is the implication of this Committee
2 touching the document?

3 CAPT TIDESWELL: Yes, ma'am. When a
4 majority of you all are present in one room, it's
5 a public hearing. There's a transcript, it's
6 posted on the website, everything is very
7 transparent.

8 When you have subcommittees, they're
9 allowed to meet outside of the public purview,
10 but their function is to merely recommend to the
11 parent committee. So I know we had great
12 success, I thought, with the JPP Subcommittee in
13 doing site visits because we had promised those
14 folks anonymity.

15 And there are reports, if you look on
16 the JPP website we have redacted the reports. We
17 can't tell what base, but you can clearly pick up
18 the generalities and the anecdotes that the JPP
19 Subcommittee sort of latched on to and resulted
20 in their report.

21 But that's really the distinction.
22 And I guess its result is the DFO. There's sort

1 of even a level below that that is known as a
2 working group that is even --

3 MR. SULLIVAN: Preparatory session.

4 CAPT TIDESWELL: Preparatory session
5 which is even less formal. And so there's ways
6 of conducting your business.

7 MS. CARSON: If I could add to that.
8 I think also if it's information, personally
9 identifiable information or it's internal DoD or
10 Service document that is not released, that has a
11 FOIA exemption for the Service, then we can't
12 release it either.

13 BG SCHWENK: So it has to be marked by
14 the Service.

15 MS. CARSON: Yes, they have to mark
16 it.

17 BG SCHWENK: They give it to us and
18 then it officially comes to the Committee.

19 MS. CARSON: I suppose so, yes.

20 BG SCHWENK: So they've got to do
21 their job before they give it to us. If you
22 don't have any authority to mark anything, just

1 handle it the way it's marked.

2 CHAIR BASHFORD: I know we're not
3 scheduled for lunch until 12:45. Has lunch
4 arrived? It seems like people are, there's a
5 certain little bit of a natural pause.

6 CAPT TIDESWELL: Yes, ma'am. I think
7 we're good to go. We're going to have lunch
8 downstairs in the staff spaces on the first
9 floor.

10 CHAIR BASHFORD: Okay.

11 CAPT TIDESWELL: Yes, ma'am.

12 CHAIR BASHFORD: And so we have a,
13 what, 45 minute break coming up?

14 CAPT TIDESWELL: Yes, ma'am, 45.

15 CHAIR BASHFORD: So five after.

16 (Whereupon, the above-entitled matter
17 went off the record at 12:24 a.m. and resumed at
18 1:59 p.m.)

19 CHAIR BASHFORD: I'd like to resume on
20 outline with Number 5, the statistical data
21 collection options. And I know Option 1 is
22 continue to build on the methodology initiated by

1 the JPP, some of which I believe is already under
2 control, but, Dr. Spohn, not to put you on the
3 spot again, can you tell us what the methodology
4 was at the JPP?

5 It says build upon the data collection
6 methodology and analysis initiated by JPP. I
7 wonder if you could just walk us through that a
8 little bit.

9 DR. SPOHN: Jennifer's not here.

10 CHAIR BASHFORD: Do you want to wait
11 until she's back?

12 DR. SPOHN: No, no. So the data that
13 were collected by the JPP were, again, cases that
14 were preferred. And they went through the
15 documents and created a database. Which was then
16 downloaded into an Excel spreadsheet and sent to
17 me. And that's pretty much --

18 CHAIR BASHFORD: And what were the
19 data points that you were looking at?

20 DR. SPOHN: So, all of the charges
21 that were preferred were listed, as well as all
22 of the dispositions of each charge. There was

1 also information about the sentence. And there
2 was limited demographic information about the
3 victim, the suspect and the place where the crime
4 took place.

5 CHAIR BASHFORD: And do you recall,
6 was it limited because the underlying data simply
7 wasn't there or because it just wasn't collected?

8 DR. SPOHN: My understanding, and
9 maybe Stayce can elaborate on this, my
10 understanding is that the data on things, such as
11 whether the victim agreed to cooperate or there
12 was drinking involved, alcohol involved, and some
13 of the other factors that we normally would take
14 into account in deciding how -- in determining
15 how these cases are decided, wasn't consistently
16 available in the files. That's my understanding.

17 MS. Rozell: I then put over 2,000
18 cases in our system right now. So we went out
19 and collected a number of documents.

20 The most important documents within
21 the case such as the, sorry, such as the charge
22 sheet, if there was an Article 32 involved, if

1 there were any pre-trial agreements and what
2 those conditions were. We also collected
3 documents such as the report of results of trial
4 and also what actions taken after the fact. By
5 the convening authority.

6 So we gathered all those and designed
7 a database to collect those data points
8 throughout the case. And we also had some
9 information to document what the alternate
10 disposition on whether the case was dismissed.

11 And I don't know if you want to also
12 give your perspective on it, then we sent all
13 that information out to Cassia.

14 We also added fields that capture
15 appellate review and what those outcomes were as
16 well. And we were able to take each of these
17 documents and uploaded them up to the document,
18 or up to the database. So therefore, you have
19 accurate information gained from the specific
20 documents, throughout the case file.

21 And like Cassia mentioned, sometimes
22 there was, the information was not available

1 because of the specific court-martial process.
2 Maybe they went to a special that didn't require
3 an Article 32, maybe they went to a summary
4 court-martial court, again, that doesn't require
5 an Article 32.

6 And sometimes, or in most all cases,
7 if there is an acquittal or a sentence below a
8 certain amount, there is not the full record of
9 trial. So you get this abbreviated transcript
10 and abbreviated documents in some cases.

11 CHAIR BASHFORD: And can you just tell
12 us who is the we? You said we went out and got
13 the data, then you sent it to --

14 MS. ROZELL: Well, it's myself, Matt
15 Osborne was initially the project manager, and
16 then now it's me and Meghan Peters, who are on
17 the team.

18 CHAIR BASHFORD: So staff members who
19 did a lot of the data collection.

20 MS. ROZELL: Yes, ma'am.

21 CHAIR BASHFORD: And I think some
22 other members of the Committee were envisioning.

1 CAPT TIDESWELL: Yes. So this is a
2 tasking --

3 (Simultaneous speaking.)

4 CHAIR BASHFORD: -- warehouse of the
5 GPS, right?

6 CAPT TIDESWELL: Yes, ma'am. So this
7 was a tasking given to us by the Judicial
8 Proceedings Panel that has literally been run
9 with the help of Dr. Spohn. All internal through
10 our staff, with the exception of Dr. Spohn.

11 I think what's really great about it,
12 if I could brag a little is, they took testimony
13 from the U.S. Sentencing Commission, and it was
14 very, very important that whatever data was used
15 in the system, could be backed up by the actual
16 documents from the case.

17 So if you came to us today and said,
18 in Case X you said this, why, we could literally
19 open up a file and show you all the documents,
20 what our input was based on. And so I think that
21 makes us different than a lot of the other
22 systems being run by DoD right now.

1 MS. ROZELL: The Services were very
2 helpful in that. If the documents were located
3 in, within the NCR region, then we physically
4 went over to those locations and went through the
5 files ourselves, pulled out those certain
6 documents that we wanted, and then we actually
7 scanned them. So we didn't actually bring back
8 any papers to the office, it was all digital.

9 And so, yes, there may have been large
10 paper files in the records of trial, but we, at
11 the JPP, don't necessarily have a lot of paper
12 files to have to worry about.

13 CHAIR BASHFORD: Thank you. And since
14 they do have the 140a process about to start, Dr.
15 Spohn, are there data points that you weren't
16 able to collect, that for across Services, you
17 think would be valuable?

18 You don't have to answer right now,
19 but --

20 DR. SPOHN: No, I think in the report
21 file that I provided, I indicated at the end of
22 that report what data elements were not included

1 in the, that would have been helpful.

2 MS. CARSON: And that's included in
3 your document, at Item 6. The demographic data.

4 DR. SPOHN: Oh, there we go. Yes.

5 MS. CARSON: So that captures all of
6 the information that Dr. Spohn had in the JPP
7 report.

8 CHAIR BASHFORD: So in Number 6, that
9 is what you were able to capture?

10 DR. SPOHN: No, that's what's not.

11 MS. CARSON: No, that's the suggested

12 --

13 CHAIR BASHFORD: That's what --

14 MS. CARSON: -- information that
15 should be looked at.

16 MS. ROZELL: The database that we
17 currently have, on this staff, is flexible and
18 therefore fields can be added, fields can be
19 deleted. So additional information, such as what
20 Cassia recommends, could be added to those files
21 as well in the future.

22 CHAIR BASHFORD: And that's on an

1 Excel spreadsheet?

2 MS. ROZELL: No, it's actually through
3 SharePoint. And you can extract the data that's
4 within the SharePoint site out to an Excel
5 spreadsheet.

6 CHAIR BASHFORD: Are there more
7 flexible computer programs that SharePoint or --

8 MS. ROZELL: There's probably some out
9 there. Yes, ma'am.

10 DR. SPOHN: Probably. Yes, ma'am.

11 CAPT TIDESWELL: Microsoft Access is
12 a potential.

13 CHAIR BASHFORD: -- that would you be
14 able to transpose the data to a more flexible
15 program? Lift, it out --

16 CAPT TIDESWELL: The IT guys would
17 have to help, ma'am, to be honest.

18 CHAIR BASHFORD: Okay.

19 MS. CARSON: I'm sure there is a
20 methodology to do that. And it's something that
21 the DAC-IPAD may want to look at, is what the
22 next generation -- this was kind of the first way

1 to do it and it was internally through the DoD
2 organization that this was setup.

3 So something that, and this is also
4 part of 140a, which is to set up the system and
5 the standards and criteria for it, is something
6 you may want to look at what the next
7 generational will be.

8 It's not the expertise of the Panel,
9 but it's certainly something that you could have
10 a data subcommittee that looked at it or other
11 experts to advise the Secretary of Defense. On
12 the best way to do that.

13 The recommendation you've seen from
14 the JPP has been, it's really important to have a
15 document based system. And so I think if the
16 DAC-IPAD wants to continue to look at that and
17 work from that and how to take that even further,
18 that would be beneficial information.

19 CHAIR BASHFORD: And when you say
20 document based, that means if you say something
21 you can back it up with the pulling up the
22 document, right?

1 MS. CARSON: The other --

2 CAPT TIDESWELL: Right. We have the
3 results of trial, we have the charge sheet.

4 MS. CARSON: The other problem
5 information is, it would be self-reported from
6 the Services, numbers based on people in the
7 field entering data, when that's not their
8 primary function. And so there's lots of room
9 for error and lack of quality control in the
10 information that's getting keyed in. Just as a
11 number. It doesn't tie to anything.

12 If you actually can say, this ties to
13 a document that we can go back and find it. That
14 was the best practice. That was expressed by the
15 U.S. Sentencing Commission and what they use in
16 the data collection that they do.

17 And they have their own group of
18 people. It's the same group that looks at the
19 document, so they're interpreted the same way,
20 with the same processes, and so they know what
21 they're looking at is all uniform.

22 DR. SPOHN: But there are some clunky

1 features about the SharePoint data system. For
2 purposes of analysis, in particular. Because I
3 took the Excel spreadsheet and imported into a
4 statistical analysis package.

5 But all of the charges, and there
6 could be up to 25, 30 charges, are all listed in
7 the same field. And then all of the dispositions
8 of those charges are all listed in the same
9 field.

10 And so it's not possible, in an
11 analytical framework, to separate those things
12 out. And so I had to go through, actually, they
13 did it for the last iteration.

14 CAPT TIDESWELL: Right.

15 DR. SPOHN: You indicated whether it
16 was penetrative or contact offense. But the
17 first time I had to go through and actually look
18 at every single case and decide what the most
19 serious charge was. And then go to the
20 disposition field and match the cases with the
21 dispositions. And so that's kind of clunky.

22 CAPT TIDESWELL: And I believe the DoD

1 IG uses Microsoft Access, right?

2 MR. REDMOND: Yes.

3 CAPT TIDESWELL: Quite successfully.

4 MR. REDMOND: Yes.

5 CAPT TIDESWELL: That would be

6 something to look at.

7 MR. REDMOND: Correct. We have our
8 database, has thousands of data points. We've
9 collected a lot of information.

10 And as you'll see, the demographics in
11 the back of those reports. We added them to the
12 package. Gender, relationships, everything.

13 SGT. MARKEY: So one of the things
14 that I learned in a civilian world is limitation.
15 If you don't manage your information, you're
16 going to fail whatever your goal is.

17 So I actually contracted with an
18 outside vendor, they actually developed, it's
19 FMR, it's forensic medical record, for SANE
20 exams. So they do it in the Cloud, it's web-
21 based.

22 So I actually contract with them. I

1 gave them the data points and elements that I
2 wanted to collect. They created an electronic
3 system that, as I do a case review, I put the
4 data into my system, anywhere that I'm at in the
5 world, and that system has all the security
6 features.

7 It meets all the federal requirements
8 for secured data. Whether it's stand-alone, in-
9 flight, at another location. And then I just go
10 in and run reports, as opposed to having to write
11 stuff down.

12 And I know collecting data has always
13 been a problem for law enforcement, and so this
14 is what we ended up doing. And I had to access
15 database, this would have worked before, but this
16 was a web-enabled system that -- so they're out
17 there, I'm just saying that's an option. Once we
18 determine how we're going to collect, what we're
19 going to collect.

20 I just went to them and said, these
21 are the data elements, these are the categories
22 I'm collecting things in, and then I broke those

1 down into -- that way it's a standardized
2 collection. So everybody that goes into that
3 system, they know what to collect so they're not
4 collecting different things.

5 And we use drop down to know we're
6 using the same language. We got same information
7 across the board, no matter who's doing the
8 review, you know they're capturing the same
9 information that the person next to them is
10 doing.

11 So it's worked really good. We're
12 going to use it on a couple other projects that
13 we have going for assessments, for civilian law
14 enforcement in the next three or four months.

15 So it's just something that we can
16 demo or look at or, if anybody cares, they can
17 get a hold of me and I can give them access to
18 the system, that they can actually look at it.

19 CHAIR BASHFORD: So at our last
20 meeting we talked about setting up a data
21 subcommittee or a data working group. Dr. Spohn
22 offered to be on that. I believe Rod offered to

1 be on that. Right?

2 CMSAF MCKINLEY: Yes.

3 CHAIR BASHFORD: But at least at the
4 last meeting, those were the only two takers.
5 Are there other people who would like --

6 SGT. MARKEY: Sure.

7 CHAIR BASHFORD: -- like might be too
8 strong.

9 SGT. MARKEY: Sure.

10 CHAIR BASHFORD: Okay.

11 SGT. MARKEY: Even though my expertise
12 isn't in that, but obviously the case file
13 review, I'd like to be involved in that. But I
14 think --

15 MS. CARSON: I think they're linked.

16 SGT. MARKEY: Yes, they're going to be
17 linked, absolutely. So I have no problem.

18 CHAIR BASHFORD: I mean, there's a
19 huge linkage back and forth --

20 SGT. MARKEY: I will require more
21 money though.

22 (Laughter.)

1 MS. CARSON: A raise.

2 SGT. MARKEY: I'm going to require a
3 raise.

4 (Laughter.)

5 CHAIR BASHFORD: How about we'll give
6 you a dime.

7 SGT. MARKEY: How about two oatmeal
8 chocolate chip cookies?

9 CHAIR BASHFORD: There we go.

10 BG SCHWENK: You've done it now. He's
11 signed up.

12 (Laughter.)

13 CHAIR BASHFORD: That's right, offer
14 and acceptance, right? Okay, great.

15 Do we have authorization from the
16 Committee to setup that subcommittee with these
17 three wonderful people? Is that the consensus?

18 DR. SPOHN: Yes.

19 CHAIR BASHFORD: Okay, great. And I
20 believe you can start as a working group and
21 transfer to a subcommittee --

22 CAPT TIDESWELL: Yes, ma'am.

1 CHAIR BASHFORD: -- when the approvals
2 come back?

3 CAPT TIDESWELL: Yes, ma'am.

4 CHAIR BASHFORD: Okay. And if we do
5 setup the working group to look at a few cases of
6 advance of our next thing, I think it would be
7 interesting to see the data suggested, both in
8 our original conversations, JPP recommendation
9 and Judge Brisbois' proposal.

10 It would be interesting to see, in
11 just looking at a few cases, are all of these
12 things in, listed in 6, being captured or is it
13 easy to capture them from looking at a few case
14 files. And if it is, that's great, if it's not,
15 then we would have to dig further.

16 MS. PETERS: Right. If it was easy we
17 would have probably had it.

18 CHAIR BASHFORD: Slackers.

19 MS. PETERS: Right. Yes. Because we
20 were dealing with public documents and some of
21 the information in there is limited in what we
22 had available publicly.

1 JUDGE BRISBOIS: Just to be clear, the
2 proposal, I was trying to brainstorm the session
3 as one, which is sometimes the problem. Because
4 your audience already believes what you're
5 saying.

6 CHAIR BASHFORD: It's always
7 unanimous, isn't it?

8 JUDGE BRISBOIS: Yes. But looking at
9 out, and so some of these points that I had
10 raised, we're assuming that they weren't being
11 captured now, but should be. In which goes more
12 in line with 140a.

13 It should be going forward because it
14 allows some of the discussion to take place that
15 we're presently not able to have.

16 CHAIR BASHFORD: Exactly.

17 JUDGE BRISBOIS: So to the extent it
18 exists, great. To the extent it doesn't, it was
19 looking forward, these are things we might want
20 to be looking forward and suggest that they get
21 captured.

22 CHAIR BASHFORD: My boss has a saying

1 he likes to use a lot, which is the plural of
2 anecdote is not data. And so I believe the more
3 actual data we can capture, I think it's hard to
4 make recommendations based on anecdote.

5 On seven, I think a lot of this has
6 been captured, if I'm correct. By data that's
7 been made, and it's continuing to be made
8 available to us, is that correct?

9 MS. CARSON: That's correct. The
10 unique point that Judge Brisbois made is looking
11 at it by combat arms convening authorities and
12 combat support convening authorities. So that's
13 a way that it's not looked at currently.

14 JUDGE BRISBOIS: I mean, hearkening
15 back 30 years, it was a different world, but
16 Seventh Armored in Stuttgart was a completely
17 different environment than the 21st Support
18 Command in Kaiserslautern.

19 And so different troops, different
20 missions and different mixes, in terms of the
21 troop strength. You know, who's in the troop,
22 you know what I mean.

1 So that is something that's unique to
2 this setting as opposed to any civilian criminal
3 analysis where society is society.

4 CHAIR BASHFORD: Is that the
5 equivalent of deployed, non-deployed?

6 JUDGE BRISBOIS: No, that's a
7 different category.

8 MS. CARSON: That may be another
9 category.

10 CHAIR BASHFORD: So what was, just so
11 I understand what we're talking about, what did
12 you say, at arms?

13 JUDGE BRISBOIS: Well, combat arms are
14 the fighting force.

15 CHAIR BASHFORD: Okay.

16 JUDGE BRISBOIS: The armor, the
17 artillery, the infantry, the Military Police,
18 combat support, our water purification, medical.

19 CHAIR BASHFORD: Okay, got it.

20 JUDGE BRISBOIS: Those are just gross
21 examples, but I'm sure Master Sergeant can be
22 much more specific.

1 CHAIR BASHFORD: And that has not been
2 captured that way yet?

3 MS. CARSON: Right. Correct.

4 CHAIR BASHFORD: So that would be
5 useful.

6 JUDGE BRISBOIS: And, General, I mean,
7 you understand what I'm trying to get at?

8 BG SCHWENK: Yes. That's why we also
9 tried to have computer guys whatever on the
10 courts when we were defense counsel. Didn't want
11 infantry officers on the courts.

12 (Laughter.)

13 BG SCHWENK: It's not a defense bar.

14 JUDGE BRISBOIS: No.

15 CHAIR BASHFORD: And it hasn't been
16 broken down by deployed or non-deployed yet, is
17 that correct? It has not?

18 MS. PETERS: No.

19 CHAIR BASHFORD: And would there be a
20 way to capture that?

21 MS. PETERS: Each charge will specify
22 the location of the offense. So we would have to

1 go by and do a by-specification analysis.

2 Right now, we look at, where was the
3 court-martial held, what unit did it. Which
4 doesn't correspond to where the offense occurred.
5 Which could be buried within a particular case.

6 But we can --

7 CHAIR BASHFORD: Where the offense
8 occurred should be in every file.

9 MS. PETERS: Right. It's easy to
10 access, we would just have to develop the system
11 to track it appropriately. It's easy enough.

12 MS. CARSON: And that's kind of the
13 list that would be beneficial for you, as an
14 Advisory Committee, to come up with an actual
15 list of exactly what data and why. And there's
16 data on the demographics, there's data on the
17 process, the Military justice process that you
18 may be interested in, in the investigation
19 specifically.

20 So maybe even have topical categories
21 of data that you recommend being collected. That
22 can inform what you do in your case reviews and

1 it can also be a recommendation to DoD on when
2 the system is made, what it should collect.

3 CHAIR BASHFORD: I know we've also
4 talked in the meetings about the aftermath of a
5 report, both in terms of either separation from
6 the Service for the victim, retention career
7 paths. I think that's one thing we should look
8 at. And retaliation as well.

9 I know that's, in our presentation
10 last time we heard two different viewpoints, that
11 might be too strong, but that sometimes what is
12 being perceived as retaliation might be somebody
13 saying, don't sit for this exam because you've
14 got too much on your mind at the moment. And
15 that might be what's well intentioned, but
16 actually winds up still hindering somebody's
17 ability to move forward.

18 CMSAF MCKINLEY: Yes, I spoke about
19 that last time. Is, you have a person that
20 they're in a promotion cycle and they're having
21 to deal with this court situation and everything
22 else and so they're supposed to be studying and

1 preparing for a promotion, but they're mind is
2 not there. So they miss out on the promotion.
3 And so therefore that goes to another year.

4 So you have a victim that may be a
5 victim of rape or sexual assault, whatever, but
6 they're also still in the promotion cycle. And
7 they missed out on the promotion.

8 So in a sense, they're a victim again.
9 Not only a victim of the sexual assault, but
10 they're also a victim of not being in that
11 promotion cycle and being able to test the way
12 everybody else does.

13 And so I think that is something that
14 we should, the Military, should consider. A
15 person of a sexual assault, what effect does that
16 have on their next promotion, their performance
17 report, et cetera. Whether they're an officer
18 enlisted, male/female, it doesn't matter.

19 Does that make sense, ma'am?

20 CHAIR BASHFORD: Yes. And one thing,
21 several people had mentioned retention rates. I
22 think you have as well.

1 I'm just not sure what our control
2 group would be. If we see people who've reported
3 being sexually assaulted cycle out of the
4 Military, at X number of years post-report,
5 what's our control group?

6 Like I don't know how you would pick
7 somebody who wasn't sexually assaulted or didn't
8 report being sexually assaulted, say in
9 September, how long they stay?

10 I'm not a data person, but I think I
11 know enough that you have to have a control. So
12 it would be good to measure, I just don't know
13 how we would do it.

14 CAPT TIDESWELL: And the Services
15 manual will have overall retention rates. They
16 track them all the time.

17 CHAIR BASHFORD: So you would look to
18 see if this particular subset had a different
19 retention rate?

20 CAPT TIDESWELL: Eventually.

21 CMSAF MCKINLEY: I know in our first
22 meeting there was a stat that was put out there

1 that one third of sexual assault victims separate
2 from the Military within seven months. That was
3 someone, I think the current Air Force Colonel
4 that came in and spoke to us, the lawyer, he
5 provided that stat. One third separates within
6 seven months.

7 DR. MARKOWITZ: I bet it would be
8 interesting to look at, enlisted versus officer,
9 in terms of career trajectory and retention and
10 that sort of thing. So I would encourage us
11 breaking that out and taking a look at this.

12 CHAIR BASHFORD: Which I think also
13 brings up to another point that we've certainly
14 heard raised, which is the expedited transfer.
15 What is the impact of that.

16 Again, I think we've seen it
17 anecdotally that there is the perception that the
18 transfer actually hurts people at the trial
19 level, because the members think, well, you got a
20 cushy transfer. I think it would be good to see
21 how often are the transfers being done, where are
22 they being done to.

1 And what I heard at the JPP, the
2 perception is that they're all going to San Diego
3 or Hawaii. That can't be true.

4 But it would be good to actually have
5 data on that. How often are they used and where
6 are they going from and where are they going to.

7 We have something similar where people
8 who are, don't have papers in the country and
9 they're the victim of a crime and cooperate and
10 get a U visa. And that has become, at least in
11 my experience, being used as a sword at trial.

12 That the only reason you said you were
13 a victim of a crime was in order to regularize
14 your immigration status. So it just seems there
15 are civilian analogues to this.

16 But I think that would be looking at
17 the idea that somehow making this claim puts you
18 in an advantageous situation. We should just
19 take a look at it.

20 MS. LONG: We had a student from the
21 Coast Guard, in our Georgetown law class
22 actually, write a paper on this, and trial piece,

1 on how to analyze. And I'm happy to share to
2 that. He was actually the top student in our
3 class.

4 CHAIR BASHFORD: Great.

5 MS. LONG: It's very short, it's not
6 a long paper. But I'd be happy to send that out,
7 it would be useful.

8 CHAIR BASHFORD: Yes, that would be
9 great. I mean, we should be able to get that
10 data.

11 The practitioner training and
12 experience and resources, and these are like
13 proposed policy topics, we've certainly heard
14 quite a bit about that. I think we should
15 continue to see how that tracks.

16 I think it would be interesting to see
17 is, how is it different across the Services. It
18 seems like it's fairly standard, from what we've
19 heard today. But we haven't actually heard,
20 unless I -- have we heard from the, sort of
21 defense bar?

22 I know people in the JAGs can switch

1 back and forth, but we heard really the
2 prosecution training. Have we heard a piece on
3 the defense training yet?

4 Is there a specific defense --

5 CAPT TIDESWELL: The JPP.

6 MS. CARSON: Right.

7 CHAIR BASHFORD: So that might be
8 something we would like to hear from them, down
9 the road.

10 MS. CARSON: Definitely.

11 CHAIR BASHFORD: And I don't think
12 we've heard from the SVCs or the VLCs, have we?

13 CMSAF MCKINLEY: No, ma'am.

14 CHAIR BASHFORD: Again, a piece down
15 the road will be good to hear their training.
16 Yes?

17 DEAN HARRISON: For the defense bar
18 and for the victims' advocates, would that be
19 something that you'd want in a public hearing
20 before the whole Committee or is that better done
21 with a subcommittee or working group meeting or
22 so?

1 CHAIR BASHFORD: I think some of both.

2 DEAN HARRISON: Okay.

3 CHAIR BASHFORD: I think sort of the
4 training they're provided --

5 DEAN HARRISON: Okay.

6 CHAIR BASHFORD: -- is kind of a
7 public committee. If there are gripes --

8 DEAN HARRISON: That's what I'm
9 thinking about.

10 CHAIR BASHFORD: -- or the things that
11 --

12 DEAN HARRISON: They might have
13 critiques.

14 CHAIR BASHFORD: Or things that they
15 think could be improved. But in a more positive
16 thing, that might be better done in a
17 subcommittee setting.

18 BG SCHWENK: The defense bar tends to
19 be more candid at the public hearings than the
20 trial counsel.

21 (Laughter.)

22 BG SCHWENK: One thing I was thinking,

1 as we get down to this Page 5 of Tab 8 in
2 Paragraph 8, the proposed policy topics, I mean,
3 it seems to me we should be, rather than talking
4 generally, maybe we should be talking
5 specifically.

6 We have between now and March for our
7 next report, what specific topics, out of this
8 list or the ones that you all have in your minds,
9 do we want to grapple with first?

10 Because if we could today, in the
11 afternoon, identify two, four, whatever we come
12 up with, that would give us a focus, if we got a
13 subcommittee to look at defense, was one of them,
14 that would give them a focus to do something
15 between now and, maybe they start as a working
16 group but they turn into a subcommittee, between
17 now and October, and then we'd have something in
18 October to really grapple with on a specific
19 issue.

20 One that we mentioned a lot here is
21 the 140a issue. Article 140a.

22 That might be one we say, let's try to

1 get at the early end of what DoD's doing on that,
2 by putting that down as one of our topics that we
3 want to address first and get started on that.
4 And maybe not, but maybe we would.

5 So it seems to me, if we just go
6 through this and say, this is a good idea,
7 they're all good ideas. I mean, I think all
8 these ideas are good, but we can't do them all at
9 once.

10 And so I think it would help if we
11 tried to decide which ones are we most interested
12 in short term, and which ones can be in reserve
13 for your next year or the year after or whatever.

14 CHAIR BASHFORD: I think it's, when
15 you're dealing with something as massive as DoD,
16 getting in at the ground floor is a lot better
17 than coming in like a month before everything is
18 final. So I think working, having 140a and what
19 we should recommend as an early topic, would be a
20 good one.

21 I know the guidance, I've already
22 forgotten the number. What was the one, Dwight,

1 the guidance that's coming out? It's out for
2 public comment now.

3 MR. SULLIVAN: The Article 33 Non-
4 binding Disposition Guidance?

5 CHAIR BASHFORD: Yes, that ship has
6 sailed. That's, you know, the one that's up for
7 public comment, it's probably not changing much.

8 BG SCHWENK: Yes, but if Dwight was
9 doing it, it's probably screwed up. To make a
10 comment on it.

11 CHAIR BASHFORD: That was a friendly
12 comment.

13 BG SCHWENK: That was.

14 CHAIR BASHFORD: But I think getting
15 in on the ground floor on something like that is
16 important. So I would like, my personal view
17 would be --

18 MS. CANNON: What is 140a?

19 CHAIR BASHFORD: -- 140a is the data
20 collection across all Services, and coming up
21 with a uniform way of tracking these. Everybody
22 tracks slightly different and they collect

1 different information.

2 If we could make some recommendations
3 as to what we think, as a Committee, would be
4 important things. I think that would be a good
5 thing for a working group subcommittee to focus
6 on early.

7 BG SCHWENK: And the working group on
8 data would be providing information to us and to
9 that subcommittee, the 140a, on what's missing,
10 what we need and issues that have arisen that
11 there is no data to support. Which would then go
12 funnel into the 140a. People can say, oh, how we
13 would design that.

14 DEAN HARRISON: I think that it's
15 something that needs, clearly meet the need of
16 the resources and training for the defense
17 counsel. We've heard about the need, I think, or
18 at least we need to look into whether or not
19 there should be dedicated, or a quasi-dedicated
20 to investigative systems, that's helpful.

21 And I suspect that the training may
22 not be as uniform across Services as we might

1 think. And I don't know. But I think it's
2 something that a staff committee should look into
3 and make recommendations for our next data
4 report. Write the recommendations back to us for
5 the next staff report.

6 MS. CANNON: And I think connected
7 with that is, once you get your feet in the door
8 and you start learning what you're doing, how
9 quickly are you moved on to something else to
10 know the continuity of representation that's
11 lost. And that has an impact.

12 CHAIR BASHFORD: I think the resources
13 seem to be not as equally distributed as might be
14 desired.

15 MR. KRAMER: I know that we've not
16 done training for Military defense lawyers, that
17 is their primary complaint, their resources, and
18 who they have to ask for.

19 CHAIR BASHFORD: Right.

20 MR. KRAMER: I think we heard today
21 they have to go to, the convening authority has
22 to authorize it. Even, I think somebody said

1 through the prosecution. And so I know that's
2 their probably primary complaint.

3 MS. CANNON: Experts, discovery,
4 investigation.

5 MR. KRAMER: Right.

6 DR. MARKOWITZ: All of that goes
7 through the government.

8 MR. KRAMER: Right. Right.

9 DR. MARKOWITZ: All of it.

10 MR. KRAMER: And I know that's their
11 primary complaint, yes.

12 DR. MARKOWITZ: Right. Yes, control
13 of the resources.

14 MR. KRAMER: Yes.

15 CAPT TIDESWELL: So the JPP had two
16 recommendations that are pending, on whether
17 congress kicks it on in the next end of year, who
18 knows. But one was to give the, each Service has
19 embedded defense investigators, then the second
20 was is that they actually have their own budget
21 or pot of money to draw from, from expert
22 witnesses, without having to go to the

1 prosecution and the convening authority to get
2 the money for the experts.

3 DR. MARKOWITZ: That's a JPP report?

4 CAPT TIDESWELL: That's a JPP report
5 that's final. And that's --

6 MR. KRAMER: That's the way federal
7 public defender offices operate. We have our --

8 CAPT TIDESWELL: Yes, sir.

9 MR. KRAMER: -- money for experts.
10 Now, CJA lawyers have to go to the judge, which
11 is now controversial. But there's a report
12 coming out on that soon.

13 But at least they don't have to go
14 through the prosecution, they can do that ex
15 parte. But there are some complaints about that
16 too I know.

17 But federal public defenders, that's
18 what Military defense counsel say, we wish we had
19 our own budget for that like you do.

20 MS. CANNON: So are you saying that
21 these two recommendations are already in the
22 work, so it would be redundant, if not

1 unnecessary, for us to pursue the areas?

2 CAPT TIDESWELL: Well I think right
3 now I would probably go into a hold position.
4 Because right now the report is final, so the JPP
5 has sent it to the Hill, it's there for their
6 consideration. What they do with it, or what the
7 Services or Secretary of Defense, if anybody
8 picks up on it to make those changes, that's
9 entirely up to them. We're just not going to
10 know right away.

11 MS. CANNON: Would it matter if we
12 weighed in also?

13 CAPT TIDESWELL: I think if it doesn't
14 happen this round, it would definitely matter in
15 the long-term if you all weighed in. Absolutely.

16 CHAIR BASHFORD: So perhaps we table
17 that to see if they take any action. If they
18 don't, we redo it.

19 MS. CANNON: The only thing not in
20 there is training.

21 DR. MARKOWITZ: Right.

22 CHAIR BASHFORD: Does the JPP report

1 on the defense bar include the training?

2 CAPT TIDESWELL: Ma'am, why don't you
3 speak to that.

4 MS. SAUNDERS: Yes. It does include
5 someone on training, but also on experience. It
6 makes the recommendation that the experience
7 levels of defense counsel be commensurate with
8 the trial counsel. Provide some guidance on
9 that.

10 And there's also one on resources as
11 well to ensure that defense counsel have similar,
12 or similarly resourced as their trial counsel
13 counterparts.

14 CAPT TIDESWELL: To include general
15 support.

16 DEAN HARRISON: What's the longevity
17 of someone who's doing defense work? Are they
18 there for an extended period of time, or it's a
19 short stint?

20 MS. SAUNDERS: It varies. I think
21 what the JPP learned, and put into their report,
22 is that it varies by Service.

1 From, I think in the Marine Corps, and
2 I'm sure that the Marine representative will
3 correct me if I'm wrong, but I think it was about
4 18 months to up to about three years, as the
5 transition --

6 DEAN HARRISON: You're only doing it
7 for 18 months?

8 MS. SAUNDERS: Serving as a defense
9 counsel.

10 MS. LONG: Is it true that it sort of
11 goes against, that it is held against a Military
12 member if they stay somewhere long?

13 I mean is that part of the attention
14 with keeping people in these positions for a long
15 enough time, to get the requisite expertise that
16 they would need?

17 Is there that attention going on that
18 has been addressed?

19 MS. PETERS: We have received
20 testimony on that issue in that it's an ongoing
21 issue, but it's one of those things that's been
22 developing. We're going to address various areas

1 in the Services.

2 So are you not going to hear those two
3 anymore, no, but you're going to hear that one
4 Service is toying with Military justice
5 litigation tracks and then another uses skill
6 identifiers to incentivize people to stay in the
7 Military justice track. Whether they you do
8 prosecution and defense. And they encourage both
9 sides in that regard.

10 But those skill identifiers are
11 favorable, are looked upon favorably for
12 promotion and what not and for being groomed for
13 senior positions. So there is more incentive.

14 I think you're still always going to
15 hear that because if the goal is to have a
16 broadly skilled individual, that necessarily
17 involves moving around. And we heard testimony
18 from senior leaders about the rationale for doing
19 that. So there's attention for the recognition
20 on the development of expertise.

21 DEAN HARRISON: Along --

22 MS. PETERS: In various ways.

1 DEAN HARRISON: Along those same
2 lines, are Coast Guard and Marine Corps lawyers
3 still line officers who are expected to rotate in
4 and out of law specialty?

5 CAPT TIDESWELL: Yes.

6 MS. CARSON: Yes, I believe.

7 CAPT TIDESWELL: They both are.

8 DEAN HARRISON: And so if a Coast
9 Guard or a Marine lawyer was only a lawyer, they
10 would not fare well in the promotion area?

11 MS. CARSON: Can I add one update?
12 Congress has actually enacted legislation on
13 this, requiring a pilot program in each Service,
14 or a legislative track, and allowing them to
15 have, I believe, O-6 --

16 DEAN HARRISON: Litigation.

17 CAPT TIDESWELL: Litigation.

18 MS. CARSON: I don't know what I said.

19 CAPT TIDESWELL: Litigation.

20 MS. CARSON: Litigation track.

21 There's been some push for this to happen, so I
22 think the first step is the pilot program.

1 The Navy already has this program in
2 place. And it also makes accommodation for
3 trying to assist that not to be a problem in this
4 promotion.

5 MR. KRAMER: Sorry, can I ask --

6 MS. CARSON: So it's something you can
7 monitor. Sorry.

8 MR. KRAMER: It's 18 to 30 months for
9 defense counsel, or whatever, 18 months to three
10 years. What about trial counsels, is that
11 similar or is that different?

12 MS. SAUNDERS: Maybe I can ask the
13 Service reps if they have a good wag on that, for
14 trial counsels?

15 LTC VERGONA: So in the Army, trial
16 counsel, defense counsels serve, it's a tour, so
17 it's typically the same. It's usually two years,
18 depending on your location. Sometimes it can be
19 12 months. Korea is of a location for a 12 month
20 tour.

21 But the length of a tour for a trial
22 counsel and a defense counsel is supposed to be

1 the same. I don't know to --

2 CAPT AHLERS: Good afternoon, I'm Joe
3 Ahlers from the United States Air Force. All of
4 our counsel start in the legal office as
5 prosecutors.

6 And that can be for typically about
7 two years, then they move over to be either a
8 defense counsel, special victim's counsel, if
9 they so choose. And those assignments also go
10 for approximately two years.

11 But then some of them also move on
12 then to be senior defense counsel, senior trial
13 counsel. Again, standard assignment is two
14 years.

15 LTC VERGONA: And if I could make one
16 correction, also there is a special victims'
17 prosecutor. So Army has -- that's a trial
18 counsel who what they do is they prosecute sexual
19 assaults. That's a three year, typically a
20 three-year tour.

21 CHAIR BASHFORD: Well, one data point
22 I haven't heard mentioned, but I think it would

1 be useful to try to get, is during the pendency
2 of a case, how often is there a change in
3 prosecutor and how often is there a change in
4 defense attorney.

5 Because somebody has cycled out of
6 that program or, I don't know, been deployed or
7 something, but on a specific case, how many
8 prosecutors and how many defenders do you cycle
9 through? That's not good for a case.

10 SGT. MARKEY: I was just going to ask
11 the same question for the investigator side. Is
12 there a transient, if an investigator starts a
13 case, is there the possibility that that
14 investigator may not continue that case because
15 of reassignment or transfer?

16 MR. REDMOND: Oh yes, there's always
17 that possibility. Depending on how complicated
18 the case is.

19 You've heard the MCIOs talk about
20 their typical case length, anywhere between 130
21 days down to 75 days. And people in uniform are
22 always transitioning.

1 There's always these -- MCIO units are
2 not large units, with the exception of Bragg and
3 some of the others, but traditionally the Air
4 Force units are smaller. So the transition is
5 always somewhat moving every year. On the
6 likelihood side.

7 SGT. MARKEY: What happens to those
8 cases when that person leaves? What happens to
9 his case load?

10 MR. REDMOND: It gets transitioned to
11 another agent in the office. But typically, in a
12 smaller unit, it's not just the agent working the
13 case, that entire office is working the case in
14 some form or fashion. It's not a lone ranger
15 doing it, but it's a team effort mostly.

16 So a lead agent transitioning will
17 just routinely transition that role of lead to
18 the support agent, who then becomes the lead
19 agent. And is fully versed and experienced in
20 the complexity of that particular case.

21 MS. LONG: What's a typical case load
22 for a prosecutor or defense attorney on the tour?

1 How many cases do they handle in their
2 lifetime?

3 Not at one time, but how many cases do
4 they handle? And then the same for
5 investigators.

6 CAPT TIDESWELL: Service reps, do you
7 have a swag?

8 LTC VERGONA: So, ma'am, for the Army,
9 it just depends on your location. If I'm
10 stationed at Fort Hood or Fort Bragg as a trial
11 counsel, or a defense counsel, I'm going to have
12 a heavier load than at another location.

13 MS. LONG: What is the typical heavier
14 --

15 LTC VERGONA: Heavier --

16 MS. LONG: -- sexual violence?

17 LTC VERGONA: Of sexual assault cases?

18 MS. LONG: Of sexual assault cases,
19 not regular cases. Of sexual assault cases.

20 LTC VERGONA: For defense counsel,
21 sexual assault, I would say 80 percent of our
22 cases. And they may carry 15 cases, 20 cases.

1 JUDGE GRIMM: But when I was in the
2 Army, you started off as a defense attorney or a
3 prosecutor and then you might be switched over to
4 do admin law or something else. Is that still
5 there?

6 LTC VERGONA: Yes, sir.

7 JUDGE GRIMM: Because you're not
8 having someone who is going to be a trial
9 counsel, is what we used to call a prosecutor or
10 a defense attorney, who in a course of a 20 year
11 career is going to spend 18 years doing that,
12 except for time in school.

13 You may have someone who is at Fort
14 Bragg, who has a heavy sexual assault case
15 docket, and then never tries another case again,
16 goes on and does admin law and is an advisor to a
17 commander in a deployed unit and then comes back
18 as a deputy staff judge advocate and then goes
19 off to the advance course or something else. So
20 you don't have that continuity of prosecution
21 that goes forward.

22 It tended to be, and I don't know if

1 it's still the same thing, the newer junior
2 officers come in and, except if you're in one of
3 the more, in a command that deals like area
4 defense counsel, where you'll have senior people
5 who are supervising another defense counsel, it's
6 not, you're not going to stay as a prosecutor or
7 defense counsel typically. At least that was my
8 understanding. Is that still the case?

9 LTC VERGONA: Yes, sir. And so for
10 the Army it's our, we want broadly skilled judge
11 advocates.

12 JUDGE GRIMM: Yes.

13 LTC VERGONA: And so you might do
14 criminal work, you go to administrative work --

15 JUDGE GRIMM: Right.

16 LTC VERGONA: -- do environment law --

17 JUDGE GRIMM: Right.

18 LTC VERGONA: -- go back to criminal
19 law. But typically, it will be a couple years
20 in-between. Go do defense work after being in
21 environmental law.

22 So that you're broadly skilled, so

1 that when you're the senior leader and you're
2 advising the commanding general, you have
3 experience in a variety of types of law.

4 JUDGE GRIMM: All right.

5 LT NICA: I'm sorry to jump in.

6 Alexandra Nica from the Navy.

7 We have the established Military
8 justice litigation career track. So the
9 experiences with the Army may not exactly what we
10 have.

11 But I am in the career litigation
12 track myself. I've spent the last five years in
13 the courtroom as a defense attorney at two
14 different locations.

15 Our litigators typically will switch
16 between defense and prosecution, but what we see
17 with our senior leaders, our senior defense
18 counsel, assistant senior defense counsel, senior
19 trial counsel, assistant senior trial counsel, is
20 that they have been in, pretty much back-to-back,
21 litigation tours.

22 We identify those, well, people tend

1 to self-identify, as either interested in
2 litigation in their first tour, as they're going
3 through the various areas that the Navy
4 practices.

5 We have a board that selects people
6 for inclusion in the Military justice career
7 track based on experience. Usually after the
8 four-year mark. So one first tour plus time in
9 the courtroom, as either prosecution and defense,
10 and then you go on in jobs that are coded for
11 Military justice.

12 Now, this may include disassociated
13 tours, so you can go be an SJA so you get that
14 experience or you can go to a carrier and get
15 that experience, or even be an instructor. Those
16 are things that add to that diversity of
17 background as you get into the higher ranks.

18 But we have a very well-established
19 group of, right now it's 77, Military justice
20 career track practitioners at various levels of
21 experience, in order to make those senior defense
22 counsel, trial counsel and leaders, very well

1 skilled in the Military justice.

2 MS. LONG: Are they specialized in
3 litigation or in sexual assault litigation?

4 LT NICA: So I would say both.
5 Because our case load is so heavily sexual
6 assault oriented, the cases we will see most
7 often are sexual assault cases. Whether that's
8 child sexual assault or adult sexual assault, it
9 constitutes a big portion of our portfolio.

10 There are -- on the trial counsel side
11 we have special victims' prosecution capabilities
12 that are SVIP capabilities that are, like, the
13 criteria have been established, we're doing this
14 by instruction.

15 For senior trial counsels and
16 assistant senior trial counsels, to make sure
17 that they meet those wickets for having dealt
18 with adult victims, child victims, experts. All
19 the things they need to know to deal with sexual
20 assault cases. So they are SVIP qualified
21 attorneys as well.

22 MS. LONG: I mean, I guess the thing

1 is, it's true that there are areas of expertise.
2 Like I think, and I'd love to make it a defense,
3 but the more of these cases you try to see,
4 because they are so variable you start to learn
5 things that compound them, whereas if you're more
6 of a generalist of litigation, you miss something
7 of it.

8 I mean, I think that's why some of us
9 stay in the sexual violence track and specialize
10 in civilian offices. Because you start learning
11 things by the trial of a similar case even or a
12 similar expert, it's so nuance.

13 So it sounds like maybe the Navy is
14 moving in that way, but I couldn't tell from your
15 description of the trial counsel, if they are
16 specialized or if they're just sort of have a
17 case, and so checks of the box.

18 LT NICA: In order to be SVIP
19 qualified, you have to have a certain number of
20 cases, and I don't have that number off the top
21 of my head --

22 MS. LONG: Okay.

1 LT NICA: -- that you tried in the
2 prosecution of sexual assault cases. There are
3 training requirements and courses you must take
4 to be SVIP qualified.

5 MS. LONG: Okay.

6 LT NICA: Each trial office is
7 required to have a certain ratio of SVIP
8 qualified senior attorneys to every, I guess line
9 trial counsel --

10 MS. LONG: Okay.

11 LT NICA: -- to assist in the training
12 and development. These are things done. And if
13 done informally -- it was a draft instruction
14 that we were all working off, but it's being
15 formalized as we speak to ensure the rigor of the
16 criteria.

17 MS. LONG: Okay.

18 LT NICA: So if you're talking about
19 SVIP qualified trial counsel, there is a list of
20 criteria that they need in order to be that kind
21 of qualified.

22 MR. KRAMER: So is the Navy the only

1 one with this litigation program that --

2 LT NICA: Yes, sir.

3 MR. KRAMER: -- track?

4 LT NICA: For performance. It's still
5 identified in some of the other Services, but
6 when we talk about track in a true sense of the
7 word, the Navy is the only one that has this.

8 CHAIR BASHFORD: Ms. Carson, did you
9 say that they have established or are
10 establishing pilot?

11 MS. CARSON: The NDAA for Fiscal Year
12 '17.

13 CHAIR BASHFORD: Okay.

14 MS. CARSON: So it's new legislation
15 that's requiring the pilot program in each
16 Service. I don't know if skill identifiers are
17 the method --

18 LTC VERGONA: So skill identifiers,
19 the Army has skill identifiers in the litigation
20 as well. Our systems are a little different, but
21 the NDAA required a pilot program.

22 But just so that you know, there has

1 been proposals to either change that litigation
2 track that's going through the wickets right now,
3 to even change the pilot program that was just
4 given to the Services last year.

5 So the pilot programs, they're trying
6 to, Congress is trying to make adjustments to
7 what they end up establish --

8 MR. KRAMER: Like change it how? To
9 make it better or worse?

10 LTC VERGONA: Well, it depends on --

11 (Laughter.)

12 LTC VERGONA: -- what your viewpoint
13 is.

14 MR. KRAMER: No, I mean to change it
15 in what way?

16 LTC VERGONA: So to be more directive
17 on what they want to see in the pilot programs.

18 CHAIR BASHFORD: Who is influencing
19 the changes?

20 LTC VERGONA: Well, Congress is the
21 one that is proposing the changes. So Congress,
22 either a Representative from the House or the

1 Senate side will make a recommended change. Then
2 it goes to the NDAA, and then we're required to
3 follow it.

4 CHAIR BASHFORD: So that might be a
5 long-term thing we look at, not now, but down the
6 road, is sort of see how these pilot programs, if
7 they get launched, how well they're performing.

8 DEAN HARRISON: Is there some
9 provision in the UCMJ where an accused can
10 request a Military lawyer by name in the local
11 Service?

12 LT NICA: Yes, sir. Individual
13 Military Counsel, IMC.

14 DEAN HARRISON: So is there anything
15 in the law processes of having the highly
16 qualified sexual assault defense attorneys put
17 into a directory and letting an accused ask for
18 one of them by name?

19 LT NICA: We do not -- I mean, that
20 has not been proposed or dealt with in anyway.
21 What I will say is that our four defense
22 attorneys are now generally more experienced

1 attorneys.

2 It used to be that, at least in the
3 Navy, my first tour was a defense attorney a few
4 years ago. That is not the same experience that
5 someone coming into the navy as a JAG now will
6 have, and will rotate through.

7 And they won't touch a defense court,
8 a true like court-martial defense case, until
9 their second or third tour, so they typically
10 have some polish on them.

11 But four defense counsels have had a
12 tendency to be more experienced. Certainly,
13 senior defense counsels and officers in charge
14 are some of those highly qualified defense
15 attorneys.

16 So within every office, you someone
17 there whose generally sitting second chair, or at
18 least as a supervisory attorney, who is one of
19 those qualified experts.

20 And our JAG instructions deal with how
21 you can request an individual Military counsel.
22 We place, I think it's like a limit of 500 miles,

1 like in that same area. But again, all the
2 staff, our offices, there is an eye towards
3 ensuring that there is someone there who is super
4 qualified at doing what they're doing.

5 And our levels --- and this may answer
6 some of your questions as well, sir. There are
7 three levels in our Military justice litigation
8 track.

9 Specialist 1 is the lowest level,
10 Specialist 2 is the intermediate, and then
11 experts are at the top level. Having seen in
12 most cases, generally, judges are in the expert
13 level. Or at least Spec 2.

14 So they're looking to staff those
15 offices, the heads of those offices, the DSOs in
16 particular.

17 Certainly trial shop as well, but
18 making sure that the remote offices have someone
19 who is on that spectrum, and one or more senior
20 people who are either Spec 2 or an expert.

21 DEAN HARRISON: I was just thinking,
22 if I'm not in the Navy and I've been accused and

1 I believe that the Navy has better trained
2 defense counsel, can I request one of your
3 officers to represent me?

4 LT NICA: Well, I know that, for the
5 Sea Services, the Navy provides defense for the
6 Coast Guard as well, so that happens a lot. We
7 have a coastie embedded, a coastie attorney
8 embedded with our offices, many of our offices,
9 as a DSO, so we do cross-training as well.

10 And then I know I have practiced with
11 the Marines on several occasions, defended their
12 folks, practiced in their courts. So there is,
13 at least on this side, fairly fluid communication
14 between our defense services, to be honest with
15 you.

16 There is no formal database, though,
17 sir.

18 CMSAF MCKINLEY: Having been an Air
19 Force First Sergeant for ten years and working
20 directly with the JAG office all the time in
21 Military discipline -- and I'm outdated so it may
22 have changed since then, but Captain, you can

1 help me out -- but I never saw a JAG Office that
2 was understaffed.

3 I mean, we always had prosecutors in
4 there. But when one of my airmen got in trouble,
5 sometimes we had a difficult time get an area
6 defense counsel. And a lot of times, the
7 availability of an area defense counsel was just
8 a phone call, but maybe that area defense counsel
9 was in another state.

10 Has that improved so that we can
11 assure that when someone needs an area defense
12 counsel, that maybe we can get them face-to-face
13 and start that process up a little bit better?
14 For any branch of Service.

15 CAPT AHLERS: Well, Chief, since
16 you're specifically talking about the Air Force -
17 -

18 CMSAF MCKINLEY: I'm looking at you,
19 Captain.

20 CAPT AHLERS: -- I'll accept that.
21 We're set up a little bit different in that we
22 have generally one defense counsel at the Air

1 Force Base. We also have a lot more Air Force
2 installations than some of the others that are
3 organized by region for defense counsel.

4 However, the improvements in the
5 technology have somewhat addressed that as well.
6 Everybody generally has a government issued
7 iPhone and we have a paralegal at each location
8 as well.

9 So I don't know that the staffing has
10 necessarily changed since you were the Chief
11 Master Sergeant of the Air Force, or the First
12 Sergeant, but certainly we've made advances in
13 improvement in ensuring that any neighboring
14 installation can assist.

15 If for instance, somebody is
16 conflicted out or caught on a PCS cycle, or
17 they're aware trying a case, our defense counsel
18 does not necessarily only try cases at their
19 installation. In fact, that's probably, they're
20 going to be at various installations with the
21 region trying cases, so they're just not always
22 going to be there.

1 CMSAF MCKINLEY: That was my point.
2 Is I've seen a lot of times when and Airman needs
3 to speak to a defense counsel and they're not
4 available.

5 CAPT AHLERS: Yes, sir. And then it
6 certainly has become a lot easier, and we can
7 access people pretty much 24 hours a day.

8 And having the defense paralegal at
9 every installation with the attorney has also
10 helped, as they don't travel quite so frequently.

11 CHAIR BASHFORD: I know that JPP, when
12 they were at site installations, heard, has maybe
13 two strong complaints about the length of time it
14 took for face-to-face meeting with the defense
15 attorney. But that might be another thing we can
16 look at when we view cases, if that's a data
17 point that should be collected.

18 How long after an accusation is made,
19 does it take before somebody is assigned or
20 actually gets, perhaps not assigned, but is in
21 contact with the defense attorney?

22 JUDGE BRISBOIS: The general history

1 that everybody is talking about right here is the
2 imbalance of government resources versus defender
3 resources. And those are issues that are city
4 and state level, federal level and Military
5 justice level. I mean, that's always been, and
6 continues to be, an issue.

7 The government seems to have virtually
8 unlimited resources and then always much limited
9 personnel and cash to support defense services.
10 So I think that's an issue that's broader than
11 just this Committee and this Military Service.

12 I mean, that's what CJA panel is about
13 and federal defender budgets. I mean, if you ask
14 federal defender, do you have an equal budget to
15 the U.S. Attorney's Office.

16 And state systems, some states public
17 defenders are suing their states' now for lack of
18 resources, out of the constitutional violation.

19 So this is an issue all the way
20 throughout the justice system. Local to federal.

21 MS. CANNON: They're all different
22 because --

1 JUDGE BRISBOIS: Article 3, Article 1.

2 CHAIR BASHFORD: I'm sorry.

3 JUDGE BRISBOIS: So I mean the debate
4 is going on everywhere, not just here in this
5 community.

6 CHAIR BASHFORD: But in the Military,
7 it's all the government, right?

8 MS. CANNON: Yes. But the Military
9 budget is the Military budget, it's not the
10 court's budget, prosecution budget, the city.

11 JUDGE BRISBOIS: But those resources
12 --

13 MS. CANNON: It is one budget being
14 delineated or disseminated according to someone
15 else.

16 So I think it's much more easy to
17 argue that that's not fair. They can't hide
18 behind, well, that's my budget.

19 JUDGE BRISBOIS: Yes, but the point is
20 that the debate, the where do you allocate
21 resources debate, is not unique to Military
22 justice.

1 MS. CANNON: No, that's true. I have
2 a concern that isn't really on this list, and I
3 don't know how it fits.

4 And that is, victims' counsel, victim
5 representative or counselor. By calling the
6 person a victim, you are in essence making a
7 finding as opposed to a complainant. And that or
8 petitioner. And that's a concern to me.

9 Because right there, before you even
10 begun, it kind of tilts things. And it's
11 something we've challenged in the state, in my
12 experience.

13 As, you can't call them that in the
14 courtroom. That's what we're talking about, are
15 they the victim.

16 And that's a real concern. I don't
17 know how that figures into this, but it's kind of
18 coloring it.

19 CHAIR BASHFORD: Well, it all depends,
20 right? In the civilian thing, if the defense has
21 mistaken ID, nobody is really challenging whether
22 somebody was victimized. If it's a known

1 individual, I take your point.

2 MS. CANNON: But as a general label,
3 in a particular case you concede, yes, this
4 person is a victim. But as a general label where
5 you're going to have general labels for attorneys
6 and resources and things like that, you've
7 already created the culture of the victim.

8 MS. LONG: I guess the only reason I
9 would push back is, you have a situation where
10 there are thousands of, I shouldn't say
11 thousands, let's say 1,900 cases and how many
12 actually get referred. I mean, that's less than,
13 I'm not a math person right now today, but we're
14 trained on a tiny portion and this is --

15 CAPT TIDESWELL: Fifteen percent.

16 MS. LONG: How many?

17 CAPT TIDESWELL: Fifteen percent.

18 MS. LONG: Fifteen percent. So I
19 don't think we have that. I mean, and that is
20 not to minimize.

21 And I know I'm a prosecution, a
22 prosecution voice, so I want to be clear, we take

1 very seriously any wrongful conviction that is
2 hideous.

3 But I want to push back on this
4 narrative because it's the victims whose cases
5 aren't going forward. And this is not just a
6 Military issue it's a civilian too.

7 So I just want to be careful. But I
8 agree, you want to have a balance. You don't
9 want to have a team of 50 on one side and one on
10 another side. But it's just hard to think we
11 have a culture that's only focused on the victim
12 if none of these cases are going forward.

13 And we hear this sometimes out in the
14 civilian world too. And on the resources, I feel
15 very strongly.

16 I mean, I was very lucky in
17 Philadelphia. We had an extremely strong
18 defense, public defender bar and they were
19 competent and probably every source issue sorted
20 away.

21 But we do have prosecutors having
22 resource issues out there as well, and they are

1 ultimately not serving the community. And that's
2 just a piece.

3 So I wanted to make that point because
4 I don't want it to be lost.

5 CHAIR BASHFORD: Certainly one of
6 JPP's recommendations is that going forward we
7 continue to take a look at whatever it's called.
8 And it's probably, I take your point, but it's
9 probably tilting at a windmill to say let's
10 rename this.

11 But certainly, I think we want to look
12 at it going forward. How is it affecting victim
13 cases.

14 We hear great things about it. We
15 hear anecdotally that it creates delays.

16 One thing that's always concerned me,
17 because you have attorney client privilege, is if
18 somebody were to divulge to their attorney,
19 appointed attorney, that something they said
20 wasn't true, whether it's small or large, I don't
21 think they can share that. So maybe that never
22 comes up, I don't know.

1 But it's certainly something I think
2 we want to continue to look at going forward. It
3 doesn't have to be our very first thing, because
4 JPP has looked at it. But it's still reasonably
5 new, five years, something like that. But it's
6 worth --

7 MS. CARSON: 2013 it was required that
8 Services, no, it was November of 2014.

9 CHAIR BASHFORD: But I just don't
10 think, Kathleen, they're going to rename it for
11 you.

12 MS. CANNON: Well, it's not for me --

13 CHAIR BASHFORD: I know. I know.

14 MS. CANNON: It's more just kind of
15 putting that out there. I've also done some work
16 in the colleges where --

17 CHAIR BASHFORD: Yes.

18 MS. CANNON: -- similar things are
19 going on. Where you're trying to correct a
20 legitimate problem of not recognizing that these
21 women, by and large, are being victimized and
22 they don't have the power to come forward. And

1 we're creating that possibility, and we're
2 correcting a lot that's been wrong.

3 I just don't want to overcorrect. And
4 that's what I think some of this is, but.

5 BG SCHWENK: In the JPP Subcommittee
6 we talked about that very issue. And the issue
7 of calling somebody a victim before there's been
8 an investigation to determine whether they're
9 really a victim or not.

10 And we finally decided, what the Chair
11 said that we were tilting with windmills to try
12 to come up with a different term, after we tried
13 at least 40 different terms sitting around the
14 table. And somebody reminded us that, well, we
15 used to always say victim of larceny, victim of
16 this, victim of that.

17 And we didn't even if there was a
18 larceny, but it was an allegation and that person
19 got labeled victim right away. And we
20 investigated with a victim. And so we declared
21 defeat.

22 (Laughter.)

1 MS. CANNON: I won't be defeated.

2 BG SCHWENK: Well, maybe you can
3 convince everybody here then you can declare
4 victim. But we declared defeat, and I think all
5 the JPP Subcommittee reports say victim.

6 CHAIR BASHFORD: Well, I think I'm
7 going to do the Chair's prerogative and let's
8 have a ten-minute break and then we'll resume
9 till 2:30.

10 (Whereupon, the above-entitled matter
11 went off the record at 2:16 p.m. and resumed at
12 2:31 p.m.)

13 CHAIR BASHFORD: So I just want to go
14 back to the data points for collection. In
15 addition to the demographic factors in Number 6,
16 I forget what the letter is, I think it's on Page
17 4.

18 Yes. And one of the things we
19 mentioned, or I mentioned, was the number of
20 changes in counsel, prosecutors. But what other
21 things do we think, when people are doing initial
22 reviews of cases, what other things does anybody

1 think, from their own silos or skill sets would
2 be, they think would be really important to
3 gather? If it's there.

4 DR. SPOHN: I have a whole list of
5 things that I've been writing down as we've been
6 talking.

7 CHAIR BASHFORD: Okay, great.

8 DR. SPOHN: So one of the things we
9 mentioned was whether the victim was granted an
10 expedited an expedited transfer.

11 CHAIR BASHFORD: Okay.

12 DR. SPOHN: Which isn't now, whether
13 the suspect was held in pre-trial detention. Was
14 the case originally a restricted report and then
15 became an unrestricted report.

16 A better measure of the relationship
17 between the victim and the offender. Right now,
18 it's just whether it was an intimate partner or
19 not.

20 CHAIR BASHFORD: Really?

21 DR. SPOHN: There are obviously
22 degrees of --

1 CHAIR BASHFORD: Just let me stop for
2 just one second, Dr. Spohn. So is that like a
3 drop down menu and those are your only two
4 choices, intimate partner, not intimate partner?

5 DR. SPOHN: Yes, ma'am.

6 CHAIR BASHFORD: Wow. There's a lot
7 of variety there.

8 DR. SPOHN: Yes.

9 CHAIR BASHFORD: Okay, thank you.

10 DR. SPOHN: Case complexity, if we can
11 figure out some way of measuring case complexity.
12 And you've made a huge start on doing that, but--

13 MS. LONG: We've started to try and
14 capture it, just to find out what, to try and
15 measure more apples with apples, but it's a pilot
16 program.

17 And so it's in a publicly available
18 document. I can get it to you. It should be
19 adapted.

20 Just to look at factors that may make
21 cases complex so that --

22 DR. MARKOWITZ: Jen, could you give

1 some examples of what --

2 MS. LONG: Sure.

3 DR. MARKOWITZ: -- categories, just to
4 give everyone an idea?

5 MS. LONG: I mean, obviously if you
6 have a victim who is reluctant to participate, it
7 tries not to be blame worthy. In fact, I pulled
8 up the document before, if you have alcohol
9 involved, if you have a victim involved.

10 And this, I think, will have
11 relevance, even in your cases, victim involved in
12 prostitution or otherwise sexually exploited.
13 Let me, I'm just going to pull it up.

14 DR. SPOHN: You could include the
15 number of charges.

16 MS. LONG: It's a little out of focus.

17 BG SCHWENK: No corroborating
18 evidence.

19 DR. SPOHN: Number of charges, number
20 of victims.

21 MS. LONG: Well, and I always find it
22 interesting, with respect to corroboration,

1 because it's what are we talking about. It's
2 sort of like this designation of weak evidence.

3 I mean certainly, a victim and
4 prosecution would seem to be weak evidence until
5 we look at all the data around the violence
6 against these individuals.

7 So with respect to corroboration, our
8 old colleague, Teresa Scalzo, I know many of you
9 would know, would often say that, as prosecutors,
10 sometimes you looked for a step in more
11 traditional corroboration, but there is other
12 factors I think corroborate.

13 So long that someone's picking that
14 up, you know, things that might be outside of an
15 eye witness to the incident itself, but do they
16 corroborate other factors. We didn't go that far
17 into the weeds. That was for a data collection
18 piece.

19 And I apologize that I'm a little
20 distracted today, but I can make this available
21 to folks to look at.

22 CHAIR BASHFORD: Thank you.

1 JUDGE WALTON: First of all, it's a
2 stranger case and the government relying upon
3 forensic evidence. Because some of the things
4 that we thought about forensic evidence is not
5 necessarily the case. It may not be.

6 CHAIR BASHFORD: Can you help us out
7 with other case complexity, Dr. Spohn?

8 DR. SPOHN: So, whether there was
9 prior sexual contact between the victim and the
10 suspect, what is the suspect's defense. Is it
11 misidentification or consent or something else.

12 Delay in reporting, alcohol use.

13 MS. LONG: Prior relationship. I
14 found it. Prior sexual relationship is another
15 one.

16 DR. SPOHN: Yes. Victim willingness
17 to cooperate as the case moves forward.

18 MS. LONG: Disability. Victim
19 disability or complexity. I mean, I don't --
20 like I said, I can make that whole list available
21 on how they prosecute.

22 MS. LONG: Different kinds of

1 evidence. Including evidence of bias or a
2 motivate to lie on the part of the victim. If
3 it's a case involving divorce or child custody or
4 some other issue that might be noted in the file.

5 None of these are things that are
6 captured in the current database, and they may
7 not be included in the documents. But they're
8 certainly things that I think we should be
9 looking at. Things we should be looking for.

10 And I'm sure there's others, these are
11 just some things I jotted down as we've been
12 talking.

13 MR. GARST: Paul Garst from the
14 Department of the Navy SAPRO Office. These are
15 all good points.

16 We struggle with some of these issues,
17 and so I just want to maybe mention some basic
18 factors that you might want to think about in
19 categorizing the cases that are in the databases
20 in a general sense.

21 First, we're talking about a case with
22 a Service member victim. For a case with a

1 civilian victim, presumably a Service member
2 offense, about ten percent of the cases that we
3 look at across the Navy and Marine Corps, don't
4 involve Service member victims.

5 Beyond that, within the subgroup of
6 cases with Service member victims, are we talking
7 about an alleged offense that occurred while the
8 member was on duty or are we talking about a
9 growing number of cases where people feel
10 comfortable enough to come in and report a sexual
11 assault that occurred before they ever entered
12 the Military. It's not that we don't care about
13 those, but you might predict a different course
14 of outcome for those kinds of cases.

15 We've already heard about distinctions
16 between cases that started as a restricted report
17 as opposed to an unrestricted report. There's an
18 obvious delay in the criminal investigators
19 getting them. That's a substantial proportion of
20 the cases that they know about.

21 And also, whether it was a contact
22 versus a penetration offense. In many locations,

1 a substantial majority of the cases being
2 investigated are touching offenses. I don't want
3 to discount those or say that they matter, but
4 your average person probably understands why they
5 might take a separate course.

6 Those would be some of the things that
7 we found useful in even starting to organize,
8 then some of the other more detailed things.
9 Thank you.

10 CHAIR BASHFORD: Thank you. That
11 brings up one thing, would the Military have
12 jurisdiction if somebody came in and said, when I
13 was in high school, five years earlier, I was
14 sexually assaulted? I just don't think they
15 would have jurisdiction.

16 MR. GARST: Probably not, but we
17 encourage them to come in --

18 CHAIR BASHFORD: Right.

19 MR. GARST: -- to provide them with
20 victim support, crisis intervention or
21 counseling.

22 MR. KRAMER: But the investigative

1 agencies wouldn't investigate them, would they?
2 The Military.

3 MR. GARST: It would be entered into
4 the databases as an NCIS case. And yes, sir,
5 they do, do some effort. I mean, they usually
6 can't do a full-on investigation, but yes, they
7 do take it up as a case.

8 MR. POORMAN: We would take the
9 report, and if it sorts out that way, we would do
10 an official referral to the law enforcement
11 agency with the jurisdiction.

12 MR. KRAMER: Right, you wouldn't do
13 the investigation itself.

14 MR. POORMAN: Not beyond that.

15 DEAN HARRISON: Excuse me, with regard
16 to the categorization of victims as civilian or
17 Military, do you subdivide as civilian and
18 Military dependent and civilian with no
19 relationship with the Military?

20 MS. PETERS: Our database did not.
21 Because we don't always have --

22 JUDGE WALTON: I didn't hear the

1 question, could people speak up please?

2 DEAN HARRISON: Oh, I'm sorry. I was
3 asking with regard to the categorization of
4 victims as civilian or Military, if they're
5 subdivided as civilians with no relationship to
6 the Military or civilian dependents?

7 MS. CARSON: Another distinction is
8 too, whether they're a civilian employee of DoD
9 or Service, or contractor.

10 CMSAF MCKINLEY: Also, the foreign
11 national.

12 MS. CARSON: Yes.

13 CHAIR BASHFORD: Foreign national in
14 deployments or just general?

15 CMSAF MCKINLEY: In general. I mean,
16 you can be stationed at Germany and the victim be
17 a German female.

18 CHAIR BASHFORD: But I'm saying, if
19 somebody was stationed in Alabama and the
20 civilian victim happened to be a resident, you
21 know, a citizen of Spain, would that be useful?

22 (Ms. Jennifer Long left the meeting.)

1 CMSAF MCKINLEY: I think for the most
2 part, I would look at what falls under a suit for
3 agreement. You see the problems we have in
4 Okinawa, et cetera.

5 CHAIR BASHFORD: Yes.

6 CMSAF MCKINLEY: So those would be
7 important categories, I think, that we look at of
8 our people who are stationed in foreign countries
9 and the assault happens to a foreign national in
10 that country, that opens up doors, to me, other
11 problems.

12 CHAIR BASHFORD: So it would be
13 civilian employees, civilian dependent or
14 civilian with a status of forces agreement?

15 DR. MARKOWITZ: Or a civilian
16 unrelated.

17 CHAIR BASHFORD: Unrelated, yes.

18 DR. MARKOWITZ: Like from a town or
19 something.

20 JUDGE WALTON: In that event that
21 takes place in another country, is committed off
22 base, where is that case processed?

1 CMSAF MCKINLEY: That --

2 JUDGE WALTON: The status of forces
3 agreement.

4 CMSAF MCKINLEY: Yes, that would be
5 determined by the forces agreement.

6 DR. MARKOWITZ: I didn't hear the
7 answer.

8 CMSAF MCKINLEY: The status of forces
9 agreement between the United States and that
10 country thought about how it could be allocated.

11 JUDGE WALTON: If it's in Turkey it's
12 no problem.

13 CHAIR BASHFORD: Where there any other
14 --

15 MR. GARST: If it's in Alabama, it may
16 be dependent on where the event occurred and who
17 had jurisdiction. In some cases, the civilian
18 entity may choose to retain their authority over
19 the case.

20 CHAIR BASHFORD: Anybody have any
21 other data points?

22 MS. TOKASH: It's Meghan Tokash

1 calling in from the U.S. Attorney's Office in
2 Buffalo, can you hear me?

3 CHAIR BASHFORD: Yes, we can, Meghan.

4 MS. TOKASH: Okay, thank you. Just a
5 point of clarification, I couldn't hear you all
6 completely, but did we capture the rank and
7 experience of the trial attorney and defense
8 attorney and kind of subcategories of that,
9 whether a special victim prosecutor or a
10 prosecutor with sexual assault training was on
11 the case?

12 CHAIR BASHFORD: Okay.

13 MS. TOKASH: And the only other
14 suggestion I have is with regards to data point
15 versus demographic factors, was the
16 recommendation of the judge advocate to the
17 commander. Specifically, the staff judge
18 advocate to the convening authority.

19 CHAIR BASHFORD: Can you just flesh
20 that out, what you mean?

21 MS. TOKASH: Yes. So the advice to
22 the convening authority when referring --

1 CHAIR BASHFORD: Oh, okay.

2 MS. TOKASH: -- for the referral
3 stage. So by way of example, if a staff judge
4 advocate recommends that the case not be referred
5 to trial but the commander refers the case
6 anyway, what was the result of that case, how did
7 that fair?

8 CHAIR BASHFORD: Okay, thank you.

9 MS. TOKASH: Thank you.

10 CHAIR BASHFORD: Well, that's
11 certainly a lot of data points to try to collect.

12 CMSAF MCKINLEY: Yes.

13 CHAIR BASHFORD: So we can see what's
14 available, what's not, what things we think would
15 be ultimately worthwhile recommending to the
16 Department of Defense for their 140a.

17 I think we should think of one more,
18 I don't want to say hot topic, but something that
19 we want to try to push forward a little bit more
20 to make it into the March report.

21 MG ANDERSON: I think the --

22 BG SCHWENK: I -- no, go ahead.

1 MG ANDERSON: Sorry. I think the
2 Chief has already mentioned this once. I saw you
3 guys write it down, but I'm not sure if it was
4 mentioned before. And it should be something
5 that's fairly easy to capture, but the training
6 that the convening authorities received as well
7 as the colonels, the O-6s.

8 I mean, you've mentioned that, but I
9 don't know if we actually -- we can capture that
10 stuff pretty quickly, I think, from each of the
11 Services and then provide that in the March
12 report. That might not be such a heavy lift.

13 BG SCHWENK: Has anybody talked about
14 that at any of the other -- RSP, JPP?

15 MS. PETERS: There is some JPP
16 testimony on the courses offered to commanders,
17 the senior leader officers --

18 BG SCHWENK: But there wasn't anything
19 written in any --

20 MS. PETERS: -- general officers.

21 BG SCHWENK: -- of the reports about
22 that issue though.

1 MS. PETERS: No, sir.

2 CHAIR BASHFORD: I don't think any --

3 MS. PETERS: I thought --

4 MS. CARSON: -- but we have testimony
5 we can look up.

6 MS. SAUNDERS: The RSP did write on
7 that in their report, but of course that was a
8 couple of years ago.

9 CHAIR BASHFORD: '14.

10 MS. SAUNDERS: Or three years ago
11 actually.

12 MR. KRAMER: I saw a reference to
13 training fatigue.

14 MS. SAUNDERS: That was more of the
15 SAPRO training.

16 MR. KRAMER: Oh, okay.

17 MS. SAUNDERS: Right.

18 MG ANDERSON: I think as a general
19 officer, we receive a certain amount of training.
20 And I know I did when I was a brigade commander,
21 but that's all, again, very old, and it certainly
22 has changed.

1 BG SCHWENK: That works for me.

2 DR. MARKOWITZ: Is it legal training
3 or referring cases particularly?

4 BG SCHWENK: Yes. Yes.

5 CMSAF MCKINLEY: I'd also like to see

6 --

7 BG SCHWENK: So a narrow issue.

8 CMSAF MCKINLEY: -- what training they
9 received to take care of an issue down at the
10 unit level.

11 MG ANDERSON: Sure. Yes. And then --

12 CMSAF MCKINLEY: When you have a
13 sexual assault in the unit, a victim, possible
14 perpetrator, how does the commander -- what
15 training had they been given to deal with that
16 situation?

17 MS. CARSON: That would be a SAPRO
18 training. I mean, there are two kinds of
19 training.

20 CMSAF MCKINLEY: But you know what,
21 the SAPRO training does not cover that.

22 MS. CARSON: No. No.

1 CMSAF MCKINLEY: It does not cover
2 that in anyway.

3 BG SCHWENK: I think we're talking
4 about the Military justice training.

5 MS. CARSON: Yes.

6 CMSAF MCKINLEY: Yes.

7 BG SCHWENK: The commander --

8 MS. CARSON: Right.

9 BG SCHWENK: -- forces in combat.

10 MS. CARSON: Right.

11 CHAIR BASHFORD: Is that something the
12 staff can do with RFIs, to the different
13 Services?

14 And I did hear something about courses
15 offered. Offered and taken are two different
16 things.

17 MS. PETERS: And I didn't mean to
18 commit one way or another --

19 CHAIR BASHFORD: No.

20 MS. PETERS: Is what the type of
21 testimony is. So you can get detail on that.

22 CHAIR BASHFORD: Okay. I did want to

1 loop back around slightly, something like what
2 their OP has available to offer on the field,
3 because it just keeps coming up about these
4 expedited transfers.

5 Like, who makes that decision? I know
6 who makes the request, but who makes the -- like
7 what level of command?

8 MS. PETERS: We can readily obtain
9 that. Right.

10 CHAIR BASHFORD: Okay. I'm curious
11 who makes the decision. Are there, you know, is
12 it a checklist of Option A, Option B, are there
13 specific requests made or is it just sort of
14 like, I would like not to be here or is it, I
15 would really like to be at Place A or something
16 like that.

17 MR. GARST: Under current SAPRO
18 guidance, which is -- under current SAPRO
19 guidance, individuals make requests of their
20 commanding officer who is asked to decide, is
21 this a credible allegation. And they have 72
22 hours to make a decision without investigating

1 it.

2 And if they decide to reject the
3 request, then it automatically goes up the chain
4 of command for review. But so the decision about
5 you get a transfer, is made by the immediate
6 commanding officer. In 99 percent of the cases
7 it's approved.

8 Then the commanding officer is
9 required to provide to the order writing section
10 for that Service. Some recommendations as to
11 where the person should be transferred to.

12 But that's up to the manpower people.
13 That's all delineated in DoD SAPRO guidance.

14 SGT. MARKEY: And who provides that
15 information to that decision maker, as to whether
16 this is prevalent or not?

17 MR. GARST: The commanding officer --

18 SGT. MARKEY: Where does he or she get
19 that information?

20 MR. GARST: He has to decide on his or
21 her own within 72 hours.

22 (Simultaneous speaking.)

1 SGT. MARKEY: Somebody has to tell him
2 something though, right?

3 MR. GARST: The victim/complainant
4 initiates the request to their commanding
5 officer. And --

6 BG SCHWENK: Maybe if we had a panel
7 at the next meeting --

8 CHAIR BASHFORD: Yes.

9 BG SCHWENK: -- our October meeting of
10 the program managers for each of the Services
11 that run the expedited transfer program, and a
12 DoD staffer wants to, because it's their
13 guidance, it be in the dispositive guidance,
14 maybe they can show up and that way we can talk
15 to the people that actually run the program and
16 see what data they have and decide what --

17 CHAIR BASHFORD: It keeps coming up,
18 but it comes up anecdotally.

19 BG SCHWENK: Well, it's all right if
20 we get the program managers in there.

21 CMSAF MCKINLEY: Once again, this
22 comes back to my point on commander training. Do

1 we properly train the people in these positions
2 to make these decisions, and they have to make
3 these decisions in 72 hours.

4 And if we improve their training
5 across all Services, maybe we have the victims,
6 and we can talk about that, the victims decide
7 they don't want to transfer, they want to stay
8 there because they have a commander and a
9 leadership team there that's going to take of
10 everything else.

11 We have more reported sexual assaults.
12 And at the end of the day, sexual assaults go
13 down, maybe convictions go up.

14 But training, or people in the
15 leadership position, is paramount. And right
16 now, I guarantee they're not getting the training
17 that goes down in the weeds to take care of these
18 situations.

19 CHAIR BASHFORD: Well, if 99 percent
20 are being granted within 72 hours, that's not
21 really a decision-making process.

22 CMSAF MCKINLEY: And that's the easy

1 thing.

2 CHAIR BASHFORD: And I don't think
3 it's just a --

4 CMSAF MCKINLEY: That's the easy
5 thing.

6 CHAIR BASHFORD: -- push it through it
7 sounds like.

8 CMSAF MCKINLEY: That's the easy safe
9 thing you do, say, yes, you can go. Because you,
10 for the most part right now, you've washed your
11 hands of it. That person is gone.

12 MR. GARST: The existing guidance
13 requires a decision within 72 hours from DoD.
14 And specifies that the decision should be made,
15 should not be delayed the outcome of any
16 investigation.

17 SGT. MARKEY: How does that decision
18 to transfer, affect the investigative process?

19 BG SCHWENK: I asked the panel that
20 was here earlier, and general consensus, I think
21 was, from them was, that it makes it a little bit
22 harder because the person has to start over with

1 wherever they end up. With a new special
2 victims' counsel or victims' legal counsel there,
3 a new interviewer, if they have to do a re-
4 interview from the investigation.

5 So maybe the initial investigator
6 established rapport and now there's a new face
7 that has to do the re-interview and start over.
8 And the person is not geographically present so
9 you have to do with the geographic --

10 SGT. MARKEY: And ultimately
11 downstream that would affect whether a decision
12 we've made to file charges or not file charges.
13 So those factors are affecting what's happening
14 downstream as well.

15 BG SCHWENK: And factor the complicate
16 skill.

17 SGT. MARKEY: Right. Right. Okay.

18 CHAIR BASHFORD: I think it would be
19 interesting if we could pull out the data to see,
20 is there a correlation between transfer, distance
21 transfer and willingness to continue
22 participation.

1 SGT. MARKEY: And outcome. There's
2 some more stuff for you. It keeps piling up.

3 BG SCHWENK: One of the things that
4 was interesting on that issue, I thought was
5 interesting in the JPP Subcommittee was, each
6 place that different groups went, we talked to
7 the SVCs, the VLCs and said, well, what about
8 expedited transfer? And they had examples, and
9 they talked about it and what have you.

10 And I did not go, but the group that
11 went to Hawaii and got the SVCs and VLCs. They
12 said, so tell us about the expedited transfers.
13 And they all looked down and said, I've never had
14 one. I've never had one. I've never had one.

15 SGT. MARKEY: Yes right.

16 (Simultaneous speaking.)

17 (Laughter.)

18 MR. KRAMER: I volunteer to be on the
19 Committee to follow-up on that.

20 (Laughter.)

21 CHAIR BASHFORD: Well, I think that's
22 time to loop back around. We sat up a working

1 group to be turned into as approvals come down
2 into a subcommittee on data that has Ms. Spohn,
3 Mr. McKinley and Mr. Markey, so far.

4 But I'd like to get a sense of, if we
5 have, which I think we would value added at
6 having before the October, looking at a handful
7 of cases to see, of these demographic factors and
8 data points, how many are readily available in
9 the case files, that are available. Or how much
10 will need a much deeper dive.

11 And the people who were, and I think
12 I might have left somebody out, the people who
13 were willing to work on that were Ms. Cannon, Mr.
14 Kramer, Mr. Markey, Ms. Long, Mr. Schwenk and me,
15 and I thought somebody else had said they were
16 willing to, Dr. Spohn, thank you.

17 Do we have a sense that that would be
18 useful to start a working group and then a
19 subcommittee on that part of the review?

20 Is there a consensus of the Committee
21 that that would be valuable and should be done?
22 Okay, that seems like that's a consensus

1 decision.

2 BG SCHWENK: So then we need to decide
3 how are we going to handle the 140a and whether
4 we're going to expedited transfer and a training
5 for convening authorities between now and March.
6 And if so, do we need another group or should we
7 set up a panel for our next big meeting or what
8 does everybody think?

9 I guess the first question is, do we
10 try to grapple with those issues before March. I
11 think the conversation was, for sure 140a we
12 wanted to grapple with between now and March, so
13 then that there is one.

14 Then the other two I think were the
15 training for the convening authority and the
16 expedited transfer. And whether we want to --

17 DR. MARKOWITZ: And I would just toss
18 it on the table again that I think, also for the
19 cases, there still needs to be a determination of
20 how you're going to handle confidential health
21 information. Even in a small work group,
22 patients did not give consent to have that

1 information reviewed in this sort of a setting.

2 So ethically speaking, I think that we
3 just need to be cognizant of the fact that some
4 of those case files have some very sensitive
5 health information. And that some people would
6 be really upset it was being reviewed in a group
7 setting.

8 MS. CANNON: What if we didn't review
9 medical records, would --

10 DR. MARKOWITZ: That would be --

11 MS. CANNON: -- they still be -- would
12 there be a problem in that they were cited in
13 other places or is the citation okay? The
14 reference.

15 DR. MARKOWITZ: I mean, I think it's
16 sort of a case-by-case basis. But people's, even
17 if things like mental health records aren't in
18 there, people's medications that they're taking
19 for mental health issues, pregnancy histories,
20 including abortion, all that kind of stuff is
21 going to be in general medical records.

22 Just for the sexual assault medical

1 forensic exam, doesn't include all the other
2 types of medical records that may also be
3 received as part of follow-up care or to
4 determine whether an issue was preexisting before
5 the assault.

6 CHAIR BASHFORD: I don't think anybody
7 would need to do that deep of dive. I think what
8 you would need to know is, was a kit taken, was a
9 forensic exam done. I mean, that's --

10 DR. MARKOWITZ: No, I think that's
11 fine. I just want to make sure, like --

12 CHAIR BASHFORD: Right.

13 DR. MARKOWITZ: -- we put some left
14 and right limits on this kind of sensitive
15 information because --

16 CHAIR BASHFORD: Yes. I just don't
17 think it's necessary to go down into that level -
18 -

19 DR. MARKOWITZ: Great.

20 CHAIR BASHFORD: -- it's just those
21 are the crucial points.

22 DR. MARKOWITZ: Yes. I think that's

1 great.

2 CHAIR BASHFORD: You know, were they
3 treated, was an exam done, was a kit taken.

4 DR. MARKOWITZ: I think all of that is
5 totally appropriate, I just want to make sure
6 that everybody is on the same page about that.

7 CHAIR BASHFORD: Yes.

8 DR. MARKOWITZ: If you're going to do
9 case review where that information exists in
10 those files.

11 DEAN HARRISON: Can I follow-up with
12 just another affirmation that, if a working group
13 or a subcommittee touches these files, that
14 doesn't become part of the public record for the
15 Committee?

16 CHAIR BASHFORD: No.

17 MS. CARSON: Correct.

18 DEAN HARRISON: Okay.

19 SGT. MARKEY: And that would take the
20 sexual assault kit, what you described capturing
21 whatever data from that and walk it a little bit
22 farther. And basically, what happened to that

1 sexual assault kit, was it taken, where was it
2 taken, when was it taken, the key to knowing
3 reference to when the incident may have occurred,
4 and then what was the disposition, was it
5 impounded, was it submitted to the lab, when was
6 it submitted to the lab. And then eventually,
7 where there any results from the laboratory
8 analysis of that sexual assault.

9 CHAIR BASHFORD: My understanding is,
10 if it wasn't submitted to the lab, it was a
11 restricted report and we won't even see those.

12 SGT. MARKEY: Right. Right. So I'm
13 speaking only unrestricted review.

14 DR. MARKOWITZ: Right.

15 CHAIR BASHFORD: But those are all
16 submitted to the lab.

17 SGT. MARKEY: Well, but --

18 DR. MARKOWITZ: I would also add,
19 suspect kits. I mean, if you're going to take a
20 look at whether there was a kit collected for a
21 victim in these cases, many of these cases also
22 have suspect kits, and so you might as well add

1 the --

2 SGT. MARKEY: Sure. Absolutely.

3 DR. MARKOWITZ: -- and suspect kits
4 too.

5 SGT. MARKEY: And I would also argue
6 that, not argue, maybe that's the wrong term,
7 Counselor, that in my own experience, I've seen
8 policies in place that said all kits will be
9 submitted, and yet there wasn't a hundred percent
10 submittal. So I think that's something to
11 ensure, if there is a policy in place, is that
12 policy being followed. You can do through the
13 review of the case.

14 Or I saw where, yes, it was submitted
15 but it was six, eight, 12 months after the kit
16 was completed and taken into custody of that
17 agency, before they submitted it.

18 So even though you're sending off
19 kits, is there a timeline that you might look at
20 as to how soon should that kit be transferred to
21 the crime lab?

22 And so I don't know if that's relevant

1 information or something that if it's there, we
2 can look at it.

3 And, Captain, I don't know if that's
4 captured in like a pre-synopsis format of these
5 reports, because I don't know how these reports
6 were formatted, or is that something that comes
7 out in the narrative and the body of the report,
8 that somebody has to actually write into it.

9 And so documentation became a big
10 issue. Some investigators document one way,
11 other investigators don't document that same
12 amount of information in a way.

13 But if that box is to check, that
14 always is really good to be able to verify that
15 everybody is checking these boxes. But if it had
16 to be in the narrative, it was a crapshoot
17 whether that information was designated in the
18 narrative or not, because there was no
19 consistency on how they were documenting their
20 investigative files.

21 DR. MARKOWITZ: All right. So sorry,
22 General, I didn't mean to waylay your point --

1 BG SCHWENK: No, that's fine.

2 DR. MARKOWITZ: -- I just wanted to
3 make sure we just addressed that one thing before
4 we moved on to your --

5 BG SCHWENK: No, that's fine. So back
6 to my point, I was just saying, when we think
7 about the March report, we clearly can talk about
8 our initial procedures on the case review and
9 where we're at and how, at that point, letting
10 you go ahead.

11 We can talk about our initial
12 assessment of the data that's currently
13 available, which would then lead into the
14 discussion of, and what the 140a implementation
15 audit make available, in the future.

16 And then the question is, do we want
17 to add, on the two issues that people have
18 recommended we consider, are the training for
19 convening authorities for commanders on Military
20 justice, sexual assault, that kind of stuff, and
21 also expedited transfer.

22 And I though at least on expedited

1 transfer, that could be handled maybe by just the
2 panel at our next big meeting --

3 CMSAF MCKINLEY: Right.

4 BG SCHWENK: -- where we get the
5 program managers and run it in the Services. And
6 maybe the SAPRO, whoever puts the big policy out,
7 and then have them come in and show us, provide
8 the staff ahead of time the data that they have,
9 and then answer questions and see where we go.

10 And maybe we can do the same thing --

11 CMSAF MCKINLEY: That's what I was
12 thinking.

13 BG SCHWENK: -- for convening
14 authorities.

15 CMSAF MCKINLEY: Right.

16 BG SCHWENK: Whoever is responsible
17 for Military justice training --

18 CHAIR BASHFORD: We could put out some
19 RFIs for the --

20 BG SCHWENK: Come in and do the same
21 thing.

22 CHAIR BASHFORD: -- training and --

1 CMSAF MCKINLEY: Training, yes.

2 BG SCHWENK: That way we start off
3 with those panels in October and see where they
4 lead us.

5 CMSAF MCKINLEY: Right.

6 CHAIR BASHFORD: It will just be
7 interesting if you put in RFIs for expedited
8 transfers, if that is something that's actually,
9 is that a statistic that's being kept by
10 different Services.

11 CMSAF MCKINLEY: I'm sure.

12 CHAIR BASHFORD: You're never sure.

13 CMSAF MCKINLEY: I'm sure.

14 BG SCHWENK: What are the criteria
15 then used for, making the determinations in that
16 period of time.

17 MR. KRAMER: Could we throw the
18 defense counsel training in on that or is that
19 thrown too much?

20 Because we haven't heard that, we've
21 heard the prosecution. Along with the convening
22 authority training.

1 BG SCHWENK: Yes, but --

2 CHAIR BASHFORD: Did the JPP -

3 CAPT TIDESWELL: We have --

4 BG SCHWENK: If we have a day, we can
5 do another panel.

6 CHAIR BASHFORD: And I know the JPP
7 did defense resources, did they address the
8 training available? I don't --

9 MS. PETERS: Training was the topic of
10 the JPP.

11 CHAIR BASHFORD: Of the report on
12 defense resources?

13 MS. SAUNDERS: More so experience. We
14 did have some information on training that had
15 been provided by the Services in a meeting. And
16 so we did include that in a chart.

17 It seemed to be the report itself was
18 more focused on the experience level, which is
19 where more of the disparity was.

20 CMSAF MCKINLEY: So as an Air Force
21 Captain, on the area of defense counsel for the
22 region, what training do they get before they

1 become that area defense counsel?

2 MS. SAUNDERS: Well, I think it varies
3 a little bit by Service, and I'm sure they can
4 answer it better than I, but I know they all have
5 some additional defense counsel training they go
6 to. And then there are other various other
7 trainings that maybe the Services could provide a
8 better answer than I on that.

9 But we do have the report that does
10 kind of outline some of the basic training that
11 both trail counsel and defense counsel get.

12 BG SCHWENK: But I don't think there
13 was a real deep dive on defense counsel training.

14 MS. SAUNDERS: No.

15 BG SCHWENK: So if we wanted to have
16 a panel, response to tell us exactly what they
17 do.

18 CHAIR BASHFORD: We had that from the
19 prosecution, right? Very well.

20 BG SCHWENK: From my perspective, that
21 would be enough to get us through --

22 CMSAF MCKINLEY: I think that will

1 take care of --

2 CHAIR BASHFORD: I think so too. I
3 think the crucial one that we've agreed to deal
4 with early, is to get on the ground floor, is the
5 upcoming guidance across, of what sort of data
6 should be collected.

7 I also want to say that I think that
8 the data that our predecessor panel, the JPP has
9 collected and what you've put together, is just
10 as comprehensive as it could be and it's very
11 good and I'm glad we're going to continue to
12 build on that and go further.

13 SGT. MARKEY: Can I just make one more
14 comment?

15 Are we making a wish list of who we'd
16 like more information from? Is that what we're
17 kind of talking about? It sounds like.

18 So we've had presentations --

19 CHAIR BASHFORD: You can wish for
20 anything.

21 SGT. MARKEY: That's true. We've had
22 panels and representatives talk about the

1 individual disciplines and how they respond to
2 sexual violence and sexual assault.

3 I'm curious about the coordination of
4 those efforts, as a multi-disciplinary team and
5 is there a model team out there in any of these
6 jurisdictions or any of your bases, that combines
7 like regular meetings, regular discussions, which
8 would include the Corps team prosecution,
9 investigation, advocacy, forensic medical, and we
10 even include the crime lab in part of our MDT.

11 Generally, defense isn't part of these
12 multi-disciplinary teams, but that's something to
13 consider. So is there a panel that would be able
14 to kind of explain, or show us, how the system
15 responds together in these cases?

16 Because we've seen how they respond
17 individual, within each discipline. And I think
18 part of the success of being able to work these
19 cases is being able to do it as more of a multi-
20 disciplinary team. Better service for the
21 survivors.

22 So I'm just curious if that's

1 something that's out there that we could see how
2 that coordination works.

3 CAPT TIDESWELL: No, I think those
4 teams do exist out in the field. Because I'll
5 refer to the Service regs.

6 BG SCHWENK: There's the SAPRO ones
7 that are for the non-intimate partner type, and
8 then there is the family advocacy ones. But the
9 intimate partner type, where the investigator and
10 whoever shows up, the command rep, the medical,
11 they all sit around once a month and get it,
12 evaluate.

13 MS. CARSON: Right.

14 BG SCHWENK: Or at least they go over
15 each case and what the status is and what any
16 problem was that they need to get resolved.

17 DR. MARKOWITZ: And a few --

18 BG SCHWENK: So we could probably find
19 some people to come in and talk about it.

20 DR. MARKOWITZ: Yes. A few of the
21 installations have a more SART looking model,
22 like what you're talking about, Jim. Joint Base

1 Lewis-McChord, I think Fort Lewis has one.

2 There are a couple others that have
3 more of what looks like a typical civilian SART.
4 So I think that there are a few different models
5 that are out there that we may want to --

6 BG SCHWENK: Right. And family
7 advocacy.

8 SGT. MARKEY: You say there's two --

9 BG SCHWENK: Pardon me?

10 SGT. MARKEY: -- over the entire --

11 BG SCHWENK: No, no, no, each
12 installation.

13 SGT. MARKEY: Okay.

14 BG SCHWENK: All the installations we
15 visited on the JPP Subcommittee had them.

16 SGT. MARKEY: Oh.

17 BG SCHWENK: And they had one run by
18 the family advocacy program and one by the sexual
19 assault response board meeting. Depending on the
20 relationship I guess --

21 SGT. MARKEY: Okay.

22 BG SCHWENK: -- and which program they

1 went into.

2 DR. CHAYT: If I may, if you go back
3 to the report that was done by the Response
4 Systems Panel, this was looked at in greater
5 depth. The Army, for example, has what they call
6 SHARP resource centers where they have co-located
7 special victim investigators, special victim
8 prosecutors.

9 SARCs, in some instances, at least the
10 medical health coordinator, although they go to a
11 different location of course, for their exams.

12 So there are some -- I do believe
13 there's actually some that's looking at doing
14 where it is all in one, similar to some
15 civilians. Other agencies, they are co-locating
16 certain aspects of this.

17 And of course you're all familiar, I
18 think, with the SVIP, special victim
19 investigation prosecution requirements. So a lot
20 of people are co-locating. The RSP does make
21 mention of some of these specific.

22 SGT. MARKEY: Again, is that something

1 we need to look at? Is that appropriate for
2 this?

3 CHAIR BASHFORD: If the RSP looked at
4 it, we might want to update it at some point, but
5 it doesn't seem like it would be one of our first
6 priorities.

7 SGT. MARKEY: Sure. Okay.
8 Absolutely.

9 CHAIR BASHFORD: Oh, we might be
10 finishing up early.

11 (Laughter.)

12 CHAIR BASHFORD: You said there's
13 nothing wrong with that?

14 DR. SPOHN: I do have a question as to
15 those of us who are on the case review working
16 group, we're expected to report at the October
17 meeting about the case review process, so how is
18 that going to work?

19 CHAIR BASHFORD: I would suggest --

20 DR. SPOHN: Mechanically.

21 CHAIR BASHFORD: -- that we, when the
22 Committee meeting adjourns, I would suggest that

1 we take a few minutes --

2 DR. SPOHN: Perfect.

3 CHAIR BASHFORD: -- and we meet
4 privately afterwards.

5 CMSAF MCKINLEY: I would like to
6 commend the staff for getting the read-aheads out
7 early.

8 CHAIR BASHFORD: Yes.

9 CMSAF MCKINLEY: Thank you very much,
10 it was very convenient to get it in the mail and
11 not be in a hurry to read it.

12 CHAIR BASHFORD: And regular mail, not
13 expensive mail either.

14 (Laughter.)

15 BG SCHWENK: The only problem is,
16 being Marine, I needed it so that I could listen
17 to it.

18 (Laughter.)

19 CHAIR BASHFORD: Unless there are any
20 other topics of conversation, anybody who hasn't
21 been heard from that has something burning to
22 speak, I would suggest we adjourn. And perhaps

1 the review subcommittee could have a brief
2 meeting to talk about going forward.

3 CMSAF MCKINLEY: Did we happen to have
4 public comment?

5 CHAIR BASHFORD: Oh. Nobody had asked
6 for public comments, but --

7 MR. SULLIVAN: All right, for the
8 record, the meeting is --

9 CHAIR BASHFORD: Thank you. Thank
10 you, Mr. Sullivan.

11 (Whereupon, the above-entitled matter
12 went off the record at 3:10 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Defense Advisory Committee on
Investigation of Sexual Assault

Before: US DOD

Date: 07-21-17

Place: Arlington, VA

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