

**Defense Advisory Committee on Investigation, Prosecution, and Defense of
Sexual Assault in the Armed Forces (DAC-IPAD) Public Meeting
April 28, 2017**

Table of Contents

Materials for Administrative Session

- Tab 1** Public Meeting Agenda
- Tab 2** Biographies of Meeting Presenters
- Tab 3** Information Paper: Federal Advisory Committee Act
- Tab 4** Federal Advisory Committee Act (5 U.S.C. app., as amended.)
- Tab 5** Federal Advisory Committee Management; Final Rule, 41 CFR Parts 101-6 and 102-3 (July 19, 2001)
- Tab 6** Department of Defense Instruction (DODI) 5105.04, “Department of Defense Federal Advisory Committee Management Program” (August 6, 2007)

Materials for Presentation on the Mechanics of a Military Sexual Assault Case

- Tab 7** Military Justice Process: Disposition Decisions, Courts-Martial, and Alternative Outcomes – DAC-IPAD Briefing (April 28, 2017)
- *PowerPoint presentation of Colonel Christopher Kennebeck, professor and chair of the Criminal Law Department at the Army Judge Advocate General’s Legal Center and School (TJAGLCS) in Charlottesville, Virginia.*
- Tab 8** Abbott Sample Case File
- *A sample case file of 22 documents utilized by TJAGLCS for instruction of judge advocates including an investigation report, charge sheet, sexual assault forensic examination report, special victims’ counsel documentation, and expert witness materials.*
- Tab 9** Mechanics of a Military Sexual Assault Case: Documents and Forms

Materials for the Presentation on Department of Defense Annual Sexual Assault Reporting Data

Tab 10 Military Sexual Assault Case Adjudication Data Analysis

- *PowerPoint presentation of Dr. Cassia Spohn, Foundation Professor and Director, Arizona State University School of Criminology and Criminal Justice and Ms. Meghan Peters, Attorney-Advisor. Judicial Proceedings Panel and DAC-IPAD*

Tab 11 National Defense Authorization Act (NDAA) Provisions Regarding the Department of Defense Annual Report on Sexual Assault, Fiscal Year 2011 – Fiscal Year 2017

- *Document prepared by DAC-IPAD staff providing the statutory reporting requirements for DoD annual reporting to Congress on sexual assault incidents occurring each year.*

Materials for DAC-IPAD Strategic Planning Session

Tab 12 Some Initial General Thoughts for Consideration in Developing a Structure for a 4+ Year Work Plan for DAC-IPAD

- *Document prepared by Judge Leo Brisbois, Committee member, outlining proposed areas of inquiry for the DAC-IPAD.*

Tab 13 Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-PAD) Committee Planning Session Outline

- *Overview of key issues and questions for the Committee members to discuss during the planning session. This document was prepared by the DAC-IPAD staff.*

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

April 28, 2017

**One Liberty Center, 875 North Randolph Street, Suite 1432
Arlington, Virginia 22203**

- | | |
|--------------------------------|--|
| 8:30 a.m. - 10:00 a.m. | Administrative Work (<i>41 C.F.R. § 102-3.160, not subject to notice & open meeting requirements</i>)

Federal Advisory Committee Act Brief

<i>- Ms. Elaine Crowley, Assistant General Counsel, U.S. Department of Defense</i> |
| 10:00 a.m. - 10:15 a.m. | Welcome and Introduction

<i>- Designated Federal Official Opens Meeting</i>
<i>- Remarks of the Chair</i> |
| 10:15 a.m. - 12:15 p.m. | Presentation on the Mechanics of a Sexual Assault Case from Reporting to Referral

<i>- Colonel Christopher Kennebeck, U.S. Army, Chair, Criminal Law Department, The Judge Advocate General's Legal Center and School (TJAGLCS)</i>
<i>- Ms. Patricia Sudendorf, Professor and Special Victims' Litigation Expert, Criminal Law Department, TJAGLCS</i>
<i>- Major Kristen Fricchione, U.S. Army, Associate Professor and Special Victims' Counsel Course Manager, Criminal Law Department, TJAGLCS</i>
<i>- Major Iain Pedden, U.S. Marine Corps, Associate Professor, Criminal Law Department,, TJAGLCS</i> |
| 12:15 p.m. - 1:00 p.m. | Lunch |
| 1:00 p.m. - 2:00 p.m. | Presentation on the Mechanics of a Sexual Assault Case from Reporting to Referral, Continued |
| 2:00 p.m. – 2:15 p.m. | The Judicial Proceedings Panel's FY 2015 Sexual Assault Case Adjudication Data Analysis

<i>- Dr. Cassia Spohn, Foundation Professor and Director, Arizona State University School of Criminology and Criminal Justice</i>
<i>- Ms. Meghan Peters. Attorney-Advisor, Judicial Proceedings Panel (JPP) and DAC-IPAD, U.S. Department of Defense</i> |

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

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|------------------------------|--|
| 2:15 p.m. - 4:00 p.m. | Briefing on Department of Defense Annual Sexual Assault Reporting Data

<i>- Dr. Nathan Galbreath, Deputy Director, Sexual Assault Prevention and Response Office, U.S. Department of Defense</i> |
| 4:00 p.m. - 5:00 p.m. | DAC-IPAD Strategic Planning Session |
| 5:00 p.m. - 5:15 p.m. | Public Comment |
| 5:15 p.m. | Meeting Adjourned |

Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD)

**April 28, 2017
Public Meeting**

Speakers' Biographies

Elaine C. Crowley, Assistant General Counsel, Office of General Counsel, Washington Headquarter Services and Pentagon Forces Protection Agency. Ms. Crowley is the Federal Advisory Committee Act (FACA) Attorney for the Department of Defense. In this role, she is responsible for providing legal guidance and advice to the Department's 40+ Federal advisory committees and their staff. She works closely with the Department's Advisory Committee Management Officer on Department-wide policy and procedures regarding the management of the Federal advisory committee program. Ms. Crowley also provides legal advice to senior officials on how to obtain advice and recommendations outside of the FACA process. In addition, Ms. Crowley is responsible for the ethics program for the Department's Washington Headquarters Services and Pentagon Force Protection Agency. Ms. Crowley began her Federal career as a Presidential Management Fellow with the General Services Administration's Committee Management Secretariat ("the Secretariat"). The Secretariat is statutorily responsible for the FACA program and policy across the Executive branch. While working for the Secretariat on FACA policy, Ms. Crowley was the Desk Officer for the Department. Prior to her work with the Federal Government, Ms. Crowley was a Parks and Recreation Manager for the New York City Parks and Recreation Department. In that role, she oversaw the operation of the parks located in the East Village and Lower East Side of Manhattan and managed relationships with local officials and the public. She has a BA in Politics, Economics, Rhetoric, and Law from the University of Chicago; an MS in Public Service Management from DePaul University; and a JD from Seton Hall University School of Law.

Colonel Christopher A. Kennebeck, U.S. Army, JA, Professor and Chair, Criminal Law Department. BS, University of South Dakota, 1995; JD, University of South Dakota School of Law, 1998; 147th Judge Advocate Officer Basic Course, 1998; LLM, 55th Judge Advocate Graduate Course, 2007; MMAS, US Army Command and General Staff College, 2011, Legal assistance attorney, trial counsel, and Special Assistant US Attorney at Fort Riley, KS, 1999-2002; Observer/Controller at the National Training Center, Fort Irwin, CA, 2002-2004; Instructor/Writer at the US Army Military Police School in Fort Leonard Wood, MO, 2004-2006; Senior Defense Counsel in Bagram, Afghanistan, 2007-2008; Chief of Military Justice at 7th JMTC in Grafenwoehr, Germany, 2008-2010; Chief of Policy in the Criminal Law Branch of the Office of the Judge Advocate General in the Pentagon, 2011-2013; and Deputy Staff Judge Advocate at I Corps and Joint Base Lewis-McChord, WA, 2013-2015. Member of the South Dakota State bar, the Court of Appeals for the Armed Forces, and the Supreme Court of the United States.

Ms. Patti M. Sudendorf, Professor, Criminal Law Department. BA, Loyola University Chicago, 1981; JD, Loyola University Chicago, 1988. Assistant States Attorney, Cook County, 1988-2004; Associate Director, National District Attorneys Association, 2004-2009; Supervisor, Sex Crimes Division and Assistant States Attorney, Cook County States Attorney's Office, 2009-2011; Adjunct Professor, Loyola University School of Law, 2011-2013; Director, LLM Program, Trial Advocacy for International Students and Instructor, Trial Advocacy, Chicago-Kent College of Law, 2013-2015; Member, Chicago Bar Association and Illinois Bar Association.

Major Kristen M. Fricchione, U.S. Army, JA, Associate Professor, Criminal Law Department. BS, University of Wisconsin–Madison, 2002; JD, University of Wisconsin Law School; 171st Judge Advocate Officer Basic Course 2006-2007; LLM, 64th Judge Advocate Officer Graduate Course, 2016. Legal Assistance Attorney, Trial Counsel, 10th Mountain Division, Fort Drum, New York, 2007–2009; Contract Attorney, Army Contracting Command, Fort Belvoir, Virginia, 2009–2011; Trial Counsel, Bamberg, Germany, 2011–2012; Detainee Review Board Counsel–Bagram, Afghanistan, 2012; Senior Trial Counsel, Bamberg, Germany, 2012–2013; Officer-in-Charge, Rose Barracks Legal Center, Vilseck, Germany, 2013-2014; Defense Counsel, Trial Defense Service–Eurasia, Grafenwoehr, Germany, 2014–2015. Member of the bars of Wisconsin and the Eastern District of Wisconsin.

Major Iain D. Pedden, U.S. Marine Corps, Associate Professor, Criminal Law Department. BA, Grand Valley State University, 1998; JD, Loyola University Chicago School of Law, 2002; Naval Justice School, 2004; LLM, 59th Judge Advocate Graduate Course, 2011. Senior Defense Counsel, Marine Corps Air Station Iwakuni, Japan, 2004-2005; Legal Assistance Officer, Marine Corps Air Station Iwakuni, Japan, 2005-2007; Trial Counsel, Marine Corps Air Station Iwakuni, Japan, 2007; Civil Law Officer, Marine Corps Air Station Cherry Point, NC, 2007; Senior Trial Counsel, Military Justice Officer, Deputy Staff Judge Advocate, Marine Corps Air Station Cherry Point, NC, 2007-2008; Battalion Judge Advocate, 2d Battalion, 8th Marines, 2008-2009 (Helmand Province, Afghanistan); Deputy Staff Judge Advocate and Deputy Director, Cherry Point Law Center, Marine Corps Air Station Cherry Point, NC, 2009-2010; Staff Judge Advocate, 26th Marine Expeditionary Unit, Camp Lejeune, NC (deployed to EUCOM, CENTCOM, and AFRICOM AORs), 2011-2014; Executive Officer (Acting), 26th Marine Expeditionary Unit, Camp Lejeune, NC, 2013-2014. Member of the Bars of Illinois, the Court of Appeals for the Armed Forces, and the Navy-Marine Corps Court of Criminal Appeals.

Dr. Cassia C. Spohn, Foundation Professor and Director, Arizona State University School of Criminology and Criminal Justice. Cassia Spohn received a Ph.D. in political science from the University of Nebraska–Lincoln. Prior to joining the ASU faculty in 2006, she was a faculty member in the School of Criminology and Criminal Justice at the University of Nebraska at Omaha for 28 years. She is the author or co-author of seven books, including *Policing and Prosecuting Sexual Assault: Inside the Criminal Justice System* and *How Do Judges Decide? The Search for Fairness and Equity in Sentencing*. Dr. Spohn’s research interests include prosecutorial and judicial decision making; the intersections of race, ethnicity, crime, and justice; and sexual assault case processing decisions. In 2013, she received ASU’s Award for Leading Edge Research in the Social Sciences and was selected as a Fellow of the American Society of Criminology. Dr. Spohn is a consultant to the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (JPP) on sexual assault data collection and analysis.

Ms. Meghan Peters, Attorney-Advisor, Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) and the JPP. She joined the JPP staff in September 2014 and manages all staff support for the JPP’s independent review and analysis of over 2,000 sexual assault prosecutions in the military. She drafted the JPP’s April 2016 Report on Statistical Data Regarding the Adjudication of Sexual Assault in the Military. Additionally, Ms. Peters supports the JPP Subcommittee’s review of issues related to the defense, prosecution, and investigation of sexual assault crimes in the military. Prior to joining the JPP staff, Ms. Peters served as a judge advocate in the U.S. Army Judge Advocate General’s Corps for over 7 years, where she prosecuted a wide range of cases including rape, sexual assault, domestic violence, and trainee abuse, and advised combat commanders at the 82nd Airborne Division on administrative law and military justice issues. After leaving active duty in 2013, Ms. Peters spent 18 months as a civilian defense counsel representing Service members at courts-martial before joining the JPP staff. She is a graduate of the University of Richmond School of Law in Richmond, Virginia and is a member of the Bars of New Jersey and the District of Columbia.

Dr. Nathan W. Galbreath, Deputy Director, Department of Defense Sexual Assault Prevention and Response Office (SAPRO). Dr. Galbreath is the Department’s expert for prevention and response programs and their relationship to behavioral health, forensic science, criminal investigation, and sex offender assessment and treatment. The Department selected Dr. Galbreath in December 2016 to be a senior executive and fill the role of Deputy. Dr. Galbreath previously served as the Department’s Highly Qualified Expert on Sexual Assault Prevention and Response from 2012 to 2014. He has been affiliated with SAPRO since May 2007 when he served as SAPRO’s first military deputy director before retiring from the Air Force in 2009.

INFORMATION PAPER

Federal Advisory Committee Act

PURPOSE OF THE FEDERAL ADVISORY COMMITTEE ACT

- The Federal Advisory Committee Act (FACA) of 1972, as amended (5 U.S.C. App.), was enacted to enhance public accountability of, and reduce the wasteful expenditures on, Federal advisory committees.
- FACA is a procedural law, governing the establishment, operation, administration, and termination of Federal advisory committees.
- An advisory committee is
 - Any committee, board, commission, council, conference, panel, task force, or other similar group, which is established by statute, or established or utilized by the President or by an agency official, for the purpose of obtaining advice and recommendations
 - Excludes committees comprised solely of full-time, or permanent part-time, Federal employees or any committee created by the National Academy of Sciences or the National Academy of Public Administration

OTHER STATUTES/PRESIDENTIAL DIRECTIVES AFFECTING ADVISORY COMMITTEES

- FACA is considered to be an integral part of the Four Pillars of Openness in Government:
 - Administrative Procedure Act of 1946
 - Federal Advisory Committee Act of 1972
 - Freedom of Information Act of 1976
 - Government in the Sunshine Act of 1977
- The following statutes and Presidential directives also affect Federal advisory committees:
 - Ethics and “Conflict of Interest” statutes, regulations, and other rules
 - Unfunded Mandates Reform Act of 1995
 - The White House Ban on Lobbyists
 - Personnel laws and rules
 - Appropriations law

GOVERNING PRINCIPLES: TRANSPARENCY AND OVERSIGHT

- DoD must develop and file a charter and membership balance plan before any advisory committee can begin working; committees do not perform inherently governmental functions – they provide advice and recommendations only; committees must have a clearly defined purpose
- Subcommittees are generally not subject to the open meeting requirements of FACA, but must report out to an advisory committee and not directly to a Federal officer or agency; the parent committee must fully and openly deliberate the subcommittee’s recommendations, no rubberstamping allowed
- No inappropriate influence by Federal employees or special interest groups on committee’s ability to provide independent advice; membership must be fairly balanced in terms of point of view represented and functions to be performed
- Federal statute/regulation require transparency – the public, with some exceptions, has the right to watch public policy development; committees lack the authority to close or partially close meetings to the public; that authority rests solely with DoD and must conform to statutory limitations; the committee’s Designated Federal Officer must attend the entirety of all committee/subcommittee meetings and may adjourn the meeting if in the public interest
- Public has legal right to submit written statements, and may be allowed to provide oral comments, for consideration by committee members when developing their advice and recommendations
- Committee’s records, to include working papers, must be made contemporaneously available to the public; committee cannot assert Freedom of Information Act exemptions – that authority rests solely with DoD; DoD must provide adequate support and provide access to appropriate DoD data/information and senior leaders; release of DoD data/information to committees must conform to DoD policies and procedures pertaining to the public release of DoD data and information

FEDERAL ADVISORY COMMITTEE ACT

FEDERAL ADVISORY COMMITTEE ACT

5 U.S.C. app.

As Amended

§1. Short title

This Act may be cited as the "Federal Advisory Committee Act Amendments."

§2. Findings and purpose

(a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government.

(b) The Congress further finds and declares that--

- (1) the need for many existing advisory committees has not been adequately reviewed;
- (2) new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary;
- (3) advisory committees should be terminated when they are no longer carrying out the purposes for which they were established;
- (4) standards and uniform procedures should govern the establishment, operation, administration, and duration of advisory committees;
- (5) the Congress and the public should be kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees; and
- (6) the function of advisory committees should be advisory only, and that all matters under their consideration should be determined, in accordance with law, by the official, agency, or officer involved.

§3. Definitions

For the purpose of this Act--

- (1) The term "Administrator" means the Administrator of General Services.
- (2) The term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as "committee"), which is--
 - (A) established by statute or reorganization plan, or
 - (B) established or utilized by the President, or
 - (C) established or utilized by one or more agencies,

FEDERAL ADVISORY COMMITTEE ACT

in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except that such term excludes (i) any committee that is composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government, and (ii) any committee that is created by the National Academy of Sciences or the National Academy of Public Administration.

(3) The term "agency" has the same meaning as in section 551(1) of Title 5, United States Code.

(4) The term "Presidential advisory committee" means an advisory committee which advises the President.

§4. Applicability; restrictions

(a) The provisions of this Act or of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise.

(b) Nothing in this Act shall be construed to apply to any advisory committee established or utilized by--

(1) the Central Intelligence Agency; or

(2) the Federal Reserve System.

(c) Nothing in this Act shall be construed to apply to any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies.

§5. Responsibilities of Congressional committees; review; guidelines

(a) In the exercise of its legislative review function, each standing committee of the Senate and the House of Representatives shall make a continuing review of the activities of each advisory committee under its jurisdiction to determine whether such advisory committee should be abolished or merged with any other advisory committee, whether the responsibilities of such advisory committee should be revised, and whether such advisory committee performs a necessary function not already being performed. Each such standing committee shall take appropriate action to obtain the enactment of legislation necessary to carry out the purpose of this subsection.

(b) In considering legislation establishing, or authorizing the establishment of any advisory committee, each standing committee of the Senate and of the House of Representatives shall determine, and report such determination to the Senate or to the House of Representatives, as the case may be, whether the functions of the proposed advisory committee are being or could be performed by one or more agencies or by an advisory committee already in existence, or by enlarging the mandate of an existing advisory committee. Any such legislation shall--

(1) contain a clearly defined purpose for the advisory committee;

(2) require the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee;

(3) contain appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment;

FEDERAL ADVISORY COMMITTEE ACT

(4) contain provisions dealing with authorization of appropriations, the date for submission of reports (if any), the duration of the advisory committee, and the publication of reports and other materials, to the extent that the standing committee determines the provisions of section 10 of this Act to be inadequate; and

(5) contain provisions which will assure that the advisory committee will have adequate staff (either supplied by an agency or employed by it), will be provided adequate quarters, and will have funds available to meet its other necessary expenses.

(c) To the extent they are applicable, the guidelines set out in subsection (b) of this section shall be followed by the President, agency heads, or other Federal officials in creating an advisory committee.

§6. Responsibilities of the President; report to Congress; annual report to Congress; exclusion

(a) The President may delegate responsibility for evaluating and taking action, where appropriate, with respect to all public recommendations made to him by Presidential advisory committees.

(b) Within one year after a Presidential advisory committee has submitted a public report to the President, the President or his delegate shall make a report to the Congress stating either his proposals for action or his reasons for inaction, with respect to the recommendations contained in the public report.

(c) [Annual report] Repealed by the Federal Reports Elimination and Sunset Act of 1995, Pub. L. No. 104-66, § 3003, 109 Stat. 707, 734-36 (1995), amended by Pub. L. No. 106-113, § 236, 113 Stat. 1501, 1501A-302 (1999) (changing effective date to May 15, 2000).

§7. Responsibilities of the Administrator of General Services; Committee Management Secretariat, establishment; review; recommendations to President and Congress; agency cooperation; performance guidelines; uniform pay guidelines; travel expenses; expense recommendations

(a) The Administrator shall establish and maintain within the General Services Administration a Committee Management Secretariat, which shall be responsible for all matters relating to advisory committees.

(b) The Administrator shall, immediately after October 6, 1972, institute a comprehensive review of the activities and responsibilities of each advisory committee to determine--

(1) whether such committee is carrying out its purpose;

(2) whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;

(3) whether it should be merged with other advisory committees; or

(4) whether it should be abolished.

The Administrator may from time to time request such information as he deems necessary to carry out his functions under this subsection. Upon the completion of the Administrator's review he shall make recommendations to the President and to either the agency head or the Congress with respect to action he believes should be taken. Thereafter, the Administrator shall carry out a similar review annually. Agency heads shall cooperate with the Administrator in making the reviews required by this subsection.

(c) The Administrator shall prescribe administrative guidelines and management controls applicable to advisory committees, and, to the maximum extent feasible, provide advice, assistance, and guidance to advisory committees to improve their performance. In carrying out his functions under

FEDERAL ADVISORY COMMITTEE ACT

this subsection, the Administrator shall consider the recommendations of each agency head with respect to means of improving the performance of advisory committees whose duties are related to such agency.

(d)(1) The Administrator, after study and consultation with the Director of the Office of Personnel Management, shall establish guidelines with respect to uniform fair rates of pay for comparable services of members, staffs, and consultants of advisory committees in a manner which gives appropriate recognition to the responsibilities and qualifications required and other relevant factors. Such regulations shall provide that--

(A) no member of any advisory committee or of the staff of any advisory committee shall receive compensation at a rate in excess of the rate specified for GS-18 of the General Schedule under section 5332 of Title 5, United States Code;

(B) such members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5, United States Code, for persons employed intermittently in the Government service; and

(C) such members--

(i) who are blind or deaf or who otherwise qualify as handicapped individuals (within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. §794)), and

(ii) who do not otherwise qualify for assistance under section 3102 of Title 5, United States Code, by reason of being an employee of an agency (within the meaning of section 3102(a)(1) of such Title 5),

may be provided services pursuant to section 3102 of such Title 5 while in performance of their advisory committee duties.

(2) Nothing in this subsection shall prevent--

(A) an individual who (without regard to his service with an advisory committee) is a full-time employee of the United States, or

(B) an individual who immediately before his service with an advisory committee was such an employee,

from receiving compensation at the rate at which he otherwise would be compensated (or was compensated) as a full-time employee of the United States.

(e) The Administrator shall include in budget recommendations a summary of the amounts he deems necessary for the expenses of advisory committees, including the expenses for publication of reports where appropriate.

§8. Responsibilities of agency heads; Advisory Committee Management Officer, designation

(a) Each agency head shall establish uniform administrative guidelines and management controls for advisory committees established by that agency, which shall be consistent with directives of the Administrator under section 7 and section 10. Each agency shall maintain systematic information on the nature, functions, and operations of each advisory committee within its jurisdiction.

(b) The head of each agency which has an advisory committee shall designate an Advisory Committee Management Officer who shall--

FEDERAL ADVISORY COMMITTEE ACT

- (1) exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by that agency;
- (2) assemble and maintain the reports, records, and other papers of any such committee during its existence; and
- (3) carry out, on behalf of that agency, the provisions of section 552 of Title 5, United States Code, with respect to such reports, records, and other papers.

§9. Establishment and purpose of advisory committees; publication in Federal Register; charter: filing, contents, copy

(a) No advisory committee shall be established unless such establishment is--

- (1) specifically authorized by statute or by the President; or
- (2) determined as a matter of formal record, by the head of the agency involved after consultation with the Administrator, with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.

(b) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government.

(c) No advisory committee shall meet or take any action until an advisory committee charter has been filed with (1) the Administrator, in the case of Presidential advisory committees, or (2) with the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency. Such charter shall contain the following information:

- (A) the committee's official designation;
- (B) the committee's objectives and the scope of its activity;
- (C) the period of time necessary for the committee to carry out its purposes;
- (D) the agency or official to whom the committee reports;
- (E) the agency responsible for providing the necessary support for the committee;
- (F) a description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;
- (G) the estimated annual operating costs in dollars and man-years for such committee;
- (H) the estimated number and frequency of committee meetings;
- (I) the committee's termination date, if less than two years from the date of the committee's establishment; and
- (J) the date the charter is filed.

A copy of any such charter shall also be furnished to the Library of Congress.

FEDERAL ADVISORY COMMITTEE ACT

§10. Advisory committee procedures; meetings; notice, publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance

(a)(1) Each advisory committee meeting shall be open to the public.

(2) Except when the President determines otherwise for reasons of national security, timely notice of each such meeting shall be published in the Federal Register, and the Administrator shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of such meeting prior thereto.

(3) Interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Administrator may prescribe.

(b) Subject to section 552 of Title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

(c) Detailed minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee.

(d) Subsections (a)(1) and (a)(3) of this section shall not apply to any portion of an advisory committee meeting where the President, or the head of the agency to which the advisory committee reports, determines that such portion of such meeting may be closed to the public in accordance with subsection (c) of section 552b of Title 5, United States Code. Any such determination shall be in writing and shall contain the reasons for such determination. If such a determination is made, the advisory committee shall issue a report at least annually setting forth a summary of its activities and such related matters as would be informative to the public consistent with the policy of section 552(b) of Title 5, United States Code.

(e) There shall be designated an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee. The officer or employee so designated is authorized, whenever he determines it to be in the public interest, to adjourn any such meeting. No advisory committee shall conduct any meeting in the absence of that officer or employee.

(f) Advisory committees shall not hold any meetings except at the call of, or with the advance approval of, a designated officer or employee of the Federal Government, and in the case of advisory committees (other than Presidential advisory committees), with an agenda approved by such officer or employee.

§11. Availability of transcripts; "agency proceeding"

(a) Except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and advisory committees shall make available to any person, at actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings.

(b) As used in this section "agency proceeding" means any proceeding as defined in section 551(12) of Title 5, United States Code.

§12. Fiscal and administrative provisions; record-keeping; audit; agency support services

(a) Each agency shall keep records as will fully disclose the disposition of any funds which may be at the disposal of its advisory committees and the nature and extent of their activities. The

FEDERAL ADVISORY COMMITTEE ACT

General Services Administration, or such other agency as the President may designate, shall maintain financial records with respect to Presidential advisory committees. The Comptroller General of the United States, or any of his authorized representatives, shall have access, for the purpose of audit and examination, to any such records.

(b) Each agency shall be responsible for providing support services for each advisory committee established by or reporting to it unless the establishing authority provides otherwise. Where any such advisory committee reports to more than one agency, only one agency shall be responsible for support services at any one time. In the case of Presidential advisory committees, such services may be provided by the General Services Administration.

§13. Responsibilities of Library of Congress; reports and background papers; depository

Subject to section 552 of Title 5, United States Code, the Administrator shall provide for the filing with the Library of Congress of at least eight copies of each report made by every advisory committee and, where appropriate, background papers prepared by consultants. The Librarian of Congress shall establish a depository for such reports and papers where they shall be available to public inspection and use.

§14. Termination of advisory committees; renewal; continuation

(a)(1) Each advisory committee which is in existence on the effective date of this Act shall terminate not later than the expiration of the two-year period following such effective date unless--

(A) in the case of an advisory committee established by the President or an officer of the Federal Government, such advisory committee is renewed by the President or that officer by appropriate action prior to the expiration of such two-year period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(2) Each advisory committee established after such effective date shall terminate not later than the expiration of the two-year period beginning on the date of its establishment unless--

(A) in the case of an advisory committee established by the President or an officer of the Federal Government such advisory committee is renewed by the President or such officer by appropriate action prior to the end of such period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(b)(1) Upon the renewal of any advisory committee, such advisory committee shall file a charter in accordance with section 9(c).

(2) Any advisory committee established by an Act of Congress shall file a charter in accordance with such section upon the expiration of each successive two-year period following the date of enactment of the Act establishing such advisory committee.

(3) No advisory committee required under this subsection to file a charter shall take any action (other than preparation and filing of such charter) prior to the date on which such charter is filed.

(c) Any advisory committee which is renewed by the President or any officer of the Federal Government may be continued only for successive two-year periods by appropriate action taken by the President or such officer prior to the date on which such advisory committee would otherwise terminate.

FEDERAL ADVISORY COMMITTEE ACT

§15. Requirements relating to the National Academy of Sciences and the National Academy of Public Administration

(a) In General- An agency may not use any advice or recommendation provided by the National Academy of Sciences or National Academy of Public Administration that was developed by use of a committee created by that academy under an agreement with an agency, unless--

(1) the committee was not subject to any actual management or control by an agency or an officer of the Federal Government;

(2) in the case of a committee created after the date of the enactment of the Federal Advisory Committee Act Amendments of 1997, the membership of the committee was appointed in accordance with the requirements described in subsection (b)(1); and

(3) in developing the advice or recommendations, the academy complied with--

(A) subsection (b)(2) through (6), in the case of any advice or recommendation provided by the National Academy of Sciences; or

(B) subsection (b)(2) and (5), in the case of any advice or recommendation provided by the National Academy of Public Administration.

(b) Requirements- The requirements referred to in subsection (a) are as follows:

(1) The Academy shall determine and provide public notice of the names and brief biographies of individuals that the Academy appoints or intends to appoint to serve on the committee. The Academy shall determine and provide a reasonable opportunity for the public to comment on such appointments before they are made or, if the Academy determines such prior comment is not practicable, in the period immediately following the appointments. The Academy shall make its best efforts to ensure that (A) no individual appointed to serve on the committee has a conflict of interest that is relevant to the functions to be performed, unless such conflict is promptly and publicly disclosed and the Academy determines that the conflict is unavoidable, (B) the committee membership is fairly balanced as determined by the Academy to be appropriate for the functions to be performed, and (C) the final report of the Academy will be the result of the Academy's independent judgment. The Academy shall require that individuals that the Academy appoints or intends to appoint to serve on the committee inform the Academy of the individual's conflicts of interest that are relevant to the functions to be performed.

(2) The Academy shall determine and provide public notice of committee meetings that will be open to the public.

(3) The Academy shall ensure that meetings of the committee to gather data from individuals who are not officials, agents, or employees of the Academy are open to the public, unless the Academy determines that a meeting would disclose matters described in section 552(b) of Title 5, United States Code. The Academy shall make available to the public, at reasonable charge if appropriate, written materials presented to the committee by individuals who are not officials, agents, or employees of the Academy, unless the Academy determines that making material available would disclose matters described in that section.

(4) The Academy shall make available to the public as soon as practicable, at reasonable charge if appropriate, a brief summary of any committee meeting that is not a data gathering meeting, unless the Academy determines that the summary would disclose matters described in section 552(b) Title 5, United States Code. The summary shall identify the committee members present, the topics discussed, materials made available to the committee, and such other matters that the Academy determines should be included.

FEDERAL ADVISORY COMMITTEE ACT

(5) The Academy shall make available to the public its final report, at reasonable charge if appropriate, unless the Academy determines that the report would disclose matters described in section 552(b) of Title 5, United States Code. If the Academy determines that the report would disclose matters described in that section, the Academy shall make public an abbreviated version of the report that does not disclose those matters.

(6) After publication of the final report, the Academy shall make publicly available the names of the principal reviewers who reviewed the report in draft form and who are not officials, agents, or employees of the Academy.

(c) Regulations- The Administrator of General Services may issue regulations implementing this section.

§16. Effective Date

Except as provided in section 7(b), this Act shall become effective upon the expiration of ninety days following October 6, 1972.



Federal Register

**Thursday,
July 19, 2001**

Part II

General Services Administration

**41 CFR Parts 101–6 and 102–3
Federal Advisory Committee Management;
Final Rule**

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–6 and 102–3

[FPMR Amendment A–57]

RIN 3090–AG49

Federal Advisory Committee Management

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is revising Federal Property Management Regulations (FPMR) coverage on Federal advisory committee management and moving it into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR coverage is written in plain language to provide agencies with updated regulatory material that is easy to read and understand. This action is necessary due to legislative and policy changes that have occurred, and judicial decisions that have been issued since the regulation was last updated. It is based also on suggestions for improvement from other Federal agencies and interested parties, and clarifies how the regulation applies or does not apply to certain situations.

EFFECTIVE DATE: August 20, 2001.

FOR FURTHER INFORMATION CONTACT: Charles F. Howton, Deputy Director, Committee Management Secretariat (202) 273–3561, or electronically at the following Internet address: charles.howton@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

GSA's authority for administering the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. (also referred to as "the Act"), is contained in section 7 of the Act and Executive Order 12024 (42 FR 61445; 3 CFR 1977 Comp., p. 158). Under Executive Order 12024, the President delegated to the Administrator of General Services all of the functions vested in the President by the Act. GSA's responsibilities for administering the Act have been delegated to the Associate Administrator for Governmentwide Policy and to the Director of the Committee Management Secretariat.

In a previous issue of the **Federal Register** (62 FR 31550, June 10, 1997), GSA published an Advance Notice of Proposed Rulemaking (ANPRM) and requested comments. Additional

comments were requested from the Interagency Committee on Federal Advisory Committee Management. GSA requested comments on: (1) Suggested issues to address; (2) specific recommendations about changes needed in the current Federal Advisory Committee Management subpart; (3) examples of situations where FACA was either a useful tool or a hindrance to public involvement; and (4) GSA's intent to include illustrative examples and principles. On January 14, 2000, GSA published a proposed rule in the **Federal Register** (65 FR 2504) and requested comments over a 60-day period ending on March 14, 2000. All comments received were considered in drafting this final rule.

This final rule provides administrative and interpretive guidelines and management controls for Federal agencies to implement the provisions of the Act, and is intended to improve the management and operation of Federal advisory committees in the executive branch.

B. Discussion of Comments

Twenty-six commenters responded to the invitation for comments, including twenty commenters from the executive branch and six commenters from non-Federal sources. Of the twenty comments received from executive branch sources, three comments were submitted by subcomponents of a Federal department or agency. A total of fifty-nine specific issues or recommendations were identified, of which seven were either fully supportive of the proposed rule or concerned typographical errors. GSA addressed the disposition of the remaining fifty-two issues or recommendations as follows:

The Final Rule Should Include More Guidance Relating to the Management of Advisory Committees, Including the Impact of Other Statutes and Issues on Day-to-Day Operations

Several commenters provided suggestions regarding the addition of guidance on issues that, although not addressed by the Act, likely would improve the management of advisory committees. For example, one commenter suggested that the final rule include a provision to encourage agencies to streamline their internal processes and procedures in order to expedite the establishment of advisory committees. Other commenters requested that GSA: (1) Provide more detailed provisions on the compensation of advisory committee members and staff, and experts and consultants; (2) expand the range of

information required to be listed in an advisory committee's charter to include the nature and disposition of records; and (3) incorporate new regulatory requirements for increasing access to advisory committee information, such as providing meeting notices, minutes, and reports via the Internet.

In response to these recommendations, GSA expanded the number of examples included within the final rule to illustrate how other statutes or issues potentially could affect the effective management of advisory committees.

In addition, GSA reorganized the examples and other guidance into appendices to avoid any ambiguity between actions required by the Act and the final rule, and actions that are suggested only within an implementing framework of "best practices." In the final rule, a "Key Points and Principles" appendix appears at the end of each subpart to which it relates.

In applying the "best practices" offered in the appendices, users of the final rule should continue to examine the extent to which other factors, including agency-specific statutory provisions and internal agency procedures, may affect a specific advisory committee or program. Although GSA believes that the examples contained in the appendices to the final rule represent the circumstances most commonly encountered during the day-to-day management of advisory committees, the listing is not exhaustive and must be supplemented based upon the unique requirements of the user.

Provide Additional Guidance Regarding What Advisory Committees and Their Subcommittees Must Do To Comply With the Act

Many commenters expressed concern over language contained in the preamble to the proposed rule relating to coverage of subcommittees under the Act. The preamble to the proposed rule noted that:

The applicability of the procedural requirements contained in FACA and this proposed rule to subcommittees of advisory committees has been clarified. GSA's current FACA regulation does not make clear that subcommittees reporting to a parent committee are not subject to FACA. Indeed, the regulation states just the opposite, providing that "[s]ubcommittees that do not function independently of the full or parent advisory committee" are subject to all requirements of FACA except the requirement for a charter. (See 41 CFR 101–6.1007(b)(3).) This provision is problematic for two reasons. First, it applies FACA more broadly than the statute itself requires. Second, it essentially creates a special type

of advisory committee that is subject to some, but not all of FACA's requirements, which has no foundation in the statute. Under FACA, a group is either an advisory committee subject to all of the statutory requirements, or it is not an advisory committee, and therefore not subject to any of its requirements. Because a subcommittee which reports to a parent committee is not an "advisory committee" under FACA, there is no legal basis for applying any of FACA's requirements to such a subcommittee.

In evaluating the comments received, GSA notes that there were no objections to the exclusions contained in § 102-3.185 of the proposed rule (now § 102-3.160 of the final rule), relating to "What activities of an advisory committee are not subject to the notice and open meeting requirements of the Act?" The exclusions in § 102-3.160 of the final rule continue to cover the types of activities routinely performed by subcommittees. By this reasoning GSA sought to bring into harmony these activities with those provisions in the proposed rule differentiating subcommittees reporting to a parent advisory committee from those reporting directly to a Federal officer or agency.

However, the preamble to the proposed rule did not explain and describe adequately the legal framework for GSA's decision to differentiate subcommittees that report only to a parent advisory committee more clearly from advisory committees that report directly to a Federal officer or agency. The Act defines the term "advisory committee" as "any committee, * * * or any subcommittee or other subgroup thereof which is established or utilized by the President or an agency in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government". Under this definition, a subcommittee is an "advisory committee" subject to the Act if it provides advice to the President or a Federal officer or agency. Most subcommittees, however, report only to a parent advisory committee and it is the parent committee that is normally responsible for providing advice or recommendations to the Government. In this conventional scenario, the subcommittee is not subject to the Act because it is not providing advice to the Government.

Case law supports this conclusion. In *National Anti-Hunger Coalition v. Executive Committee*, 557 F.Supp. 524 (D.D.C.), *aff'd*, 711 F.2d 1071 (D.C. Cir. 1983), the question presented was whether the Act applied to task forces reporting to the Executive Committee of the President's Private Sector Survey on

Cost Control in the Federal Government. The task forces had no authority to make recommendations to agencies or to the President. Instead, their function was to do the "preliminary work of the survey, including fact-gathering, statistical evaluations, and the formulation of preliminary reports." (557 F.Supp. at 526). Although it was undisputed that the Executive Committee was subject to the Act, the court held that the Act did not apply to the task forces under the following reasoning:

There is no question that the task forces are intimately involved in the gathering of information about federal programs and the formulation of possible recommendations for consideration of the Committee. That is not enough to render them subject to the FACA. The Act itself applies only to committees "established or utilized by" the President or an agency "in the interest of obtaining advice or recommendations for the President or one or more agencies." The Act does not cover groups performing staff functions such as those performed by the so-called task forces. (557 F.Supp. at 529). (See also *Association of American Physicians and Surgeons v. Clinton*, 997 F.2d 898, 911-913 (D.C. Cir. 1993).)

GSA believes that as a result of this decision, subcommittees that report to a parent advisory committee generally are not subject to the Act. GSA also believes that subcommittees whose advice or recommendations are provided directly to a Federal officer or agency are subject to the Act. However, GSA further believes that this decision does not shield those subcommittees from coverage under the Act whose advice or recommendations are not subject to deliberation by their parent advisory committees.

From this reasoning, it is not permissible for parent advisory committees simply to "rubber-stamp" the advice or recommendations of their subcommittees, thereby depriving the public of its opportunity to know about, and participate contemporaneously in, an advisory committee's deliberations. Agencies are cautioned to avoid excluding the public from attending any meeting where a subcommittee develops advice or recommendations that are not expected to be reviewed and considered by the parent advisory committee before being submitted to a Federal officer or agency. These exclusions may run counter to the provisions of the Act that require contemporaneous access to the advisory committee deliberative process.

To address these issues more clearly, GSA strengthened language in the final rule by: (1) Adding a new § 102-3.35 that outlines policies relating to subcommittees; (2) clarifying language

in § 102-3.145 relating to subcommittee meetings; and (3) clarifying the examples contained in Appendix A to Subpart C.

Correct and Clarify the Definition of "Utilized"

Nine commenters recommended that GSA revise its definition of the term, "utilized" to conform to governing case law.

As noted by some of the commenters, the definition of the term "utilized" in § 102-3.30 of the proposed rule inadvertently misstated the applicable legal test. The proposed rule stated that a committee is "utilized within the meaning of the Act when the President or a Federal agency exercises actual management and control over its operation." This construction would require an agency both to have management of the committee and to exercise control over the committee before the committee can be deemed "utilized." The proper statement of the "utilized" test is whether an agency either has management of the committee or, in some fashion other than management, exercises control over the committee.

The controlling legal authority is *Washington Legal Foundation v. U. S. Sentencing Commission*, 17 F.3d 1446 (D.C. Cir. 1994). In that case, the appeals court gave structure to the U.S. Supreme Court's prior decision interpreting the term "utilized." (See *Public Citizen v. Department of Justice*, 491 U.S. 440 (1989).) The appeals court ruled that the word "utilized" indicates "something along the lines of actual management or control of the advisory committee." (17 F.3d at 1450). The operative criterion for determining whether a committee has sufficiently close ties to an agency in order to render it "utilized" is whether the agency has either *management* of the committee or exerts some other type of *control*, but not necessarily both.

Similarly, § 102-3.50(b) of the proposed rule (now § 102-3.185(b) of the final rule) used the phrase "actual management and control" with regard to section 15 of the Act. In explaining the relationship between Federal agencies and the National Academy of Sciences (NAS) and the National Academy of Public Administration (NAPA) covered by section 15 of the Act, § 102-3.50(b) of the proposed rule states that "[a]gencies must not manage or control the specific procedures adopted by each academy." However, committees covered by section 15 of the Act must be under *both* the actual management *and* the control of the academies, not that of a Federal agency. In this instance, the use of the conjunctive

word “and” is appropriate and indicates that the academies cannot relinquish *either* management or control of their committees to Federal agencies.

Accordingly, GSA revised the language contained in the final rule by changing *management and control* to *management or control* in the definition of the term “utilized,” now in § 102–3.25 of the final rule, and in those instances in which it appears in the “Key Points and Principles” guidance in the appendices to the final rule.

Clarify the Application of the Act to Agency Interactions With the Public

Several commenters noted that Federal agencies are increasingly reliant on local communities, individual citizens, and interested parties to obtain information, advice, or recommendations on which to base decisions. They expressed concerns that: (1) Uncertainty about the scope of the Act creates a disincentive for Federal officers and agencies wishing to engage in public outreach; (2) the requirements of the Act are being interpreted differently within and among agencies; and (3) GSA’s current regulations do not adequately differentiate between those groups and activities covered by the Act and others that are not. (See 41 CFR 101–6.10.)

GSA recognizes that the broad definition in the Act of an “advisory committee” might be interpreted to extend coverage by the Act to any gathering or two or more persons from whom the President or other Federal officers or agencies seek advice or recommendations. However, in the cases discussed above, the courts have rejected such a broad reading of “advisory committee.” GSA believes that the sections in the final rule on definitions and on groups not covered by the Act, §§ 102–3.25 and 102–3.40, respectively, clarify the limits of the coverage by, or scope of, the Act when applied together.

Within this group of comments, GSA noted a consistent theme related to the need for more information regarding public participation tools and techniques that would allow for more collaboration that is not subject to the Act. Although advisory committees support Federal decisions in a variety of situations, GSA believes that the ability of agencies to interact with the public in numerous other ways is particularly important because advisory committees are only one method for agencies to obtain the views of the public for their programs. Federal agencies may engage in continuous collaboration using diverse, but complimentary, tools, techniques, and methods. Whether or

not a selected approach includes the use of advisory committees, the potential or perceived applicability of the Act must not prevent constructive collaboration from taking place. Agencies are encouraged to contact GSA concerning not only the use of Federal advisory committees, but also for information about alternative forms of public involvement.

In GSA’s view, agencies have broad latitude to consult with the public using many different approaches that are not subject to the Act. Public consultation formats that generally fall outside of the scope of the Act include public meetings, information exchange forums, meetings initiated with or by non-governmental organizations, Federal participation on groups that are not established or utilized by the Government, and certain work products generated by contractors as a result of consultation with the public.

While FACA is not a public participation statute, it directly affects how the executive branch is held accountable for the use and management of Federal advisory committees as a major means of obtaining public involvement. Within this context, agencies wishing to consult with private individuals, non-governmental organizations, or with the public at large through other assemblages often must consider whether or not the Act applies to a given situation.

The number and range of scenarios presented by the commenters underscore the importance of presenting a clearer understanding of how advisory committees are established by Federal agencies or how the Government’s relationship with groups not established within the meaning of the Act may nevertheless become subject to the Act if they are *utilized*. Based upon the comments received, the circumstances under which advisory committees are *established* within the executive branch appear to be well understood. Accordingly, GSA retained the language contained in § 102–3.30 of the proposed rule in § 102–3.25 of the final rule and throughout subpart B.

However, as noted in the above discussion of the proposed rule’s treatment of the term “utilized,” agencies must determine whether or not their relationship with a group created by non-Federal entities constitutes *actual management or control* within the meaning of the Act. To help agencies make this determination, GSA has included within the final rule several new examples illustrating the application of the *actual management or control* test to different situations.

These additions are contained in the “Key Points and Principles” guidance in Appendix A to Subpart A.

Explain the Relationship Between Committees Established by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA) and the Act

The Federal Advisory Committee Act Amendments of 1997, Public Law 105–153, December 17, 1997, established separate procedures for committees that are managed and controlled by NAS or NAPA. Subpart E of the final rule contains implementing instructions for the new section 15 of FACA.

Clarify the Distinction Between Advisory Committees Subject to the Act and Operational Committees Not Covered by the Act

Five commenters suggested that further guidance in the final rule is necessary to assist agencies in differentiating an operational committee not covered by the Act from one that performs primarily advisory functions and is, therefore, subject to the Act. GSA added guidance within Appendix A to Subpart A listing those characteristics generally associated with committees having primarily operational, as opposed to advisory, functions.

Clarify the Applicability of the Act to Advisory Committee Meetings Conducted Through Electronic Means

Four commenters supported GSA’s language contained in the proposed rule extending the definition of “committee meeting” to meetings conducted in whole or part through electronic means. However, two commenters suggested additional clarifications, which GSA has adopted.

First, GSA slightly modified the definition of “committee meeting” contained in § 102–3.25 of the final rule to include a “gathering” of advisory committee members whether in person or through electronic means. This change was made to highlight coverage by the Act of both physical and “virtual” meetings conducted by such means as a teleconference, videoconference, the Internet, or other electronic medium.

Second, GSA amended the language contained in § 102–3.140 of the final rule to provide for adequate public access to advisory committee meetings that are conducted in whole or part through electronic means. This change complements existing policy covering advisory committee meetings that are held within a physical setting, such as a conference room, by ensuring that agencies adequately plan for public

participation by adding additional capability (such as a designated number of public call-in lines for a teleconference) to ensure access to committee deliberations.

Provide Additional Guidance on Balanced Representation and Selection of Members

One commenter expressed concern that the proposed rule did not contain sufficient guidance on balanced representation and the selection of members. GSA recognizes that the guidance contained in the proposed rule is limited to the language of the Act, but believes that the provisions of section 5(c) of the Act are broad enough to allow for agency discretion in determining advisory committee representation and membership relative to applicable statutes, Executive orders, and the needs of the agency responsible for the advisory committee.

However, GSA added a list of possible considerations within Appendix A to Subpart B that, while not comprehensive or universally applicable, may help in developing a plan for balancing an advisory committee's membership.

Emphasize the Importance of Maximizing an Advisory Committee's Independent Judgment

Five commenters offered various suggestions to address the requirement contained in section 5(b)(3) of the Act, which is intended to ensure that the work products of an advisory committee reflect the group's independent judgment.

Included among these suggestions were recommendations from the U.S. Office of Government Ethics (OGE) that GSA modify the language contained in § 102-3.155 of the proposed rule (now contained in Appendix A to Subpart C of the final rule) to clarify the applicability of conflict of interest statutes and other Federal ethics rules to advisory committee members. GSA adopted all of OGE's suggestions.

The remaining suggestions received concerned the appointment of advisory committee members, including a recommended change to § 102-3.155 of the proposed rule (now Appendix A to Subpart C) to clarify that: (1) An agency may appoint a member to an advisory committee based upon the recommendation of an organization to be represented; and (2) recommendations from an advisory committee may be a part of an agency's process to nominate new members. GSA adopted these changes and suggestions.

Provide Additional Guidance on the Management of Federal Records

GSA received suggestions from the National Archives and Records Administration (NARA) regarding three areas where additional guidance on records management issues could be useful. Specifically, NARA recommended that § 102-3.190 of the proposed rule: (1) Be expanded to include all recordkeeping requirements specified by the Act, not just those relating to advisory committee minutes; (2) include a statement that records should be scheduled for disposition before actual termination of the advisory committee; and (3) with regard to information that must be included within an advisory committee's charter, include a determination as to whether its records fall within the Presidential Records Act, 44 U.S.C. Chap 22.

GSA addressed these recommendations by expanding § 102-3.200 of the proposed rule (now Appendix A to Subpart D) to include additional guidance relating to records management and to highlight the applicability and importance of Federal recordkeeping statutes and policies to advisory committee operations. GSA decided to include this guidance within this appendix because the Act generally is silent on records management issues, with the exception of the responsibilities of the Committee Management Officer (CMO) in section 8(b)(2) of the Act.

Pursuant to the National Archives and Records Administration Act, 44 U.S.C. Chap. 21, the Archivist of the United States is responsible for records management in the Federal Government, including the issuance of regulations and guidance for records retention and disposition. The Archivist, working in conjunction with the agencies' Records Management Officers, also is responsible for identifying records that are appropriate for transfer to the permanent Archives of the United States and those that must be processed in accordance with the Presidential Records Act.

Strengthen Provisions Relating to the Public's Access to Advisory Committee Records

Two commenters suggested that the final rule contain more explicit guidance regarding the public's access to committee records under section 10(b) of the Act. In particular, the commenters recommended adding language describing the circumstances under which records may be withheld pursuant to the Freedom of Information Act (FOIA), as amended, 5 U.S.C. 552.

GSA believes that timely access to advisory committee records is an important element of the public access provisions of the Act and, therefore, agrees with these suggestions. GSA further believes that there are two separate, but equally important issues related to the availability of advisory committee records under section 10(b) of FACA: (1) The extent to which records may be protected from disclosure under FOIA; and (2) the extent to which agencies may require that requests for non-exempt records be processed under the request and review process established by section 552(a)(3) of FOIA.

Section 10(b) of the Act provides that:

Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

The purpose of section 10(b) of the Act is to provide for the contemporaneous availability of advisory committee records that, when taken in conjunction with the ability to attend advisory committee meetings, ensures that interested parties have a meaningful opportunity to comprehend fully the work undertaken by the advisory committee. Records covered by the exemptions set forth in section 552(b) of FOIA generally may be withheld. However, it should be noted that FOIA Exemption 5 generally cannot be used to withhold documents reflecting an advisory committee's internal deliberations.

An opinion of the Office of Legal Counsel, U.S. Department of Justice, 12 Op. O.L.C. 73, April 29, 1988, entitled "Disclosure of Advisory Committee Deliberative Materials," concludes that FOIA Exemption 5 "is not generally applicable to materials prepared by or for an advisory committee, but that it does extend to protect privileged documents delivered from the agency to an advisory committee." The opinion further states that:

This construction gives meaning to exemption 5 without vitiating Congress' enumeration of deliberative documents such as working papers and drafts as subject to disclosure. It is also supported by a close reading of exemption 5 itself. Because by its terms exemption 5 protects only inter-agency and intra-agency documents and because an advisory committee is not an agency, documents do not receive the protection of exemption 5 by virtue of the fact that they are prepared by an advisory committee. On

the other hand, documents prepared by an agency do not lose the protection of exemption 5 by virtue of the fact that they are delivered to an advisory committee.

In determining whether or not such records fall within these narrow exclusions, the OLC opinion provides that consideration should be given to determining whether or not section 10(b) of FACA is applicable in the first instance. As noted in the OLC opinion:

Section 10(b) itself applies only to materials made available to or prepared for or by an advisory committee established by statute or reorganization plan or established or utilized by the President or an agency. 5 U.S.C. app. I, 3(2), 10(b). Accordingly, in determining whether a document is to be disclosed the first issue is not whether it is subject to an exemption under 5 U.S.C. 552 but whether it meets this threshold definition.

In explaining this threshold determination of whether particular records are subject to the section 10(b) disclosure requirement, the OLC opinion states that:

The courts and this Office have construed the concept of advisory committees established or utilized by the President or an agency to preclude section 10(b)'s application to the work prepared by a staff member of an advisory committee or a staffing entity within an advisory committee, such as an independent task force limited to gathering information, or a subcommittee of the advisory committee that is not itself established or utilized by the President or agency, so long as the material was not used by the committee as a whole.

Although advisory committee records may be withheld under the provisions

of FOIA if there is a *reasonable expectation* that the records sought fall within the exemptions contained in section 552(b) of FOIA, agencies may not require members of the public or other interested parties to file requests for non-exempt advisory committee records under the request and review process established by section 552(a)(3) of FOIA.

In *Food Chemical News v. Department of Health and Human Services*, 980 F.2d 1468, 299 U.S. App. DC 25, the appeals court held that:

Under section 10(b) of FACA an agency is generally obligated to make available for public inspection and copying all materials that were made available to or prepared for or by an advisory committee. Except with respect to those materials that the agency reasonably claims to be exempt from disclosure pursuant to FOIA, a member of the public need not request disclosure in order for FACA 10(b) materials to be made available. Thus, whenever practicable, all 10(b) materials must be available for public inspection and copying before or on the date of the advisory committee meeting to which they apply.

Accordingly, GSA included language within § 102–3.170 of the final rule describing the policy to be followed in implementing section 10(b) of the Act, and included additional guidance in Appendix A to Subpart D concerning the applicability of FOIA to records covered by section 10(b) of FACA.

Improve the Organization of the Final Rule

During the course of evaluating comments received from all sources,

GSA conducted a review of the proposed rule's general organization and structure for the purpose of achieving greater clarity and consistency in presentation. This effort led to a number of changes, such as redesignating the "Key Points and Principles" sections following each subpart as appendices. Other changes were made throughout the final rule to improve alignment between section headings and the material that follows. Similar changes were made within the appendices in order to improve the linkage between the examples or questions and the corresponding guidance.

In addition, GSA reorganized the final rule to redesignate subpart B as subpart E to improve the flow of information distinguishing Federal advisory committees subject to the Act from those committees created by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA) which, if not *utilized* by the executive branch, are not subject to the Act's provisions. Section numbers previously assigned in the proposed rule affected by the redesignation of subpart B as subpart E, subpart C as subpart B, subpart D as subpart C, and subpart E as subpart D have been changed accordingly.

C. Technical and Procedural Comments

The final rule incorporates several technical and procedural recommendations made by a range of commenters, particularly in the following sections or appendices:

Section/Appendix	Modification
102–3.60	Specific procedures for consulting with the Secretariat have been eliminated. GSA will issue separate guidance to agencies covering the administration of the consultation requirement.
Appendix A to Subpart B	Addition of guidance relating to the achievement of "balanced" advisory committee membership.
Appendix A to Subpart B	Addition of guidance covering the legal duration of the charter of an advisory committee required by statute where Congress authorizes the advisory committee for a period exceeding two years.
Appendix A to Subpart C	Addition of guidance addressing the designation of an alternate Designated Federal Officer (DFO).
102–3.130	All references to compensation limits imposed by the Act have been updated, and references to alternative similar agency compensation systems other than the General Schedule have been included.
102–3.130	All references to the word, "handicapped," have been replaced with the phrase, "with disabilities."
Appendix A to Subpart D	Addition of guidance regarding activities that are not subject to the notice and open meeting requirements of the Act.
102–3.165	The requirement for the completion of advisory committee meeting minutes now requires the DFO to ensure certification within the time limit specified.

D. Consultation With Other Federal Agencies

Pursuant to section 7(d) of the Act, the guidelines contained in this final

rule with respect to uniform fair rates of compensation for comparable services of members and staff of, and experts and consultants to advisory committees have

been established after consultation with the U.S. Office of Personnel Management (OPM).

Although not required by the Act, the guidelines contained in this final rule that refer to the applicability of conflict of interest statutes and other Federal ethics rules to advisory committee members have been established after consultation with the U.S. Office of Government Ethics (OGE).

Although not required by the Act, the guidelines contained in this final rule that relate to the management of advisory committee records have been established after consultation with the National Archives and Records Administration (NARA).

E. Executive Order 12866

GSA has determined that this final rule is a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

F. Regulatory Flexibility Act

GSA has determined that this final rule will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The rule does not impact small entities and applies only to Federal officers and agencies.

G. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

H. Small Business Regulatory Enforcement Fairness Act

This final rule is being submitted for Congressional review as prescribed under 5 U.S.C. 801.

List of Subjects in 41 CFR Parts 101-6 and 102-3

Advisory committees, Government property management.

Dated: July 5, 2001.

Stephen A. Perry,
Administrator of General Services.

For the reasons set forth in the preamble, GSA amends 41 CFR chapters 101 and 102 as follows:

CHAPTER 101—[AMENDED]

PART 101-6—MISCELLANEOUS REGULATIONS

1. Subpart 101-6.10 is revised to read as follows:

Subpart 101-6.10—Federal Advisory Committee Management

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); sec. 7, 5 U.S.C., App.; and E.O. 12024, 3 CFR, 1977 Comp., p. 158.

§ 101-6.1001 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102-1 through 102-220).

For Federal advisory committee management information previously contained in this subpart, see FMR part 102-3 (41 CFR part 102-3).

CHAPTER 102—[AMENDED]

2. Part 102-3 is added to subchapter A of chapter 102 to read as follows:

PART 102-3—FEDERAL ADVISORY COMMITTEE MANAGEMENT

Subpart A—What Policies Apply To Advisory Committees Established Within the Executive Branch?

Sec.

- 102-3.5 What does this subpart cover and how does it apply?
- 102-3.10 What is the purpose of the Federal Advisory Committee Act?
- 102-3.15 Who are the intended users of this part?
- 102-3.20 How does this part meet the needs of its audience?
- 102-3.25 What definitions apply to this part?
- 102-3.30 What policies govern the use of advisory committees?
- 102-3.35 What policies govern the use of subcommittees?
- 102-3.40 What types of committees or groups are not covered by the Act and this part?

Appendix A to Subpart A of Part 102-3—Key Points and Principles

Subpart B—How Are Advisory Committees Established, Renewed, Reestablished, and Terminated?

- 102-3.45 What does this subpart cover and how does it apply?
- 102-3.50 What are the authorities for establishing advisory committees?
- 102-3.55 What rules apply to the duration of an advisory committee?
- 102-3.60 What procedures are required to establish, renew, or reestablish a discretionary advisory committee?
- 102-3.65 What are the public notification requirements for discretionary advisory committees?
- 102-3.70 What are the charter filing requirements?
- 102-3.75 What information must be included in the charter of an advisory committee?
- 102-3.80 How are minor charter amendments accomplished?
- 102-3.85 How are major charter amendments accomplished?

Appendix A to Subpart B of Part 102-3—Key Points and Principles

Subpart C—How Are Advisory Committees Managed?

- 102-3.90 What does this subpart cover and how does it apply?
 - 102-3.95 What principles apply to the management of advisory committees?
 - 102-3.100 What are the responsibilities and functions of GSA?
 - 102-3.105 What are the responsibilities of an agency head?
 - 102-3.110 What are the responsibilities of a chairperson of an independent Presidential advisory committee?
 - 102-3.115 What are the responsibilities and functions of an agency Committee Management Officer (CMO)?
 - 102-3.120 What are the responsibilities and functions of a Designated Federal Officer (DFO)?
 - 102-3.125 How should agencies consider the roles of advisory committee members and staff?
 - 102-3.130 What policies apply to the appointment, and compensation or reimbursement of advisory committee members, staff, and experts and consultants?
- Appendix A to Subpart C of Part 102-3—Key Points and Principles

Subpart D—Advisory Committee Meeting and Recordkeeping Procedures

- 102-3.135 What does this subpart cover and how does it apply?
 - 102-3.140 What policies apply to advisory committee meetings?
 - 102-3.145 What policies apply to subcommittee meetings?
 - 102-3.150 How are advisory committee meetings announced to the public?
 - 102-3.155 How are advisory committee meetings closed to the public?
 - 102-3.160 What activities of an advisory committee are not subject to the notice and open meeting requirements of the Act?
 - 102-3.165 How are advisory committee meetings documented?
 - 102-3.170 How does an interested party obtain access to advisory committee records?
 - 102-3.175 What are the reporting and recordkeeping requirements for an advisory committee?
- Appendix A to Subpart D of Part 102-3—Key Points and Principles

Subpart E—How Does This Subpart Apply to Advice or Recommendations Provided to Agencies by the National Academy of Sciences or the National Academy of Public Administration?

- 102-3.180 What does this subpart cover and how does it apply?
 - 102-3.185 What does this subpart require agencies to do?
- Appendix A to Subpart E of Part 102-3—Key Points and Principles

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); sec. 7, 5 U.S.C., App.; and E.O. 12024, 3 CFR, 1977 Comp., p. 158.

Subpart A—What Policies Apply to Advisory Committees Established Within the Executive Branch?

§ 102–3.5 What does this subpart cover and how does it apply?

This subpart provides the policy framework that must be used by agency heads in applying the Federal Advisory Committee Act (FACA), as amended (or “the Act”), 5 U.S.C., App., to advisory committees they establish and operate. In addition to listing key definitions underlying the interpretation of the Act, this subpart establishes the scope and applicability of the Act, and outlines specific exclusions from its coverage.

§ 102–3.10 What is the purpose of the Federal Advisory Committee Act?

FACA governs the establishment, operation, and termination of advisory committees within the executive branch of the Federal Government. The Act defines what constitutes a Federal advisory committee and provides general procedures for the executive branch to follow for the operation of these advisory committees. In addition, the Act is designed to assure that the Congress and the public are kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees.

§ 102–3.15 Who are the intended users of this part?

(a) The primary users of this Federal Advisory Committee Management part are:

- (1) Executive branch officials and others outside Government currently involved with an established advisory committee;
- (2) Executive branch officials who seek to establish or utilize an advisory committee;
- (3) Executive branch officials and others outside Government who have decided to pursue, or who are already engaged in, a form of public involvement or consultation and want to avoid inadvertently violating the Act; and
- (4) Field personnel of Federal agencies who are increasingly involved with the public as part of their efforts to increase collaboration and improve customer service.

(b) Other types of end-users of this part include individuals and organizations outside of the executive branch who seek to understand and interpret the Act, or are seeking additional guidance.

§ 102–3.20 How does this part meet the needs of its audience?

This Federal Advisory Committee Management part meets the general and

specific needs of its audience by addressing the following issues and related topics:

(a) *Scope and applicability.* This part provides guidance on the threshold issue of what constitutes an advisory committee and clarifies the limits of coverage by the Act for the benefit of the intended users of this part.

(b) *Policies and guidelines.* This part defines the policies, establishes minimum requirements, and provides guidance to Federal officers and agencies for the establishment, operation, administration, and duration of advisory committees subject to the Act. This includes reporting requirements that keep Congress and the public informed of the number, purpose, membership, activities, benefits, and costs of these advisory committees. These requirements form the basis for implementing the Act at both the agency and Governmentwide levels.

(c) *Examples and principles.* This part provides summary-level key points and principles at the end of each subpart that provide more clarification on the role of Federal advisory committees in the larger context of public involvement in Federal decisions and activities. This includes a discussion of the applicability of the Act to different decisionmaking scenarios.

§ 102–3.25 What definitions apply to this part?

The following definitions apply to this Federal Advisory Committee Management part:

Act means the Federal Advisory Committee Act, as amended, 5 U.S.C., App.

Administrator means the Administrator of General Services.

Advisory committee subject to the Act, except as specifically exempted by the Act or by other statutes, or as not covered by this part, means any committee, board, commission, council, conference, panel, task force, or other similar group, which is established by statute, or established or utilized by the President or by an agency official, for the purpose of obtaining advice or recommendations for the President or on issues or policies within the scope of an agency official's responsibilities.

Agency has the same meaning as in 5 U.S.C. 551(1).

Committee Management Officer (“CMO”), means the individual designated by the agency head to implement the provisions of section 8(b) of the Act and any delegated responsibilities of the agency head under the Act.

Committee Management Secretariat (“Secretariat”), means the organization established pursuant to section 7(a) of the Act, which is responsible for all matters relating to advisory committees, and carries out the responsibilities of the Administrator under the Act and Executive Order 12024 (3 CFR, 1977 Comp., p. 158).

Committee meeting means any gathering of advisory committee members (whether in person or through electronic means) held with the approval of an agency for the purpose of deliberating on the substantive matters upon which the advisory committee provides advice or recommendations.

Committee member means an individual who serves by appointment or invitation on an advisory committee or subcommittee.

Committee staff means any Federal employee, private individual, or other party (whether under contract or not) who is not a committee member, and who serves in a support capacity to an advisory committee or subcommittee.

Designated Federal Officer (“DFO”), means an individual designated by the agency head, for each advisory committee for which the agency head is responsible, to implement the provisions of sections 10(e) and (f) of the Act and any advisory committee procedures of the agency under the control and supervision of the CMO.

Discretionary advisory committee means any advisory committee that is established under the authority of an agency head or authorized by statute. An advisory committee referenced in general (non-specific) authorizing language or Congressional committee report language is discretionary, and its establishment or termination is within the legal discretion of an agency head.

Independent Presidential advisory committee means any Presidential advisory committee not assigned by the Congress in law, or by President or the President's delegate, to an agency for administrative and other support.

Non-discretionary advisory committee means any advisory committee either required by statute or by Presidential directive. A *non-discretionary advisory committee* required by statute generally is identified specifically in a statute by name, purpose, or functions, and its establishment or termination is beyond the legal discretion of an agency head.

Presidential advisory committee means any advisory committee authorized by the Congress or directed by the President to advise the President.

Subcommittee means a group, generally not subject to the Act, that reports to an advisory committee and not directly to a Federal officer or

agency, whether or not its members are drawn in whole or in part from the parent advisory committee.

Utilized for the purposes of the Act, does not have its ordinary meaning. A committee that is not established by the Federal Government is *utilized* within the meaning of the Act when the President or a Federal office or agency exercises actual management or control over its operation.

§ 102–3.30 What policies govern the use of advisory committees?

The policies to be followed by Federal departments and agencies in establishing and operating advisory committees consistent with the Act are as follows:

(a) *Determination of need in the public interest.* A discretionary advisory committee may be established only when it is essential to the conduct of agency business and when the information to be obtained is not already available through another advisory committee or source within the Federal Government. Reasons for deciding that an advisory committee is needed may include whether:

(1) Advisory committee deliberations will result in the creation or elimination of (or change in) regulations, policies, or guidelines affecting agency business;

(2) The advisory committee will make recommendations resulting in significant improvements in service or reductions in cost; or

(3) The advisory committee's recommendations will provide an important additional perspective or viewpoint affecting agency operations.

(b) *Termination.* An advisory committee must be terminated when:

(1) The stated objectives of the committee have been accomplished;

(2) The subject matter or work of the committee has become obsolete by the passing of time or the assumption of the committee's functions by another entity;

(3) The agency determines that the cost of operation is excessive in relation to the benefits accruing to the Federal Government;

(4) In the case of a discretionary advisory committee, upon the expiration of a period not to exceed two years, unless renewed;

(5) In the case of a non-discretionary advisory committee required by Presidential directive, upon the expiration of a period not to exceed two years, unless renewed by authority of the President; or

(6) In the case of a non-discretionary advisory committee required by statute, upon the expiration of the time explicitly specified in the statute, or implied by operation of the statute.

(c) *Balanced membership.* An advisory committee must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed.

(d) *Open meetings.* Advisory committee meetings must be open to the public except where a closed or partially-closed meeting has been determined proper and consistent with the exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), as the basis for closure.

(e) *Advisory functions only.* The function of advisory committees is advisory only, unless specifically provided by statute or Presidential directive.

§ 102–3.35 What policies govern the use of subcommittees?

(a) In general, the requirements of the Act and the policies of this Federal Advisory Committee Management part do not apply to subcommittees of advisory committees that report to a parent advisory committee and not directly to a Federal officer or agency. However, this section does not preclude an agency from applying any provision of the Act and this part to any subcommittee of an advisory committee in any particular instance.

(b) The creation and operation of subcommittees must be approved by the agency establishing the parent advisory committee.

§ 102–3.40 What types of committees or groups are not covered by the Act and this part?

The following are examples of committees or groups that are not covered by the Act or this Federal Advisory Committee Management part:

(a) *Committees created by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA).* Any committee created by NAS or NAPA in accordance with section 15 of the Act, except as otherwise covered by subpart E of this part;

(b) *Advisory committees of the Central Intelligence Agency and the Federal Reserve System.* Any advisory committee established or utilized by the Central Intelligence Agency or the Federal Reserve System;

(c) *Committees exempted by statute.* Any committee specifically exempted from the Act by law;

(d) *Committees not actually managed or controlled by the executive branch.* Any committee or group created by non-Federal entities (such as a contractor or private organization), provided that these committees or groups are not actually managed or controlled by the executive branch;

(e) *Groups assembled to provide individual advice.* Any group that meets with a Federal official(s), including a public meeting, where advice is sought from the attendees on an individual basis and not from the group as a whole;

(f) *Groups assembled to exchange facts or information.* Any group that meets with a Federal official(s) for the purpose of exchanging facts or information;

(g) *Intergovernmental committees.* Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government and elected officers of State, local and tribal governments (or their designated employees with authority to act on their behalf), acting in their official capacities. However, the purpose of such a committee must be solely to exchange views, information, or advice relating to the management or implementation of Federal programs established pursuant to statute, that explicitly or inherently share intergovernmental responsibilities or administration (see guidelines issued by the Office of Management and Budget (OMB) on section 204(b) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1534(b), OMB Memorandum M–95–20, dated September 21, 1995, available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW., Washington, DC 20405–0002);

(h) *Intragovernmental committees.* Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government;

(i) *Local civic groups.* Any local civic group whose primary function is that of rendering a public service with respect to a Federal program;

(j) *Groups established to advise State or local officials.* Any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies; and

(k) *Operational committees.* Any committee established to perform primarily operational as opposed to advisory functions. Operational functions are those specifically authorized by statute or Presidential directive, such as making or implementing Government decisions or policy. A committee designated operational may be covered by the Act if it becomes primarily advisory in nature. It is the responsibility of the administering agency to determine whether a committee is primarily operational. If so, it does not fall under

the requirements of the Act and this part.

Appendix A to Subpart A of Part 102–3—Key Points and Principles

This appendix provides additional guidance in the form of answers to frequently

asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART A

Key points and principles	Section(s)	Question(s)	Guidance
I. FACA applies to advisory committees that are either “established” or “utilized” by an agency.	102–3.25, 102–3.40(d), 102–3.40(f)	<ol style="list-style-type: none"> 1. A local citizens group wants to meet with a Federal official(s) to help improve the condition of a forest’s trails and quality of concessions. May the Government meet with the group without chartering the group under the Act? 2. May an agency official attend meetings of external groups where advice may be offered to the Government during the course of discussions? 3. May an agency official participate in meetings of groups or organizations as a member without chartering the group under the Act? 4. Is the Act applicable to meetings between agency officials and their contractors, licensees, or other “private sector program partners?” 	<p>A. The answer to questions 1, 2, and 3 is yes, if the agency does not either “establish” or “utilize” (exercise “actual management or control” over) the group. (i) Although there is no precise legal definition of “actual management or control,” the following factors may be used by an agency to determine whether or not a group is “utilized” within the meaning of the Act: (a) Does the agency manage or control the group’s membership or otherwise determine its composition? (b) Does the agency manage or control the group’s agenda? (c) Does the agency fund the group’s activities? (ii) Answering “yes” to any or all of questions 1, 2, or 3 does not automatically mean the group is “utilized” within the meaning of the Act. However, an agency may need to reconsider the status of the group under the Act if the relationship in question essentially is indistinguishable from an advisory committee established by the agency.</p> <p>B. The answer to question 4 is no. Agencies often meet with contractors and licensees, individually and as a group, to discuss specific matters involving a contract’s solicitation, issuance, and implementation, or an agency’s efforts to ensure compliance with its regulations. Such interactions are not subject to the Act because these groups are not “established” or “utilized” for the purpose of obtaining advice or recommendations.</p>
II. The development of consensus among all or some of the attendees at a public meeting or similar forum does not automatically invoke FACA.	102–3.25, 102–3.40(d), 102–3.40(f)	<ol style="list-style-type: none"> 1. If, during a public meeting of the “town hall” type called by an agency, it appears that the audience is achieving consensus, or a common point of view, is this an indication that the meeting is subject to the Act and must be stopped? 	<p>A. No, the public meeting need not be stopped. (i) A group must either be “established” or “utilized” by the executive branch in order for the Act to apply. (ii) Public meetings represent a chance for individuals to voice their opinions and/or share information. In that sense, agencies do not either “establish” the assemblage of individuals as an advisory committee or “utilize” the attendees as an advisory committee because there are no elements of either “management” or “control” present or intended.</p>

APPENDIX A TO SUBPART A—Continued

Key points and principles	Section(s)	Question(s)	Guidance
III. Meetings between a Federal official(s) and a collection of individuals where advice is sought from the attendees on an individual basis are not subject to the Act.	102–3.40(e)	1. May an agency official meet with a number of persons collectively to obtain their individual views without violating the Act? 2. Does the concept of an “individual” apply only to “natural persons?”	A. The answer to questions 1 and 2 is yes. The Act applies only where a group is established or utilized to provide advice or recommendations “as a group.” (i) A mere assemblage or collection of individuals where the attendees are providing individual advice is not acting “as a group” under the Act. (ii) In this respect, “individual” is not limited to “natural persons.” Where the group consists of representatives of various existing organizations, each representative individually may provide advice on behalf of that person’s organization without violating the Act, if those organizations themselves are not “managed or controlled” by the agency.
IV. Meetings between Federal, State, local, and tribal elected officials are not subject to the Act.	102–3.40(g)	1. Is the exclusion from the Act covering elected officials of State, local, and tribal governments acting in their official capacities also applicable to associations of State officials?	A. Yes. The scope of activities covered by the exclusion from the Act for intergovernmental activities should be construed broadly to facilitate Federal/State/local/tribal discussions on shared intergovernmental program responsibilities or administration. Pursuant to a Presidential delegation, the Office of Management and Budget (OMB) issued guidelines for this exemption, authorized by section 204(b) of the Unfunded Mandates Reform Act of 1995, 2U.S.C. 1534(b). (See OMB Memorandum M–95–20, dated September 21, 1995, published at 60 FR 50651 (September 29, 1995), and which is available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW, Washington, DC 20405–0002).
V. Advisory committees established under the Act may perform advisory functions only, unless authorized to perform “operational” duties by the Congress or by Presidential directive.	102–3.30(e), 102–3.40(k)	1. Are “operational committees” subject to the Act, even if they may engage in some advisory activities?	A. No, so long as the operational functions performed by the committee constitute the “primary” mission of the committee. Only committees established or utilized by the executive branch in the interest of obtaining advice or recommendations are subject to the Act. However, without specific authorization by the Congress or direction by the President, Federal functions (decisionmaking or operations) cannot be delegated to, or assumed by, non-Federal individuals or entities.

APPENDIX A TO SUBPART A—Continued

Key points and principles	Section(s)	Question(s)	Guidance
VI. Committees authorized by the Congress in law or by Presidential directive to perform primarily “operational” functions are not subject to the Act.	102–3.40(k)	<ol style="list-style-type: none"> 1. What characteristics are common to “operational committees?” 2. A committee created by the Congress by statute is responsible, for example, for developing plans and events to commemorate the contributions of wildlife to the enjoyment of the Nation’s parks. Part of the committee’s role includes providing advice to certain Federal agencies as may be necessary to coordinate these events. Is this committee subject to FACA? 	<p>A. In answer to question 1, non-advisory, or “operational” committees generally have the following characteristics: (i) Specific functions and/or authorities provided by the Congress in law or by Presidential directive; (ii) The ability to make and implement traditionally Governmental decisions; and (iii) The authority to perform specific tasks to implement a Federal program.</p> <p>B. Agencies are responsible for determining whether or not a committee primarily provides advice or recommendations and is, therefore, subject to the Act, or is primarily “operational” and not covered by FACA.</p> <p>C. The answer to question 2 is no. The committee is not subject to the Act because: (i) Its functions are to plan and implement specific tasks; (ii) The committee has been granted the express authority by the Congress to perform its statutorily required functions; and (iii) Its incidental role of providing advice to other Federal agencies is secondary to its primarily operational role of planning and implementing specific tasks and performing statutory functions.</p>

Subpart B—How Are Advisory Committees Established, Renewed, Reestablished, and Terminated?

§ 102–3.45 What does this subpart cover and how does it apply?

Requirements for establishing and terminating advisory committees vary depending on the establishing entity and the source of authority for the advisory committee. This subpart covers the procedures associated with the establishment, renewal, reestablishment, and termination of advisory committees. These procedures include consulting with the Secretariat, preparing and filing an advisory committee charter, publishing notice in the **Federal Register**, and amending an advisory committee charter.

§ 102–3.50 What are the authorities for establishing advisory committees?

FACA identifies four sources of authority for establishing an advisory committee:

(a) *Required by statute.* By law where the Congress establishes an advisory committee, or specifically directs the President or an agency to establish it (*non-discretionary*);

(b) *Presidential authority.* By Executive order of the President or other Presidential directive (*non-discretionary*);

(c) *Authorized by statute.* By law where the Congress authorizes, but does

not direct the President or an agency to establish it (*discretionary*); or

(d) *Agency authority.* By an agency under general authority in title 5 of the United States Code or under other general agency authorizing statutes (*discretionary*).

§ 102–3.55 What rules apply to the duration of an advisory committee?

(a) An advisory committee automatically terminates two years after its date of establishment unless:

(1) The statutory authority used to establish the advisory committee provides a different duration;

(2) The President or agency head determines that the advisory committee has fulfilled the purpose for which it was established and terminates the advisory committee earlier;

(3) The President or agency head determines that the advisory committee is no longer carrying out the purpose for which it was established and terminates the advisory committee earlier; or

(4) The President or agency head renews the committee not later than two years after its date of establishment in accordance with § 102–3.60. If an advisory committee needed by the President or an agency terminates because it was not renewed in a timely manner, or if the advisory committee has been terminated under the provisions of § 102–3.30(b), it can be

reestablished in accordance with § 102–3.60.

(b) When an advisory committee terminates, the agency shall notify the Secretariat of the effective date of the termination.

§ 102–3.60 What procedures are required to establish, renew, or reestablish a discretionary advisory committee?

(a) *Consult with the Secretariat.* Before establishing, renewing, or reestablishing a discretionary advisory committee and filing the charter as addressed later in § 102–3.70, the agency head must consult with the Secretariat. As part of this consultation, agency heads are encouraged to engage in constructive dialogue with the Secretariat. With a full understanding of the background and purpose behind the proposed advisory committee, the Secretariat may share its knowledge and experience with the agency on how best to make use of the proposed advisory committee, suggest alternate methods of attaining its purpose that the agency may wish to consider, or inform the agency of a pre-existing advisory committee performing similar functions.

(b) *Include required information in the consultation.* Consultations covering the establishment, renewal, and reestablishment of advisory committees must, as a minimum, contain the following information:

(1) *Explanation of need.* An explanation stating why the advisory committee is essential to the conduct of agency business and in the public interest;

(2) *Lack of duplication of resources.* An explanation stating why the advisory committee's functions cannot be performed by the agency, another existing committee, or other means such as a public hearing; and

(3) *Fairly balanced membership.* A description of the agency's plan to attain fairly balanced membership. The plan will ensure that, in the selection of members for the advisory committee, the agency will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the advisory committee. Advisory committees requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed.

§ 102-3.65 What are the public notification requirements for discretionary advisory committees?

A notice to the public in the **Federal Register** is required when a discretionary advisory committee is established, renewed, or reestablished.

(a) *Procedure.* Upon receiving notice from the Secretariat that its review is complete in accordance with § 102-3.60(a), the agency must publish a notice in the **Federal Register** announcing that the advisory committee is being established, renewed, or reestablished. For the establishment of a new advisory committee, the notice also must describe the nature and purpose of the advisory committee and affirm that the advisory committee is necessary and in the public interest.

(b) *Time required for notices.* Notices of establishment and reestablishment of advisory committees must appear at least 15 calendar days before the charter is filed, except that the Secretariat may approve less than 15 calendar days when requested by the agency for good cause. This requirement for advance notice does not apply to advisory committee renewals, notices of which may be published concurrently with the filing of the charter.

§ 102-3.70 What are the charter filing requirements?

No advisory committee may meet or take any action until a charter has been filed by the Committee Management Officer (CMO) designated in accordance with section 8(b) of the Act, or by another agency official designated by the agency head.

(a) *Requirement for discretionary advisory committees.* To establish, renew, or reestablish a discretionary advisory committee, a charter must be filed with:

(1) The agency head;

(2) The standing committees of the Senate and the House of Representatives having legislative jurisdiction of the agency, the date of filing with which constitutes the official date of establishment for the advisory committee;

(3) The Library of Congress, Anglo-American Acquisitions Division, Government Documents Section, Federal Advisory Committee Desk, 101 Independence Avenue, SE., Washington, DC 20540-4172; and

(4) The Secretariat, indicating the date the charter was filed in accordance with paragraph (a)(2) of this section.

(b) *Requirement for non-discretionary advisory committees.* Charter filing requirements for non-discretionary advisory committees are the same as those in paragraph (a) of this section, except the date of establishment for a Presidential advisory committee is the date the charter is filed with the Secretariat.

(c) *Requirement for subcommittees that report directly to the Government.* Subcommittees that report directly to a Federal officer or agency must comply with this subpart and include in a charter the information required by § 102-3.75.

§ 102-3.75 What information must be included in the charter of an advisory committee?

(a) *Purpose and contents of an advisory committee charter.* An advisory committee charter is intended to provide a description of an advisory committee's mission, goals, and objectives. It also provides a basis for evaluating an advisory committee's progress and effectiveness. The charter must contain the following information:

(1) The advisory committee's official designation;

(2) The objectives and the scope of the advisory committee's activity;

(3) The period of time necessary to carry out the advisory committee's purpose(s);

(4) The agency or Federal officer to whom the advisory committee reports;

(5) The agency responsible for providing the necessary support to the advisory committee;

(6) A description of the duties for which the advisory committee is responsible and specification of the authority for any non-advisory functions;

(7) The estimated annual costs to operate the advisory committee in dollars and person years;

(8) The estimated number and frequency of the advisory committee's meetings;

(9) The planned termination date, if less than two years from the date of establishment of the advisory committee;

(10) The name of the President's delegate, agency, or organization responsible for fulfilling the reporting requirements of section 6(b) of the Act, if appropriate; and

(11) The date the charter is filed in accordance with § 102-3.70.

(b) The provisions of paragraphs (a)(1) through (11) of this section apply to all subcommittees that report directly to a Federal officer or agency.

§ 102-3.80 How are minor charter amendments accomplished?

(a) *Responsibility and limitation.* The agency head is responsible for amending the charter of an advisory committee. Amendments may be either minor or major. The procedures for making changes and filing amended charters will depend upon the authority basis for the advisory committee. Amending any existing advisory committee charter does not constitute renewal of the advisory committee under § 102-3.60.

(b) *Procedures for minor amendments.* To make a minor amendment to an advisory committee charter, such as changing the name of the advisory committee or modifying the estimated number or frequency of meetings, the following procedures must be followed:

(1) *Non-discretionary advisory committees.* The agency head must ensure that any minor technical changes made to current charters are consistent with the relevant authority. When the Congress by law, or the President by Executive order, changes the authorizing language that has been the basis for establishing an advisory committee, the agency head or the chairperson of an independent Presidential advisory committee must amend those sections of the current charter affected by the new statute or Executive order, and file the amended charter as specified in § 102-3.70.

(2) *Discretionary advisory committees.* The charter of a discretionary advisory committee may be amended when an agency head determines that technical provisions of a filed charter are inaccurate, or specific provisions have changed or become obsolete with the passing of time, and that these amendments will not alter the advisory committee's objectives and scope

substantially. The agency must amend the charter language as necessary and file the amended charter as specified in § 102–3.70.

§ 102–3.85 How are major charter amendments accomplished?

Procedures for making major amendments to advisory committee charters, such as substantial changes in

objectives and scope, duties, and estimated costs, are the same as in § 102–3.80, except that for discretionary advisory committees an agency must:

(a) Consult with the Secretariat on the amended language, and explain the purpose of the changes and why they are necessary; and

(b) File the amended charter as specified in § 102–3.70.

Appendix A to Subpart B of Part 102–3—Key Points and Principles

This appendix provides additional guidance in the form of answers to frequently asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART B

Key points and principles	Section(s)	Question(s)	Guidance
I. Agency heads must consult with the Secretariat prior to establishing a discretionary advisory committee.	102–3.60, 102–3.115	1. Can an agency head delegate to the Committee Management Officer (CMO) responsibility for consulting with the Secretariat regarding the establishment, renewal, or reestablishment of discretionary advisory committees?	A. Yes. Many administrative functions performed to implement the Act may be delegated. However, those functions related to approving the final establishment, renewal, or reestablishment of discretionary advisory committees are reserved for the agency head. Each agency CMO should assure that their internal processes for managing advisory committees include appropriate certifications by the agency head.
II. Agency heads are responsible for complying with the Act, including determining which discretionary advisory committees should be established and renewed.	102–3.60(a), 102–3.105	1. Who retains final authority for establishing or renewing a discretionary advisory committee?	A. Although agency heads retain final authority for establishing or renewing discretionary advisory committees, these decisions should be consistent with § 102–3.105(e) and reflect consultation with the Secretariat under § 102–3.60(a).
III. An advisory committee must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed.	102–3.30(c), 102–3.60(b)(3) ..	1. What factors should be considered in achieving a “balanced” advisory committee membership?	A. The composition of an advisory committee’s membership will depend upon several factors, including: (i) The advisory committee’s mission; (ii) The geographic, ethnic, social, economic, or scientific impact of the advisory committee’s recommendations; (iii) The types of specific perspectives required, for example, such as those of consumers, technical experts, the public at-large, academia, business, or other sectors; (iv) The need to obtain divergent points of view on the issues before the advisory committee; and (v) The relevance of State, local, or tribal governments to the development of the advisory committee’s recommendations.
IV. Charters for advisory committees required by statute must be filed every two years regardless of the duration provided in the statute.	102–3.70(b)	1. If an advisory committee’s duration exceeds two years, must a charter be filed with the Congress and GSA every two years?	A. Yes. Section 14(b)(2) of the Act provides that: Any advisory committee established by an Act of Congress shall file a charter upon the expiration of each successive two-year period following the date of enactment of the Act establishing such advisory committee.

Subpart C—How Are Advisory Committees Managed?

§ 102–3.90 What does this subpart cover and how does it apply?

This subpart outlines specific responsibilities and functions to be carried out by the General Services Administration (GSA), the agency head, the Committee Management Officer (CMO), and the Designated Federal Officer (DFO) under the Act.

§ 102–3.95 What principles apply to the management of advisory committees?

Agencies are encouraged to apply the following principles to the management of their advisory committees:

(a) *Provide adequate support.* Before establishing an advisory committee, agencies should identify requirements and assure that adequate resources are available to support anticipated activities. Considerations related to support include office space, necessary supplies and equipment, Federal staff

support, and access to key decisionmakers.

(b) *Focus on mission.* Advisory committee members and staff should be fully aware of the advisory committee’s mission, limitations, if any, on its duties, and the agency’s goals and objectives. In general, the more specific an advisory committee’s tasks and the more focused its activities are, the higher the likelihood will be that the advisory committee will fulfill its mission.

(c) *Follow plans and procedures.* Advisory committee members and their agency sponsors should work together to assure that a plan and necessary procedures covering implementation are in place to support an advisory committee's mission. In particular, agencies should be clear regarding what functions an advisory committee can perform legally and those that it cannot perform.

(d) *Practice openness.* In addition to achieving the minimum standards of public access established by the Act and this part, agencies should seek to be as inclusive as possible. For example, agencies may wish to explore the use of the Internet to post advisory committee information and seek broader input from the public.

(e) *Seek feedback.* Agencies continually should seek feedback from advisory committee members and the public regarding the effectiveness of the advisory committee's activities. At regular intervals, agencies should communicate to the members how their advice has affected agency programs and decisionmaking.

§ 102-3.100 What are the responsibilities and functions of GSA?

(a) Under section 7 of the Act, the General Services Administration (GSA) prepares regulations on Federal advisory committees to be prescribed by the Administrator of General Services, issues other administrative guidelines and management controls for advisory committees, and assists other agencies in implementing and interpreting the Act. Responsibility for these activities has been delegated by the Administrator to the GSA Committee Management Secretariat.

(b) The Secretariat carries out its responsibilities by:

- (1) Conducting an annual comprehensive review of Governmentwide advisory committee accomplishments, costs, benefits, and other indicators to measure performance;
- (2) Developing and distributing Governmentwide training regarding the Act and related statutes and principles;
- (3) Supporting the Interagency Committee on Federal Advisory Committee Management in its efforts to improve compliance with the Act;
- (4) Designing and maintaining a Governmentwide shared Internet-based system to facilitate collection and use of information required by the Act;
- (5) Identifying performance measures that may be used to evaluate advisory committee accomplishments; and
- (6) Providing recommendations for transmittal by the Administrator to the

Congress and the President regarding proposals to improve accomplishment of the objectives of the Act.

§ 102-3.105 What are the responsibilities of an agency head?

The head of each agency that establishes or utilizes one or more advisory committees must:

- (a) Comply with the Act and this Federal Advisory Committee Management part;
- (b) Issue administrative guidelines and management controls that apply to all of the agency's advisory committees subject to the Act;
- (c) Designate a Committee Management Officer (CMO);
- (d) Provide a written determination stating the reasons for closing any advisory committee meeting to the public, in whole or in part, in accordance with the exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), as the basis for closure;
- (e) Review, at least annually, the need to continue each existing advisory committee, consistent with the public interest and the purpose or functions of each advisory committee;
- (f) Determine that rates of compensation for members (if they are paid for their services) and staff of, and experts and consultants to advisory committees are justified and that levels of agency support are adequate;
- (g) Develop procedures to assure that the advice or recommendations of advisory committees will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment;
- (h) Assure that the interests and affiliations of advisory committee members are reviewed for conformance with applicable conflict of interest statutes, regulations issued by the U.S. Office of Government Ethics (OGE) including any supplemental agency requirements, and other Federal ethics rules;
- (i) Designate a Designated Federal Officer (DFO) for each advisory committee and its subcommittees; and
- (j) Provide the opportunity for reasonable participation by the public in advisory committee activities, subject to § 102-3.140 and the agency's guidelines.

§ 102-3.110 What are the responsibilities of a chairperson of an independent Presidential advisory committee?

The chairperson of an independent Presidential advisory committee must:

- (a) Comply with the Act and this Federal Advisory Committee Management part;

(b) Consult with the Secretariat concerning the designation of a Committee Management Officer (CMO) and Designated Federal Officer (DFO); and

(c) Consult with the Secretariat in advance regarding any proposal to close any meeting in whole or in part.

§ 102-3.115 What are the responsibilities and functions of an agency Committee Management Officer (CMO)?

In addition to implementing the provisions of section 8(b) of the Act, the CMO will carry out all responsibilities delegated by the agency head. The CMO also should ensure that sections 10(b), 12(a), and 13 of the Act are implemented by the agency to provide for appropriate recordkeeping. Records to be kept by the CMO include, but are not limited to:

(a) *Charter and membership documentation.* A set of filed charters for each advisory committee and membership lists for each advisory committee and subcommittee;

(b) *Annual comprehensive review.* Copies of the information provided as the agency's portion of the annual comprehensive review of Federal advisory committees, prepared according to § 102-3.175(b);

(c) *Agency guidelines.* Agency guidelines maintained and updated on committee management operations and procedures; and

(d) *Closed meeting determinations.* Agency determinations to close or partially close advisory committee meetings required by § 102-3.105.

§ 102-3.120 What are the responsibilities and functions of a Designated Federal Officer (DFO)?

The agency head or, in the case of an independent Presidential advisory committee, the Secretariat, must designate a Federal officer or employee who must be either full-time or permanent part-time, to be the DFO for each advisory committee and its subcommittees, who must:

- (a) Approve or call the meeting of the advisory committee or subcommittee;
- (b) Approve the agenda, except that this requirement does not apply to a Presidential advisory committee;
- (c) Attend the meetings;
- (d) Adjourn any meeting when he or she determines it to be in the public interest; and
- (e) Chair the meeting when so directed by the agency head.

§ 102-3.125 How should agencies consider the roles of advisory committee members and staff?

FACA does not assign any specific responsibilities to members of advisory

committees and staff, although both perform critical roles in achieving the goals and objectives assigned to advisory committees. Agency heads, Committee Management Officers (CMOs), and Designated Federal Officers (DFOs) should consider the distinctions between these roles and how they relate to each other in the development of agency guidelines implementing the Act and this Federal Advisory Committee Management part. In general, these guidelines should reflect:

(a) *Clear operating procedures.* Clear operating procedures should provide for the conduct of advisory committee meetings and other activities, and specify the relationship among the advisory committee members, the DFO, and advisory committee or agency staff;

(b) *Agency operating policies.* In addition to compliance with the Act, advisory committee members and staff may be required to adhere to additional agency operating policies; and

(c) *Other applicable statutes.* Other agency-specific statutes and regulations may affect the agency's advisory committees directly or indirectly. Agencies should ensure that advisory committee members and staff understand these requirements.

§ 102-3.130 What policies apply to the appointment, and compensation or reimbursement of advisory committee members, staff, and experts and consultants?

In developing guidelines to implement the Act and this Federal Advisory Committee Management part at the agency level, agency heads must address the following issues concerning advisory committee member and staff appointments, and considerations with respect to uniform fair rates of compensation for comparable services, or expense reimbursement of members, staff, and experts and consultants:

(a) *Appointment and terms of advisory committee members.* Unless otherwise provided by statute, Presidential directive, or other establishment authority, advisory committee members serve at the pleasure of the appointing or inviting authority. Membership terms are at the sole discretion of the appointing or inviting authority.

(b) *Compensation guidelines.* Each agency head must establish uniform compensation guidelines for members and staff of, and experts and consultants to an advisory committee.

(c) *Compensation of advisory committee members not required.* Nothing in this subpart requires an agency head to provide compensation to

any member of an advisory committee, unless otherwise required by a specific statute.

(d) *Compensation of advisory committee members.* When an agency has authority to set pay administratively for advisory committee members, it may establish appropriate rates of pay (including any applicable locality pay authorized by the President's Pay Agent under 5 U.S.C. 5304(h)), not to exceed the rate for level IV of the Executive Schedule under 5 U.S.C. 5315, unless a higher rate expressly is allowed by another statute. However, the agency head personally must authorize a rate of basic pay in excess of the maximum rate of basic pay established for the General Schedule under 5 U.S.C. 5332, or alternative similar agency compensation system. This maximum rate includes any applicable locality payment under 5 U.S.C. 5304. The agency may pay advisory committee members on either an hourly or a daily rate basis. The agency may not provide additional compensation in any form, such as bonuses or premium pay.

(e) *Compensation of staff.* When an agency has authority to set pay administratively for advisory committee staff, it may establish appropriate rates of pay (including any applicable locality pay authorized by the President's Pay Agent under 5 U.S.C. 5304(h)), not to exceed the rate for level IV of the Executive Schedule under 5 U.S.C. 5315, unless a higher rate expressly is allowed by another statute. However, the agency head personally must authorize a rate of basic pay in excess of the maximum rate of basic pay established for the General Schedule under 5 U.S.C. 5332, or alternative similar agency compensation system. This maximum rate includes any applicable locality payment under 5 U.S.C. 5304. The agency must pay advisory committee staff on an hourly rate basis. The agency may provide additional compensation, such as bonuses or premium pay, so long as aggregate compensation paid in a calendar year does not exceed the rate for level IV of the Executive Schedule, with appropriate proration for a partial calendar year.

(f) *Other compensation considerations.* In establishing rates of pay for advisory committee members and staff, the agency must comply with any applicable statutes, Executive orders, regulations, or administrative guidelines. In determining an appropriate rate of basic pay for advisory committee members and staff, an agency must give consideration to the significance, scope, and technical complexity of the matters with which

the advisory committee is concerned, and the qualifications required for the work involved. The agency also should take into account the rates of pay applicable to Federal employees who have duties that are similar in terms of difficulty and responsibility. An agency may establish rates of pay for advisory committee staff based on the pay these persons would receive if they were covered by the General Schedule in 5 U.S.C. Chapter 51 and Chapter 53, subchapter III, or by an alternative similar agency compensation system.

(g) *Compensation of experts and consultants.* Whether or not an agency has other authority to appoint and compensate advisory committee members or staff, it also may employ experts and consultants under 5 U.S.C. 3109 to perform work for an advisory committee. Compensation of experts and consultants may not exceed the maximum rate of basic pay established for the General Schedule under 5 U.S.C. 5332 (that is, the GS-15, step 10 rate, excluding locality pay or any other supplement), unless a higher rate expressly is allowed by another statute. The appointment and compensation of experts and consultants by an agency must be in conformance with applicable regulations issued by the U. S. Office of Personnel Management (OPM) (See 5 CFR part 304.).

(h) *Federal employees assigned to an advisory committee.* Any advisory committee member or staff person who is a Federal employee when assigned duties to an advisory committee remains covered during the assignment by the compensation system that currently applies to that employee, unless that person's current Federal appointment is terminated. Any staff person who is a Federal employee must serve with the knowledge of the Designated Federal Officer (DFO) for the advisory committee to which that person is assigned duties, and the approval of the employee's direct supervisor.

(i) *Other appointment considerations.* An individual who is appointed as an advisory committee member or staff person immediately following termination of another Federal appointment with a full-time work schedule may receive compensation at the rate applicable to the former appointment, if otherwise allowed by applicable law (without regard to the limitations on pay established in paragraphs (d) and (e) of this section). Any advisory committee staff person who is not a current Federal employee serving under an assignment must be appointed in accordance with applicable agency procedures, and in consultation with the DFO and the

members of the advisory committee involved.

(j) *Gratuitous services.* In the absence of any special limitations applicable to a specific agency, nothing in this subpart prevents an agency from accepting the gratuitous services of an advisory committee member or staff person who is not a Federal employee, or expert or consultant, who agrees in advance and in writing to serve without compensation.

(k) *Travel expenses.* Advisory committee members and staff, while engaged in the performance of their

duties away from their homes or regular places of business, may be allowed reimbursement for travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703, for persons employed intermittently in the Government service.

(l) Services for advisory committee members with disabilities. While performing advisory committee duties, an advisory committee member with disabilities may be provided services by a personal assistant for employees with disabilities, if the member qualifies as

an individual with disabilities as provided in section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791, and does not otherwise qualify for assistance under 5 U.S.C. 3102 by reason of being a Federal employee.

Appendix A to Subpart C of Part 102-3—Key Points and Principles

This appendix provides additional guidance in the form of answers to frequently asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART C

Key points and principles	Section	Question(s)	Guidance
I. FACA does not specify the manner in which advisory committee members and staff must be appointed.	102-3.105, 102-3.130(a)	1. Does the appointment of an advisory committee member necessarily result in a lengthy process?	<p>A. No. Each agency head may specify those policies and procedures, consistent with the Act and this part, or other specific authorizing statute, governing the appointment of advisory committee members and staff.</p> <p>B. Some factors that affect how long the appointment process takes include: (i) Solicitation of nominations; (ii) Conflict of interest clearances; (iii) Security or background evaluations; (iv) Availability of candidates; and (v) Other statutory or administrative requirements.</p> <p>C. In addition, the extent to which agency heads have delegated responsibility for selecting members varies from agency to agency and may become an important factor in the time it takes to finalize the advisory committee's membership.</p>
II. Agency heads retain the final authority for selecting advisory committee members, unless otherwise provided for by a specific statute or Presidential directive.	102-3.130(a)	<p>1. Can an agency head select for membership on an advisory committee from among nominations submitted by an organization?</p> <p>2. If so, can different persons represent the organization at different meetings?</p>	<p>A. The answer to question 1 is yes. Organizations may propose for membership individuals to represent them on an advisory committee. However, the agency head establishing the advisory committee, or other appointing authority, retains the final authority for selecting all members.</p> <p>B. The answer to question 2 also is yes. Alternates may represent an appointed member with the approval of the establishing agency, where the agency head is the appointing authority.</p>
III. An agency may compensate advisory committee members and staff, and also employ experts and consultants.	102-3.130(d), 102-3.130(g), 102-3.130(e),	<p>1. May members and staff be compensated for their service or duties on an advisory committee?</p> <p>2. Are the guidelines the same for compensating both members and staff?</p> <p>3. May experts and consultants be employed to perform other advisory committee work?</p>	<p>A. The answer to question 1 is yes. (i) However, FACA limits compensation for advisory committee members and staff to the rate for level IV of the Executive Schedule, unless higher rates expressly are allowed by other statutes. (ii) Although FACA provides for compensation guidelines, the Act does not require an agency to compensate its advisory committee members.</p>

APPENDIX A TO SUBPART C—Continued

Key points and principles	Section	Question(s)	Guidance
			<p>B. The answer to question 2 is no. The guidelines for compensating members and staff are similar, but not identical. For example, the differences are that: (i) An agency “may” pay members on either an hourly or a daily rate basis, and “may not” provide additional compensation in any form, such as bonuses or premium pay; while (ii) An agency “must” pay staff on an hourly rate basis only, and “may” provide additional compensation, so long as aggregate compensation paid in a calendar year does not exceed the rate for level IV of the Executive Schedule, with appropriate proration for a partial calendar year.</p> <p>C. The answer to question 3 is yes. Other work not part of the duties of advisory committee members or staff may be performed by experts and consultants. For additional guidance on the employment of experts and consultants, agencies should consult the applicable regulations issued by the U. S. Office of Personnel Management (OPM). (See 5 CFR part 304.)</p>
IV. Agency heads are responsible for ensuring that the interests and affiliations of advisory committee members are reviewed for conformance with applicable conflict of interest statutes and other Federal ethics rules..	102–3.105(h)	<p>1. Are all advisory committee members subject to conflict of interest statutes and other Federal ethics rules?</p> <p>2. Who should be consulted for guidance on the proper application of Federal ethics rules to advisory committee members?</p>	<p>A. The answer to question 1 is no. Whether an advisory committee member is subject to Federal ethics rules is dependent on the member’s status. The determination of a member’s status on an advisory committee is largely a personnel classification matter for the appointing agency. Most advisory committee members will serve either as a “representative” or a “special Government employee” (SGE), based on the role the member will play. In general, SGEs are covered by regulations issued by the U. S. Office of Government Ethics (OGE) and certain conflict of interest statutes, while representatives are not subject to these ethics requirements.</p> <p>B. The answer to question 2 is the agency’s Designated Agency Ethics Official (DAEO), who should be consulted prior to appointing members to an advisory committee in order to apply Federal ethics rules properly.</p>
V. An agency head may delegate responsibility for appointing a Committee Management Officer (CMO) or Designated Federal Officer (DFO); however, there may be only one CMO for each agency..	102–3.105(c), 102–3.105(i)	1. Must an agency’s CMO and each advisory committee DFO be appointed by the agency head?	A. The answer to question 1 is no. The agency head may delegate responsibility for appointing the CMO and DFOs. However, these appointments, including alternate selections, should be documented consistent with the agency’s policies and procedures.

APPENDIX A TO SUBPART C—Continued

Key points and principles	Section	Question(s)	Guidance
VI. FACA is the principal statute pertaining to advisory committees. However, other statutes may impact their use and operations..	102–3.125(c)	<p>2. May an agency have more than one CMO?</p> <p>1. Do other statutes or regulations affect the way an agency carries out its advisory committee management program?</p>	<p>B. The answer to question 2 also is no. The functions of the CMO are specified in the Act and include oversight responsibility for all advisory committees within the agency. Accordingly, only one CMO may be appointed to perform these functions. The agency may, however, create additional positions, including those in its sub-components, which are subordinate to the CMO's agencywide responsibilities and functions.</p> <p>A. Yes. While the Act provides a general framework for managing advisory committees Governmentwide, other factors may affect how advisory committees are managed. These include: (i) The statutory or Presidential authority used to establish an advisory committee; (ii) A statutory limitation placed on an agency regarding its annual expenditures for advisory committees; (iii) Presidential or agency management directives; (iv) The applicability of conflict of interest statutes and other Federal ethics rules; (v) Agency regulations affecting advisory committees; and (vi) Other requirements imposed by statute or regulation on an agency or its programs, such as those governing the employment of experts and consultants or the management of Federal records.</p>

Subpart D—Advisory Committee Meeting and Recordkeeping Procedures

§ 102–3.135 What does this subpart cover and how does it apply?

This subpart establishes policies and procedures relating to meetings and other activities undertaken by advisory committees and their subcommittees. This subpart also outlines what records must be kept by Federal agencies and what other documentation, including advisory committee minutes and reports, must be prepared and made available to the public.

§ 102–3.140 What policies apply to advisory committee meetings?

The agency head, or the chairperson of an independent Presidential advisory committee, must ensure that:

(a) Each advisory committee meeting is held at a reasonable time and in a manner or place reasonably accessible to the public, to include facilities that are readily accessible to and usable by persons with disabilities, consistent with the goals of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794;

(b) The meeting room or other forum selected is sufficient to accommodate advisory committee members, advisory committee or agency staff, and a

reasonable number of interested members of the public;

(c) Any member of the public is permitted to file a written statement with the advisory committee;

(d) Any member of the public may speak to or otherwise address the advisory committee if the agency's guidelines so permit; and

(e) Any advisory committee meeting conducted in whole or part by a teleconference, videoconference, the Internet, or other electronic medium meets the requirements of this subpart.

§ 102–3.145 What policies apply to subcommittee meetings?

If a subcommittee makes recommendations directly to a Federal officer or agency, or if its recommendations will be adopted by the parent advisory committee without further deliberations by the parent advisory committee, then the subcommittee's meetings must be conducted in accordance with all openness requirements of this subpart.

§ 102–3.150 How are advisory committee meetings announced to the public?

(a) A notice in the **Federal Register** must be published at least 15 calendar days prior to an advisory committee meeting, which includes:

(1) The name of the advisory committee (or subcommittee, if applicable);

(2) The time, date, place, and purpose of the meeting;

(3) A summary of the agenda, and/or topics to be discussed;

(4) A statement whether all or part of the meeting is open to the public or closed; if the meeting is closed state the reasons why, citing the specific exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), as the basis for closure; and

(5) The name and telephone number of the Designated Federal Officer (DFO) or other responsible agency official who may be contacted for additional information concerning the meeting.

(b) In exceptional circumstances, the agency or an independent Presidential advisory committee may give less than 15 calendar days notice, provided that the reasons for doing so are included in the advisory committee meeting notice published in the **Federal Register**.

§ 102–3.155 How are advisory committee meetings closed to the public?

To close all or part of an advisory committee meeting, the Designated Federal Officer (DFO) must:

(a) *Obtain prior approval.* Submit a request to the agency head, or in the case of an independent Presidential

advisory committee, the Secretariat, citing the specific exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), that justify the closure. The request must provide the agency head or the Secretariat sufficient time (generally, 30 calendar days) to review the matter in order to make a determination before publication of the meeting notice required by § 102-3.150.

(b) *Seek General Counsel review.* The General Counsel of the agency or, in the case of an independent Presidential advisory committee, the General Counsel of GSA should review all requests to close meetings.

(c) *Obtain agency determination.* If the agency head, or in the case of an independent Presidential advisory committee, the Secretariat, finds that the request is consistent with the provisions in the Government in the Sunshine Act and FACA, the appropriate agency official must issue a determination that all or part of the meeting be closed.

(d) *Assure public access to determination.* The agency head or the chairperson of an independent Presidential advisory committee must make a copy of the determination available to the public upon request.

§ 102-3.160 What activities of an advisory committee are not subject to the notice and open meeting requirements of the Act?

The following activities of an advisory committee are excluded from the procedural requirements contained in this subpart:

(a) *Preparatory work.* Meetings of two or more advisory committee or subcommittee members convened solely to gather information, conduct research, or analyze relevant issues and facts in preparation for a meeting of the advisory committee, or to draft position papers for deliberation by the advisory committee; and

(b) *Administrative work.* Meetings of two or more advisory committee or subcommittee members convened solely to discuss administrative matters of the advisory committee or to receive administrative information from a Federal officer or agency.

§ 102-3.165 How are advisory committee meetings documented?

(a) The agency head or, in the case of an independent Presidential advisory committee, the chairperson must ensure that detailed minutes of each advisory committee meeting, including one that is closed or partially closed to the public, are kept. The chairperson of each advisory committee must certify the accuracy of all minutes of advisory committee meetings.

(b) The minutes must include:

(1) The time, date, and place of the advisory committee meeting;

(2) A list of the persons who were present at the meeting, including advisory committee members and staff, agency employees, and members of the public who presented oral or written statements;

(3) An accurate description of each matter discussed and the resolution, if any, made by the advisory committee regarding such matter; and

(4) Copies of each report or other document received, issued, or approved by the advisory committee at the meeting.

(c) The Designated Federal Officer (DFO) must ensure that minutes are certified within 90 calendar days of the meeting to which they relate.

§ 102-3.170 How does an interested party obtain access to advisory committee records?

Timely access to advisory committee records is an important element of the public access requirements of the Act. Section 10(b) of the Act provides for the contemporaneous availability of advisory committee records that, when taken in conjunction with the ability to attend committee meetings, provide a meaningful opportunity to comprehend fully the work undertaken by the advisory committee. Although advisory committee records may be withheld under the provisions of the Freedom of Information Act (FOIA), as amended, if there is a *reasonable expectation* that the records sought fall within the exemptions contained in section 552(b) of FOIA, agencies may not require members of the public or other interested parties to file requests for non-exempt advisory committee records under the request and review process established by section 552(a)(3) of FOIA.

§ 102-3.175 What are the reporting and recordkeeping requirements for an advisory committee?

(a) *Presidential advisory committee follow-up report.* Within one year after a Presidential advisory committee has submitted a public report to the President, a follow-up report required by section 6(b) of the Act must be prepared and transmitted to the Congress detailing the disposition of the advisory committee's recommendations. The Secretariat shall assure that these reports are prepared and transmitted to the Congress as directed by the President, either by the President's delegate, by the agency responsible for providing support to a Presidential advisory committee, or by the responsible agency or organization designated in the charter of the

Presidential advisory committee pursuant to § 102-3.75(a)(10). In performing this function, GSA may solicit the assistance of the President's delegate, the Office of Management and Budget (OMB), or the responsible agency Committee Management Officer (CMO), as appropriate. Reports shall be consistent with specific guidance provided periodically by the Secretariat.

(b) *Annual comprehensive review of Federal advisory committees.* To conduct an annual comprehensive review of each advisory committee as specified in section 7(b) of the Act, GSA requires Federal agencies to report information on each advisory committee for which a charter has been filed in accordance with § 102-3.70, and which is in existence during any part of a Federal fiscal year. Committee Management Officers (CMOs), Designated Federal Officers (DFOs), and other responsible agency officials will provide this information by data filed electronically with GSA on a fiscal year basis, using a Governmentwide shared Internet-based system that GSA maintains. This information shall be consistent with specific guidance provided periodically by the Secretariat. The preparation of these electronic submissions by agencies has been assigned interagency report control number (IRCN) 0304-GSA-AN.

(c) *Annual report of closed or partially-closed meetings.* In accordance with section 10(d) of the Act, advisory committees holding closed or partially-closed meetings must issue reports at least annually, setting forth a summary of activities and such related matters as would be informative to the public consistent with the policy of 5 U.S.C. 552(b).

(d) *Advisory committee reports.* Subject to 5 U.S.C. 552, 8 copies of each report made by an advisory committee, including any report of closed or partially-closed meetings as specified in paragraph (c) of this section and, where appropriate, background papers prepared by experts or consultants, must be filed with the Library of Congress as required by section 13 of the Act for public inspection and use at the location specified § 102-3.70(a)(3).

(e) *Advisory committee records.* Official records generated by or for an advisory committee must be retained for the duration of the advisory committee. Upon termination of the advisory committee, the records must be processed in accordance with the Federal Records Act (FRA), 44 U.S.C. Chapters 21, 29-33, and regulations issued by the National Archives and Records Administration (NARA) (see 36 CFR parts 1220, 1222, 1228, and 1234),

or in accordance with the Presidential Records Act (PRA), 44 U.S.C. Chapter 22.

Appendix A to Subpart D of Part 102–3—Key Points and Principles

This appendix provides additional guidance in the form of answers to frequently

asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART D

Key points and principles	Section(s)	Question(s)	Guidance
I. With some exceptions, advisory committee meetings are open to the public.	102–3.140, 102–3.145(a), 102–3.155.	1. Must all advisory committee and subcommittee meetings be open to the public?	A. No. Advisory committee meetings may be closed when appropriate, in accordance with the exemption(s) for closure contained in the Government in the Sunshine Act, 5 U.S.C. 552b(c). (i) Subcommittees that report to a parent advisory committee, and not directly to a Federal officer or agency, are not required to open their meetings to the public or comply with the procedures in the Act for announcing meetings. (ii) However, agencies are cautioned to avoid excluding the public from attending any meeting where a subcommittee develops advice or recommendations that are not expected to be reviewed and considered by the parent advisory committee before being submitted to a Federal officer or agency. These exclusions may run counter to the provisions of the Act requiring contemporaneous access to the advisory committee deliberative process.
II. Notices must be published in the Federal Register announcing advisory committee meetings.	102–3.150	1. Can agencies publish a single Federal Register notice announcing multiple advisory committee meetings?	A. Yes, agencies may publish a single notice announcing multiple meetings so long as these notices contain all of the information required by § 102–3.150. (i) “Blanket notices” should not announce meetings so far in advance as to prevent the public from adequately being informed of an advisory committee’s schedule. (ii) An agency’s Office of General Counsel should be consulted where these notices include meetings that are either closed or partially closed to the public.

APPENDIX A TO SUBPART D—Continued

Key points and principles	Section(s)	Question(s)	Guidance
III. Although certain advisory committee records may be withheld under the Freedom of Information Act (FOIA), as amended, 5 U.S.C. 552, agencies may not require the use of FOIA procedures for records available under section 10(b) of FACA.	102–3.170	1. May an agency require the use of its internal FOIA procedures for access to advisory committee records that are not exempt from release under FOIA?	A. No. Section 10(b) of FACA provides that: Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist. (i) The purpose of section 10(b) of the Act is to provide for the contemporaneous availability of advisory committee records that, when taken in conjunction with the ability to attend advisory committee meetings, provide a meaningful opportunity to comprehend fully the work undertaken by the advisory committee. (ii) Although advisory committee records may be withheld under the provisions of FOIA if there is a reasonable expectation that the records sought fall within the exemptions contained in section 552(b) of FOIA, agencies may not require members of the public or other interested parties to file requests for non-exempt advisory committee records under the request and review process established by section 552(a)(3) of FOIA. (iii) Records covered by the exemptions set forth in section 552(b) of FOIA may be withheld. An opinion of the Office of Legal Counsel (OLC), U.S. Department of Justice concludes that: FACA requires disclosure of written advisory committee documents, including predecisional materials such as drafts, working papers, and studies. The disclosure exemption available to agencies under exemption 5 of FOIA for predecisional documents and other privileged materials is narrowly limited in the context of FACA to privileged “inter-agency or intra-agency” documents prepared by an agency and transmitted to an advisory committee. The language of the FACA statute and its legislative history support this restrictive application of exemption 5 to requests for public access to advisory committee documents. Moreover, since an advisory committee is not itself an agency, this construction is supported by the express language of exemption 5 which applies only to inter-agency or intra-agency materials. (iv) Agencies first should determine, however, whether or not records being sought by the public fall within the scope of FACA in general, and section 10(b) of the Act in particular, prior to applying the available exemptions under FOIA. (See OLC Opinion 12 Op. O.L.C. 73, dated April 29, 1988, which is available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW., Washington, DC 20405–0002.)

APPENDIX A TO SUBPART D—Continued

Key points and principles	Section(s)	Question(s)	Guidance
IV. Advisory committee records must be managed in accordance with the Federal Records Act (FRA), 44 U.S.C. Chapters 21, 29–33, and regulations issued by the National Archives and Records Administration (NARA) (see 36 CFR parts 1220, 1222, 1228, and 1234), or the Presidential Records Act (PRA), 44 U.S.C. Chapter 22.	102–175(e)	1. How must advisory committee records be treated and preserved?	<p>A. In order to ensure proper records management, the Committee Management Officer (CMO), Designated Federal Officer (DFO), or other representative of the advisory committee, in coordination with the agency's Records Management Officer, should clarify upon the establishment of the advisory committee whether its records will be managed in accordance with the FRA or the PRA.</p> <p>B. Official records generated by or for an advisory committee must be retained for the duration of the advisory committee. Responsible agency officials are encouraged to contact their agency's Records Management Officer or NARA as soon as possible after the establishment of the advisory committee to receive guidance on how to establish effective records management practices. Upon termination of the advisory committee, the records must be processed in accordance with the FRA and regulations issued by NARA, or in accordance with the PRA.</p> <p>C. The CMO, DFO, or other representative of an advisory committee governed by the FRA, in coordination with the agency's Records Management Officer, must contact NARA in sufficient time to review the process for submitting any necessary disposition schedules of the advisory committee's records upon termination. In order to ensure the proper disposition of the advisory committee's records, disposition schedules need to be submitted to NARA no later than 6 months before the termination of the advisory committee.</p> <p>D. For Presidential advisory committees governed by the PRA, the CMO, DFO, or other representative of the advisory committee should consult with the White House Counsel on the preservation of any records subject to the PRA, and may also confer with NARA officials.</p>

Subpart E—How Does This Subpart Apply to Advice or Recommendations Provided to Agencies by the National Academy of Sciences or the National Academy of Public Administration?

§ 102–3.180 What does this subpart cover and how does it apply?

This subpart provides guidance to agencies on compliance with section 15 of the Act. Section 15 establishes requirements that apply only in connection with a funding or other written agreement involving an agency's use of advice or recommendations provided to the agency by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA), if such advice or recommendations were developed by use of a committee created by either academy. For purposes of this subpart,

NAS also includes the National Academy of Engineering, the Institute of Medicine, and the National Research Council. Except with respect to NAS committees that were the subject of judicial actions filed before December 17, 1997, no part of the Act other than section 15 applies to any committee created by NAS or NAPA.

§ 102–3.185 What does this subpart require agencies to do?

(a) *Section 15 requirements.* An agency may not use any advice or recommendation provided to an agency by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA) under an agreement between the agency and an academy, if such advice or recommendation was developed by use of a committee created by either academy, unless:

(1) The committee was not subject to any actual management or control by an agency or officer of the Federal Government; and

(2) In the case of NAS, the academy certifies that it has complied substantially with the requirements of section 15(b) of the Act; or

(3) In the case of NAPA, the academy certifies that it has complied substantially with the requirements of sections 15(b) (1), (2), and (5) of the Act.

(b) *No agency management or control.* Agencies must not manage or control the specific procedures adopted by each academy to comply with the requirements of section 15 of the Act that are applicable to that academy. In addition, however, any committee created and used by an academy in the development of any advice or recommendation to be provided by the

academy to an agency must be subject to both actual management and control by that academy and not by the agency.

(c) *Funding agreements.* Agencies may enter into contracts, grants, and cooperative agreements with NAS or NAPA that are consistent with the requirements of this subpart to obtain advice or recommendations from such academy. These funding agreements require, and agencies may rely upon, a written certification by an authorized

representative of the academy provided to the agency upon delivery to the agency of each report containing advice or recommendations required under the agreement that:

(1) The academy has adopted policies and procedures that comply with the applicable requirements of section 15 of the Act; and

(2) To the best of the authorized representative's knowledge and belief, these policies and procedures

substantially have been complied with in performing the work required under the agreement.

Appendix A to Subpart E of Part 102–3—Key Points and Principles

This appendix provides additional guidance in the form of answers to frequently asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART E

Key points and principles	Section(s)	Question(s)	Guidance
I. Section 15 of the Act allows the National Academy of Sciences (NAS) and the National Academy of Public Administration (NAPA) to adopt separate procedures for complying with FACA.	102–3.185(a)	1. May agencies rely upon an academy certification regarding compliance with section 15 of the Act if different policies and procedures are adopted by NAS and NAPA?	A. Yes. NAS and NAPA are completely separate organizations. Each is independently chartered by the Congress for different purposes, and Congress has recognized that the two organizations are structured and operate differently. Agencies should defer to the discretion of each academy to adopt policies and procedures that will enable it to comply substantially with the provisions of section 15 of the Act that apply to that academy.
II. Section 15 of the Act allows agencies to enter into funding agreements with NAS and NAPA without the academies' committees being "managed" or "controlled".	102–3.185(c)	1. Can an agency enter into a funding agreement with an academy which provides for the preparation of one or more academy reports containing advice or recommendations to the agency, to be developed by the academy by use of a committee created by the academy, without subjecting an academy to "actual management or control" by the agency?	A. Yes, if the members of the committee are selected by the academy and if the committee's meetings, deliberations, and the preparation of reports are all controlled by the academy. Under these circumstances, neither the existence of the funding agreement nor the fact that it contemplates use by the academy of an academy committee would constitute actual management or control of the committee by the agency.



Department of Defense INSTRUCTION

NUMBER 5105.04

August 6, 2007

DA&M

SUBJECT: Department of Defense Federal Advisory Committee Management Program

- References:
- (a) DoD Directive 5105.4, "Department of Defense Federal Advisory Committee Management Program," February 10, 2003 (hereby canceled)
 - (b) Acting Deputy Secretary of Defense Memorandum, "DoD Directives Review – Phase II," July 13, 2005
 - (c) DoD Directive 5105.53, "Director of Administration and Management," November 23, 1998
 - (d) Title 41, Code of Federal Regulations, Sections 102-3.5 through 102-3.185, "Federal Advisory Committee Management"
 - (e) through (y), see Enclosure 1

1. PURPOSE

This Instruction:

1.1. Reissues Reference (a) as a DoD Instruction in accordance with the guidance in Reference (b) and the authority in References (c) and (d).

1.2. Establishes policy, provides procedures, and assigns responsibilities for the Department of Defense Federal Advisory Committee Management Program in accordance with sections 102-3.5 through 102-3.185 of Reference (d), and Appendix of title 5, United States Code (U.S.C.) (Reference (e)).

2. APPLICABILITY AND SCOPE

This Instruction applies to:

2.1. The Office of the Secretary of Defense (OSD), the Military Departments (including the Coast Guard at all times, including when it is a service in the Department of Homeland Security by agreement with that Department), the Chairman of the Joint Chiefs of Staff, the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter collectively referred to as the "DoD Components"). The term

“Military Services,” as used herein, refers to the Active and Reserve Components of the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard.

2.2. DoD-Supported Federal Advisory Committees, pursuant to section 102-3.105(b) of Reference (d) and Reference (e).

2.3. Nothing in this Instruction shall:

2.3.1. Limit or restrict the free exchange of information, advice, or ideas between representatives of the Department of Defense or other Federal Agencies through ad hoc or occasional meetings, or by other means.

2.3.2. Apply to any committee, board, commission, council conference, panel, task force, subcommittee or other subgroup, or any other similar types of groups, which are:

2.3.2.1. Internal DoD staff meetings, accident investigation boards, safety mishap boards, flying evaluation boards, or medical evaluation boards, committees established to perform primarily operational duties, as opposed to advisory functions, or boards to select members of the Military Services for promotion, reassignment, education, training, separation, or retirement.

2.3.2.2. Created by a non-Federal entity (such as a contractor or private organization) and are not actually managed or controlled by an officer or employee of the Federal government.

2.3.2.3. Meetings initiated by one or more Federal officials with more than one other individual to obtain advice from individual attendees and not for the purpose of utilizing the group to obtain consensus advice or recommendations.

2.3.2.4. Meetings of two or more Committee or Subcommittee members convened solely to gather information or to conduct research for a Committee operating under this Instruction, to analyze relevant issues and facts, or to draft proposed position papers for deliberations by the entire Committee membership.

2.3.2.5. Local civic groups whose primary function is that of rendering a public service with respect to a Federal program or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies.

2.3.3. Require intergovernmental and intragovernmental committees to comply with the provisions of this Instruction. Notwithstanding, care shall be taken to ensure that members of the public do not participate in any deliberations whatsoever. Public participation in the deliberations of intergovernmental or intragovernmental committees may require the Committee to comply with References (d) and (e). Any questions regarding this issue shall be directed to the Committee Management Officer (CMO).

3. DEFINITIONS

Terms used in this Instruction are defined in Enclosure 2.

4. POLICY

It is DoD policy that:

4.1. No DoD-Supported Federal Advisory Committee (hereafter referred to as “DoD-Supported Committee”), subject to the provisions of References (d) and (e), shall be established unless specifically authorized by the President of the United States, Congress, the Secretary of Defense, or an official authorized by the Secretary of Defense.

4.2. No DoD-Supported Committee shall be considered part of the DoD organizational structure.

4.3. DoD-Supported Committees shall be supported by a DoD Sponsor appointed by the Director for Administration and Management (DA&M).

4.4. All DoD-Supported Committees shall be used for advisory functions, unless directed by statute or Presidential directive. Only the President, the Secretary of Defense, or their designees, as appropriate, shall determine the proper course of action and the appropriate expression of policy regarding matters on which a Committee reports or makes recommendations.

4.5. No Discretionary Committees shall make any decisions, conduct DoD operations, or perform functions that are capable of being carried out by existing DoD resources, an existing Committee, or other means, such as public hearings.

4.6. Committee membership, as a whole, shall be balanced in terms of the points of view and the functions to be performed.

4.7. All DoD-Supported Committees, by majority vote of the Committee members, shall develop and adopt by-laws that describe how the Committee and its Subcommittees, if authorized, operate and the Committee’s relationship to the Department of Defense. Adopted by-laws shall be made available to the public, upon request.

4.8. Individuals who are appointed to or detailed to Committees, while acting in an official capacity as a Committee member or Committee staff, shall not perform any work for the Department of Defense other than what is directly associated with the Committee’s Charter.

5. RESPONSIBILITIES

5.1. The DA&M shall:

5.1.1. Perform, pursuant to the Acting Deputy Secretary of Defense Memorandum

(Reference (f)), the responsibilities of the Secretary of Defense outlined in References (d) and (e).

5.1.2. Appoint a DoD Sponsor for each DoD-Supported Committee, unless otherwise directed by statute, Executive order, or the Secretary of Defense.

5.1.3. Approve or disapprove the establishment, renewal, or termination of all DoD-Supported Committees and determine whether Subcommittees shall be authorized, unless otherwise prohibited by statute, Executive order, or the Secretary of Defense.

5.1.4. Ensure that DoD-Supported Committees are terminated whenever their work has been accomplished, the subject matter is no longer relevant, their work has become obsolete, or their functions have been assumed by another Federal government entity.

5.1.5. Determine the level of DoD support to be provided to Independent Presidential Advisory Committees.

5.1.6. Appoint a Committee Management Officer for the Department of Defense to provide policy oversight and management of the Department of Defense Federal Advisory Committee Management Program.

5.1.7. Develop and implement DoD-wide policies and procedures to ensure DoD compliance with References (d) and (e).

5.1.8. Ensure that all DoD Components cooperate with any Committee and furnish such information and assistance as is necessary for the performance of its functions, consistent with applicable laws.

5.1.9. Ensure that information is shared as broadly as possible, except when limited by law, policy, or security classification and that data assets resulting from assigned responsibilities are accessible by and comprehensible to the Department of Defense, pursuant to DoD Directive 8320.02 (Reference (g)).

5.2. The CMO, under the authority, direction, and control of the DA&M, shall:

5.2.1. Develop and file the Charters for all DoD-Supported Committees, including the initial Charter and any modifications or renewals pursuant to this Instruction and Reference (c).

5.2.2. Consult with the General Counsel of the Department of Defense (DoD GC) and the Committee Management Secretariat (CMS) for the General Services Administration (GSA), on matters pertaining to the Department of Defense Federal Advisory Committee Management Program, pursuant to Executive Order 12024 (Reference (h)).

5.2.3. Ensure that all DoD-Supported Committees, unless otherwise authorized by a statute, Executive order, or the Secretary of Defense, or designee, terminate their operations not later than 2 years after the date of establishment.

5.2.4. Review and approve all written DoD guidance that implements References (d) and (e) and this Instruction prior to publication by any DoD organization or entity (including, but not limited to, Regulations, Manuals, Pamphlets, Directives, and changes thereto).

5.2.5. Review and validate DoD's submission to the Annual Comprehensive Review (ACR) and the Closed or Partially Closed Meeting Report and work with the CMS to correct any deficiencies.

5.2.6 Develop and maintain a Committee Management Review Program to ensure that the Department of Defense and the DoD-Supported Committees comply with the appropriate statutes, Executive orders, policies, and regulations.

5.3. The OSD Principal Staff Assistants (PSAs), the Secretaries of the Military Departments, and the Chairman of the Joint Chiefs of Staff shall:

5.3.1. Serve as the DoD Sponsor of DoD-Supported Committees, when appointed by the DA&M, and in that capacity shall:

5.3.1.1. Provide adequate support to the DoD-Sponsored Committees, which may, depending on the Committee's requirements, include support in the following areas: funding, facilities, human resources (Committee member appointments and staffing requirements, when authorized), information technology, central services (telephones, supplies, furniture, printing, etc.), contracting, and access to key decision makers.

5.3.1.2. Ensure Federal employees do not interfere with the daily management responsibilities and functions of DoD-Supported Committees, or provide specific direction to appointed Committee members on how to execute their statutory responsibilities, which are to provide independent advice and recommendations to the Federal government.

5.3.2. Make recommendations to the DA&M regarding the establishment, renewal, or termination of DoD-Supported Committees, as necessary.

5.3.3. Nominate to the Secretary of Defense, or designee, for the appointment or reappointment of qualified individuals to serve on DoD-Supported Committees.

5.3.4. Ensure that all Component organizations cooperate with any Committee and furnish such information and assistance as is necessary for the performance of its functions, consistent with applicable laws.

5.3.5. Select and appoint a full-time or permanent part-time Federal employee to perform Group Federal Officer (GFO) duties for the DoD Sponsor. This appointment authority may be further delegated in writing, but no lower than the Assistant Secretary level. No one to whom this appointment authority is delegated may serve in any capacity on any Committee sponsored by the DoD Sponsor in question.

5.3.6. Select and appoint a full-time or permanent part-time Federal employee to perform Designated Federal Officer (DFO) or Alternate DFO duties for each DoD-Supported Committee. This appointment authority may be further delegated in writing, but no lower than the Assistant Secretary level or the three-star flag officer equivalent. No one to whom this appointment authority is delegated may serve in any capacity on the Committee in question.

5.3.7. Determine, in consultation with the appropriate GC, whether to close all or part of a Committee or Subcommittee meeting to the public pursuant to section 552b(c) of title 5, U.S.C. (Reference (i)). This authority may be delegated in writing, but no lower than the Assistant Secretary level or the three-star flag officer equivalent. No one to whom this authority is delegated may serve in any capacity on the Committees in question.

5.3.8. Evaluate, unless prohibited by a statute or Executive order, a Committee's independent advice and recommendations, and determine which actions or policies shall be implemented by the Department of Defense. Only the PSAs, the Secretaries of the Military Departments, or the Chairman of the Joint Chiefs of Staff, who have been designated as DoD Sponsors of specific Committees shall be authorized to exercise this authority, and only when such advice falls within the scope of the responsibilities and functions formally assigned to them by a statute or a DoD Charter Directive. This authority may be further delegated in writing, but no lower than the Assistant Secretary level or the three-star flag officer equivalent. No one to whom this authority is delegated may serve in any capacity on the Committee in question.

5.3.9. Ensure a copy of all delegations authorized by this Instruction are provided to the CMO.

5.4. The Director of the Document Automation and Production Service (DAPS), or designee, under the authority of the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall:

5.4.1. Determine, in accordance with the Government Printing Office (GPO), if a Committee's report should be sold in the GPO's commercial stores and if it should be distributed through the Federal Depository Library Program.

5.4.2. Ensure that the printing requirements for DoD-Supported Committees are accomplished in an expeditious manner, due to the time sensitivity of the Committees' work, and include, if necessary, authorizations for the use of private-sector graphic design and commercial printing companies.

5.5. The GFO, under the authority, direction and control of the DoD Sponsor, shall:

5.5.1. Assist the Sponsor in the administrative oversight and management of their aspects of the Department of Defense Federal Advisory Committee Management Program.

5.5.1. Oversee compliance of those Committees sponsored by his or her DoD Sponsor with References (d) and (e), this Instruction, and all other relevant Federal rules and regulations.

5.5.2. Develop and maintain, for their respective Component, a Committee Management Program that ensures compliance with the appropriate statutes, Executive orders, policies, and regulations.

5.5.3. Develop and implement Component-wide policies and procedures to ensure compliance with References (d) and (e) and this Instruction.

5.5.4. Consult with the DoD Sponsor's GC and the CMO on matters pertaining to the Department of Defense Federal Advisory Committee Management Program, pursuant to References (d) and (e) and this Instruction.

5.5.5. Assist the CMO in ensuring that all written Component guidance (including, but not limited to, Regulations, Manuals, Pamphlets, Directives, and changes thereto) that implement References (d) and (e) and this Instruction are reviewed by the CMO prior to publication.

5.5.6. Review and validate DoD's submission to the ACR and the Closed-Partial Closed Meeting Report and work with the CMO to correct any deficiencies.

5.5.7. Assist their DoD Sponsor to ensure that Committees are terminated whenever their work has been accomplished, the subject matter is no longer relevant, their work has become obsolete, or their functions have been assumed by another Federal government entity.

5.6. The DFO, under the authority, direction, and control of the DoD Sponsor, the DA&M, and the CMO, shall:

5.6.1. Ensure compliance of DoD-Supported Committees with References (d) and (e), this Instruction, and all other relevant Federal rules and regulations.

5.6.2. Ensure that no DoD-Supported Committee establishes Subcommittees unless specifically authorized by statute, Executive order, or the Committee's Charter.

5.6.3. Ensure that no DoD-Supported Committee shall meet or take any official action until the CMO files the Committee's Charter pursuant to Reference (d), and paragraph E3.4.3. of this Instruction.

5.6.4. Comply with the DFO duties assigned by References (d) and (e), this Instruction, and the DA&M and/or the CMO.

5.6.5. Ensure that no DoD-Supported Committee, unless authorized by statute, uses a commercial publishing house to print or sell any of its reports.

5.6.6. Ensure that DoD-Supported Committees are managed pursuant to the provisions of References (d) and (e) and this Instruction.

5.6.7. Oversee the internal controls of DoD-Supported Committees for non-payroll financial transactions to ensure compliance with the Federal Acquisition Regulation (Reference (j)) and other Federal policies and procedures governing financial management practices.

5.7. The Alternate DFO, under the authority, direction, and control of the DFO and the DoD Sponsor, shall:

5.7.1. Assist the Committee's DFO, when appointed by the DoD Sponsor, and in that capacity shall:

5.7.1.1. Ensure compliance of DoD-Supported Committees with References (d) and (e), this Instruction, and all other relevant Federal rules and regulations.

5.7.1.2. Ensure that DoD-Supported Committees are managed pursuant to the provisions of References (d) and (e) and this Instruction.

5.7.1.3. Oversee the internal controls of DoD-Supported Committees for non-payroll financial transactions to ensure compliance with the Reference (j) and other Federal policies and procedures governing financial management practices.

5.7.2. Comply with the DFO duties assigned by References (d) and (e), this Instruction, the DA&M, the CMO or the DFO, when required.

6. PROCEDURES

The procedures for implementing this Instruction are contained in Enclosure 3.

7. INFORMATION REQUIREMENTS

7.1. Reports of findings, recommendations or actions prepared by a committee are exempt from licensing in accordance with paragraph C4.4.3. of DoD 8910.1.-M (Reference (k)).

7.2. Committee recommendations or evaluations as to existing or proposed plans, policies, procedures, organizations, missions, publications, agenda, curricula or courses of action are exempt from licensing in accordance with paragraph C4.4.4. of Reference (k).

7.3. Data collection that falls outside the exemptions cited in paragraphs 7.1. and 7.2. require licensing. The WHS/ESD Information Management Division shall be consulted on a case-by-case basis before any such data collection commences.

8. EFFECTIVE DATE

This Instruction is effective immediately.



Michael B. Donley
Director, Administration and Management

Enclosures - 3

- E1. References, continued
- E2. Definitions
- E3. Procedures

E1. ENCLOSURE 1

REFERENCES, continued

- (e) Appendix of title 5, United States Code, as amended
- (f) Acting Deputy Secretary of Defense Memorandum, "Department of Defense Federal Advisory Committee Management Program," August 22, 2006
- (g) DoD Directive 8320.02, "Data Sharing in a Net-Centric Department of Defense," December 2, 2004
- (h) Executive Order 12024, December 1, 1977
- (i) Sections 7(a), 552, 2104, 2105, 3102, 3109, and 3161 of title 5, United States Code
- (j) Federal Acquisition Regulation, March 2005
- (k) DoD 8910.1-M, Paragraphs C4.4.3 and C4.4.4, "DoD Procedures for Management of Information Requirements," June 30, 1998
- (l) Sections 202, 203, 205, 207 and 208 of title 18, United States Code
- (m) DoD Directive 1100.4, "Guidance for Manpower Management." February 12, 2005
- (n) Chapter 38 of title 10, United States Code
- (o) DoD Directive 1000.17, "Detail of DoD Personnel to Duty Outside the Department of Defense," February 24, 1997
- (p) DoD 5500.7-R, "Joint Ethics Regulation," August 1993, as amended
- (q) DoD 5200.1-R, "Information Security Program," January 14, 1997
- (r) Joint Federal Travel Regulations, Volume 1, "Uniformed Services Members"
- (s) Joint Travel Regulations, Volume 2, "DoD Civilian Personnel"
- (t) Sections 501 and 504 of the Rehabilitation Act of 1973, as amended
- (u) DoD Directive 5015.2, "DoD Records Management Program," March 6, 2000
- (v) DoD Instruction 5330.03, "Document Automation and Production Service (DAPS)," February 8, 2006
- (w) Section 1042 of Public Law 107-107, "National Defense Authorization Act for Fiscal Year 2002," December 28, 2001
- (x) Section 3301 of title 44, United States Code
- (y) Title 36, Code of Federal Regulations 1228, Subpart L

E2. ENCLOSURE 2

DEFINITIONS

E2.1. Administrative Work Meeting. A meeting between two or more Committee members or Subcommittee members convened solely to discuss Committee administrative matters or to receive administrative information from a Federal employee or agency. As defined, an administrative work meeting shall be exempt from the open meeting and Federal Register meeting notice requirements of Reference (d).

E2.2. Advisory Committee. Any committee, subcommittee, board, commission, council, conference, panel, task force, or other similar group which is established by statute or reorganization plan, established or utilized by the President of the United States, or established or utilized by one or more agencies to obtain advice or recommendations for the President or one or more Federal agencies or employees. As defined, "Advisory Committee" does not include any committee that is composed solely of full-time or permanent part-time Federal employees or any committee created by the National Academy of Sciences or the National Academy of Public Administration.

E2.3. Alternate Designated Federal Officer. A full-time or permanent part-time Federal employee appointed by the DoD Sponsor to assist the Committee's appointed DFO. The Alternate Designated Federal Officer may assist the DFO in the performance of his or her duties.

E2.4. Committee Management Officer (CMO). The individual designated by the DA&M to manage and provide policy oversight to the Department of Defense Federal Advisory Committee Management Program.

E2.5. Committee Management Secretariat (CMS) for the General Services Administration (GSA). The organization established pursuant to section 7(a) of Reference (i), which is responsible for all matters relating to Advisory Committees and carries out the responsibilities of the Administrator of the GSA under References (d) and (e).

E2.6. Committee Meeting. Any gathering of Committee members (whether in person or through electronic means) held with the approval of the DFO for the purpose of deliberating on substantive matters for which the Committee provides advice or recommendations.

E2.7. Committee Member. An individual who serves by appointment or invitation on an Advisory Committee or Subcommittee. A Committee member may be a Federal employee, a private U.S. citizen, or employee of a U.S. State or local government.

E2.8. Committee Staff. Committee staff may include Federal employees (military or civilian), private U.S. citizens, and other individuals (including contractors) who are not Committee members, but serve in a support role to an Advisory Committee or Subcommittee.

E2.9. Defense Decorations. The Defense Distinguished Service Medal, the Defense Superior Service Medal, the Defense Meritorious Service Medal, the Joint Service Commendation Medal, and the Joint Service Achievement Medal.

E2.10. Designated Federal Officer (DFO). The full-time or permanent part-time Federal employee appointed by the DoD Sponsor for a specific DoD-Supported Committee, who, as the Federal government's representative to the Committee, shall ensure the Committee's compliance with References (d) and (e).

E2.11. Discretionary Committee. Any Committee established under the authority of the Secretary of Defense or authorized by statute. An Advisory Committee that is referred to in general (non-specific) authorizing language or Congressional Committee report language is discretionary, and its establishment or termination is within the legal discretion of the Secretary of Defense.

E2.12. DoD-Supported Federal Advisory Committee (or "DoD-Supported Committee"). Any Federal Advisory Committee subject to the provisions of References (d) and (e) that the Secretary of Defense or the Department of Defense has been directed to support or that the Secretary of Defense or designee has established.

E2.13. DoD Sponsor. The Component Head designated by the DA&M to sponsor a DoD-Supported Federal Advisory Committee. The Component Heads shall be one of the OSD PSAs, the Secretaries of the Military Departments, or the Chairman of the Joint Chiefs of Staff.

E2.14. Group Federal Officer (GFO). A full-time or permanent part-time Federal employee appointed by the DoD Sponsor to assist the Sponsor in overseeing and managing the Sponsor's aspects of the Department of Defense Federal Advisory Committee Management Program.

E2.15. Intergovernmental Committee. Any Committee composed wholly of full-time or permanent part-time officers or employees of the Federal government and elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf), acting in their official capacities. The sole purpose of such a Committee shall be to exchange views, information, or advice relating to the management or implementation of Federal programs established pursuant to statute, that explicitly or inherently share intergovernmental responsibilities or administration.

E2.16. Intragovernmental Committee. Any Committee composed wholly of full-time or permanent part-time officers or employees of the Federal government.

E2.17. Non-Discretionary Advisory Committee. Any Committee required by statute or Presidential Directive. A Non-Discretionary Advisory Committee that is required by statute is generally identified by name, purpose, or functions, and its establishment or termination is beyond the legal discretion of the Secretary of Defense.

E2.18. Preparatory Work Meeting. Meetings of two or more Committee members or Subcommittee members convened solely to gather information, conduct research, or analyze relevant issues and facts in preparation for a Committee meeting, or to draft position papers for deliberation by the Committee.

E2.19. Principal Staff Assistant (PSA). Under this Instruction, the term “Principal Staff Assistant” includes the Under Secretaries of Defense, the Assistant Secretaries of Defense, the DoD GC, the Inspector General of the Department of Defense, the Director of Operational Test and Evaluation, the Assistants to the Secretary of Defense, the Director of the National Reconnaissance Office, and other OSD Directors or equivalents who report directly to the Secretary of Defense.

E2.20. Regular Government Employee (RGE). Under this Instruction, the term “Regular Government Employee” refers generally to an individual employed within the meaning of section 2105 of Reference (i), or a Federal officer as defined in section 2104 of Reference (i). For purposes of the GSA’s Federal Advisory Committee Act (FACA) Database only, this category also includes a Federal officer holding a position in the uniformed services.

E2.21. Special Government Employee (SGE). Under this Instruction, the term Special Government Employee refers to an officer or employee of the Executive or Legislative Branch who is retained, designated, appointed, or employed to perform temporary duties (either on a full-time or intermittent basis) not to exceed 130 days during any period of 365 consecutive days.

E2.22. Subcommittee. A group, generally not subject to References (d) and (e), which reports to an Advisory Committee and not directly to a Federal employee or agency, whether or not its members are drawn in whole or in part from the parent Committee.

E3. ENCLOSURE 3

PROCEDURES

E3.1. General Information on Advisory Committees

E3.1.1. Committee Management. Committees play a significant role in shaping public policy by providing independent advice and recommendations on a wide range of issues to the Executive and Legislative Branches. To be effective, these independent entities of the Executive and Legislative Branches must act and, more importantly, be perceived as balanced and independent of any Executive Branch Agency that provides them with support.

E3.1.1.1. Even though DoD-Supported Committees are independent of the Department of Defense and are not considered part of the DoD organizational structure, they shall comply with the policies and procedures prescribed by the Department of Defense, this Instruction, and any rules and regulations governing the use of DoD appropriated funds, pursuant to Reference (d).

E3.1.1.2. All DoD-Supported Committees shall be carefully managed and, unless prescribed by statute, terminated when:

E3.1.1.2.1. The stated objectives have been accomplished, the subject matter or work of the Committee has become obsolete by the passing of time or their functions are assumed by another entity.

E3.1.1.2.2. The authorizing authority determines that the cost of operation exceeds the benefits acquired by the Department of Defense.

E3.1.1.2.3. In the case of a Discretionary Committee, upon the expiration of a period not to exceed 2 years, unless renewed by the authorizing authority.

E3.1.1.2.4. In the case of a Non-Discretionary Committee directed by Presidential Directive, upon expiration of a period not to exceed 2 years, unless renewed by Presidential Directive.

E3.1.1.2.5. In the case of a Non-Discretionary Committee required by Statute, upon the expiration of the time explicitly specified in the statute or implied by operation of the statute.

E3.1.1.2.6. In the opinion of the Secretary of Defense, or designee, the Department of Defense can no longer continue to support the Committee due to a declared National Emergency. If this occurs, the Secretary of Defense, or designee, shall coordinate the termination or realignment of responsibilities with the authority that established the Committee.

E3.1.2. Committee Duration. Regardless of the Committee's enabling authority, no Committee lasts indefinitely.

E3.1.2.1. DoD-Supported Committees may be terminated earlier than the expiration date of their Charter if the President or the Secretary of Defense determine that the Committee is no longer required under paragraph E3.1.1.2.

E3.1.2.2. No Discretionary Committee shall be automatically renewed or able to continue operations beyond the termination date of the Committee's Charter without prior approval from the DA&M.

E3.1.2.3. Notwithstanding the Committee's termination date, the Committee, providing it has funding to cover expenses and obtains the written approval of the DA&M or the CMO, may request its staff be allowed to operate beyond the termination date for the sole purpose of concluding the Committee's administrative activities (i.e., disseminating its final report, inventorying classified information, or archiving the Committee's official records). However, such extensions shall be for no more than 30 days.

E3.1.3. Public Participation. Committees, to the extent possible and pursuant to References (d) and (e), shall open their meetings to the public. The public or interested groups, pursuant to section 102-3.140(c) of Reference (d), shall be allowed to submit written statements to the Committee for its consideration at any time or in response to the stated agenda of a planned meeting; however, the public shall not participate in the Committee member's deliberations, unless otherwise authorized.

E3.1.3.1. The DFO shall ensure that copies of all written statements received from the public or interested groups are provided to each Committee member for their review and consideration. In addition, the DFO shall ensure that copies of all such written statements are archived with the Committee's official records.

E3.1.3.2. The DFO, in consultation with the Committee chairperson, may place limitations (i.e., length of submission and time frame for submission) on written statements submitted in response to the stated agenda for a planned meeting.

E3.1.3.3. The DFO, in consultation with the Committee chairperson, may allow the public or interested groups to address the Committee at a particular Committee meeting. However, prior to the meeting the DFO shall ensure that the Committee's established guidelines and procedures for addressing the Committee are announced in the Federal Register meeting notice.

E3.1.4. Administrative Matters. DoD-Supported Committees may use the U.S. Postal Service in the same manner and under the same conditions as other DoD organizations; however, the use of internal DoD mail distribution facilities shall be at the discretion of the DoD Sponsor. All Committees, unless otherwise authorized by statute, shall comply with existing statutes and international copyright and trademark agreements.

E3.2. Establishment of DoD-Supported Committees and Subcommittees

E3.2.1. Establishment of DoD-Supported Committees. All requests to establish a DoD-Supported Committee shall be submitted to the DA&M through the CMO by the appropriate DoD Sponsor, and all requests, at a minimum, shall contain the elements listed in Appendix 1.

E3.2.1.1 The CMO, on behalf of the DA&M, shall consult the CMS, as appropriate, on the feasibility of establishing a new Committee and provide that information to the DA&M.

E3.2.1.2. Pursuant to Reference (d), the establishment of Discretionary Committees shall be kept to the absolute minimum required, and the decision to establish such Committees shall be at the sole discretion of the Secretary of Defense or designee.

E3.2.2. Establishment Authority for Subcommittees. When a DoD-Supported Committee is authorized to establish Subcommittees, the decision to use them rests not with the Federal government, but with the Committee Chairperson.

E3.2.2.1. Once established the Subcommittee works for the Chairperson and shall report all findings, advice, or recommendations to the Chairperson for deliberation by the full Committee.

E3.2.2.2. If a Committee Chairperson elects to establish a Subcommittee, the DFO shall notify the CMO of the Subcommittee's name, and the CMO shall enter the Subcommittee's name into the Committee's section of the GSA's FACA Database. Once the Subcommittee's name is entered, the DFO shall complete and maintain that portion of the Subcommittee's Database, as required by the CMO and this Instruction.

E3.2.2.3. Subcommittee members, who are not already members of the parent Committee, shall be appointed in the same manner in which Committee members are appointed. In addition, each DoD-Supported Committee shall retain and archive documents pertaining to the Subcommittee, including documentation on the Chairperson's decision to establish the Subcommittee.

E3.2.3. Establishment of Non-Discretionary Advisory Committees as Subcommittees. The DA&M, in consultation with the DoD GC, may establish a Non-Discretionary Committee as a Subcommittee of a previously established DoD-Supported Committee. When such a determination is made the newly established Subcommittee shall comply with all the provisions of the enabling legislation. In addition, the Subcommittee, with the exception of having a filed charter, shall comply with all the provisions of References (d) and (e) that apply to a chartered Committee.

E3.3. DFO Appointments and Requirements

E3.3.1. DFO Appointment. As the Federal government's representative to the Committee, the DFO works for the DoD Sponsor, the DA&M, and the CMO. The DFO is responsible for ensuring that the Committee complies with the provisions of References (d) and (e), and this Instruction.

E3.3.1.1. Failure to appoint a DFO in a timely manner will adversely affect the Committee's ability to comply with the legal provisions of References (d) and (e). The DoD Sponsor may appoint one individual to perform DFO duties on more than one Committee under the Sponsor's direction.

E3.3.1.2. The DoD Sponsor shall ensure that the person who is appointed as a DFO is a full-time or permanent part-time Federal employee. In addition, the DoD Sponsor shall ensure that the DFO is not a member of the Committee (i.e., the Committee Chairperson or a Committee member) and is not involved in the decision-making process for the Committee in which he or she is performing DFO duties.

E3.3.2. DFO Appointment Letter Composition. Within 10-business days of the DA&M's decision to establish a Discretionary Committee or to appoint a DoD Sponsor for a Non-Discretionary Committee, the DoD Sponsor, or designee, shall appoint a DFO. A copy of the signed appointment letter shall be provided to the GFO and the CMO, and convey, at a minimum, the following information to the DFO:

E3.3.2.1. The name of the DoD-Sponsored Committee to which the DFO has been appointed.

E3.3.2.2. That the DFO, as the Federal government's representative to the Committee, reports to the DoD Sponsor, the DA&M, and the CMO and is responsible for ensuring that the Committee complies with the provisions of References (d) and (e) and this Instruction.

E3.3.2.3. Who the DFO should contact in the DoD Sponsor's GC office to receive the appropriate orientation training on the Committee's ethics requirements and the handling of Financial Disclosure Reports.

E3.3.2.4. That the DFO, when performing his or her responsibilities, shall comply with the provisions of References (d) and (e), this Instruction, and any other duties prescribed by the DA&M or the CMO.

E3.3.2.5. That the DFO shall attend the CMS Federal Advisory Committee Act Course offered by the GSA at the earliest opportunity.

E3.3.3. DFO and Committee Duties. While the DoD Sponsor may assign non-Committee duties to a DFO that it appoints, no Committee shall assign duties or responsibilities to its DFO without prior approval from the DA&M or the CMO.

E3.3.4. Replacement or Removal of DFOs. Any DFO who is unable to perform his or her DFO duties due to reassignment or termination of their service within the Department of Defense shall be replaced. The DFO's appointment may be revoked at any time by the DoD Sponsor or the DA&M when, based on the opinion of the DoD Sponsor or the DA&M, the DFO is not fulfilling his or her legal obligations to the Committee and/or the Department of Defense. The DoD Sponsor shall coordinate all removal actions with the appropriate GC and the CMO. Following removal of the DFO, the DoD Sponsor shall provide a replacement as soon as possible.

E3.3.5. Appointment of Alternate DFOs. Depending upon the circumstances, the DoD Sponsor may appoint one or more DoD employees to serve as Alternate DFOs. When appointed the Alternate DFO shall:

E3.3.5.1. Not be considered a full-time substitute for the duly appointed DFO.

E3.3.5.2. Perform the DFO duties only when the duly appointed DFO, due to unforeseen circumstances (e.g., multiple Subcommittee meetings), is temporarily unable to attend to his or her duties.

E3.3.5.3. Make a public statement at the beginning of the Committee or Subcommittee meeting that he or she is standing in for the DFO on a temporary basis and that he or she has been duly appointed by the DoD Sponsor to act as the Committee's Alternate DFO during the DFO's temporary absence. In addition, the Alternate DFO shall ensure that the meeting minutes reflect that he or she is temporarily representing the Committee's duly appointed DFO.

E3.3.6. DFO Training. Each DoD Sponsor shall provide newly appointed DFOs with the appropriate orientation training on ethics requirements and the handling of Financial Disclosure Reports. In addition, DFOs and Alternate DFOs must attend the CMS Federal Advisory Committee Act Course after initial appointment and every 3 years thereafter, for as long as they remain DFOs or Alternate DFOs.

E3.4. Committee Charters

E3.4.1. Preparation of Charters. The CMO, in coordination with the DFO and the DoD GC, shall prepare the Committee's Charter. The CMO shall ensure that the Charter conforms to the elements listed in Appendix 2, complies with References (d) and (e), and any additional CMS guidance. The DFO, as the DoD Sponsor's appointed representative for the Committee, shall be responsible for obtaining any coordination required by the DoD Sponsor.

E3.4.2. CMS Consultation. Subsequent to the DoD GC approval of the draft Charter, the CMO shall request CMS consultation.

E3.4.2.1. For Discretionary Committees, the CMO's written request shall include, at a minimum, an explanation why the Advisory Committee is essential for DoD business and is in the public interest; reasoning why the proposed Committee's functions cannot be performed by the Department of Defense, another existing Committee, or other means, such as a public hearing; and a description of the plan to attain a fairly balanced membership.

E3.4.2.2. With regards to Non-Discretionary Committees, the CMO's written request shall include the Committee's applicable statute or Presidential Directive and provide any additional relevant materials, as necessary.

E3.4.3. Charter Filing Process. Following the CMS consultation, the CMO shall use the following procedures to file the Committee's charter:

E3.4.3.1. Discretionary Committees. The CMO shall submit a Federal Register notice with the OSD Federal Register Liaison Officer (FRLO) announcing the establishment of a Discretionary Committee. Once the Federal Register notice has appeared for 15-calendar days in the Federal Register, the CMO shall file the Charter with the Library of Congress and the appropriate congressional committees. At the same time the Committee's Charter is filed, the CMO shall upload a PDF copy of the Charter to the GSA's FACA Database.

E3.4.3.2. Non-Discretionary Committees. The CMO shall file the Committee's Charter with the Library of Congress and the appropriate congressional committees. In addition, the CMO shall upload a PDF copy of the Charter to the GSA's FACA Database.

E3.4.4. Charter's Official Date. The Charter's official date is the date that the CMO officially transmits the Charter to the Library of Congress and the appropriate congressional committees.

E3.4.5. Charter Changes or Modifications. Once the Charter is filed, the Discretionary Committee may not change its mission or purpose without prior approval from the DA&M. If changes to the Committee's mission are required, the CMO, in coordination with the DoD GC, shall determine what steps are required. Non-Discretionary Committees, on the other hand, shall not change their mission or purpose unless changes are made to the statute or Executive order that established the Committee.

E3.4.6. Renewal of Committee Charters. Charters for all DoD-Supported Committees, unless renewed by the DA&M, terminate 2 years from the date that the CMO filed the Charter.

E3.4.6.1. The DFO shall be responsible for submitting the renewal request, and all renewal requests shall be submitted in writing no later than 90 days before the expiration date of the current Charter.

E3.4.6.2. The DFO, in consultation with the Committee Chairperson, shall submit his or her written request through the DoD Sponsor and the CMO to the DA&M for final determination. The DoD Sponsor shall review the DFO's written request, indicating whether or not the Committee should be renewed or terminated.

E3.4.6.2.1. If the DoD Sponsor recommends renewal of the Committee's Charter, then he or she shall, at a minimum, indicate whether or not the Committee is accomplishing its mission; provide rationale for the Committee's continued operation; specify the Committee's accomplishments with regards to the Department of Defense; explain why the Committee's operations could not be performed by existing DoD resources and/or absorbed by another existing DoD-Supported Committee; and indicate what type of impact the discontinuation of the Committee could have on the Department of Defense.

E3.4.6.2.2. When a DoD Sponsor or designee determines that a Committee Charter shall not be renewed, then he or she shall indicate the Committee's past accomplishments regarding the Department of Defense, how soon Committee termination should occur, and whether or not legislative action is required for termination.

E3.4.6.3. All Charter renewal requests shall be submitted to the CMO for action no later than 90 days before the current Charter expires. Failure to submit the renewal request within the prescribed timeframe may result in the Committee having to suspend its operations until the renewal request is acted upon, or the CMS determines that the Department of Defense shall re-establish the Committee.

E3.4.6.4. If the renewal request is disapproved, then the Committee shall terminate all actions no later than its scheduled termination date unless the DA&M authorizes the Committee staff an additional period of time to close-out administrative actions pertaining to the Committee. Regardless of whether or not a Discretionary Committee is given additional time to carry out its termination, the DFO, in consultation with the CMO, shall ensure that:

E3.4.6.4.1. All DoD personnel detailed to the Committee are returned to their parent organizations with the appropriate personnel evaluations.

E3.4.6.4.2. All National Security Information provided to the Committee is returned to the appropriate Federal agencies or disposed of pursuant to existing statutes, Executive orders, and regulations.

E3.4.6.4.3. The Committee's official records, pursuant to DoD policies and procedures, are archived and transferred to the National Archives and Records Administration (NARA) within 30 days of the Committee's official termination date.

E3.4.6.4.4. All Federal government property is accounted for and disposed of pursuant to existing DoD policies and regulations and that all Federal government-leased office space is returned to the appropriate authorities.

E3.4.6.4.5. The Committee's ACR is current and ready for CMO and CMS verification, and if appropriate, the Committee completes the Annual Closed or Partially-Closed Report.

E3.5. Committee Member Selection and Appointment Process

E3.5.1. Committee Member Selection. Individual Committee members shall be free from significant conflicts of interest to ensure that Committee members provide independent and balanced advice to the Federal government. While the CMO is not involved in the Committee

member selection or approval process, the CMO shall be immediately advised of any changes to the membership numbers or selection process that may impact the Committee's Charter.

E3.5.2. Committee Chairperson Selection Process. All DoD-Supported Committees, unless otherwise prohibited by statute or Executive order, shall have a Chairperson, and the selection process shall be mentioned in the Committee's Charter. If the authorizing authority or the Committee's Charter does not indicate how the Chairperson shall be selected, then the Committee members shall select the Chairperson by majority vote.

E3.5.3. Committee Member Nominations. All Committee member nominations shall be handled in a confidential manner until the nominations have been approved.

E3.5.3.1. The DoD Sponsor, unless otherwise directed by statute or Presidential directive, shall nominate to the Secretary of Defense qualified individuals to serve as Committee members, including Federal officers and employees.

E3.5.3.2. Any discussion with the nominee about his or her participation on the Committee shall be limited until the Secretary of Defense or designee has approved the nominee's appointment.

E3.5.3.3. The DoD Sponsor, in developing a list of candidates, may assess the points of view of prospective candidates, including published articles, testimony, speeches, various legal forums (particularly legal testimony), research conducted on related matters, sources of funding for research and other similar activities, and interests of their employers or clients in specific areas. The DoD Sponsor may include candidates with demonstrated professional or technical qualifications when Committee membership requires technical expertise.

E3.5.3.4. The Secretary of Defense, unless otherwise directed, shall determine the actual number of Committee members to be appointed and any special qualifications required. Once approved by the Secretary of Defense and appointed, all Committee members, unless otherwise authorized by statute or Executive order, shall serve at the discretion of the Secretary of Defense.

E3.5.4. Committee Member Appointments and Reappointments. Once Committee member nominations are approved by the Secretary of Defense, the DoD Sponsor may proceed with the appointment process for approved Committee members. Prospective Committee members, who are not full-time or permanent part-time Federal employees, unless otherwise authorized by

statute or Executive order, shall be appointed on an annual basis pursuant to section 3109 of Reference (i), and shall be considered a Special Government Employee (SGE). Concurrent appointments as an SGE may be held with other DoD-Supported Committees or in another Federal agency.

E3.5.5. Committee Member Appointment Process. The DoD Sponsor's personnel office, pursuant to existing statutes, regulations, and this Instruction, shall process the necessary paperwork to appoint individual Committee members who are not current Federal employees as either experts or consultants, pursuant to Reference (i), or full or part-time Federal government employees, as appropriate.

E3.5.5.1. All prospective Committee members, when formally notified of their appointment by the appropriate DoD Sponsor, shall be advised of their appointment authority (e.g., section 3109 of Reference (i)), and whether they are considered a SGE or Regular Government Employee (RGE).

E3.5.5.2. No prospective Committee member shall be officially appointed until the DoD Sponsor's personnel office and the appropriate GC have completed all administrative matters pertaining to the Committee member's appointment. Administrative matters, at a minimum, shall include compliance with Federal government ethics requirements by filing the necessary Financial Disclosure Reports and certification by the Federal government's reviewing authority and completing the required personnel paperwork (e.g., appointment affidavits, proof of citizenship, security clearances, if required).

E3.5.5.3. While each DoD Sponsor may require Committee members to complete Component-unique personnel forms, all Committee members who are not full-time Federal officers or employees, when appointed, shall be required, at a minimum, to complete the paperwork listed in Appendix 3. Notwithstanding, the DoD Sponsor's personnel office or the appropriate GC may accept previously submitted appointment paperwork that the prospective Committee member filed for a different Committee or another appointment, as long as the paperwork is verified as current.

E3.5.6. Committee Member Reappointment Process. Committee members may be reappointed once their one-year appointment expires; however, they cannot conduct Committee business until their reappointment is approved. In coordination with the Committee Chairperson and under the authority, direction, and control of the DoD Sponsor, the DFO shall request reappointment of the appropriate Committee members.

E3.5.6.1. All reappointment requests shall be forwarded to the Secretary of Defense no later than 60 days prior to the Committee member's appointment expiration date. If the approving authority approves the reappointment then the DoD Sponsor, in coordination with the DFO, shall ensure that the Committee member completes all the required paperwork prior to his or her reappointment.

E3.5.6.2. Committee members who are SGEs shall file a new Financial Disclosure Report along with providing the DoD Sponsor's personnel office a current resume or curriculum vitae.

E3.5.7. Committee Member Resignation Process. Committee members may resign their appointment at any time prior to the termination of their appointment. Resignations shall be submitted to the Committee Chairperson in writing, and the Chairperson or the DFO shall notify the CMO, the DoD Sponsor, and the DoD Sponsor's personnel office. The DoD Sponsor, if necessary, shall nominate a replacement pursuant to the policies of this Instruction.

E3.5.8. Committee Member Appointment Limitations. Pursuant to section 202 of 18 U.S.C. (Reference (l)), no SGE shall serve as a Committee member for more than 130 days in any consecutive 365-day period.

E3.6. Committee Staffing Process

E3.6.1. Staffing. The Department of Defense does not fund manpower authorizations for DoD-Supported Federal Advisory Committees. Instead, the Department of Defense normally assists the Committee by hiring Federal employees, or consultants, contracting for external contractors, or detailing Federal employees from other Federal Agencies.

E3.6.1.1. Within the Federal government, the normal procedure is to provide staffing support using full-time or permanent part-time Federal employees, including members of the Military Services, from the Federal agency that supports the Committee. This process of detailing personnel is normally done on a non-reimbursement basis.

E3.6.1.2. While the DoD Sponsor may be involved with establishing the Committee or determining its approved funding levels, the actual makeup of the Committee staff (i.e., the number of staff or the required skill sets) is typically determined by the Committee's Executive or Staff Director and shall be kept to the minimum number of people required to accomplish the Committee's mission goals and objectives.

E3.6.2. Detailing DoD Personnel. Committees, unless prohibited by statute or Executive order, may request that full-time or permanent part-time DoD employees, including members of the Military Services be detailed, without reimbursement, to assist the Committee with its work.

E3.6.2.1. The use of detailed members of the Military Services shall be kept to an absolute minimum and shall be approved only when deemed essential, pursuant to paragraph 3.2.3 of DoD Directive 1100.4 (Reference (m)).

E3.6.2.1.1. Only full-time or permanent part-time DoD employees or members of the Military Services officially assigned to the locality of the Committee's official location shall be considered for detail. Individuals that possess unique skills or expertise who are stationed outside of the Committee's official locality may be considered for a short-term detail; however, such individuals shall be detailed only in a temporary duty (TDY) status, and the Committee shall pay all TDY costs associated with the individual's TDY assignment.

E3.6.2.1.2. The DFO shall ensure that performance evaluations of Federal employees, to include members of the Military Services, are completed pursuant to applicable DoD or Military Service policies and procedures.

E3.6.2.1.3. The needs of the Military Services and individual career development, to include promotion implications, shall be the overriding factors when evaluating a Committee's request to detail members of the Military Services to Committees.

E3.6.2.1.4. The duty of commissioned officers of the Military Services who are detailed to Committees or serve as Committee members shall not be considered as joint duty pursuant to Chapter 38 of 10 U.S.C. (Reference (n)). In addition, the duty of members of the Uniformed Services who are detailed to Committees or serve as Committee members shall not be considered eligibility toward the award of Defense Decorations, the OSD Identification Badge, or the Joint Staff Identification Badge.

E3.6.2.2. When a Committee is initially established or the charter for an existing Committee is renewed, the DA&M, in coordination with the DoD GC, shall determine whether the Committee shall comply with the policies and procedures outlined in DoD Directive 1000.17 (Reference (o)).

E3.6.2.3. Committees that are required to comply with Reference (o) shall submit their detail requests through their DoD Sponsor to the appropriate approval authority.

E3.6.2.4. Committees that are not required to comply with Reference (o) shall submit their detail requests to the appropriate DoD Sponsor for action.

E3.6.2.4.1. To minimize costs and personnel disruption, the DoD Sponsor shall determine if he or she has adequate resources to meet the requested requirements. If the DoD Sponsor lacks adequate resources, he or she may deny the Committee's request or seek assistance from another DoD Component within the Committee's official locale.

E3.6.2.4.2. On a quarterly basis, the DFO shall provide the CMO with a list of all DoD personnel who have been detailed to the Committee. This list shall indicate the name, rank, occupational specialty, parent organization, date of detail to the Committee, duration of detail, approval authority for the detail (list parent organization and DoD Sponsor), and the detailed member's date of return to his or her parent organization. The CMO shall maintain this information on a permanent basis with the CMO's official files.

E3.6.3. Hiring Committee Staff. Prior to hiring any Committee staff, the DoD Sponsor, in consultation with the appropriate GC and Human Resources Office, shall determine what level of support the Department of Defense can provide to the Committee.

E3.6.3.1. Congressional Authority. Occasionally, Congress will provide specific hiring authority for Non-Discretionary Committees. In addition, some Discretionary and Non-Discretionary Committees may qualify for temporary authority under section 3161 of Reference (i), which provides the authority to hire temporary Federal employees.

E3.6.3.2. Agency Authority. The DoD Sponsor may authorize the Committee to hire full-time or permanent part-time DoD employees, consultants or contractors, depending on the appropriations granted to the Committee by the Department of Defense and pursuant to established Component policies and procedures.

E3.6.3.2.1. When a long-term Committee does not have congressional authority to hire staff personnel, the DoD Sponsor may determine that a small, permanent full-time Committee staff (e.g., the Office of the Military Director for the Defense Advisory Committee on Women in the Services) is in the best interest of the Department of Defense.

E3.6.3.2.2. When such a determination is made, the DoD Sponsor may align the Committee staff under any organization that is formally assigned to the DoD Sponsor by applicable statutes, DoD regulations, subject to the funding limitations and restrictions of the DoD Sponsor and the Committee. Both the DoD Sponsor and authorized permanent Committee staff shall exercise caution in order to maintain transparency of the Committee's work, to ensure that the DoD Sponsor or other DoD officials are not influencing the Committee's work through the permanent Committee staff, and to ensure that the Committee does not interfere with the responsibilities of the DoD Sponsor or other DoD officials through inappropriate use of the Committee's permanent staff.

E3.7. Compensation

E3.7.1. Member Compensation. Committee members, unless otherwise authorized by statute, normally do not receive compensation for their service on the Committee. However, in cases in which the DA&M has determined that certain Committees shall be sponsored by the Military Departments, and the Secretary of Defense and the Secretaries of the Military Departments are authorized to administratively determine pay, these entities, unless otherwise prohibited, may authorize the compensation of Committee members when deemed essential and pursuant to section 102-3.130(d) of Reference (d) and established DoD policies.

E3.7.2. Committee Staff Compensation. Committee staff shall be compensated for their work on the Committee. When the Secretary of Defense or the Secretaries of the Military Departments, pursuant to section 102-3.130(e) (Reference (d)) and established DoD policies, are authorized to determine the compensation of Committee staff, then they shall do so pursuant to Reference (d).

E3.8. Government Ethics

E3.8.1. Ethics and Conflict of Interest Requirements. All Committee members and Committee staff, unless otherwise determined by the DoD Sponsor's GC, shall comply with the standards of ethical conduct for employees of the Federal government, pursuant to DoD 5500.7-R (Reference (p)). Any questions pertaining to ethical issues, particularly representational activities, as set forth in sections 203, 205 and 207 of Reference (l), shall be handled by the DoD Sponsor's GC. Additionally, the DFO shall assist the DoD Sponsor's GC with ensuring the Committee's compliance with the appropriate ethics and conflict of interest rules by:

E3.8.1.1. Ensuring effective training and timely dissemination of information on ethical standards, procedures, and compliance for the Committee, including potential restrictions on post-government employment.

E3.8.1.2. Maintaining records on all Committee members and Committee staff who receive conflict of interest training and counseling.

E3.8.1.3. Notifying the appropriate DoD agencies of any allegations of potential misconduct by Committee members or Committee staff.

E3.8.2. Handling Completed Financial Disclosure Reports. All completed Financial Disclosure Reports shall be protected from unauthorized access or disclosure. No one within the Department of Defense, other than the individual who is filing the Financial Disclosure Report and the appropriate GC, shall retain copies of completed Financial Disclosure Reports.

E3.8.2.1. The DFO, who is normally the DoD Reviewing Official for Financial Disclosure Reports, shall review all Financial Disclosure Reports to determine if the filer has a potential conflict of interest. When determining whether a potential conflict of interests exists, the DFO shall also consult with the appropriate GC. The DFO's review shall take place prior to the individual being appointed, reappointed, or hired.

E3.8.2.2. If a conflict of interest exists, the DFO, in consultation with the DoD Sponsor's GC, shall determine whether a conflict-of-interest waiver shall be granted or if the person shall be replaced. The DFO, at the Committee's public meeting, shall notify the Committee of any conflict-of-interest waivers that are granted. The DFO's announcement shall only indicate the name of the individual concerned and the type of waiver granted.

E3.8.2.3. To facilitate communications between the DoD Sponsor's GC and the individual filers, the DFO shall provide the GC with an e-mail address for each person on the Committee who is required to file a Financial Disclosure Report. The e-mail addresses shall be provided at the same time the Financial Disclosure Reports are filed with the DoD Sponsor's GC, and the e-mail address provided shall be one that the individual checks frequently.

E3.8.3. Annual Submission of Financial Disclosure Reports. Individuals required to file a financial disclosure report (OGE Form 450, “Confidential Financial Disclosure Report” or approved alternative form, or Standard Form 278, “Executive Branch Personnel Public Financial Disclosure”), who remain on the Committee, shall file a new financial disclosure report no later than one year after the previous report was submitted. The DFO shall ensure that each person files a new financial disclosure report and that anyone who fails to comply with the annual submission requirement shall be prohibited from participating in any Committee work until the report is filed.

E3.8.4. Foreign Activities Questionnaire. All SGEs shall file a DD Form 2859 with the DoD Sponsor’s GC prior to their appointments. A new DD Form 2859 shall be filed with the DoD Sponsor’s GC prior to their reappointment. The DFO, unless otherwise directed, shall ensure that the Committee member complies with initial and subsequent submissions of the DD Form 2859.

E3.9. Security Management

E3.9.1. Disclosure of National Security Information. All DoD-Supported Federal Advisory Committees shall comply with DoD 5200.1-R (Reference (q)). Furthermore, no Committee member or Committee staff, including individuals who are detailed to the Committee, shall be provided access to National Security Information without the appropriate security clearances, “need to know,” and completed Standard Form 312, “Classified Information Non-Disclosure Agreement.” Non-government employees (e.g., contractors) who are employed by the Committee shall have an approved contract and DD Form 254, “DoD Contract Security Classification Specification,” on file with the Department of Defense.

E3.9.2. Safeguarding National Security Information. The DFO shall be responsible for safeguarding all National Security Information that is provided to DoD-Supported Committees and ensuring that Committees comply with DoD policies and procedures that deal with National Security Information.

E3.9.3. Security Manager Appointments. A full-time or permanent part-time Federal employee shall be appointed as a Security Manager for all DoD-Supported Committees. This individual shall work under the authority, direction, and control of the Committee’s DFO and shall comply with Reference (q) and all other Directives or Instructions that are issued by the DoD Sponsor’s Security Manager, or the WHS Security Manager for the Committees that the DA&M has directed the Department of Defense, Washington Headquarters Services (WHS), to support. Committee security managers shall be trained and receive support from the Committee’s senior leadership.

E3.9.4. Documentation. Receipts for classified material shall be used by all Federal Agencies that provide National Security Information to DoD-Supported Committees, and the Committees shall retain copies of all receipts that are provided. Copies of all receipts shall be provided to the DoD Sponsor’s security manager upon request, or when the Committee terminates its operations.

E3.9.5. Security Reviews. Any DoD-Supported Committee that receives National Security Information from any Federal agency shall obtain the appropriate security reviews prior to the release of information to the public. Releases to the public include, but are not limited to, news releases, public reports and open meetings.

E3.9.5.1. During the security review, DoD officials may propose changes to the Committee's documents to ensure classified material is not compromised and that documents have the proper security classification. However, no DoD officials shall make editorial changes to any Committee document that impacts the Committee's statutory and regulatory role to provide "independent advice and recommendations" to the Executive and/or Legislative Branches.

E3.9.5.2. The Committee shall retain copies of the security reviews and archive them with the Committee's records.

E3.10. Travel and Transportation Procedures

E3.10.1. Travel and Transportation for Committee Members and Staff. Pursuant to the Joint Federal Travel Regulations (JFTR), Volume 1 (Reference (r)) and JFTR, Volume 2 (Reference (s)), Committee members and staff may travel on military transportation assets when travel is required to perform official Committee business, except when the cost of commercial transportation is less expensive. Travel through commercial means shall be in a manner consistent with References (r) and (s).

E3.10.2. All official travel by Committee members and staff, with the exception of non-government employees (e.g., contractors), that takes place outside of the vicinity of the Committee's official address or the Committee member's primary residence or place of business shall be on official TDY orders issued by the Department of Defense.

E3.10.2.1. The Department of Defense, through the DoD Sponsor and pursuant to existing DoD rules and regulations, may issue the necessary TDY orders for the Committee or provide the Committee the ability to issue its own TDY orders.

E3.10.2.2. Committee members required to travel on official Committee business prior to their appointment to the Committee, shall travel on Invitational Travel Orders (ITO) issued by the DoD Sponsor. Such travel would normally be to receive administrative information from DoD employees prior to taking the oath of office (e.g., ethics briefings).

E3.10.3. Premium-Class Travel Accommodations. No Committee member, Committee staff, or guests of any DoD-Supported Committee, unless specifically authorized, shall use DoD appropriated funds to pay for premium-class travel accommodations, as defined by the Department of Defense. Exceptions to this policy, when required, shall only be authorized by:

E3.10.3.1. The DA&M when the DoD Sponsor is one of the OSD PSAs, Defense Agencies, or Defense Field Activities.

E3.10.3.2. The Secretaries of the Military Departments for the respective Committees in which the DA&M has designated them as DoD Sponsors (e.g., the Secretary of the Army is the DoD Sponsor for the Army Education Committee). The Secretaries of the Military Departments may delegate this authority, but no lower than the Assistant Secretary level provided that the delegated authority is not serving in any capacity on the respective Committee.

E3.10.3.3. The Chairman of the Joint Chiefs of Staff for those Committees that the DA&M designated him or her as the DoD Sponsor. The Chairman of the Joint Chiefs of Staff may delegate this authority, but no lower than the Director of the Joint Staff.

E3.10.4. Personal Assistants for Committee Members with Disabilities. Any Committee member with disabilities who is entitled to the services of a Personal Assistant, pursuant to section 3102 of Reference (i) and Section 501 of the Rehabilitation Act of 1973, as amended, (Reference (t)), shall be authorized to have the Personal Assistant accompany them on official Committee business. The Personal Assistant shall travel on official TDY orders and be entitled to the same travel and transportation allowances authorized for the Committee member he or she is accompanying and when required by the Committee member's disability, shall be authorized, if required, seating adjacent to the Committee member.

E3.11. Financial Management

E3.11.1. Committee Financial Management. Financial disclosure by the Committee, its Committee members, and, when appropriate, its Committee staff is key to the integrity of the Committee and the overall Department of Defense Federal Advisory Committee Management Program. Each Committee shall establish comprehensive policies and procedures to govern their financial management practices and maintain financial records to support expenditure of public funds, enforcement of travel regulations, and adherence to DoD Directive 5015.2 (Reference (u)).

E3.11.2. Funding Source. DoD-Supported Committees, unless funded by statute, Presidential Directive, or otherwise determined by the Office of the Under Secretary of Defense (Comptroller) (USD(C)), shall be funded from amounts appropriated for the Department of Defense for operation and maintenance accounts.

E3.11.2.1. The DoD Sponsor, through their Comptroller, shall provide funding for the Committee's operation in keeping with budget guidance issued by the USD(C). All appropriated DoD funds remaining after termination of the Committee shall revert to the Department of Defense pursuant to existing statutes, Executive orders, and regulations.

E3.11.2.2. The Committee's DoD Sponsor, when determining funding levels for the Committees that it sponsors, shall prescribe what budget submission documentation is required.

E3.11.2.3. Whenever the Chairman of the Joint Chiefs of Staff is designated the DoD Sponsor, adequate support for the Committee, including funding, unless otherwise directed by the Chairman of the Joint Chiefs of Staff, shall be provided by the organization that the

Committee is providing independent advice and recommendations to (e.g., the United States Strategic Command Advisory Group shall be provided adequate support by the U.S. Strategic Command).

E3.11.3. Funding Levels. The Department of Defense, pursuant to its budget restrictions, may be unable to provide full funding for the Committee. As a consequence, actual funding levels for DoD-Supported Committees, unless otherwise stated, shall be determined by the DoD Sponsor.

E3.11.4. Funding Limitations. DoD Sponsors shall ensure that no DoD appropriated funds are expended for Committee operations prior to the approval of the Committee members' appointment by the appointing authority.

E3.11.4.1. The DoD Sponsor, prior to the appointment of Committee members, may authorize the expenditure of DoD appropriated funds for the purpose of procuring infrastructure support (e.g., Information Technology, telecommunication), leasing agreements, or to enable Committee members, prior to taking their oath of office, to attend an Administrative or Preparatory Work Meeting. The DoD Sponsor may delegate this authority, but no lower than the Assistant Secretary level or the three-star flag officer equivalent provided the delegated authority is not serving in any capacity on the Committee in question.

E3.11.4.2. The DoD Sponsor shall ensure that no DoD-appropriated permanent change of station (PCS) funds are used to support the Committee's operations for either PCS or permanent change of assignment moves unless he or she has authorized the hiring of full-time or permanent part-time DoD employees on to the Committee, including members of the Military Services, pursuant to existing statutes, Executive orders, and regulations.

E3.11.5. Financial Transactions and Internal Controls. DoD-Supported Committees are obligated to develop comprehensive financial management policies and procedures, including internal controls over financial transactions. When possible, DoD officials may assist with developing the appropriate policies, procedures, and internal controls; however, the responsibility rests solely with the Committee.

E3.11.5.1. To meet these obligations, the Department of Defense recommends that the Committee, in consultation with its DFO, review account balances on a regular basis to identify unusual account balances, retain sufficient evidence in transaction files to show that all transactions have been properly approved for payment, and monitor the prompt processing of vendor invoices upon receipt so that vendors are accurately paid in a timely manner.

E3.11.5.2. The Department of Defense suggests that the Committee focus on two areas of special interest:

E3.11.5.2.1. Travel Records. The Committee shall ensure that travelers provide appropriate documentation to support airfare transactions, including a payment receipt, boarding pass receipts and/or an itinerary from the appropriate DoD Commercial Travel Office that shows the amount of airfare that was paid and serves as proof that travel occurred. In addition, the Committee shall retain completed travel vouchers as evidence that the designated travel occurred and to support amounts claimed for reimbursement.

E3.11.5.2.2. Contract Files. The Committee shall maintain contract files, including contract awards and administration, to document the basis for Committee decisions to acquire goods and services from commercial vendors, to document each step in the acquisition process, and to document information to supplement an external review of the procurement process. In addition, the Committee shall ensure that all statements of work contain a provision on organizational conflicts of interest and that contract files contain signed assurances that contractors do not have an organizational conflict of interest.

E3.12. Committee and Subcommittee Meetings

E3.12.1. Authority to Call Committee or Subcommittee Meetings. Only the DFO can call a Committee or Subcommittee meeting, and the DFO shall attend all Committee and Subcommittee meetings. Furthermore, no meeting shall be held unless the DFO approves the agenda in advance and is present for the meeting, there is a majority of Committee members present for the meeting, and the Committee or Subcommittee fully complies with the open-meeting requirements of References (d) and (e), and this Instruction.

E3.12.2. Open-Meeting Requirements. All Committees shall ensure that their open meetings are held at a reasonable time and in a manner or place reasonably accessible to the public. Unless the Department of Defense has authorized the Committee to close the meeting under the provisions of section 552b(c) of Reference (i), interested persons or groups, to the extent possible shall be permitted to attend the Committee's meeting.

E3.12.3. Closed-Meeting Determinations. All requests to close a Committee meeting or Subcommittee meeting, when appropriate, shall be submitted in writing by the DFO to the appropriate DoD Sponsor for determination.

E3.12.3.1. The DFO's request shall cite the specific provisions of section 552b(c) of Reference (i) that justifies closure.

E3.12.3.2. Requests shall be submitted in a timely manner to ensure the Committee complies with the 15-calendar day requirement for the Federal Register meeting notice. Failure to administratively handle the necessary paperwork shall not be considered as a reason for the CMO to grant a waiver to the 15-calendar day publication requirement.

E3.12.4. Committee Meetings. All Committee meetings, to the extent possible, shall be open to the public; however, no Committee, unless otherwise directed by the authorizing authority, shall allow the public or interested parties to participate in Committee deliberations.

Any facility used to hold a Committee meeting shall be readily accessible to persons with disabilities, pursuant to section 504 of Reference (t), and sufficient to accommodate Committee members and staff and a reasonable number of interested members of the public.

E3.12.5. Subcommittee Meetings. Even though most Subcommittee meetings are exempt from the open-meeting provisions of References (d) and (e), the Chairperson may direct that his or her Subcommittees comply with the open-meeting requirements of References (d) and (e).

E3.12.5.1. Notwithstanding, the full provisions of References (d) and (e), including the open-meeting requirements, apply to any Subcommittee that meets any of the following conditions:

E3.12.5.1.1. The Subcommittee provides advice or recommendations to a Federal employee who is not a member of the Subcommittee or the parent Committee.

E3.12.5.1.2. The parent Committee fails to deliberate on the Subcommittee's advice or recommendations prior to submitting it to the final Federal government decision maker, or to a Federal officer or employee, who is not a member of the parent Committee.

E3.12.5.1.3. It is known, prior to the Subcommittee's submission of advice and recommendations to the parent Committee that the parent Committee will not deliberate on the Subcommittee's advice and recommendations.

E3.12.5.2. When any of the conditions described in paragraph E3.12.5.1 occur, the Department of Defense, at a minimum, shall file a separate Charter for the Subcommittee, appoint a DFO for the Subcommittee, direct the Subcommittee to comply with the provisions of References (d) and (e), and count the Subcommittee against DoD's Discretionary Federal Advisory Committee ceiling.

E3.12.6. Combined Committee Meetings. Even though References (d) and (e) do not prohibit two separate Committees from having a combined Committee meeting, DFOs shall exercise caution when considering the feasibility of combining meetings.

E3.12.6.1. In such cases, specific ground rules must be developed and published in the Federal Register meeting notice indicating who will lead the meeting, how joint meeting minutes will be recorded and that they will be signed by both Committee Chairpersons, and how Committee voting will be handled.

E3.12.6.2. Any DFOs that are considering holding combined Committee meetings are strongly encouraged to consult with their Sponsor's GC, GFO, and the CMO before proceeding.

E3.12.7. Virtual Committee or Subcommittee Meetings. Committees, with teleconferencing technology, may conduct virtual Committee or Subcommittee meetings. However, they shall comply with all the Committee or Subcommittee meeting requirements, including open or closed meeting requirements, pursuant to References (d) and (e) and this Instruction. In addition, the DFO shall inform the public through the Federal Register notice of the procedures they need to follow if they desire to observe the meeting.

E3.12.8. Committee Member Attendance. When a Committee member cannot attend a scheduled Committee or Subcommittee meeting, the Committee Chairperson or DFO may authorize the Committee member to send a non-Committee member substitute to attend the meeting. However, this person, who travels on ITO orders, shall be prohibited from engaging in any deliberations or casting a vote for the person they represent. In addition, this person shall not be considered to determine whether a majority of Committee members are present.

E3.12.9. Federal Register Notice Requirement. The DFO, pursuant to References (d), (e), and (i), shall file all Federal Register meeting notices with the DoD Component FRLO early enough to ensure that the meeting notice appears in the Federal Register for at least 15 calendar days prior to the actual date of the meeting.

E3.12.9.1. Multiple meeting notices may be announced in a single Federal Register notice; however, if the Committee subsequently has to make changes to the announced schedule, then the DFO shall announce the changes and ensure that the notice complies with the 15-day rule.

E3.12.9.2. The DFO shall ensure that every Federal Register meeting notice includes information on the public's right to submit written statements to the Committee at any time or in response to the stated agenda of a planned meeting, and how they should go about submitting statements to the Committee.

E3.12.9.3. The DoD Component FRLO shall not process any DoD-Supported Committee's Federal Register notice that does not comply with the 15-calendar day requirement, without prior written approval from the CMO. The CMO shall provide the DFO with specific language for inclusion in the Federal Register notice that explains the basis for the CMO's waiver. Copies of the CMO's waiver shall be made available to the public upon request, and retained in the Committee's official records.

E3.12.10. Committee and Subcommittee Meeting Minutes. Meeting minutes or transcripts, pursuant to Reference (d), shall be kept and the appropriate Chairperson shall certify the accuracy of the minutes within 90 calendar days of the meeting. With regard to Administrative and Preparatory Work meetings, the DFO shall ensure that a summary of the meeting is maintained, to include a listing of who attended the meeting, and this information shall be maintained in the Committee's official records.

E3.12.10.1. The DFO, as appropriate, shall ensure that the minutes are certified by the Chairperson no later than 90 calendar days after every Committee or Subcommittee meeting, and that PDF copies of all unclassified Committee meeting minutes or the Closed-Meeting Summaries are uploaded onto the GSA's FACA Database.

E3.12.10.2. Committee and Subcommittee meeting minutes shall contain, at a minimum, the following:

E3.12.10.2.1. The time, date, and location of each meeting; an accurate description of each matter that was discussed; and the Committee's resolution, if any.

E3.12.10.2.2. A list of the persons who were present at the meeting, to include Committee members and staff, Agency employees, and any members of the public who presented oral or written statements.

E3.12.10.2.3. Copies of each report or other document received, issued, or approved by the Committee members at the meeting.

E3.13. Committee Printing Requirements and Committee Reports

E3.13.1. Committee Printing Requirements. All DoD-Supported Committees, unless otherwise directed by DoD Instruction 5330.03 (Reference (v)), shall use DAPS for its printing requirements, including Committee reports and products that are unique to a Committee's identity (e.g., logos, letterhead, custom note pads).

E3.13.1.1. Committee Logos and Seals. Since DoD-Supported Committees provide independent advice and recommendations, and are not considered part of any DoD organizational structure, the Department of Defense discourages the use of any DoD-related seals or logos. Committees may use the Great Seal of the United States, but no Committee, unless authorized by statute or Presidential directive, shall use the Seals of the President, Vice President, U.S. Congress, U.S. House of Representatives, or U.S. Senate in products developed or used by the Committee.

E3.13.1.2. Publishing Files. All Committees shall ensure that the Federal government retains any electronic files used by DAPS or a commercial company to publish the Committee's reports. When the Committee terminates its operations these files shall be retained by the CMO for subsequent printing requirements, if necessary.

E3.13.2. Committee Reports. Normally, each Committee publishes a printed report that provides the Federal government with the Committee's advice and recommendations.

E3.13.2.1. Committee Report Distribution. While the Committee's enabling authority normally specifies who receives the Committee's report, section 102.3-175(d) of Reference (d) requires that eight copies of all Committee reports, including background papers prepared by consultants, be sent to the Library of Congress. The DFO shall comply with this requirement

and provide the CMO a copy of the Committee's transmittal letter within 30 days of a Committee's report being published,

E3.13.2.1.1. Pursuant to section 1042 of Pub. L. No. 107-107 (2001) (Reference (w)), Committees that are required to submit reports to any of the DoD congressional oversight committees shall also send a PDF copy of the report to all other DoD congressional oversight committees. If the report is classified, the Committee shall make special delivery arrangements with the DoD congressional oversight committees.

E3.13.2.1.2. All Committees shall provide one copy of every unclassified Committee report to the Pentagon Library, the libraries that service the Service Academies and the Military Services' commissioned and noncommissioned officer professional military education programs.

E13.2.2. Draft Versions of Reports. For each report published, Committees shall maintain and archive with their official records all draft copies and comments by the Committee members on each version. This enables the public to follow the logic the Committee used in reaching its conclusions, recommendations, and advice.

E3.13.2.3. Statutory Reports. Pursuant to References (d) and (e), each Executive Branch Agency is required to submit annual reports in reference to the Committees that they support. The CMO is required to submit the ACR and the Closed or Partially-Closed Meeting Report each fiscal year. Each DFO shall verify their ACR and submit an Annual Report of Closed or Partially-Closed Committee or Subcommittee meetings no later than October 15 of each year.

E3.14. Committee Management Records

E3.14.1. Department of Defense Federal Advisory Committee Management Program Records. All records pertaining to the Department of Defense Federal Advisory Committee Management Program shall be maintained and preserved pursuant to Reference (u).

E3.14.1.1. DoD offices, as determined by the CMO, shall retain appropriate records that pertain to the Department of Defense Federal Advisory Committee Management Program. For example, the DoD GC for OSD Sponsored Federal Advisory Committees, instead of the CMO's office, shall retain copies of Committee member and staff confidential financial records pursuant to established statutes, Executive orders, and regulations.

E3.14.1.2. All Committee records, pursuant to section 3301 of 44 U.S.C. (Reference (x)), shall be considered property of the Federal government and retained pursuant to existing statutes, Executive orders, and regulations. Pursuant to section 552 of Reference (i), any records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agendas, or other documents that were made available to or prepared for or by a Committee shall be available for public inspection and copying at a single location until the Committee ceases to exist. Normally, these documents will be located at the Committee's office; however, if the documents are located elsewhere, then the DFO shall ensure that the location of the documents is announced in the Federal Register.

E3.14.2. Transferring and Archiving of Committee Records. All DoD-Sponsored Committees, unless otherwise directed by statute, Executive order, or regulation shall immediately archive and transfer their official records to NARA upon termination.

E3.14.2.1. The maintenance and preparation of Committee records for transfer to NARA shall be done pursuant to Reference (u) and 36 Code of Federal Regulations 1128, subpart L (Reference (y)).

E3.14.2.2. Long-term Committees may transfer historical records to NARA at any time prior to their actual termination (e.g., in 2006, the U.S. Air Force Scientific Advisory Board elected to transfer all of its previous records to NARA, even though the Committee's Charter was renewed by the Secretary of Defense).

E3.14.2.3. When the Committee's official records are transmitted to NARA the Committee shall include in the archived records two printed copies of the Committee's final report.

E3.14.3. Freedom of Information Requests. The public is not required to submit Freedom of Information Act (FOIA) requests when seeking committee records that are not exempt from release under the FOIA statute. However, if there is a reasonable expectation that the records fall within a FOIA exemption, the public may be required to submit a FOIA request.

E3.15. FACA Database System

E3.15.1. FACA Database. The CMS maintains a FACA Database, which the CMO, the GFOs, and the DFOs shall update on a regular basis. This database is used by Congress, the Executive Office of the President, the public, and the media to stay abreast of developments within each Committee and the Executive Branch's Federal Advisory Committee Management Program.

E3.15.1.1. The CMO shall establish the Committee's database file in the FACA Database when the Committee's Charter is initially filed.

E3.15.1.2. Since the FACA Database is regularly accessed by the Executive Branch, the Congress, the Government Accountability Office, and the public, it is imperative that the DFO routinely update the Committee's Database File. At a minimum, the DFO shall review and update, as appropriate, their Committee's FACA Database File every 60 days. Each GFO may require the DFOs under their cognizance to advise them when these reviews and updates have been completed.

E3.15.2. Areas Requiring Special Attention. When updating the FACA Database, each GFO and DFO shall pay special attention to the following areas:

E3.15.2.1. Reports. Every unclassified report issued by a Committee during a fiscal year shall be listed and loaded onto the GSA's FACA Database. If the Committee's report is classified, the DFO shall list the report's unclassified title, if it exists, and annotate the remarks section of the Agency Recommendation Profile to indicate that the report is classified.

E3.15.2.2. Meetings. Every Committee meeting, including Administrative and Preparatory Work, Closed or Partially Closed meetings, shall be listed and all associated documents shall be loaded onto the GSA's FACA Database. The information listed on this profile shall be the same information (i.e., open, closed or partially closed; dates, location; and purpose) that the DFO normally submits on the Federal Register notice, if required.

E3.15.2.3. Meeting Documentation. Regardless of whether the Committee meeting is open or closed to the public, the DFO must ensure that all the proper documentation is posted to the GSA's FACA Database.

E3.15.2.3.1. Open Meeting Documentation. For each open Committee meeting, the DFO shall post all unclassified documents associated with the meeting. Specifically, the DFO shall post, in PDF format: the published Federal Register notice; the meeting's approved agenda; the approved minutes; and all unclassified documents presented to Committee members prior to and during the meeting by Committee staff, Agency representatives, or the public.

E3.15.2.3.2. Closed or Partially-Closed Meeting Documentation. For approved closed or partially-closed meetings, the DFO shall post in PDF format the meeting's unclassified approved agenda and a summary of the meeting. This summary, which will be used for the Annual Report of Closed or Partially-Closed Committee or Subcommittee meetings, shall contain the date and place of the meeting; what portion of the meeting (by time and agenda item) was closed to the public, and the provisions of Reference (i) cited to authorize the closure; the title or topic of all reports, records, or other information (written or oral) presented to the Committee or Subcommittee during the meeting, or provided to the Committee members in advance of the meeting; and a description of any actions taken at the closed session, including any reports or recommendations made to a DoD official and the disposition of any such reports or recommendations.

E3.15.2.4. Costs. All Federal government expenditures (direct and indirect) associated with the Committee shall be captured. When reporting Payments to Non-Federal members, the DFO shall capture all government funds, except for travel and per diem reimbursements, paid to the members for official Committee business. As for Payments for Federal members, the DFO shall capture the total salaries, to include benefits, received by Committee members who are Federal officers or employees (including Members of Congress) based upon the number of days of official Committee business. The Payments to Consultants is intended to capture costs paid to any consultant hired by the Committee. Reimbursement for Travel Payments, regardless of the category, is for all reimbursements provided by the Federal government for official Committee business. The Other Payments captures all other Committee expenditures, including printing, contracts, mailing costs (FedEx®, U.S. Postal Service, etc.), Committee meetings, etc, which are not captured elsewhere.

E3.15.2.5. Members. The DFO shall provide all the CMS information requested. The member's designation, unless otherwise directed by the CMO, will either be Regular Government Employee (Federal officer or employee, member of the Military Services, or Member of Congress) or SGE. The Appointment Type will be either Agency, Congressional, or Federal Employee Member. For the member's appointment term, the DFO, unless the Charter says otherwise, will enter 1-year term appointments. The Pay Plan and Pay Source, unless otherwise directed by the CMO, will be Travel and Per Diem Only and Executive Branch, respectively. When entering the member's e-mail address, the DFO may use the Committee's e-mail address so long as the CMS, who is the only person who will use the e-mail address, is able to contact the Committee member.

E3.15.2.6. Subcommittees. When the Committee establishes Subcommittees, the CMO shall be advised so that the Subcommittee's name can be entered into the FACA Database. Once entered, the DFO is then responsible for maintaining the required data. Within the Subcommittee Profile, the Cost Page is normally intended for chartered Subcommittees; however, if the DFO is able to separate out the Subcommittee costs from those of the parent Committee then the DFO may report the Subcommittee's cost information. When doing so the DFO must ensure that the Subcommittee's costs are reflected in the overall Committee's costs.

E3.16. Program Management

E3.16.1. Department of Defense Federal Advisory Committee Management Program. To comply with the statutory and regulatory requirements of References (d) and (e), the CMO, on behalf of the DA&M, shall develop a management program that enables the CMO to manage and assess the performance of the DoD's overall program.

E3.16.2. GFOs. Each DoD Sponsor is encouraged to appoint, in writing, a GFO to assist the Sponsor in the administrative oversight and management of their aspects of the Department of Defense Federal Advisory Committee Management Program.

E3.16.2.1. The GFO duties shall be administrative in nature. He or she shall not exercise policy management authority over the Department of Defense Federal Advisory Committee Management Program, but will provide input, when requested or warranted. In addition, the GFO serves as the liaison between the CMO and all DFOs, alternate DFOs, and Committee points of contacts under the purview of the GFO's sponsor. In this capacity, the GFO provides policy guidance, implements DoD policy, answers inquiries, ensures FACA compliance, reviews nomination packages, etc. To the extent possible, communications between the DFO and the CMO shall be through the appropriate GFO.

E3.16.2.2. When appointed, the GFO shall attend the GSA's Federal Advisory Committee Act Course, and retake the course every 36 months as long as the person remains a GFO. In addition, the GFO shall be given access to the GSA's FACA Database for those Committees that fall under the GFO's Sponsor. For example, the GFO for the Department of the Navy shall have GFO privileges in GSA's FACA Database for all Committees sponsored by the Secretary of the Navy, and the GFO shall assist the DFOs and CMO in maintaining the accuracy of the Database for these Committees.

E3.16.2.3. Acting on behalf of the DoD Sponsor, the GFO may hold their Sponsor's DFOs to additional administrative requirements as long as these additional requirements do not negate CMO or CMS requirements.

E3.16.3. Transparency. Program transparency reduces the likelihood of perceived inequities and enables the public to better understand how the Federal Advisory Committee Management Program is managed, and how Committees exercise internal controls over project management, contracting procedures and practices, and financial transactions.

E3.16.3.1. To promote greater transparency, the Department of Defense and the DoD-Supported Committees shall conduct its FACA-related business in the open to the extent possible and in accordance with existing regulations regarding National Security Information.

E3.16.3.2. The Department of Defense shall use various public-access Web sites to make information available to the public. This includes, but is not limited to information such as the status of Committee member appointment; how Committees arrive at their decisions; copies of Committee Charters; and access to unclassified work products (reports, studies, or recommendations).

E3.16.4. CMO Web site. The CMO shall maintain a Web site that provides information on DoD-Supported Committees. At a minimum, the Web site shall include the CMO's mailing address, fax number, and phone number; a list of the various DoD-Sponsored Committees, including the Committees that Congress exempted from Reference (e); a hyperlink to the Committee's Web site, if appropriate; a copy of the Committee's current Charter; a media point of contact for the CMO; and when possible copies of published unclassified Committee reports.

E3.16.5. Committee Web sites. In keeping with established security requirements, Committees are encouraged to develop and maintain Web sites. Web sites funded by DoD appropriated funds, shall comply with the standards and policies promulgated by the Chief Information Officer for the Department of Defense, including the appropriate security regulations and policies.

E3.16.5.1. As permitted by law, Committees shall practice openness and seek feedback from the public and other interested parties by encouraging the exchange of ideas and recommendations through their Web sites.

E3.16.5.2. A Web site that is maintained by a Committee shall provide, at a minimum the Committee's name and mailing address; information on the Committee's DoD Sponsor; the DFO's phone and mailing address; background on the authority that established the Committee; the Committee's Charter; details on the Committee's public inquiry process; any by-laws or rules of operations approved by Committee members; explanation of how the Committee arrives at its decisions; a history and timeline of Committee activities; a media point of contact for the Committee; and records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agendas, and any other documents that pertain to the Committee.

E3.16.6. Committee Management Review Program. The DA&M and the CMO shall develop a DoD Committee Management Review Program no later than 90 days after this Instruction becomes effective. When conducting his or her reviews, the CMO may consult with the GFO, DFO, DoD Washington Headquarters Services, or DoD GC subject-matter experts. Findings and recommendations resulting from the CMO's review shall be reported to the appropriate officials, and any DoD-wide changes shall be submitted to the DA&M or CMO within 60 days. At a minimum, the CMO shall review the following on an annual basis:

E3.16.6.1. All Committee records maintained in the CMO and the GFO offices.

E3.16.6.2. All Financial Disclosure Reports (DD Form 2859) and Appointment Affidavits on current Committee members.

E3.16.6.3. At least 25 percent of the records maintained by Committees and their DFOs, including financial management records. The CMO shall ensure that he or she takes a representative sampling of Committees from each DoD Sponsor.

E3.17. Non-Discretionary Committees Exempted from the FACA Statute

E3.17.1. FACA Exemption. Only Congress may exempt a Federal Advisory Committee from the provisions of References (d) and (e). when this occurs, the CMO, in coordination with the DoD GC, shall determine which provisions of this Instruction a Non-Discretionary Committee shall comply with.

E3.17.1.1. Any DoD Sponsor for a Committee that is exempt from References (d) and (e) shall designate a full-time or permanent part-time Federal employee to act as a DoD Liaison Officer for that Committee. This individual will work with the CMO and the GFO, if appropriate, to ensure that the Committee complies with the appropriate DoD regulations and policies.

E3.17.1.2. In addition, the DoD Liaison Officer shall be responsible for safeguarding all DoD National Security Information that is provided to the Committee.

E3.17.2. DoD Regulatory Compliance. Generally, the Committee shall comply with the following provisions:

E3.17.2.1. DoD personnel policies and procedures, including those regarding the detail of DoD personnel when the Department of Defense provides funding for Committee members and staff, or the Committee utilizes the professional services of a DoD personnel office to staff its Committee.

E3.17.2.2. DoD policies and procedures pertaining to access, use, and storage of DoD National Security Information. When DoD National Security Information is required by a Committee exempted by the FACA statute and other Federal regulations, the Committee's DoD Sponsor shall establish procedures for the Committee to follow when handling DoD National Security Information, including security reviews of any materials disseminated by the Committee.

E3.17.2.3. DoD travel rules and regulations when the Department of Defense provides funding for the Committee's official travel.

E3.17.2.4. DoD contracting and financial management policies and procedures when the Committee uses DoD appropriated funds.

E3.17.2.5. DoD information technology policies and procedures when the Committee uses any DoD backbone or e-mail servers.

E3.17.2.6. DoD policies and procedures regarding the transfer and archiving of the Committee's official records when the Committee completes its work.

E3.17.3. Report Requirements. Although Committees exempt from the provisions of References (d) and (e) are also exempt from the report filing provisions of References (d) and (e) and this Instruction, the Department of Defense encourages the Committee to consider filing copies of its unclassified Committee reports in accordance with the additional distribution requirements of this Instruction.

Appendices - 3

E3.A1. Elements of Justification for the Establishment of Discretionary Advisory Committees

E3.A2. Elements Required for DoD-Supported Federal Advisory Committee Charters

E3.A3. Required Appointment Paperwork for Committee members (With and Without Compensation)

E3.A1. APPENDIX 1

ELEMENTS OF JUSTIFICATION FOR THE ESTABLISHMENT
OF DISCRETIONARY ADVISORY COMMITTEES

E3.A1.1. Name of Proposed Advisory Committee.

E3.A1.2. Number of Committee Members. Indicate the required number of members and whether or not additional compensation, other than travel and per diem, is necessary. With regard to compensation, Committee members normally do not receive compensation for their services. In addition, indicate how the Department of Defense will ensure that Committee membership is balanced.

E3.A1.3. Estimated Size and Source of Staff. Indicate the size of the proposed Advisory Committee's support staff and the source of staff members (e.g., detailed DoD employees, new hires).

E3.A1.4. Estimated Number and Frequency of Meetings. Indicate the estimated number of meetings anticipated within a fiscal year and, if known, how frequently the meetings will be held (e.g., "approximately every 4 months").

E3.A1.5. Estimated Annual Costs, Funding Sources, and Number of Man-Years Required to Support Proposed Advisory Committee. Costs shall include DoD's direct and indirect costs. Funding sources shall indicate if funding is available from the Component's appropriated funds or if appropriation will come from other DoD funds.

E3.A1.6. Rationale for Committee Formation. Explain why it is essential that the Department of Defense form this Committee to serve in the interests of the Department of Defense and the public. (Keep in mind that the Office of Management and Budget through the CMS controls the number of Discretionary Committees that the Department of Defense can approve.)

E3.A1.7. Explain Why the Proposed Advisory Committee Cannot be Aligned Under an Existing DoD-Supported Federal Advisory Committee. [Self Explanatory]

E3.A1.8. Explain How the Proposed Advisory Committee will Accomplish its Purpose and Why the Advice is not Available from Other Sources. [Self Explanatory]

E3.A2. APPENDIX 2

ELEMENTS REQUIRED FOR DOD-SUPPORTED
FEDERAL ADVISORY COMMITTEE CHARTERS

E3.A2.1. Official Designation. Provide the official name of the Advisory Committee.

E3.A2.2. Objectives and Scope of Activities. Describe the objectives and scope of the Committee's mission or charge, and indicate what authority established the committee. For Discretionary Committees, it is not necessary to provide a detailed description of the specific duties or tasks; however, for Non-Discretionary Committees, the specific duties or tasks that are listed in the statute shall be provided.

E3.A2.3. Membership. Indicate the total number of members, provide details on the selection process for Committee members and the Committee Chairperson, provide a description of the required expertise and/or represented groups necessary to achieve balanced membership, and list the Committee members' appointment categories (e.g., SGE) and whether or not they are compensated for their duties.

E3.A2.4. Meetings. Indicate that the DFO calls the Committee meetings and what the estimated number of meetings per year. In addition, this section will indicate: (a) how the DFO is appointed; (b) that the DFO or Alternate DFO must attend all Committee and Subcommittee meetings; (c) whether the Committee is authorized to establish Subcommittees; and (d) that Subcommittees, if authorized, must comply with FACA statutes.

E3.A2.5. Duration of the Committee. Indicate that the Committee is subject to renewal every 2 years.

E3.A2.6. Agency Support. Indicate that the Department of Defense through the DoD Sponsor will support the Committee, as required, and ensure compliance with the FACA statute and regulations.

E3.A2.7. Termination Date. Indicate that the Committee will terminate upon completion of its mission or 2 years from the date its charter is filed, unless approved for extension.

E3.A2.8. Operating Costs. Indicate the estimated annual operating and DoD personnel costs to support the Committee. The cost expenditure categories that are used in the ACR shall be used to estimate these costs.

E3.A2.9. Charter Filing Date. Date shall be entered by the CMO and it will be the date the Charter is officially filed.

E3.A3. APPENDIX 3

REQUIRED APPOINTMENT PAPERWORK FOR
COMMITTEE MEMBERS (WITH AND WITHOUT COMPENSATION)¹

E3.A3.1. INS Form 9, “Employment Eligibility Verification” (Copies of supporting documentation used for verification shall be provided.)¹

E3.A3.2. Optional Form 306, “Declaration for Federal Employment.”

E3.A3.3. Current Resume or Optional Form 612, “Optional Application for Federal Employment.” If a resume is used, then it shall indicate the Committee member’s social security number, date of birth, and current address.

E3.A3.4. Standard Form 61, “Appointment Affidavits.”

E3.A3.5. Standard Form 144, “Statement of Prior Federal Service” (Former military personnel shall provide a copy of DD Form 214 and retired Federal employees shall provide a copy of the most recent annuity statement.)

E3.A3.6. OGE Form 450, “Confidential Financial Disclosure Report” or Standard Form 278, “Executive Branch Personnel Public Financial Disclosure Report.” The appropriate GC shall determine which form is required.

E3.A3.7. DoD GC’s “An Ethics Guide for Consultants and Advisory Committee members at the Department of Defense,” which provides Committee members with ethics information.

E3.A3.8. DD Form 2292, “Consultant or Expert, Request for Appointment, or Renewal of Appointment.”

REQUIRED APPOINTMENT PAPERWORK
COMMITTEE MEMBERS (WITH COMPENSATION)

E3.A3.10. Required appointment paperwork includes the requirements of Paragraphs E3.A3.1 through E3.A3.9, in addition to the following:

E3.A3.10.1. Standard Form 1199A, “Direct Deposit Form.”

E3.A3.10.2. Employee Withholding Certificate – Internal Revenue Service Form W-4 and appropriate State Certificates.

¹ Obtain copies via the Internet at: <http://www.uscis.gov/graphics/formsfee/forms/i-9.htm>

**Defense Advisory Committee on Investigation, Prosecution, and Defense of
Sexual Assault in the Armed Forces (DAC-IPAD) Public Meeting
April 28, 2017**

Table of Contents

Materials for Administrative Session

- Tab 1** Public Meeting Agenda
- Tab 2** Biographies of Meeting Presenters
- Tab 3** Information Paper: Federal Advisory Committee Act
- Tab 4** Federal Advisory Committee Act (5 U.S.C. app., as amended.)
- Tab 5** Federal Advisory Committee Management; Final Rule, 41 CFR Parts 101-6 and 102-3 (July 19, 2001)
- Tab 6** Department of Defense Instruction (DODI) 5105.04, “Department of Defense Federal Advisory Committee Management Program” (August 6, 2007)

Materials for Presentation on the Mechanics of a Military Sexual Assault Case

- Tab 7** Military Justice Process: Disposition Decisions, Courts-Martial, and Alternative Outcomes – DAC-IPAD Briefing (April 28, 2017)
- *PowerPoint presentation of Colonel Christopher Kennebeck, professor and chair of the Criminal Law Department at the Army Judge Advocate General’s Legal Center and School (TJAGLCS) in Charlottesville, Virginia.*
- Tab 8** Abbott Sample Case File
- *A sample case file of 22 documents utilized by TJAGLCS for instruction of judge advocates including an investigation report, charge sheet, sexual assault forensic examination report, special victims’ counsel documentation, and expert witness materials.*
- Tab 9** Mechanics of a Military Sexual Assault Case: Documents and Forms

Materials for the Presentation on Department of Defense Annual Sexual Assault Reporting Data

Tab 10 Military Sexual Assault Case Adjudication Data Analysis

- *PowerPoint presentation of Dr. Cassia Spohn, Foundation Professor and Director, Arizona State University School of Criminology and Criminal Justice and Ms. Meghan Peters, Attorney-Advisor. Judicial Proceedings Panel and DAC-IPAD*

Tab 11 National Defense Authorization Act (NDAA) Provisions Regarding the Department of Defense Annual Report on Sexual Assault, Fiscal Year 2011 – Fiscal Year 2017

- *Document prepared by DAC-IPAD staff providing the statutory reporting requirements for DoD annual reporting to Congress on sexual assault incidents occurring each year.*

Materials for DAC-IPAD Strategic Planning Session

Tab 12 Some Initial General Thoughts for Consideration in Developing a Structure for a 4+ Year Work Plan for DAC-IPAD

- *Document prepared by Judge Leo Brisbois, Committee member, outlining proposed areas of inquiry for the DAC-IPAD.*

Tab 13 Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-PAD) Committee Planning Session Outline

- *Overview of key issues and questions for the Committee members to discuss during the planning session. This document was prepared by the DAC-IPAD staff.*

Military Justice Process

Disposition Decisions, Courts-Martial, and Alternative Outcomes

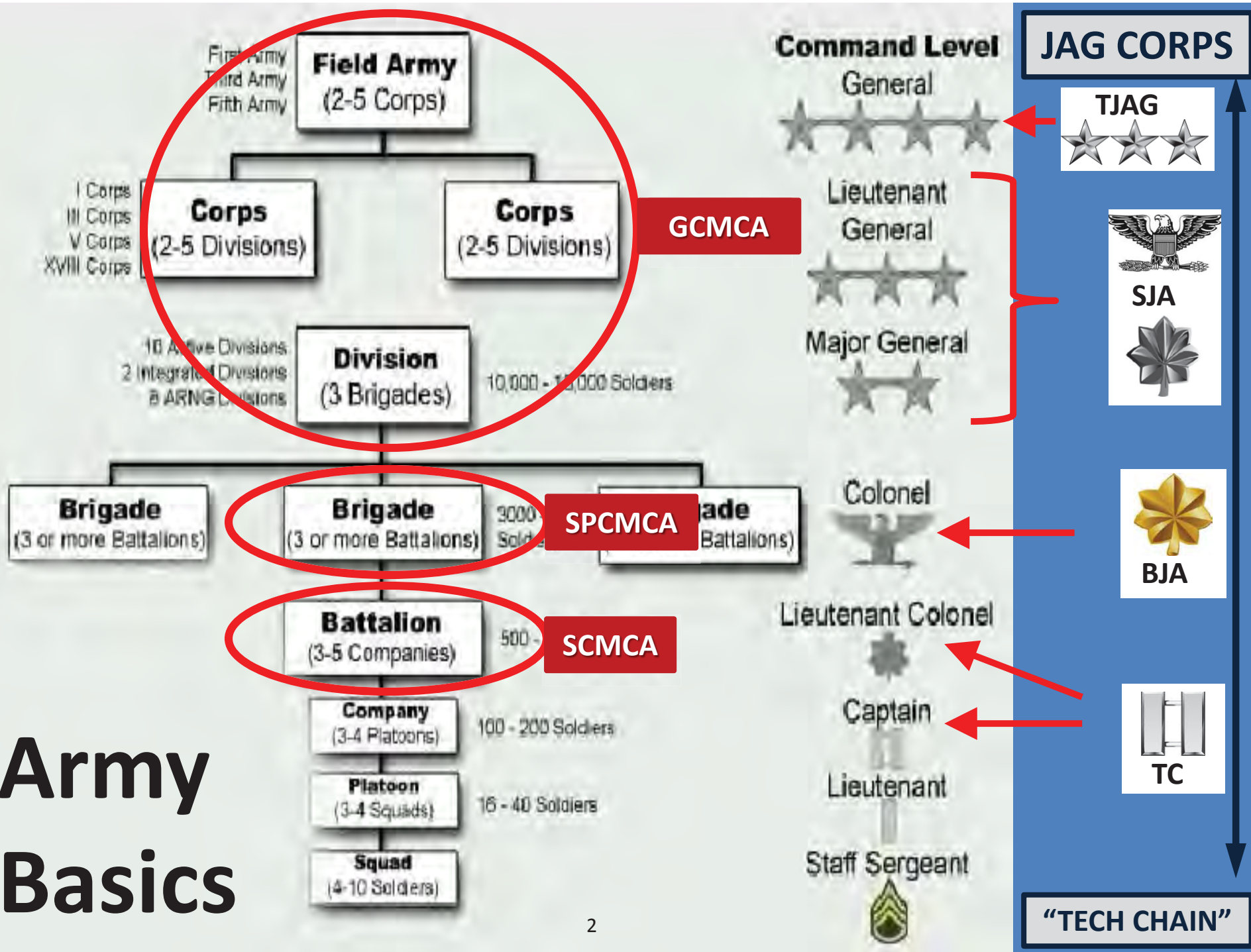
DAC-IPAD Briefing

28 April 2017

Agenda

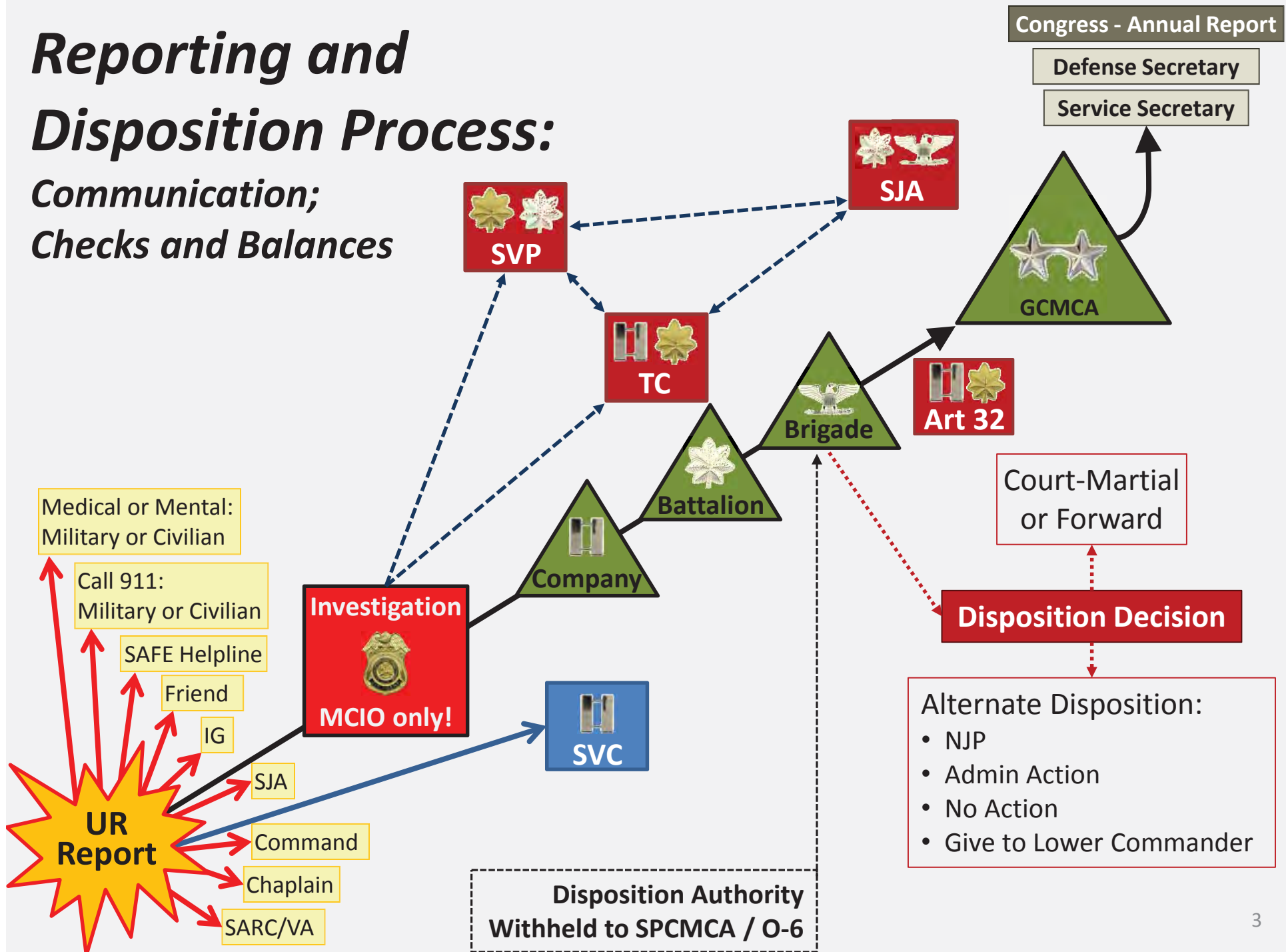
- Overview of the Process and Players
- Sexual Assault Prevention/Response Strategy
- Multi-Disciplinary Approach to Victim Care
- Walk Through a Typical Case

Army Basics

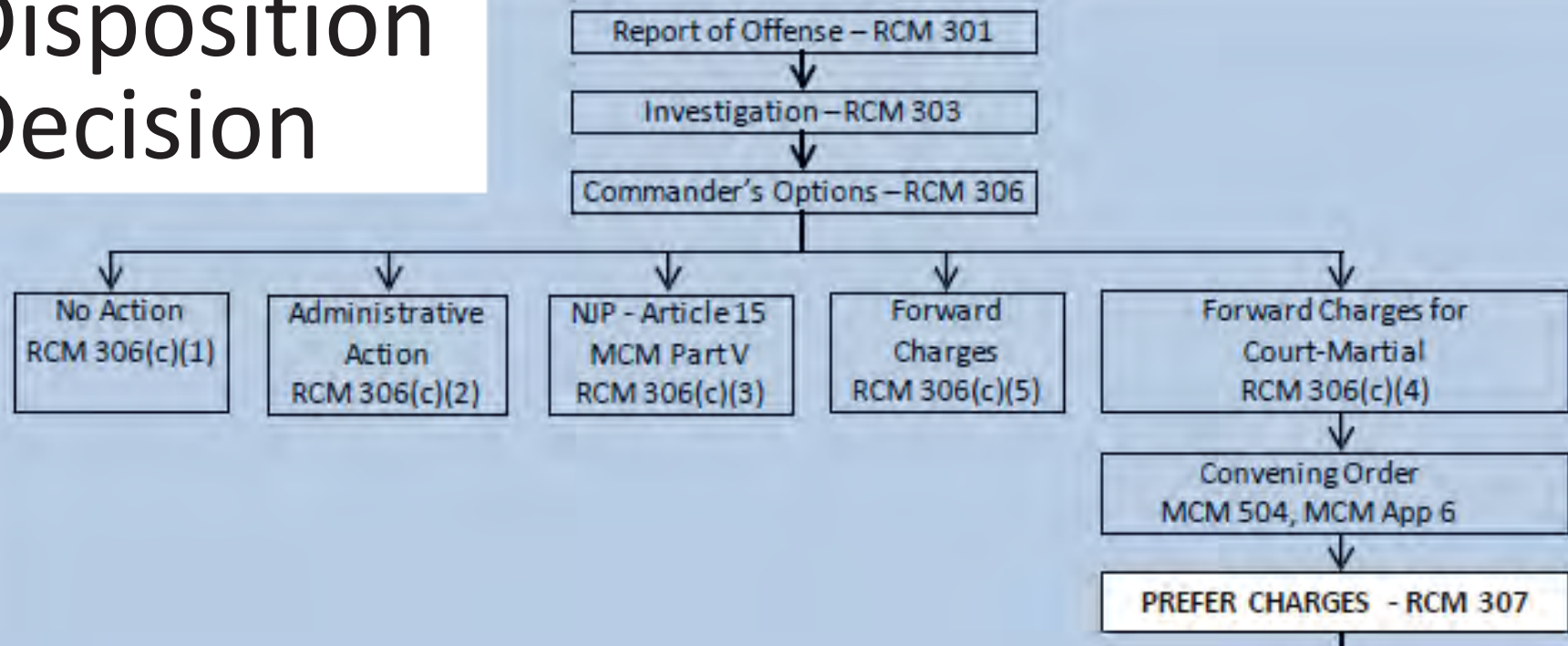


Reporting and Disposition Process:

Communication; Checks and Balances



Disposition Decision



Commander makes “Disposition Decision”

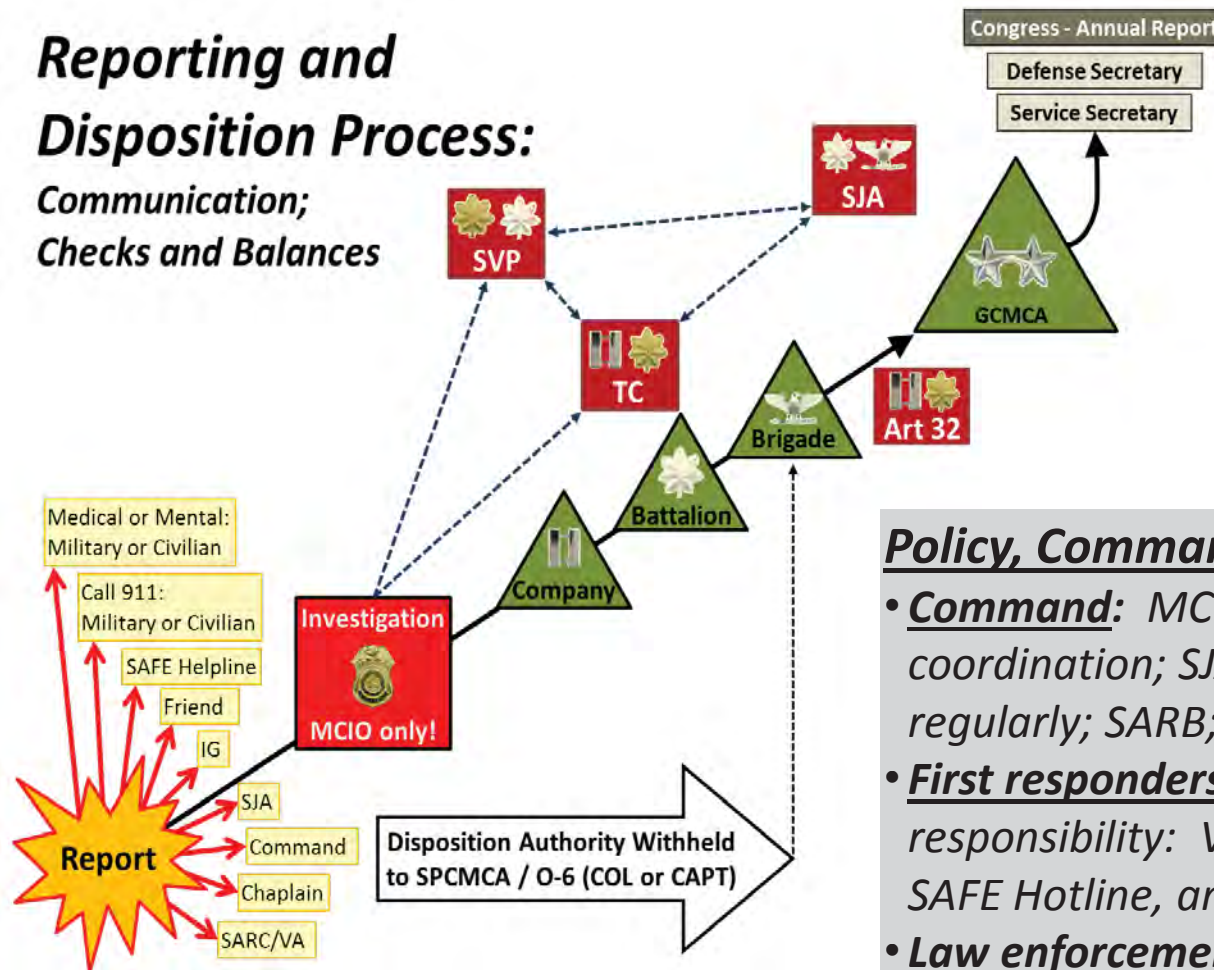
- After investigation; restrictions considerations; and consult with SVP and MCIO

RCM 306

1. Do Nothing
2. Administrative Action
3. NJP
4. Forward for Court-Martial
5. “Forward” for Disposition

Reporting and Disposition Process:

Communication;
Checks and Balances



Policy, Command and Personnel:

- **Command:** MCIO mandatory; SAIRO; SARC coordination; SJA & withhold; update victim regularly; SARB; 4833.
- **First responders:** ALL have visibility and responsibility: VA, SARC, SANE, SARB, Chaplain, IG, SAFE Hotline, and database entry (DA visibility)
- **Law enforcement:** Blotter; notify SVP & SVC; coordinate SVC; DoD IG audit.
- **SJA (SVP, TC, CoJ):** SVP manages ALL SA investigation/prosecution; PC decision; disposition advice (withhold); reporting
- **SVC:** Victim's attorney and best interests; helps enforce victims' rights; conduit to command; can alert retaliation reports

Disposition Options

Administrative Action	Nonjudicial Punishment (NJP)	Courts-Martial
On-the-spot correction	Summarized Article 15	Summary Court-Martial
Corrective Training	Company Grade Article 15	Special Court-Martial
Counseling	Field Grade Article 15	General Court-Martial
Pass Revocation	General Officer Article 15	(Chapter 10)
Bar to Continued Service		
Administrative Reprimand		
Administrative Separation	(minor offenses)	(major offenses)
OTH, General, or Honorable Discharge Possible		Dishonorable or Bad Conduct Discharge, or Dismissal (officers)

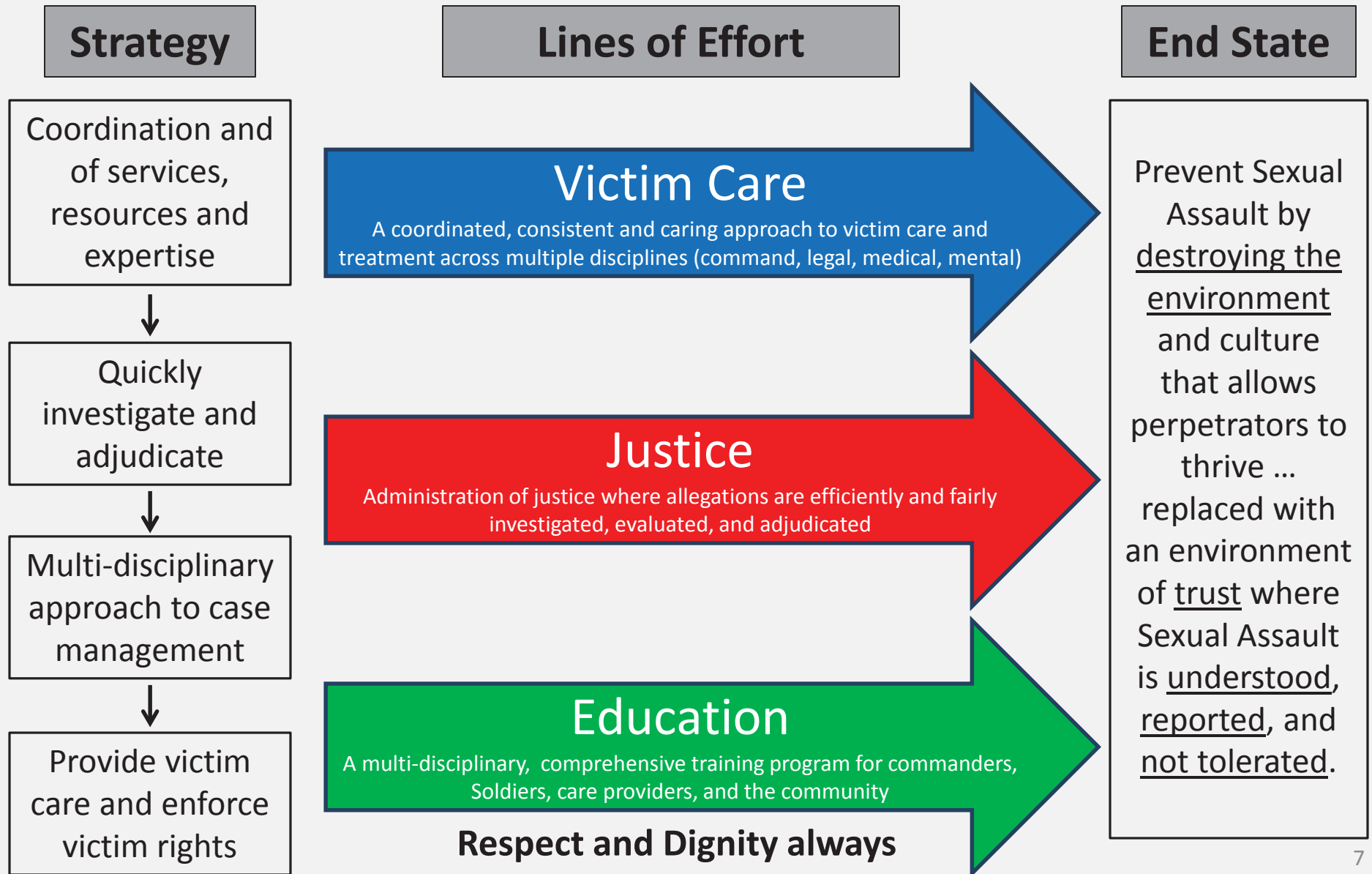
Preponderance

Beyond a Reasonable Doubt

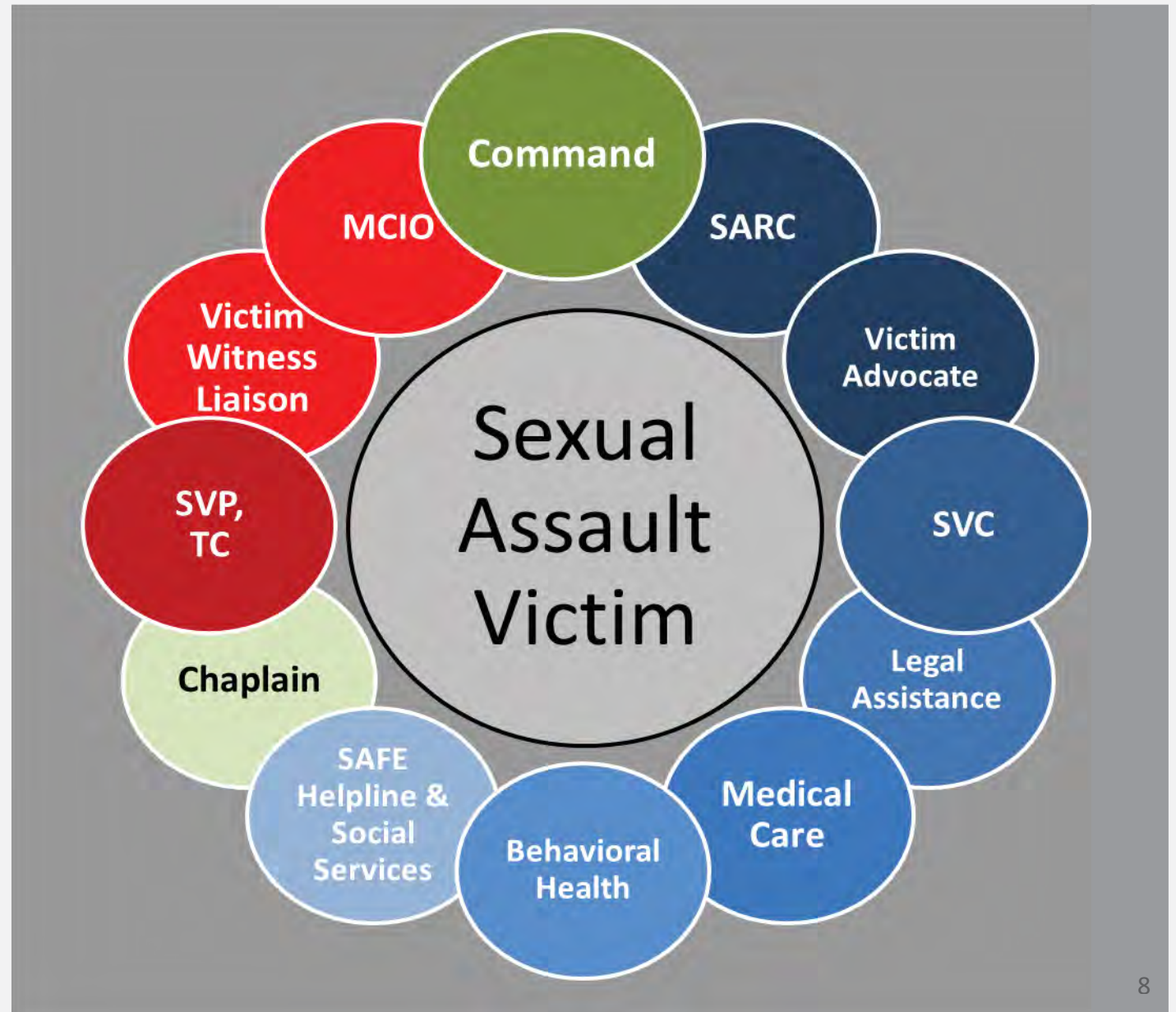
MRE Do Not Apply

MRE Do Apply

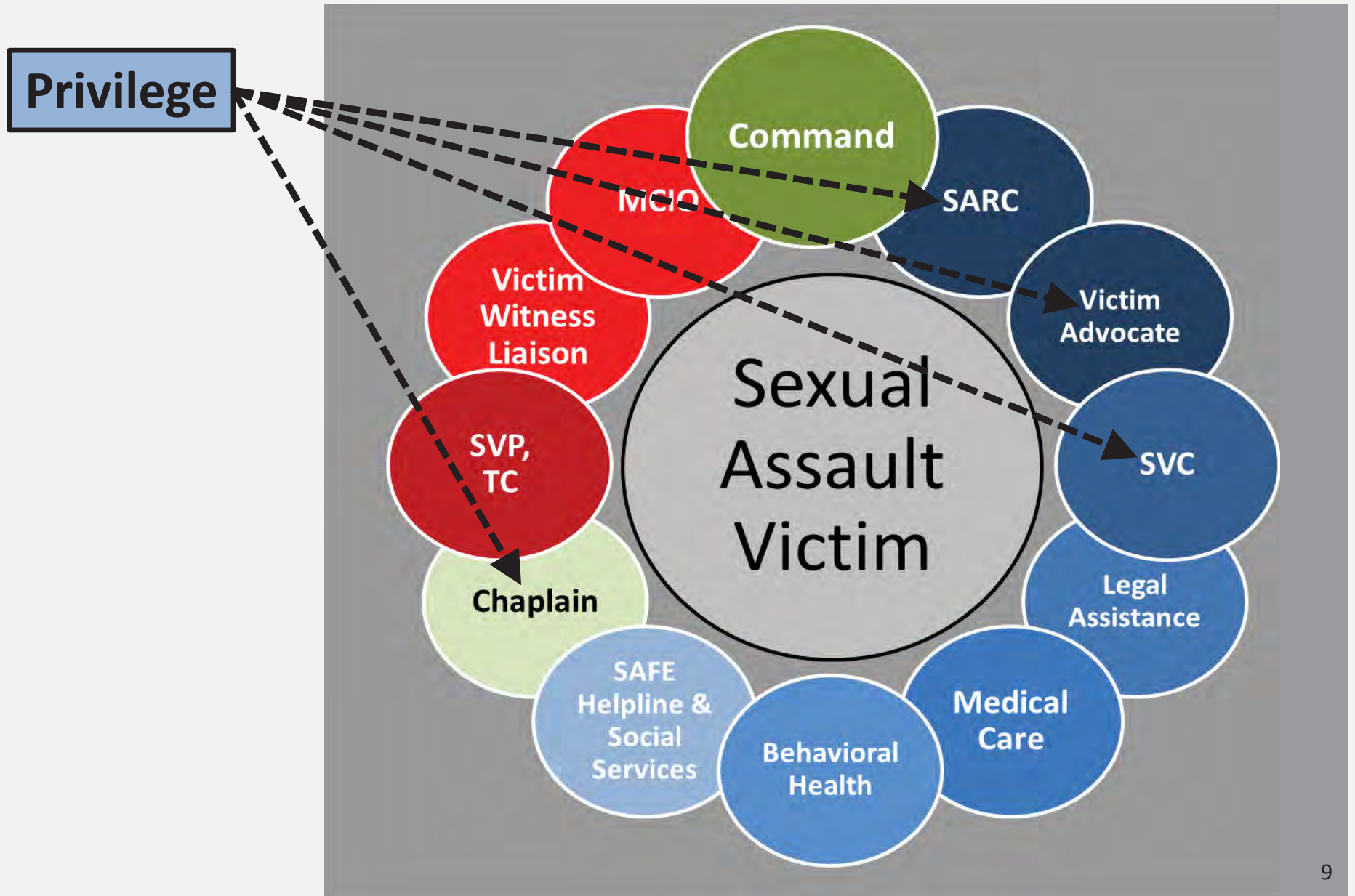
SA Prevention & Response: Strategy



Victim Care and Support

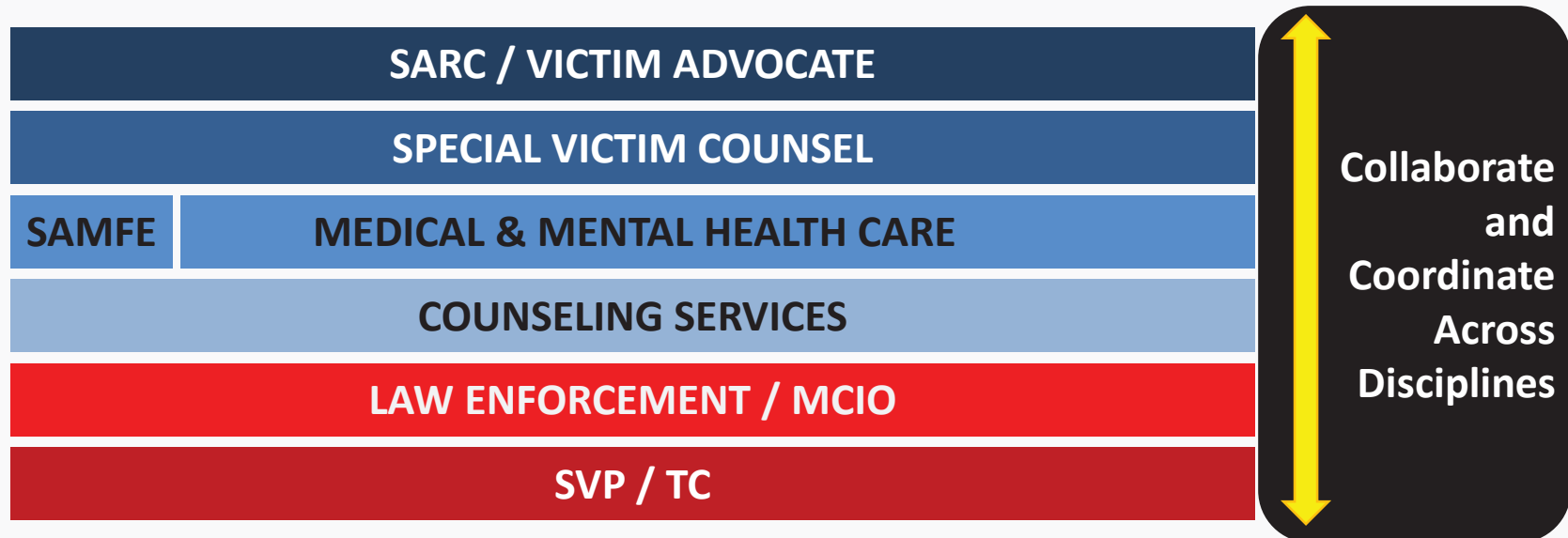


Victim Care and Support

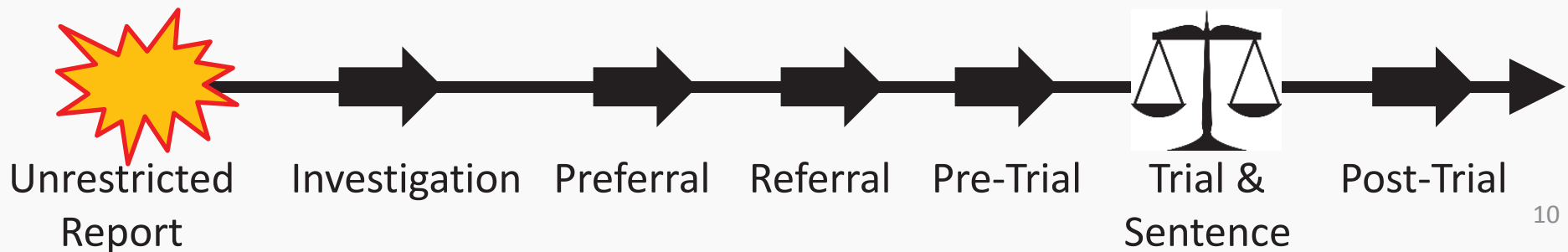


Victim Care

A Multi-Disciplinary Approach



- Provide Care from incident through adjudication (and beyond)
- Communication “hub” is often the prosecutor



Fact Pattern – US v. Abbott

- This fact pattern was designed by the US Army Judge Advocate General's Legal Center and School to facilitate advocacy training for the Intermediate Trial Advocacy Course (ITAC).
- The case is set in the fictional jurisdiction of the 54th Infantry Division at Fort Atterbury, Indiana, and it represents a sexual assault consistent with current offender and victim data. The materials are engineered to provide students with realistic training using the UCMJ, Rules for Courts-Martial, and Military Rules of Evidence, with emphasis on amendments made in the last several years.
- Normally in an investigation, a case will continue to develop over time. However, this fact pattern is a snapshot in time and designed to generate discussion. Purposefully, there are no dispositive facts, and minor discrepancies in dates or other details that may exist are not intentional. Students should focus on the substantive information contained in the case file, and on the advocacy skills required during trial.

Fact Pattern – US v. Abbott

- Victim 1 (Patterson)

- Private (E-2)
- 20 years old
- Assaulted by SGT in parking lot of beer hall off post; vaginal penetration; Accused claims consent
- Had been drinking
- Reports approximately 1 week later
- SAFE report made
- Mental health report
- SVC Representation

- Victim 2 (Wells)

- Private First Class
- 20 years old (time of assault)
- Assaulted by same SGT one year prior in same parking lot of same beer hall; vaginal penetration; Accused claims consent
- Had been drinking
- Restricted report (unrestricted when she hears of V1 attack).
- SAFE report made at time of assault
- Mental health report
- SVC Representation

What is a Sexual Offense?

1. The term “Sexual Assault” generally includes PENETRATIVE OFFENSES:

- Rape or Sexual Assault (Article 120)
- Forcible Sodomy (Article 125)
- Attempts thereof

2. The term “Sexual Contact” generally includes TOUCHING OFFENSES:

- Aggravated Sexual Contact or Abusive Sexual Contact (Article 120)
- Attempts thereof

3. OTHER Sexual Offenses include:

- Rape of a child (Article 120b)
- Indecent Viewing, Distributing, Forcible Pandering, Indecent Exposure (Article 120c)
- Stalking (Article 120a)
- Attempts thereof

Problem

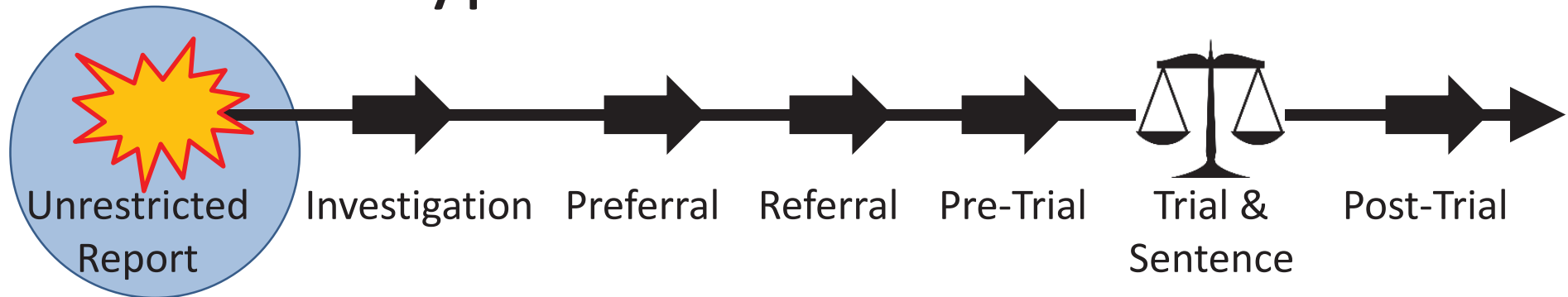
The term “Sexual Assault” is often used broadly to cover penetrative and contact offenses, or ALL sex offenses

Sex Offender Registration:

DODI 1325.07

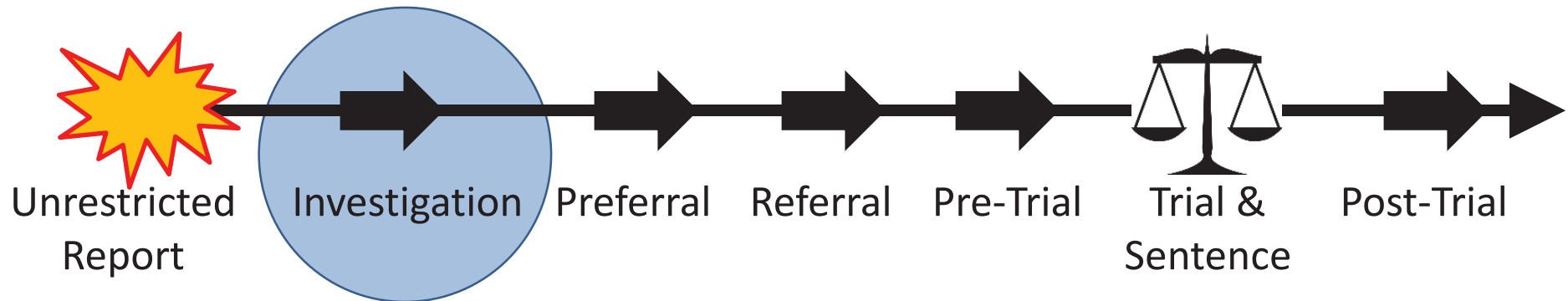
Article 120
Article 120b
Article 120c
(except indecent exposure)

A Typical Case – First Week



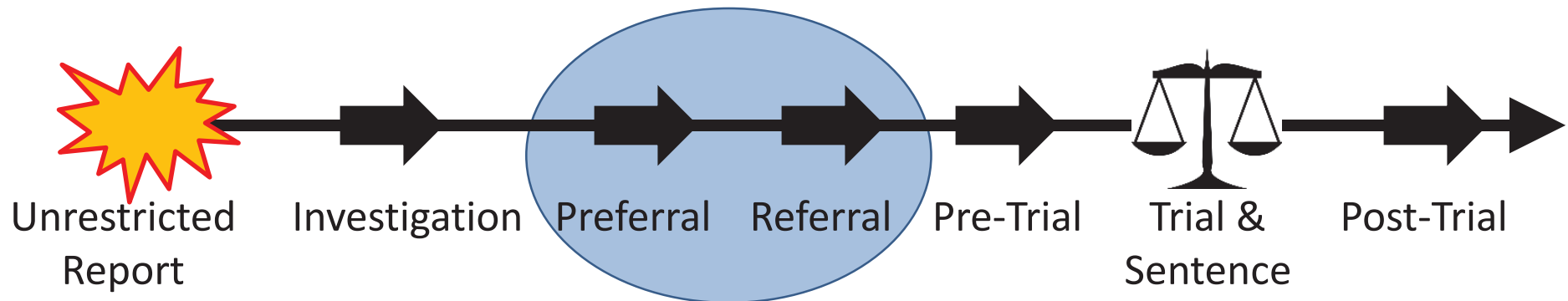
- Who is typically involved: Command; SANE; SARC; MCIO; SVC
- **Victim** is given a Medical Forensic Exam (SAMFE), if timely report
- SARC and/or VA talk to **Victim**, counsel, provide/offer services
- **Victim** is offered SVC services
- **Victim** is interviewed by MCIO (SVC can be present)
- Command talks to **Victim** about safety / protective order
- **Victim** may request “Expedited Transfer”
- SVP/TC may talk to **Victim**
- Command determines confinement/restriction/MPO for alleged perpetrator
- Forms: SAMFE; DD Form 2910 (SARC); MCIO/Police Reports

A Typical Case – Investigation



- MCIO/Police interview witnesses, collect evidence, work with SVP/TC
- Command ensures **Victim** safety **(ongoing)**
- BN Commander meets with Victim monthly **(ongoing)**
- Sexual Assault Review Board (SARB) **(ongoing)**
- **Victim** meets/communicates with SVC, SARC, and/or VA **(ongoing)**
- **Victim** is provided medical and/or behavioral health care **(ongoing)**
- **Victim** may ask for expedited transfer
- **Victim** may refuse to participate in the investigation (usually through SVC)
- **Victim** may be asked to meet with MCIO/Police or SVP/TC
- “Collateral Misconduct” (could implicate DC and SVC representation)

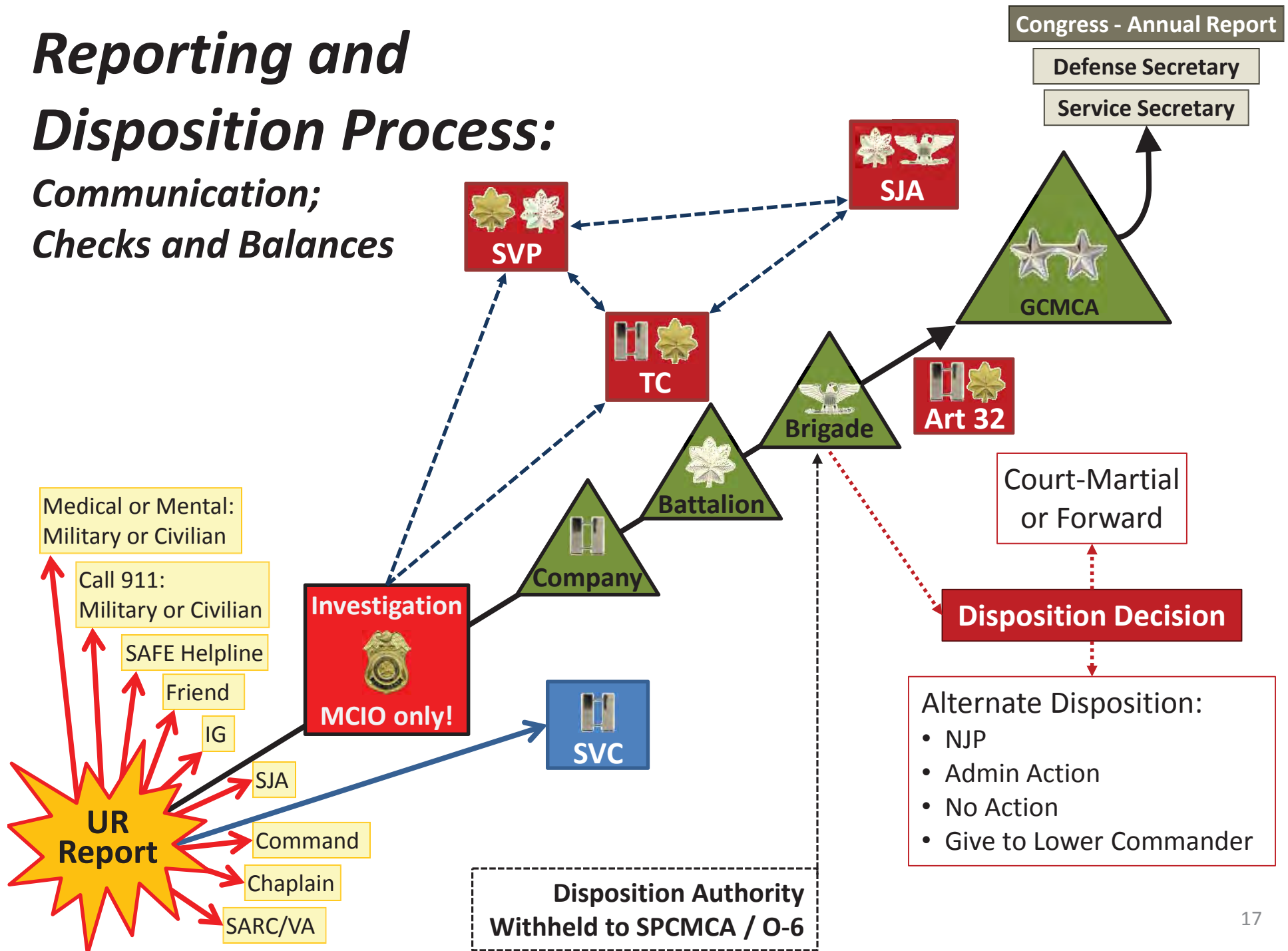
A Typical Case – Disposition Decision, Preferral and Referral



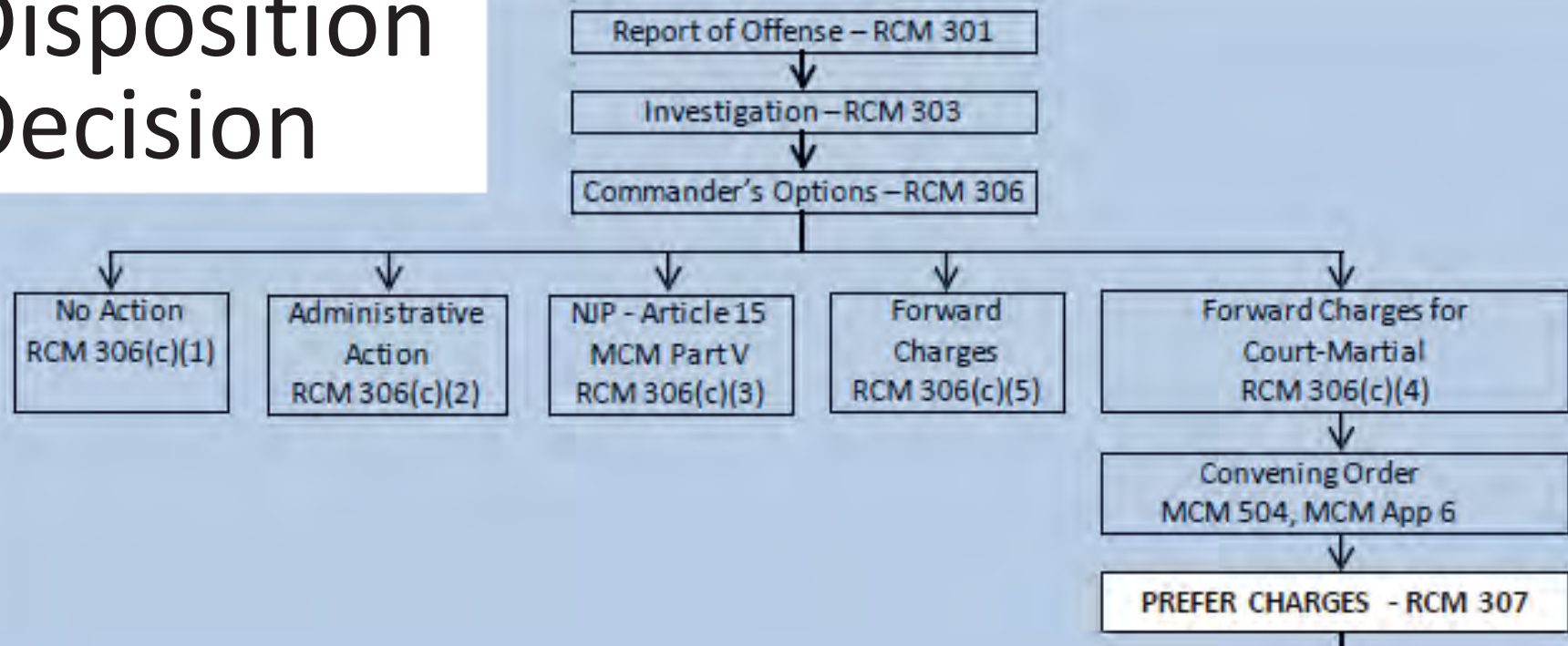
- PC Determination: MCIO/Police ask for opine; Pros Memo
- SVP and TC review investigation and evidence, communicate with MCIO, and assess lawful disposition options
- **Victim** can request civilian prosecution (new R.C.M. 306(e))
- COMMAND Makes Disposition Decision
 - Withholding policy requires SPCMCA/O-6 level
 - Considers victim care and health (SARC/VA)
 - Considers **Victim** input (SVC/SARC/VA/Subordinate commanders)
 - Considers lawful disposition options (SVP/TC)

Reporting and Disposition Process:

Communication; Checks and Balances



Disposition Decision



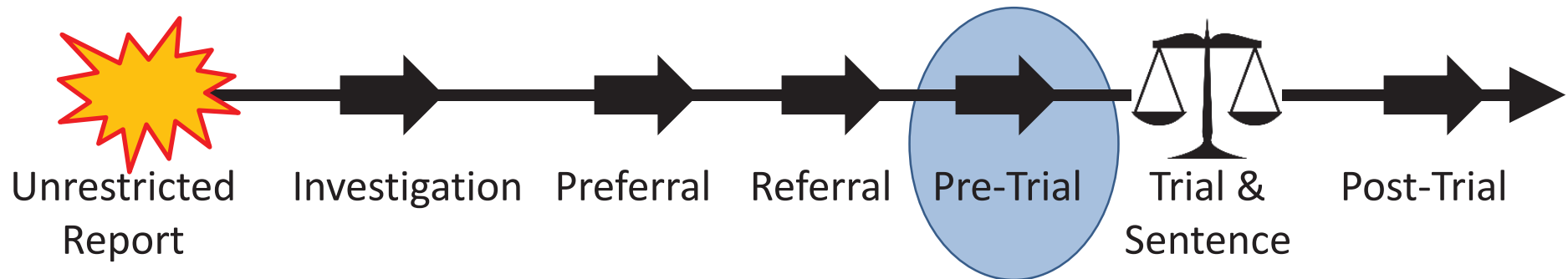
Commander makes “Disposition Decision”

- After investigation; restrictions considerations; and consult with SVP and MCIO

RCM 306

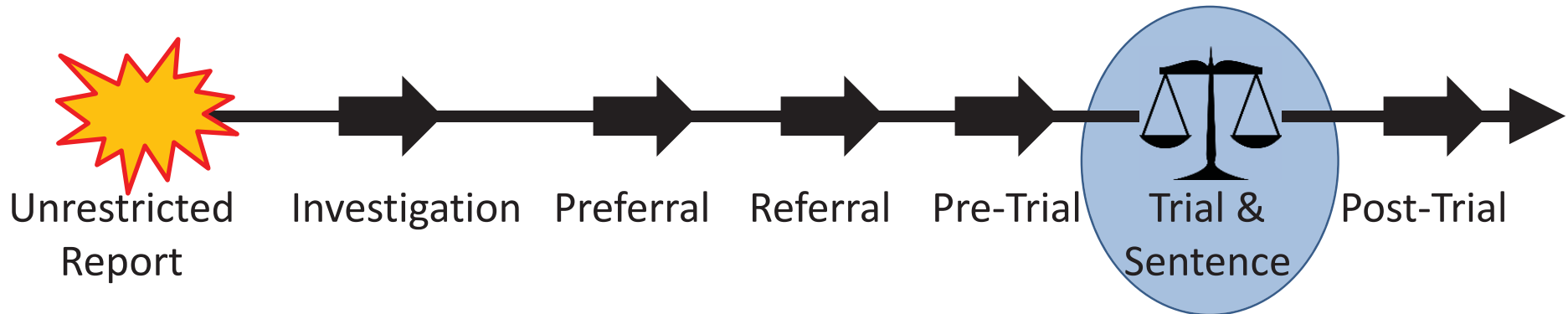
1. Do Nothing
2. Administrative Action
3. NJP
4. Forward for Court-Martial
5. “Forward” for Disposition

A Typical Case – Pre-Trial



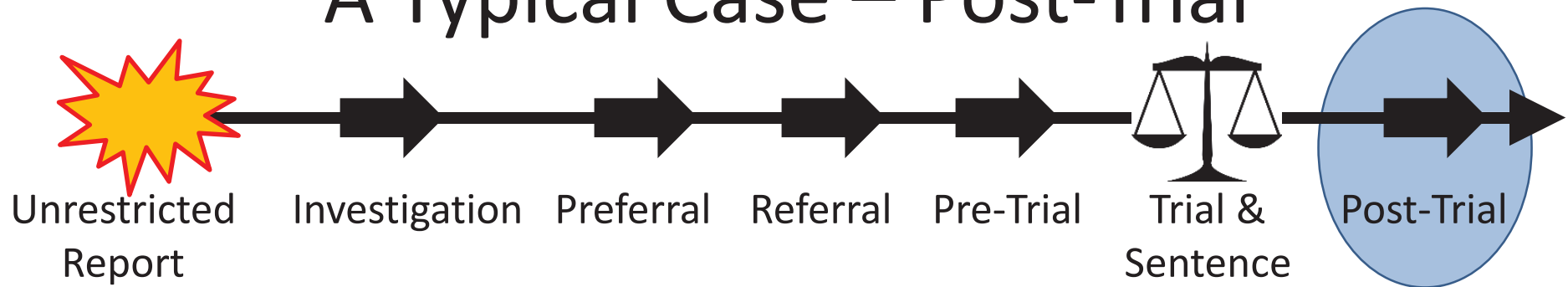
- VWL assists **Victim** and other witnesses
- **Victim** is often interviewed by defense, TC and/or CID (with SVC)
- Motions are litigated:
 - MRE 412 (Rape Shield)
 - MRE 513 (Psychotherapist-Patient)
 - MRE 514 (Victim Advocate-Victim)
- SVC may respond to motions or petition appellate court for relief
- Evidentiary issues/motions may result in alternate disposition (command)
- Accused may offer to plead guilty (command and SJA; stip of fact)
- Collateral misconduct decisions are often made
- If civilian jurisdiction is requested, SVP/TC/SJA coordinate and get response

A Typical Case – Trial & Sentencing



- **Victim** interaction with SVC, SVP, TC, SARC ramp up
- SVC and victim may be present in courtroom
- Accused may request judge-alone (panel vs. judge-alone)
- If guilty plea, judge will conduct providence inquiry
- Judge will put findings and recommendations in record of trial
- If guilty finding, sentencing occurs immediately
- At sentencing, **Victim** can make unsworn statement (as can accused)

A Typical Case – Post-Trial



- ROT is produced (SJA)
- Victim provided DD Form 2704 (prisoner status)
- Victim is provided a copy of the ROT (as is accused)
- Victim may submit matters to be considered by the convening authority
- SJA provides recommendation and addendum
- Convening authority takes action (then through appellate process)
- Victim care continues:
 - SARC and SARB track victim until providers say complete
 - SVC representation will end at some point after post-trial is complete
 - Mental and Behavioral healthcare continue as warranted

Questions?

Slides for DAC-IPAD, 28 April 2017

The concepts and notes on the slides are the thoughts of the faculty alone and do not represent Army, Marine or DoD policy positions.

Table of Contents

1. Preliminary Information

- a. Report of Investigation (summary)
- b. Statement (Private Patterson)
- c. Rights Waiver (Sergeant Abbott)
- d. Statement 1 (Sergeant Abbott)
- e. Statement 2 (Sergeant Abbott)
- f. Military Protective Order
- g. Sexual Assault Forensic Examination Report

2. Special Victim's Counsel Materials

- a. Special Victim's Counsel Notification of Representation
- b. Notification of Right to Special Victim's Counsel Services
- c. Special Victim's Counsel Engagement Letter

3. Procedural Materials

- a. Charge Sheet
- b. Article 32 Preliminary Hearing Officer Appointing Order
- c. Article 32 Hearing Transcript (partial)

4. Expert Witness Materials

- a. DNA Report of Examination
- b. Stipulation of Expected Testimony (DNA Expert)
- c. Psychiatric Evaluation Record (Private Patterson)
- d. Affidavit in Support of Search (DA Form 3744)
- e. Supplemental Affidavit in Support of Search
- f. Search Authorization (DA Form 3375)
- g. Digital Forensics Examination Report Summary
- h. Digital Forensics Examination (Sergeant Abbott Phone)
- i. Digital Forensics Examination (Private Patterson Phone)

AGENT'S INVESTIGATIVE REPORT:
ROI: 0258-13-CID004-27665

About 0700, 22 December, 2015, SA HENDERSON received a call from 1SG Bradshaw, A Co, BSB, 2BCT about a rape allegation. PV2 Sharon PATTERSON, A Co, BSB, 2BCT, reported SGT William Abbott, B Co, BSB, 3BCT forcibly raped her on or about 16 December, 2015. About 0715, 22 December 15, SA HENDERSON advised PV2 PATTERSON about the Special Victims' Counsel Program. PV2 PATTERSON was aware of the program and indicated she wanted her SVC, CPT R. STARR present during the interview.

About 0730, 22 December 15, PV2 PATTERSON, SA HENDERSON interviewed PV2 PATTERSON wherein she stated SGT ABBOTT assaulted her at Fritzels restaurant/bar on 16 December 2015. PV2 PATTERSON indicated SGT ABBOTT forced PV2 PATTERSON into her car and forcibly pushed her down onto the backseat of the car and forced sexual intercourse. PV2 PATTERSON indicated she banged her foot against window attempting to get passerby attention but that SGT. ABBOTT grabbed her ankle tight. PV2 PATTERSON indicated she was drinking that night prior to the assault. PV2 Patterson indicated she had gone to the hospital on the evening of 16 December, 2015 and a SAFE kit was taken. PV2 PATTERSON indicated she originally made a restricted report but has been traumatized by the event since then and broke down yesterday in the parking lot of BLDG 124 ADC. She contacted her SVC and decided to make an unrestricted report against SGT ABBOTT.

About 0815, 22 December 15, SA HENDERSON contacted SANE at Fort Atterbury Army Hospital (FAAH) and confirmed a SAFE exam of PV2 PATTERSON on 11 July 15.

About 0830, 22 December 15, SA HENDERSON and BROWN contacted SGT ABBOTT's unit (B Co, 1st BSB, 2nd BDE, 54th ID) and requested SGT ABBOTT be brought to CID for an interview.

At 0900, 22 December 15, SA HENDERSON advised SGT ABBOTT of his legal rights, which he waived and provided a statement wherein he disclosed he engaged in sexual intercourse with PV2 PATTERSON on the night of 16 December 15. SGT ABBOTT stated he did not use physical force nor restraint with PV2 PATTERSON at any time. ABBOTT indicated he knew PV2 PATTERSON. They had met some time ago. SGT ABBOTT could not remember much about the events of 16 December, 2015 with respect to the assault of PV2 PATTERSON at Fritzels. He indicated any sexual relations he would have had with PV2 PATTERSON would have been consensual. He also indicated he did remember he was drunk that evening.

At the conclusion of the interview SA HENDERSON asked if SGT ABBOTT would consent to a buccal swab. SGT ABBOTT signed a consent form where after SA HENDERSON took the buccal swab from SGT ABBOTT then properly bagged and tagged the swab in conformity with USACIL procedures.

About 1215 on 22 December 15, SA HENDERSON interviewed CPT Mitch

AGENT'S INVESTIGATIVE REPORT:
ROI: 0258-13-CID004-27665

GREGGSON, (A CO, BSB, 2nd BDE, 54th ID) who indicated he observed PV2 PATTERSON on 21 December 15, crumple to the ground near the parking lot behind BLDG 124 ADC. He indicated he heard PV2 PATTERSON state "He raped me" pointing in the direction of SGT ABBOTT. CPT GREGGSON indicated he called a friend, CPT DORA MARX to come and bring PVT PATTERSON to hospital. PVT PATTERSON would not speak to either on the way to the hospital.

About 1530, 22 December 15, SA HENDERSON interviewed PVT Melissa TOOMEY, (B CO, 4th Battalion, 2BDB, 54th ID) PVT TOOMEY indicated that on 17 December 15, she was in the shower area of the women's gym at BLDG 124 ADC when she saw PV2 PATTERSON, sobbing uncontrollably in the showers. PVT TOOMEY indicated she asked PV2 PATTERSON what was wrong however PV2 PATTERSON kept waving her off and would not respond. PVT TOOMEY stated she does not know PV2 PATTERSON very well and is acquainted with SGT ABBOTT.

About 1730, 22 December 15, SA HENDERSON went to Fritzels restaurant located at 1234 Dempster St. in Edinburg, IN. to observe the crime scene. SA HENDERSON took photos and sketched the parking lot and general surroundings.

About 2200, 22 December 15, SA HENDERSON interviewed PVT Natalie GRIFFIN, indicating she came to CID as she had information on the ABBOTT case PVT GRIFFIN indicated she believed PV2 PATTERSON and SGT ABBOTT had an on-going relationship. PVT GRIFFIN indicated she had seen PV2 PATTERSON and SGT ABBOTT on a previous occasion at Fritzels kissing and fondling one another near the women's bathrooms. She indicated that on 16 December 15, PVT GRIFFIN was at Fritzels and observed SGT ABBOTT and PV2 PATTERSON in an embrace outside in the parking lot of Fritzels. PVT GRIFFIN indicated she saw SGT ABBOTT and PV2 PATTERSON enter a car and that she did not observe any force used by SGT ABBOTT.

About 1500, 23 December 15, SA HENDERSON obtained a copy of PV2 PATTERSON'S Sexual Assault Forensics Examination (SAFE) report. SA HENDERSON reviewed the report and interviewed Mr. JOE SMITH, who had provided the forensic examination of PV2 PATTERSON. He explained that during the course of this examination, patients are screened for signs and symptoms associated with STDs and any other illnesses. Mr. SMITH related, while undergoing a SAFE, patients are questioned about any knowledge or history of STDs. Mr. Smith also stated that any physical marks and/or abnormalities found in the patient are documented and photographed as part of the examination.

About 0830, 27 December 15, SA HENDERSON contacted 1SG LACEWELL and requested that SGT ABBOTT return to the CID office for a follow-up interview. 1SG LACEWELL stated that he would personally escort SGT ABBOTT to the appointment.

About 0915, 27 December 15, SGT ABBOTT and 1SG LACEWELL arrived at the CID

AGENT'S INVESTIGATIVE REPORT:
ROI: 0258-13-CID004-27665

Office. SA HENDERSON reminded SGT ABBOTT of the rights advisement he was given earlier and asked SGT ABBOTT if he understood his rights. SGT ABBOTT said he did, and was interviewed by SA HENDERSON, making a second statement. SGT ABBOTT then stated he had additional information about the events of 16 December 15. SGT ABBOTT indicated that both he and PV2 PATTERSON had made a plan to meet at Fritzels that evening. Once at Fritzels, PV2 PATTERSON began flirting with SGT ABBOTT and they went outside for more privacy. SGT ABBOTT indicated they were kissing outside PV2 PATTERSON'S car when PV2 PATTERSON indicated they should move into the car for more privacy as people were walking past them in the parking lot. SGT ABBOTT indicated that once in the car they became more intimate and without removing any clothing had sexual intercourse. SGT ABBOTT indicated that he may have grabbed onto PV2 PATTERSON'S ankles during the sexual intercourse but PV2 PATTERSON seemed to enjoy that position. PVT PATTERSON did not wish to return to Fritzels as she did not want anyone gossiping about her. SGT ABBOTT indicated that he and PVT PATTERSON had texted each other and turned over his cell phone. SGT ABBOTT stated the sexual intercourse between himself and PV2 PATTERSON was entirely consensual.

About 1300, 27 December 15, SA HENDERSON updated CPT HARRISON on the status of the investigation. CPT HARRISON coordinated a time to come to the CID office and view the evidence. CPT HARRISON requested all SAFE reports be sent to the United States Army Criminal Investigation Lab (USACIL) once collected.

About 1700, 27 DECEMBER 15, SA HENDERSON conducted a criminal history name check of the United States Army Crime Records Center (USACRC) and National Crime Information Center (NCIC), which revealed no derogatory information pertaining to SGT ABBOTT.

About 04 January 16, SA HENDERSON received a phone call from SA Dave WINFIELD, of Fort Richardson, CID indicating he had additional information concerning SGT ABBOTT. SA WINFIELD indicated he had received a phone call from PFC Dawn WELLS who indicated she wished to make a statement with respect to a sexual assault committed by SGT ABBOTT on 13 January, 15. PFC WELLS indicated to Winfield that she had heard about the assault on PV2 PATTERSON and wished to come forward.

About 1130 on 6 January 16, SA HENDERSON interviewed SGT Robert LAMOTTA regarding the events at Fritzels on 16 December 2016. SGT LAMOTTA indicated that he was at Fritzels with PV2 PATTERSON and SGT ABBOTT on 16 December and observed both PATTERSON and ABBOTT drinking and kissing. LAMOTTA further noted that he had contacted PATTERSON in an attempt to "get her to back off her charges" against ABBOTT. LAMOTTA provided a sworn statement.

About 1530 on 10 January 16, PFC WELLS (HHC, 4th ABCT 25 ID) made a statement to SA WINFIELD at Fort Richardson, Alaska that on 13 January 15, when PFC WELLS was stationed at Fort Atterbury she went to Fritzels that evening to celebrate a

AGENT'S INVESTIGATIVE REPORT:
ROI: 0258-13-CID004-27665

birthday with friends. She indicated she had one glass of wine to drink and was leaving the bar when SGT ABBOTT approached her. PFC WELLS indicated she did not personally know SGT ABBOTT but he offered to buy her a drink. She indicated she declined and left the bar. PFC WELLS indicated SGT ABBOTT followed her out of Fritzels and forcibly grabbed her arm spinning her around. PFC WELLS indicated

SGT ABBOTT forcibly kissed her and forced her into her car. He then forced his penis into her vagina over and over again. PFC PATTERSON stated it was very painful and she had bruises on her legs for about a week thereafter. PFC WELLS indicated after the assault SGT ABBOTT stated something like "thank you" or "you're welcome" and then returned to the bar. PFC WELLS indicated she filed a restricted report and was assigned an SVC – CPT BEAGUL. Present at the taking of her statement was a newly assigned SVC – CPT SPEARS.

About 0930 on 10 January 16, SGT ABBOTT arrived at the CID Office. SA HENDERSON reminded SGT ABBOTT of the rights advisement he was given earlier and asked SGT ABBOTT if he understood his rights. SGT ABBOTT said he did, and was interviewed by SA HENDERSON, SGT ABBOTT indicated he knew PFC WELLS. He indicated they worked together at FT. Atterbury in 2014-2015. He indicated that sometime before Valentine's Day of 2015, he saw her at Fritzels and bought her a drink. She left before he could give it to her and he followed her outside. SGT ABBOTT indicated, PFC WELLS had been flirting with him and when they got out to her car they began kissing. SGT ABBOTT indicated they got into PFC WELLS car and continued to kiss and fondle one another in the car which eventually led to having sexual intercourse. SGT ABBOTT indicated he was wearing a condom and got rid of it at Fritzels when he went back into the bar. SGT ABBOTT indicated PFC WELLS was enjoying the sexual encounter and stated as much. SGT ABBOTT believed that PFC WELLS had a pretty serious relationship with someone back home and did not want anyone to know about what happened between herself and SGT ABBOTT.

About 1500, 10 January 16, SA HENDERSON obtained a copy of PV2 WELLS' Sexual Assault Forensics Examination (SAFE) report. SA HENDERSON reviewed the report and interviewed Ms. Jane SMITH, who had provided the forensic examination of PV2 WELLS. She explained that during the course of this examination, patients are screened for signs and symptoms associated with STDs and any other illnesses. Ms. SMITH related, while undergoing a SAFE, patients are questioned about any knowledge or history of STDs. Ms. Smith also stated that any physical marks and/or abnormalities found in the patient are documented and photographed as part of the examination.

About 1400, 12 January 16, SA HENDERSON collected PFC WELLS' and PV2 PATTERSON's SAFE kit from Mr. & Ms. SMITH.

About 1610, 14 January 16, SA HENDERSON packaged up all evidence collected and all SAFE kits. SA HENDERSON then sent all items to USACIL for examination.

///LAST ENTRY///

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is PMG.

PRIVACY ACT STATEMENT

AUTHORITY: Title 10, USC Section 301; Title 5, USC Section 2951; E.O. 9397 Social Security Number (SSN).

PRINCIPAL PURPOSE: To document potential criminal activity involving the U.S. Army, and to allow Army officials to maintain discipline, law and order through investigation of complaints and incidents.

ROUTINE USES: Information provided may be further disclosed to federal, state, local, and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of Personnel Management. Information provided may be used for determinations regarding judicial or non-judicial punishment, other administrative disciplinary actions, security clearances, recruitment, retention, placement, and other personnel actions.

DISCLOSURE: Disclosure of your SSN and other information is voluntary.

1. LOCATION FORT ATTERBURY, INDIANA	2. DATE (YYYYMMDD) 20XX1222	3. TIME 0730	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME PV2 PATTERSON, SHARON, V.	6. SSN 000-98-7654	7. GRADE/STATUS	
8. ORGANIZATION OR ADDRESS C Company, 4th Battalion, 28th Infantry Regiment, 2nd Brigade, 54th Infantry Division, Fort Atterbury, IN			
9.			

I, PV2 SHARON PATTERSON, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

I am assigned to Company C, 4th Battalion, 28th Infantry Regiment, 2nd Brigade, 54th Infantry Division, Fort Atterbury, IN. This is my first assignment in the Army. I have been here about 5-6 months.

On Wednesday, December 16, 20(-1), I went to Fritzels Beer Hall, about a mile outside Fort Atterbury. I went with several of my fellow C Company. We all climbed in two or three cars and headed out. I drove one of the cars. Once we got there, I had a couple drinks, mostly beers, they had some kind of special. I can't remember how many I had, maybe 3 or 4. One of the guys was buying shots. We were celebrating something or other. I know I had at least 2 shots. I was kinda drunk but I completely snapped out of it once SGT ABBOTT started attacking me.

We were there for about an hour when I saw SGT ABBOTT. He was with a couple of friends and they called me and another girl over. We started talking and SGT ABBOTT was mostly talking to me. I had seen him at Fritzels before. Last time I was at Fritzels was about two weeks ago and SGT ABBOTT and I got friendly and we started kissing near the bathrooms. I really hadn't talked to him since but when he called me over this time, I admit I was interested.

SGT ABBOTT asked if I wanted to go outside and I said I did. He took my hand and we walked out to the back parking lot. He walked me over to a car and leaned up against it and started kissing me. That was ok but then he asked me to get into the car. I wasn't really good with that but I did it anyway. People were walking by and I guess he wanted more privacy. So I got in the car.

(CONTINUED)

11. INITIALS OF PERSON MAKING STATEMENT <i>SP</i>	PAGE 1 OF <u>3</u> PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF _____ TAKEN AT _____ DATED _____"

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

STATEMENT OF PV2 PATTERSON, SHARON TAKEN AT FORT ATTERBURY CID OFFICE DATED 20XX1222

9. STATEMENT (Continued)

Once we got in the car he started kissing me again which was ok but then he started feeling on me. He started grabbing my breasts and I pushed him away. He also was pulling up my skirt. I told him: "Wait a minute – things are going too fast." He tried to kiss me again but this time I tried to avoid him by moving my face away from him. He stopped for a minute and asked me what was wrong. I told him: "This is not what I want," but he said; "Yeah, but this is what I want and you know you want it too."

He then forced my legs open and sexually assaulted me. He was on top of me and I couldn't get out from under him. I felt totally trapped. He was really strong and forceful. I tried to bang my foot on the window but I don't think anyone heard me. I kept banging my foot and he just grabbed it and I couldn't do it anymore. He put his penis in my vagina. It really hurt. He kept jabbing at me – he wouldn't stop. I don't think he was wearing a condom. I tried to pull my legs together but he's way stronger than me.

After he was done, he pulled me out of the car and headed over to the bar. He looked over his shoulder and said: "you coming?" Like nothing happened. I started crying, ran to my car and left. I didn't tell anyone. I was totally embarrassed. I don't know how the rest of the crew got home. It was kind of a blur.

I know people saw me kissing him at Fritzels that one night by the bathrooms. I avoided SGT ABBOTT as much as I could. He tried to text me a couple of times, but I didn't answer. I think I deleted all his messages.

The next day I broke down in the shower. I just couldn't stop crying. PVT TOOMEY asked me what was wrong. I told her nothing was wrong but I got dressed and went straight to the SARC office and told them what happened. They asked whether I wanted to make a restricted or unrestricted report at that time. I really didn't understand too much but I wanted the least amount of people to know as possible. They gave me some names of people I could talk to but I never went. I was still really upset.

I did go to the hospital and they examined me and I showed them the bruise around my ankle where SGT ABBOTT had grabbed me. I remember I was still sore from the assault. I told them everything I'm telling you.

(CONTINUED)

INITIALS OF PERSON MAKING STATEMENT

SP

PAGE 2 OF 3 PAGES

STATEMENT OF PV2 PATTERSON, SHARON, V TAKEN AT FORT ATTERBURY CID
OFFICE DATED 20XX1222.

STATEMENT (Continued)

Maybe a week after that I saw SGT ABBOTT walking to his car out of uniform. It reminded me of that night he assaulted me. I broke down right there and started crying and crying. Some other soldier came by. I didn't know him. I pointed out SGT ABBOTT and told him SGT ABBOTT had raped me. He was asking me a bunch of questions, but I couldn't answer him. He called someone on the phone and a couple of minutes later a female soldier came in her car. I didn't know her either.

They both took me to the hospital. I told them I already went to the hospital, but they just dropped me off there. I guess I wasn't making too much sense. My foot and ankle were bruised pretty bad but I didn't take any pictures. I guess I should have.

I finally called CPT Renae Starr, and we came to CID to make a full report. I want CPT Starr to be with me during this interview.

(END OF STATEMENT)

AFFIDAVIT

I, PV2 PATTERSON, SHARON, V, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 3. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

SHARON V. PATTERSON

(Signature of Person Making Statement)

WITNESSES:

Robert Brown

ORGANIZATION OR ADDRESS

USACID
Fort Atterbury, IN

ORGANIZATION OR ADDRESS

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 22nd day of DECEMBER, 20XX at Fort Atterbury, IN

William Henderson

(Signature of Person Administering Oath)

William Henderson

(Typed Name of Person Administering Oath)

Article 136(b)(4), UCMJ

(Authority To Administer Oaths)

SP

PAGE 3 OF 3 PAGES

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

For use of this form, see AR 190-30; the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code, Section 3012(g)
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION BLDG 400, 54TH MP DET (CID), FORT ATTERBURY, IN	2. DATE 22 Dec 2015	3. TIME 0900	4. FILE NO.
5. NAME (Last, First, MI) ABBOTT, WILLIAM C.	8. ORGANIZATION OR ADDRESS B CO, BSB, 3rd BDE 54th INFANTRY DIVISION FORT ATTERBURY, IN		
6. SSN 000-11-2222	7. GRADE/STATUS E5/AD		

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE**Section A. Rights**

The investigator whose name appears below told me that he/she is with the United States Army CRIMINAL INVESTIGATION COMMAND
and wanted to question me about the following offense(s) of which I am

suspected/accused: Rape

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

1. I do not have to answer any question or say anything. ☒
2. Anything I say or do can be used as evidence against me in a criminal trial. ☒
3. (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both. ☒

- or -

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below. ☒

5. COMMENTS (Continue on reverse side)

I have/have not consulted with an attorney within the last 30 days.

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE <i>Bill Abbott</i>
1a. NAME (Type or Print) ROBERT BROWN		
b. ORGANIZATION OR ADDRESS AND PHONE 54th MP DET (CID) FORT ATTERBURY, IN	4. SIGNATURE OF INVESTIGATOR	
2a. NAME (Type or Print)	5. TYPED NAME OF INVESTIGATOR WILLIAM HENDERSON	
b. ORGANIZATION OR ADDRESS AND PHONE	6. ORGANIZATION OF INVESTIGATOR 54th MP DET (CID) FORT ATTERBURY, IN	

Section C. Non-waiver

1. I do not want to give up my rights
☐ I want a lawyer ☐ I do not want to be questioned or say anything

2. SIGNATURE OF INTERVIEWEE

ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED

PART II - RIGHTS WARNING PROCEDURE

THE WARNING

- | | |
|---|--|
| <p>1. WARNING - Inform the suspect/accused of:</p> <ul style="list-style-type: none"> a. Your official position. b. Nature of offense(s). c. The fact that he/she is a suspect/accused. <p>2. RIGHTS - Advise the suspect/accused of his/her rights as follows:</p> <p>"Before I ask you any questions, you must understand your rights."</p> <ul style="list-style-type: none"> a. "You do not have to answer my questions or say anything." b. "Anything you say or do can be used as evidence against you in a criminal trial." c. (For personnel subject to the UCMJ) "You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer | <p>can be a civilian you arrange for at no expense to the Government or a military lawyer detailed for you at no expense to you, or both."</p> <p style="text-align: center;">- or -</p> <p><i>(For civilians not subject to the UCMJ)</i> You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be one you arrange for at your own expense, or if you cannot afford a lawyer and want one, a lawyer will be appointed for you before any questioning begins."</p> <ul style="list-style-type: none"> d. "If you are now willing to discuss the offense(s) under investigation, with or without a lawyer present, you have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if you sign a waiver certificate." <p>Make certain the suspect/accused fully understands his/her rights.</p> |
|---|--|

THE WAIVER

"Do you understand your rights?"
 (If the suspect/accused says "no," determine what is not understood, and if necessary repeat the appropriate rights advisement. If the suspect/accused says "yes," ask the following question.)

"Have you ever requested a lawyer after being read your rights?"
 (If the suspect/accused says "yes," find out when and where. If the request was recent (*i.e., fewer than 30 days ago*), obtain legal advice whether to continue the interrogation. If the suspect/accused says "no," or if the prior request was not recent, ask him/her the following question.)

"Do you want a lawyer at this time?"
 (If the suspect/accused says "yes," stop the questioning until he/she has a lawyer. If the suspect/accused says "no," ask him/her the following question.)

"At this time, are you willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer and without having a lawyer present with you?" *(If the suspect/accused says "no," stop the interview and have him/her read and sign the non-waiver section of the waiver certificate on the other side of this form. If the suspect/accused says "yes," have him/her read and sign the waiver section of the waiver certificate on the other side of this form.)*

SPECIAL INSTRUCTIONS

WHEN SUSPECT/ACCUSED REFUSES TO SIGN WAIVER CERTIFICATE: If the suspect/accused orally waives his/her rights but refuses to sign the waiver certificate, you may proceed with the questioning. Make notations on the waiver certificate to the effect that he/she has stated that he/she understands his/her rights, does not want a lawyer, wants to discuss the offense(s) under investigation, and refuses to sign the waiver certificate.

IF WAIVER CERTIFICATE CANNOT BE COMPLETED IMMEDIATELY: In all cases the waiver certificate must be completed as soon as possible. Every effort should be made to complete the waiver certificate before any questioning begins. If the waiver certificate cannot be completed at once, as in the case of street interrogation, completion may be temporarily postponed. Notes should be kept on the circumstances.

PRIOR INCRIMINATING STATEMENTS:

- 1. If the supsect/accused has made spontaneous incriminating statements before being properly advised of his/her rights he/she should be told that such statements do not obligate him/her to answer further questions.

- 2. If the suspect/accused was questioned as such either without being advised of his/her rights or some question exists as to the propriety of the first statement, the accused must be so advised. The office of the serving Staff Judge Advocate should be contacted for assistance in drafting the proper rights advisal.

NOTE: If 1 or 2 applies, the fact that the suspect/accused was advised accordingly should be noted in the comment section on the waiver certificate and initialed by the suspect/accused.

WHEN SUSPECT/ACCUSED DISPLAYS INDECISION ON EXERCISING HIS OR HER RIGHTS DURING THE INTERROGATION PROCESS: If during the interrogation, the suspect displays indecision about requesting counsel (for example, "Maybe I should get a lawyer."), further questioning must cease immediately. At that point, you may question the suspect/accused only concerning whether he or she desires to waive counsel. The questioning may not be utilized to discourage a suspect/accused from exercising his/her rights. (For example, do not make such comments as "If you didn't do anything wrong, you shouldn't need an attorney.")

COMMENTS *(Continued)*

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is PMG.

PRIVACY ACT STATEMENT

AUTHORITY: Title 10, USC Section 301; Title 5, USC Section 2951; E.O. 9397 Social Security Number (SSN).

PRINCIPAL PURPOSE: To document potential criminal activity involving the U.S. Army, and to allow Army officials to maintain discipline, law and order through investigation of complaints and incidents.

ROUTINE USES: Information provided may be further disclosed to federal, state, local, and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of Personnel Management. Information provided may be used for determinations regarding judicial or non-judicial punishment, other administrative disciplinary actions, security clearances, recruitment, retention, placement, and other personnel actions.

DISCLOSURE: Disclosure of your SSN and other information is voluntary.

1. LOCATION FORT ATTERBURY, INDIANA	2. DATE (YYYYMMDD) 20151222	3. TIME 0900	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME SGT ABBOTT, WILLIAM. C	6. SSN 000-11-2222	7. GRADE/STATUS E-5/AD	
8. ORGANIZATION OR ADDRESS B Company, 1st Battalion, 15th Infantry Division, 2nd Brigade, 54th Infantry Division, Fort Atterbury, IN			
9.			

I, SGT William C. Abbott, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

I am assigned to Company B, 1st Battalion, 15th Infantry Division, 2nd Brigade, 54th Infantry Division, Fort Atterbury, IN. I have been stationed at Fort Atterbury for 10 months. I have been in the Army for just over 6 years and this is my second duty assignment. Prior to this assignment, I was in the 101st.

Q. Do you know PV2 PATTERSON?

A. I do

Q. How do you know her?

A. I met her a while ago.

Q. When?

A. A few months ago – I met her at a BBQ.

Q. How would you describe your relationship?

A. Good. No problems.

Q. When was the last time you spoke to her?

A. Well, we texted a few days ago.

Q. Do you still have the texts?

A. I think so, yeah, here it is.

Q. Now when is the last time you saw PV2 PATTERSON in person?

(CONTINUED)

11. INITIALS OF PERSON MAKING STATEMENT

WCA

PAGE 1 OF 3 PAGES

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF _____ TAKEN AT _____ DATED _____"

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

STATEMENT OF SGT ABBOTT WILLIAM C TAKEN AT FORT ATTERBURY CID OFFICE DATED 20151222

9. STATEMENT *(Continued)*

A. About a week ago.

Q. Where was that?

A. At a place just down the road – Fritzels

Q. What happened?

A. I really don't remember much. We were both there. I was drinking.

Q. Who was there with you?

A. Nobody. I don't think. I really don't remember too much about that night. It wasn't anything special.

Q. Were you with PV2 Patterson?

A. Well, she was there. I do remember that. I don't think we came together or left together for that matter.

Q. Did you ever go outside with PV2 Patterson?

A. I might have, I honestly can't recall, it's been a while.

Q. Did you ever have sex with Pv2 Patterson?

A. That night?

Q. Yes.

A. I might have. I honestly don't remember. I know we had sex once or twice.

Q. Can you tell me when that was?

A. Once was in my car and once when we first met – at a BBQ or something.

Q. Can you tell me about what happened at the BBQ?

A. I don't know exactly when but it was the first time I met her. She was really coming onto me and we hooked up.

Q. Where did that occur?

A. I don't really remember. Maybe at my place. Maybe in the car?

Q. Can you tell me about the second time?

A. I just remember we had sex in my car. I don't know when that was exactly.

Q. Could it be about a month ago?

A. Yeah, it could. I just can't remember.

Q. What happened?

A. I don't know. I'm not sure how we got there. It might have been at Fritzels.

Q. Was it the last time you saw her?

A. It might have been. That sounds about right.

Q. What happened in your car?

A. Well, we had sex. I'm pretty sure. It's all a blur really. I'd been drinking

Q. How much had you been drinking?

A. I don't really know – a lot – mostly beers but probably shots too.

Q. Can you tell me how much you had?

A. Not really. Enough. A lot. Probably overserved.

(CONTINUED)

INITIALS OF PERSON MAKING STATEMENT

WCA

PAGE 2 OF 3 PAGES

STATEMENT OF SGT ABBOTT, WILLIAM, C TAKEN AT FORT ATTERBURY CID OFFICE DATED 20151222.

STATEMENT (Continued)

Q. Can you remember anything specific about that night?

A. What night?

Q. December 16, the night at Fritzels and your interaction with PV2 Patterson.

A. I don't really remember if we actually did have sex that night. I know we probably did but I just don't know when. Either way it was all consensual. That much I do know. I was pretty drunk.

Q. Can you remember anything else about any contact you had with PV2 Patterson?

A. Sorry, no.

Q. Is there anything else you can tell us about the night of December 16, 2015?

A. No, that's all I can remember right now.

(END OF STATEMENT)

AFFIDAVIT

I, SGT ABBOTT, WILLIAM C., HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 3. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

William C. Abbott

(Signature of Person Making Statement)

WITNESSES:

Robert Brown

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 22nd day of DECEMBER, 2015 at Fort Atterbury, IN

William Henderson

(Signature of Person Administering Oath)

William Henderson

(Typed Name of Person Administering Oath)

Article 136(b)(4), UCMJ

(Authority To Administer Oaths)

ORGANIZATION OR ADDRESS

USACID

Fort Atterbury, IN

ORGANIZATION OR ADDRESS

WCA

PAGE 3 OF 3 PAGES

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is PMG.

PRIVACY ACT STATEMENT

AUTHORITY: Title 10, USC Section 301; Title 5, USC Section 2951; E.O. 9397 Social Security Number (SSN).

PRINCIPAL PURPOSE: To document potential criminal activity involving the U.S. Army, and to allow Army officials to maintain discipline, law and order through investigation of complaints and incidents.

ROUTINE USES: Information provided may be further disclosed to federal, state, local, and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of Personnel Management. Information provided may be used for determinations regarding judicial or non-judicial punishment, other administrative disciplinary actions, security clearances, recruitment, retention, placement, and other personnel actions.

DISCLOSURE: Disclosure of your SSN and other information is voluntary.

1. LOCATION FORT ATTERBURY, INDIANA	2. DATE (YYYYMMDD) 20151227	3. TIME 0930	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME SGT ABBOTT, WILLIAM. C	6. SSN 000-11-2222	7. GRADE/STATUS E-5/AD	
8. ORGANIZATION OR ADDRESS B Company, 1st Battalion, 15th Infantry Division, 2nd Brigade, 54th Infantry Division, Fort Atterbury, IN			
9.			

I, SGT William C. Abbott, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

Since my last statement of 22 December, 2015, I've had an opportunity to think about my actions concerning the night of 16 December 2015 and before as to my relationship and interactions with PV2 Patterson.

I know PV2 PATTERSON. I met her at a BBQ when she first got to Fort Atterbury. She's like second cousins or something with one of the Specialists in my squad. She was part of Charlie Company, 4-28. PV2 PATTERSON and I also partied together both on base and off base. PV2 PATTERSON and I began a romantic type relationship in July, 2015. I found her attractive and I think that was the same for her. She constantly complimented me on my fitness and the way I looked in and out of uniform. That's what she said: "I like seeing you in and out of uniform, if you know what I mean." That was one of the first things she said to me.

We got together a couple of times, mostly at Fritzels. We texted back and forth. But we were never able to hook up, until that night, December 16, 2015. I know I said before that we might have hooked up the first day I met PV2 PATTERSON at the BBQ but that wasn't her. We did kiss a couple times before and maybe some other stuff, but no sex.

On December 16, 2015, I texted her I would be at Fritzels that night and that I really wanted to see her. I never heard back from her but she came to the bar that night, with some of her friends. Right away she come up to me and we started flirting. She looked really good.

(CONTINUED)

11. INITIALS OF PERSON MAKING STATEMENT <i>WCA</i>	PAGE 1 OF <u>3</u> PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF _____ TAKEN AT _____ DATED _____"

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

STATEMENT OF SGT ABBOTT WILLIAM C TAKEN AT FORT ATTERBURY CID OFFICE DATED 20151227

9. STATEMENT (Continued)

I asked her if she wanted to go outside. She agreed. She grabbed my hand and we headed for my car. We started kissing but people were walking by and she said she wanted to go somewhere more private. We were leaning up against my car so I suggested we go in my car. She agreed and once we got inside she was all over me. It got pretty intense and we ended up having sex. Neither one of us really had our clothes off, we just got to it. She seemed to be enjoying it. She never said "stop," or "quit it" or "I don't think this is a good idea" or anything like that. She wanted it as much as I did.

I didn't really know I was doing anything wrong by getting involved with PV2 PATTERSON. She was from another Company. We were both caught up in the moment. She was unmarried, I was unmarried, and we were both attracted to each other. No, I didn't wear a condom, but she didn't seem to mind. She never said anything about it.

After we had sex, I asked her if she wanted to go back into Fritzels with me. She said no – she didn't want anyone to start gossiping about us and she said she had enough to drink.

I might have grabbed her legs when we were in the backseat having sex. PV2 Patterson was not banging on the window with her foot. She was not trying to draw any attention to us in the car. We got in the car for privacy.

I told her I would call or text her the next day and we would set something up for next week. She said that would be great and she took off. I went back into the bar and drank another beer or two with the guys I came there with. No one asked me anything at the bar about PV2 PATTERSON. To tell you the truth, I don't think anyone really missed us.

I texted PV2 PATTERSON the very next day and the day after but she never got back with me. I saw her a couple of times during the next two weeks, but it seemed like as soon as I started walking up to her she took off. I figured she found someone new. I never actually talked to her again after that night. I did not rape her, though.

(CONTINUED)

INITIALS OF PERSON MAKING STATEMENT

WCA

PAGE 2 OF 3 PAGES

STATEMENT OF SGT ABBOTT, WILLIAM, C TAKEN AT FORT ATTERBURY CID OFFICE DATED 20151227.

STATEMENT (Continued)

That night of December 16, 2015, I probably had 5-6 beers and a couple shots before PV2 PATTERSON and I went out to my car. She looked a little buzzed but not really drunk – just happy and flirty. We kissed, I think I felt her breasts, but really, we never took off our clothes. I did not rape PV2 PATTERSON. I did not.

(END OF STATEMENT)

AFFIDAVIT

I, SGT ABBOTT, WILLIAM C., HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 3. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

William C. Abbott

(Signature of Person Making Statement)

WITNESSES:

Robert Brown

ORGANIZATION OR ADDRESS

USACID

Fort Atterbury, IN

ORGANIZATION OR ADDRESS

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 27th day of December, 2015 at Fort Atterbury, IN

William Henderson

(Signature of Person Administering Oath)

William Henderson

(Typed Name of Person Administering Oath)

Article 136(b)(4), UCMJ

(Authority To Administer Oaths)

WCA

PAGE 3 OF 3 PAGES

MILITARY PROTECTIVE ORDER

PRIVACY ACT STATEMENT

In accordance with the Privacy Act of 1974 (Public Law 93-579), this notice informs you of the purpose of the form and how it will be used. Please read it carefully.

AUTHORITY: 5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; and National Defense Authorization Act for Fiscal Year 1995, Sec. 534.

PRINCIPAL PURPOSE(S): To inform the service member and the protected person that the commanding officer is issuing an order to the member prohibiting contact or communication with the protected person or members of the protected person's family or household and directing that the member take specified actions that support, or are in furtherance of, the prohibition.

ROUTINE USE(S): Any release of information outside of the Department of Defense shall be compatible with the purposes for which the information is being collected and shall be in accordance with an established routine use for the record system where the information is maintained.

DISCLOSURE: Voluntary. Failure to disclose/verify information will not delay either the issuance of the order or the enforceability of the order.

1. SERVICE MEMBER				2. PROTECTED PERSON <i>(Important: see NOTE)</i>			
a. RANK	b. LAST NAME	FIRST NAME	MI	a. RANK	b. LAST NAME	FIRST NAME	MI
Sgt	Abbott	William	C	Pvt	Patterson	Sharon	V
c. UNIT				c. UNIT			
B Co, BSB, 3rd BDE, 54th Infantry Division				B Co, BSB, 3rd BDE, 54th Infantry Division			
d. INSTALLATION				d. INSTALLATION			
Fort Atterbury, IN				Fort Atterbury, IN			

NOTE: Omit information in Item 2 that, if known to the service member in Item 1, could endanger the protected person.

3. INFORMATION SUPPORTING ISSUANCE OF THIS MILITARY PROTECTIVE ORDER

On or about 22 December 2015, you were the subject of a complaint of sexual assault against PVT Patterson. The complaint alleges that you sexually assaulted Pvt Patterson off-post at a local drinking establishment, and that the incident involved both alcohol and your fraternizing with junior soldiers. In addition, you became intoxicated in the presence of junior soldiers, and encouraged them to purchase alcohol for you.

4. THE PROTECTED PERSON HAS ALSO BEEN ISSUED THE FOLLOWING COURT ORDERS:

a. Civil protection order issued (Date - YYYYMMDD) _____, in _____ Court, _____ County, State of _____	
b. Order issued (Date - YYYYMMDD) _____, in _____ Court, _____ County, State of _____	<input type="checkbox"/> Property Settlement <input type="checkbox"/> Custody and/or Visitation

5. As a Commanding Officer with jurisdiction over the above-named service member, I find that there is sufficient reason to conclude that the issuance of an order is warranted in the best interest of good order and discipline. It is hereby ordered that (initial applicable portions):

BA	a. The above-named service member is restrained from initiating any contact or communication with the above-named protected person either directly or through a third party. For purposes of this order, the term "communication" includes, but is not limited to, communication in person, or through a third party, via face-to-face contact, telephone, or in writing by letter, data fax, or electronic mail. If the protected person initiates any contact with the service member, the service member must immediately notify me regarding the facts and circumstances surrounding such contact.
BA	b. The above-named service member shall remain at all times and places at least <u>500</u> feet away from the above-named protected person and members of the protected person's family or household including, but not limited to, residences and workplaces. Members of the protected person's family or household include:
	c. The above-named service member will vacate the military residence shared by the parties located at: N/A
BA	d. Until further notified, the above-named service member will be provided temporary military quarters at: You will vacate your current barracks room located at Barracks 1774 due to its proximity to Pvt Patterson's assignment to Barracks 1775 at Fort Atterbury. You will be assigned other suitable quarters.
BA	e. The above-named service member will attend the following counseling: Alcohol screening and counseling at the Substance Abuse and Counseling Center.
BA	f. The above-named service member will surrender his/her government weapons custody card at the time of issuance of this order. <u>N/A</u>
BA	g. The above-named service member will dispose of his/her personal firearm(s) that are located or stored on the installation at the time of issuance of this order. <u>N/A</u>
BA	h. Exceptions to this order will be granted only after an advance request is made to me and approved by me.
BA	i. Other specific provisions of this order: You will also remain at least 500 feet away from Barracks 1775, the residence of Pvt Patterson. In addition to the contact prohibitions noted in paragraph 5a above, you are prohibited from contacting Pvt Patterson via text, social media, or any other form of electronic or other communication, either directly or through a third party. You will surrender any personally owned firearms, including those not stored aboard a military installation.

6. DURATION: The terms of this order shall be effective until INDEFINITE, unless sooner rescinded, modified, or extended in writing by me.

ENFORCEABILITY: Violation of this order or an applicable civilian protection order shall constitute a violation of Article 90 of the Uniform Code of Military Justice.

a. COMMANDING OFFICER'S SIGNATURE

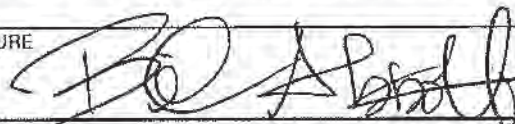
Arthur Wellesley, CPT, USA, Commanding Officer, B Company, Brigade Support Battalion

b. DATE (YYYYMMDD)

20151222

7. I hereby acknowledge receipt of a copy of this order and attest that I understand the terms and conditions it imposes on me.

a. SERVICE MEMBER'S SIGNATURE



b. DATE (YYYYMMDD)

20151222

DISTRIBUTION:

Service member

Protected person (Custodial parent of protected child)

Service member's local personnel file

DoD SEXUAL ASSAULT FORENSIC EXAMINATION REPORT

PRIVACY ACT STATEMENT

AUTHORITY: Section 301 of Title 5 U.S.C. and Chapter 55 of Title 10 U.S.C.; DoDD 6495.01, Sexual Assault Prevention and Response (SAPR) Program; and DoDI 6495.02 Sexual Assault Prevention and Response Program Procedures.

PRINCIPAL PURPOSE(S): Information on this form will be used to document the medical/forensic examination of the sexual assault victim. The DD Form 2911 also documents the reporting preference (Restricted or Unrestricted) of the sexual assault victim as part of the sexual assault prevention and response program.

ROUTINE USE(S): None.

DISCLOSURE: Completion of this form is voluntary; however, failure to complete this form with the information requested impedes the effective management of care and support required by the procedures of the sexual assault prevention and response program.

Patient Identification

Sensitive Information Document

PART I (NOTE: Conduct a SAFE for up to one full week following a sexual assault, or longer if circumstances dictate.)

A. GENERAL INFORMATION (Print or type)

Name of Medical Facility: FORT ATERBURY Army Hospital

1a. NAME OF PATIENT (Last, First, Middle Initial)

PATERSON, SHARON V.

b. PATIENT ID NUMBER

000-98-7654

2a. ADDRESS

b. CITY

c. COUNTY

d. STATE

e. ZIP CODE

f. TELEPHONE (Include Area Code)

(1) Home:

(2) Work:

3a. AGE

b. DATE OF BIRTH (YYYY/MM/DD)

c. GENDER (X)

☐ M

☒ F

d. ETHNICITY (X)

☐ (1) Hispanic or Latino

☒ (2) Not Hispanic or Latino

e. RACE (X)

☐ (1) American Indian/ Alaska Native

☐ (2) Asian

☐ (3) Black or African American

☒ (4) White

☐ (5) Native Hawaiian/ Other Pacific Islander

4a. ARRIVAL DATE (YYYY/MM/DD)

2015/12/17

b. TIME

1145

5a. DISCHARGE DATE (YYYY/MM/DD)

2015/12/17

b. TIME

4:1500

B. NOTIFICATION AND AUTHORIZATION:

Location of Assault:

Jurisdiction:

Civilian or Foreign Assisting Agency:

☐ On Installation ☒ Off Installation ☐ City ☐ County ☐ Other

1a. NAME OF SEXUAL ASSAULT RESPONSE COORDINATOR (SARC) (Last, First, Middle Initial)

CHRISTIANSEN, ANNIE

b. TELEPHONE (Include Area Code)

555-867-1212

2a. NAME OF SEXUAL ASSAULT FORENSIC EXAMINER (Last, First, Middle Initial)

SMITH, JOE

b. RANK

N/A

c. TITLE

RN/SANE

d. TELEPHONE (Include Area Code)

555-867-1234

3a. NAME OF VICTIM ADVOCATE (VA) (Last, First, Middle Initial)

HARTER, SHANON

b. TELEPHONE (Include Area Code)

555-867-9867

4a. NAME OF MILITARY CRIMINAL INVESTIGATIVE OFFICER (UNRESTRICTED REPORT) (Last, First, Middle Initial)

N/A

b. TELEPHONE (Include Area Code)

N/A

c. AGENCY

N/A

d. ID NUMBER

N/A

e. DATE (YYYY/MM/DD)

N/A

5a. NAME OF SERVICE DESIGNATED EVIDENCE COLLECTING OFFICER (RESTRICTED REPORT) (Last, First, Middle Initial)

CHRISTIANSEN, ANNIE

b. TELEPHONE (Include Area Code)

555-867-1212

c. AGENCY

SARC

d. ID NUMBER

N/A

e. DATE (YYYY/MM/DD)

2015/12/17

f. TIME

1528

g. RESTRICTED REPORT CONTROL NUMBER (RRCN)

5449-15

C. REPORTING INFORMATION

1. In unrestricted reporting, I understand that Military Medical Treatment Facilities and Healthcare Providers are required by Department of Defense regulations to report sexual assaults to Military Criminal Investigative Organization authorities (e.g., CID, NCIS, AFOSI). Under these circumstances, the report must state the name of the injured person, current whereabouts, and the type and extent of injuries. In Restricted reporting, I understand that Military Medical Treatment Facilities and Healthcare Providers are required by Department of Defense regulations to report sexual assaults to the Sexual Assault Response Coordinator (SARC).

(Initial)

SRP

2. The Sexual Assault Response Coordinator (SARC) and/or Victim Advocate (VA) have explained the difference between Unrestricted and Restricted Reporting options. I have elected

(Initial)

SRP

☐ UNRESTRICTED REPORTING ☒ RESTRICTED REPORTING (Only applicable to Active Duty, and Reserve and National Guard in active service or inactive duty training)

Note: Military dependents under age 18 who have been sexually assaulted by either parent and/or caregiver are not covered under the sexual assault restricted reporting policy.

3. I understand what my options are and do not have questions.

(Initial)

SRP

D. PATIENT CONSENT

1. I understand that the Sexual Assault Forensic Examination (also known as a "SAFE") that I am about to undergo is optional. When I give my consent, a healthcare professional may examine me to find and collect evidence of an assault. I understand that as part of the examination, the provider can collect specimens to include my hair, urine and/or blood, both now and at a later date, if necessary.

☒ YES☐ NO

(Initial)



Patient Identification

2. I understand that I may withdraw my consent at any time for any portion of the examination and that it will not impact my right to medical care.

☒ YES☐ NO

(Initial)

3. I understand that collection of evidence may include photographing injuries and that these photographs may include the genital area.

☒ YES☐ NO

(Initial)

4. I understand that samples of my blood and/or urine may need to be tested for drugs as part of my treatment. I also understand that testing for drugs will also show prescriptions, other drugs, and alcohol that I have voluntarily consumed. I understand that illegal drugs or alcohol (if I am under age 21) in my body could be used to show that I engaged in misconduct if I am a Service member. I consent to this testing and the release of the result to law enforcement.

☒ YES☐ NO

(Initial)

5. I understand that some of the information that I provide may be collected for health and forensic purposes and provided to health authorities and other qualified persons for a valid educational or scientific interest and/or epidemiological studies. However, none of my personally identifying data (name, patient identification number, etc.) will be disclosed for these purposes.

☒ YES☐ NO

(Initial)

6. I hereby consent to a sexual assault medical forensic examination (SAFE).

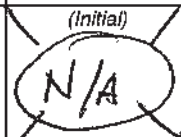
☒ YES☐ NO

(Initial)

7. If I have elected to make an Unrestricted Report, I understand and consent to the release of my records and all evidence collected from this exam to law enforcement.

☐ YES☐ NO

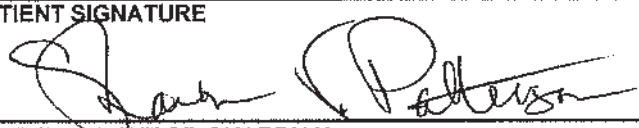
(Initial)



8. If I have elected to make a Restricted Report, I understand that my records and all evidence collected should not be reviewed or tested unless I choose to convert to an Unrestricted Report.

☒ YES☐ NO

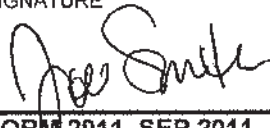
(Initial)

9a. PATIENT SIGNATURE**b. DATE**
(YYYY/MM/DD)

20151217

c. TIME

1204

10. PATIENT PARENT OR GUARDIAN (If applicable)**a. SIGNATURE****b. ADDRESS (If different from patient) (Include ZIP Code)****c. DATE**
(YYYY/MM/DD)**d. TIME****11. WITNESS TO PATIENT SIGNATURE****a. SIGNATURE****b. ADDRESS (Include ZIP Code)****c. DATE**
(YYYY/MM/DD)**d. TIME**

FAAH

20151217

1204

E. PATIENT HISTORY				Patient Identification			
1a. NAME OF PERSON PROVIDING HISTORY (Last, First, Middle Initial)							
b. RELATIONSHIP TO PATIENT c. DATE (YYYY/MM/DD) d. TIME							
1a. NAME OF PERSON PROVIDING HISTORY (Last, First, Middle Initial) PATERSON, SHARON V.							
b. RELATIONSHIP TO PATIENT VICTIM		c. DATE (YYYY/MM/DD) 20151217		d. TIME 1205			
2. PERTINENT MEDICAL HISTORY							
a. LAST MENSTRUAL PERIOD 26 JUL 2015		b. Any recent (60 days) anal-genital injuries, surgeries, diagnostic procedures, or medical treatment that may affect the interpretation of current physical findings? (If yes, describe) <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes					
c. Any other pertinent medical condition(s) that may affect the interpretation of current physical findings? (If yes, describe) <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes							
d. Any pre-existing physical injuries? (If yes, describe) <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes ANKLE INJURED DURING PT +/- 2 WKS PRIOR TO EXAM ("I HIT MY ANKLE ON A SOCCER GOAL POST AND BRUISED IT.")							
3. PERTINENT NON-ASSAULT RELATED HISTORY							
a. Other non-assault sexual activity within past 5 days? Do NOT record any other information regarding sexual history on this form. <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Unsure If yes or unsure, complete items b. through f. below. If no, then check the "No" box to the left and proceed to item 4.							
(X and complete as applicable)		No	Yes	Unsure	(If Yes)		
b. Anal (within past 5 days)?					When?		
c. Vaginal (within past 5 days)?					When?		
d. Oral (within past 5 days)?					When?		
e. Did ejaculation occur?					Where?		
f. Was a condom used?							
4. POST-ASSAULT HYGIENE/ACTIVITY							
(X and complete as applicable)				No	Yes		
a. Urinated					<input checked="" type="checkbox"/>	h. Brushed teeth	
b. Defecated					<input checked="" type="checkbox"/>	i. Gargled/mouthwash	
c. Genital or body wipes (If yes, describe)				<input checked="" type="checkbox"/>		j. Vomited	
d. Douched (If yes, with what)				<input checked="" type="checkbox"/>		k. Ate or drank	
e. Removed/inserted <input type="checkbox"/> Tampon <input type="checkbox"/> Diaphragm <input type="checkbox"/> Nuva ring				<input checked="" type="checkbox"/>		l. Used cream/ointment/lotion on body part involved in assault (If yes, describe) BODY BUTTER	
f. Oral gargle/rinse					<input checked="" type="checkbox"/>	m. Changed clothing (If yes, describe)	
g. Bath/shower/wash					<input checked="" type="checkbox"/>	n. Changed body piercings (If yes, describe)	
F. ASSAULT HISTORY							
1a. DATE OF ASSAULT(S) (YYYY/MM/DD) 20151216				2. LOCATION AND PERTINENT PHYSICAL SURROUNDINGS PARKING LOT OF FRITZEL'S BAR OUT IN TOWN. BACK SEAT OF CAR.			
b. TIME 2300							
3. PHYSICAL EFFECTS OF ASSAULT. If injuries are described or if remarkable findings or possible trauma are observed, please photograph.							
a. Non-genital injury, pain and/or bleeding (including tenderness). (If yes, describe.) <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes ANKLE/FOOT IMPACTED WINDOW OF CAR; TENDERNESS + SOME BRUISING. MILD DERM. ABRASION IN INNER THIGH.							
b. Genital/rectal injury, pain and/or bleeding (including tenderness). (If yes, describe.) <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes "MY VAGINA HURTS AND HAS BEEN SORE. MY THIGH HURTS WHERE HIS HAND WAS BETWEEN MY LEGS."							
4. INJURIES INFLICTED UPON THE ASSAILANT(S) DURING ASSAULT? (If yes, describe injuries, possible locations on the body, and how they were inflicted.) <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes "I DON'T THINK SO BUT I MIGHT HAVE SCRATCHED HIS BACK A LITTLE."							
5a. NUMBER OF ASSAILANT(S) 1				b. ASSAILANT(S) RELATIONSHIP TO VICTIM (Indicate/number all that apply) <input type="checkbox"/> Stranger <input checked="" type="checkbox"/> Acquaintance <input type="checkbox"/> Relative (Specify) <input type="checkbox"/> Other (Specify) "HIS NAME IS SERGEANT ARBORE, BUT PLEASE DON'T TELL ANYONE."			

G. PATIENT'S DESCRIPTION OF THE ASSAULT | of 2

Please record the patient's description of the assault.
Add additional pages if necessary.

Patient Identification

- I WENT TO FRITZEL'S W/A BUNCH
OF OTHER SOLDIERS FROM MY SHOP.

I SAW SGT ABBOTT THERE BUT NOT UNTIL WE HAD BEEN THERE
DRINKING FOR AN HOUR OR TWO. I HAD PROBABLY 4 OR 5 BEERS
AND 2 OR 3 SHOTS OF FIREBALL WHILE WE WERE THERE.
SOME OF THE GUYS WERE PLAYING DRINKING GAMES BUT I
DIDN'T PLAY. I GOT UP TO GO TO THE BATHROOM AND WHEN
I CAME OUT SGT ABBOTT WAS OUTSIDE THE BATHROOM. I THOUGHT
THAT WAS A LITTLE WEIRD, BUT WE TALKED FOR A FEW
MINUTES AND WOUND UP KISSING. HE SAID HE DIDN'T WANT
OTHER PEOPLE TO SEE US AND TALK, SO WE WENT OUT TO
THE PARKING LOT. WE WERE OUTSIDE HIS CAR AND KISSED A
LITTLE MORE, THEN HE SAID WE SHOULD GET IN THE CAR SO
PEOPLE WOULDN'T SEE US. I THOUGHT HE JUST MEANT SEE US
KISSING. WHEN WE GOT IN THE CAR HE KISSED ME AGAIN
AND THEN STARTED TOUCHING MY BREASTS OVER MY SHIRT.
I WANTED TO STOP BUT HE PUSHED MY LEGS APART WITH
HIS KNEE AND HIP. I TRIED TO TELL HIM THIS WASN'T WHAT
I WANTED, BUT HE SAID HE KNEW WHAT I WANTED, THAT'S WHY I CAME
TO FRITZEL'S WHEN I KNEW HE WOULD BE THERE. HE PULLED MY
PANTIES DOWN PAST MY BUTTOCKS AND PUSHED MY SKIRT FARTHER
UP AROUND MY STOMACH AND PUT HIS PENIS IN ME. HE
KEPT SAYING 'I KNEW YOU WANTED THIS'. I TRIED KICKING AT
THE WINDOW BUT ONLY HURT MY ANKLE. AT SOME POINT
— CONTINUED ON NEXT PAGE —

G. PATIENT'S DESCRIPTION OF THE ASSAULT 2 OF 2

Please record the patient's description of the assault.
Add additional pages if necessary.

Patient Identification

- CONTINUED FROM PREV. PAGE -

HE GRABBED MY ANKLES AND HELD THEM TOGETHER WITH HIS HANDS. HE WAS REALLY HEAVY AND HIS WEIGHT WAS ON TOP OF ME, AND I COULDN'T MOVE.

I DON'T KNOW IF HE ESTABLISHED OR NOT. I DON'T THINK HE WORE A CONDOM. HE GOT OFF OF ME AND GOT OUT OF THE CAR. I PULLED MY SKIRT BACK TOGETHER AND GOT OUT OF THE CAR TOO. HE ASKED IF I WAS GOING BACK INTO FRITZEL'S AND I JUST CRIED + WENT TO MY CAR AND DROVE HOME. WHEN I GOT HOME I TOOK MY CLOTHES OFF AND TOOK A SHOWER RIGHT AWAY. I THREW MY CLOTHES IN THE CORNER OF MY ROOM. I DON'T REMEMBER HOW LONG I SLEPT BUT MY HEAD, ANKLE, THIGH, AND VAGINA WERE ALL SORE WHEN I WOKE UP. I DON'T REMEMBER EVERY LITTLE DETAIL BECAUSE I WAS A LITTLE DRUNK THAT NIGHT, AND HAD ANOTHER DRINK WHEN I GOT TO MY ROOM.

H. ACTS DESCRIBED BY PATIENT

- Describe any penetration of the genital, anal or oral opening, no matter how slight or brief.
- Type of sexual intercourse (oral, vaginal, anal).
- If more than one assailant, identify by number.

Patient Identification

1. PENETRATION OF VAGINA BY

- a. Penis
b. Finger
c. Object (if yes, describe the object)

No	Yes	Attempted	Unsure
	<input checked="" type="checkbox"/>		
			<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>			

Describe:

"HE YANKED MY PANTIES DOWN AND PULLED MY SKIRT UP, UNBUTTONED HIS PANTS AND PUT HIS PENIS IN MY VAGINA."

2. PENETRATION OF ANUS BY

- a. Penis
b. Finger
c. Object (if yes, describe the object)

No	Yes	Attempted	Unsure
<input checked="" type="checkbox"/>			
<input checked="" type="checkbox"/>			
<input checked="" type="checkbox"/>			

Describe:

~~Joe Smith~~

3. ORAL COPULATION OF GENITALS

- a. Of patient by assailant
b. Of assailant by patient

No	Yes	Attempted	Unsure
<input checked="" type="checkbox"/>			
<input checked="" type="checkbox"/>			

Describe:

~~Joe Smith~~

4. ORAL COPULATION OF ANUS

- a. Of patient by assailant
b. Of assailant by patient

No	Yes	Attempted	Unsure
<input checked="" type="checkbox"/>			
<input checked="" type="checkbox"/>			

Describe:

~~Joe Smith~~

5. NON-GENITAL ACT(S)

- a. Licking
b. Kissing
c. Suction injury
d. Biting
e. Strangulation/choking

No	Yes	Attempted	Unsure
<input checked="" type="checkbox"/>			
	<input checked="" type="checkbox"/>		
<input checked="" type="checkbox"/>			
<input checked="" type="checkbox"/>			
<input checked="" type="checkbox"/>			

Describe:

"HE KISSED ME ON THE FACE, MOUTH, AND NECK."

6. OTHER ACT(S) (Describe)

"HE FELT MY BREASTS. I CAN'T REMEMBER IF THAT WAS ONLY OVER, OR BOTH OVER AND UNDER MY SHIRT."

7. DID EJACULATION OCCUR?

(If yes, location(s))

- ☐ Mouth ☐ Rectum
☐ Vagina ☐ Body surface
☐ Genitals ☐ On clothing
☐ Anus ☐ On bedding

No	Yes	Unsure
		<input checked="" type="checkbox"/>

☒ Other (note location(s))

"MAYBE ON THE CAR SEAT OR MY SKIRT."

8. CONTRACEPTIVE OR LUBRICANT PRODUCT(S)

- a. Condom used?
b. Lubricant used?
c. Other Contraceptive used?

No	Yes	Unsure
		<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>		
	<input checked="" type="checkbox"/>	

Describe Type/Brand, if known:

"I'M ON THE PILL BUT ALWAYS FORGET TO TAKE IT."

J. HEAD, NECK, THROAT AND ORAL EXAMINATION

- Record all findings, including tenderness and pain, using diagrams, legend, and a consecutive numbering system.
- If injuries are described or if remarkable findings or possible trauma are observed, please photograph.

1. Examine the face, head, hair, scalp, neck and throat for injury and foreign materials.

☐ Findings ☒ No Findings Observed

2. Collect dried and moist secretions, stains, and foreign materials from the face, head, hair, neck, throat and scalp. ☐ Findings ☒ No Findings Observed

3. Examine the oral cavity for injury and foreign material (if indicated by assault history). Collect foreign materials.

Exam done: ☐ Not applicable ☐ Yes ☐ Findings ☒ No Findings Observed

Patient Identification

4. Collect at a minimum 1 external mouth swab and 2 swabs from the oral cavity (if indicated by history).

5. Collect head hair combing or brushing.

Diagram C

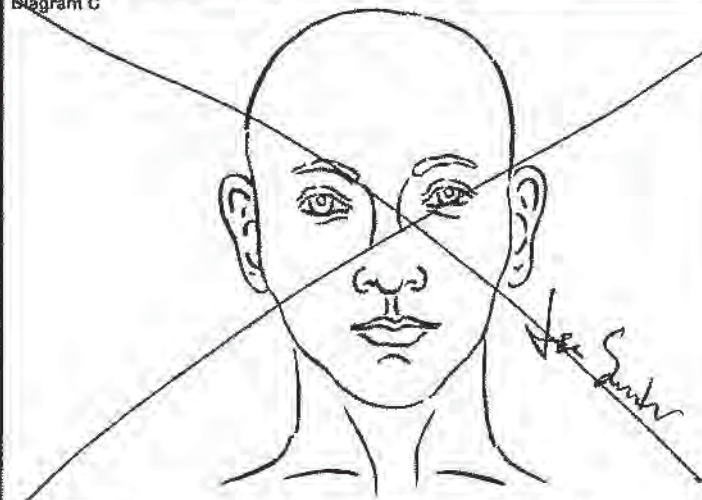


Diagram D

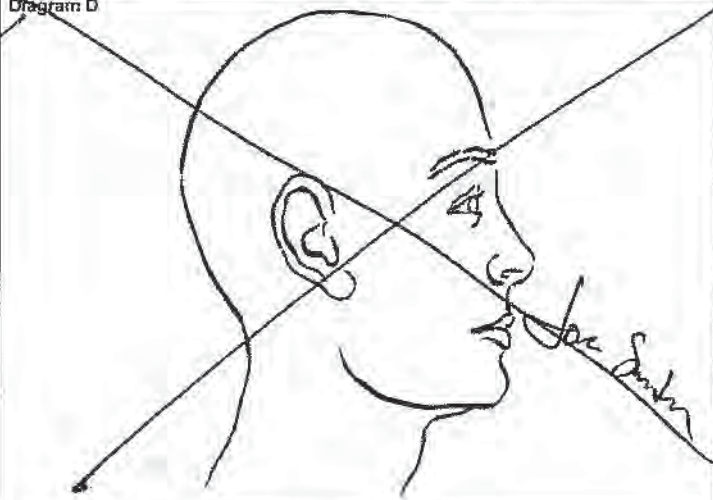


Diagram E

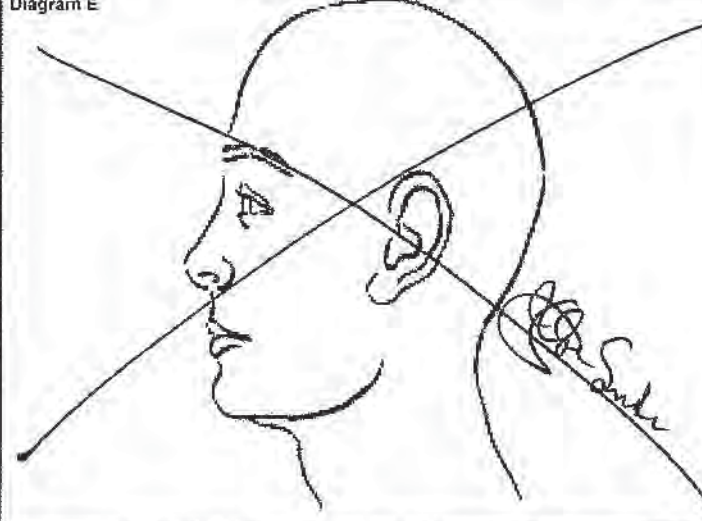
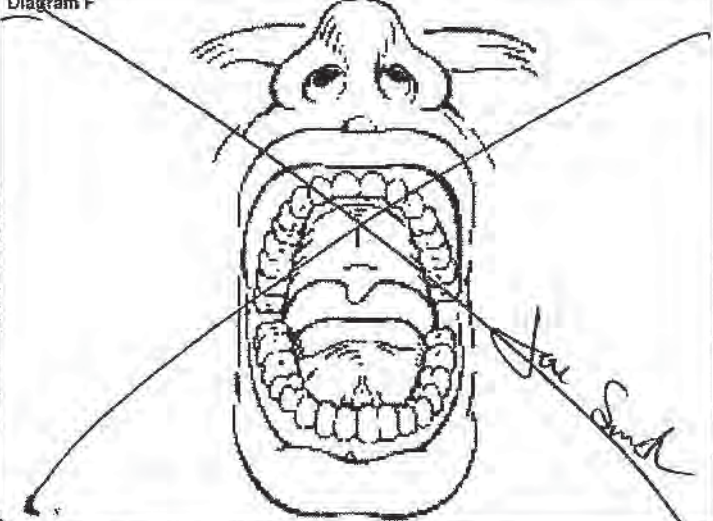


Diagram F



LEGEND: TYPES OF FINDINGS. RECORD ALL SPECIMENS COLLECTED IN SECTION O.

AB Abrasion	BU Burn	DF Deformity	FB Foreign Body	MS Moist Secretion	PE Petechiae	SW Swelling
ALS Alternate Light Source	CS Control Swab	DS Dry Secretion	IN Induration	OF Other Foreign Materials (describe)	PS Potential Saliva	TB Toluidine Blue®
BI Bite	DE Debris	ER Erythema (redness)	IW Incised Wound	OI Other Injury (describe)	SHX Sample Per History	TE Tenderness
		F/H Fiber/Hair	LA Laceration		SJ Suction Injury	V/S Vegetation/Soil

Locator #	Type	Description	Locator #	Type	Description

K. GENITAL EXAMINATION - FEMALE

- Record all findings, including tenderness and pain, using diagrams, legend, and a consecutive numbering system.
- If injuries are described or if remarkable findings or possible trauma are observed, please photograph.

1. Examine the inner thighs, external genitalia, and perineal area.

If there are findings, describe (including location).
(If available and appropriate, consider the use of toluidine blue dye.)

☐ Findings ☒ No Findings Observed

- | | |
|---------------------------------------|---|
| <input type="checkbox"/> Abdomen | <input type="checkbox"/> Clitoral hood and surrounding area |
| <input type="checkbox"/> Thighs | <input type="checkbox"/> Perineal tissue/urethral meatus |
| <input type="checkbox"/> Perineum | <input type="checkbox"/> Hymen |
| <input type="checkbox"/> Labia majora | <input type="checkbox"/> Fossa navicularis |
| <input type="checkbox"/> Labia minora | <input type="checkbox"/> Posterior fourchette |

Patient Identification

2. Scan the area with an Alternate Light Source. Collect dried and moist secretions, stains, and foreign materials. ☐ Findings ☒ No Findings Observed

3. Collect pubic hair combing or brushing. If there is no pubic hair, conduct an external swab of genitalia.**4. Examine the vagina and cervix.** If there are findings, describe (including location). (If available and appropriate, consider the use of toluidine blue dye.)

☐ Findings ☒ No Findings Observed

5. Examine the buttocks, anus, and perineum.

a. Findings from buttocks, anus, or perineum. If there are findings, describe (including location) (If available and appropriate, consider use of toluidine blue dye.).

☐ Yes ☒ No Findings Observed

b. Collect dried and moist secretions, and foreign materials.

☐ Findings ☒ No Findings Observed

c. Collect 2 swabs of the perineum. *done* d. Collect 2 anal swabs. *done*

a. Collect the following swabs: 2 pubic mound (if there is no pubic hair), 2 vaginal, and 2 cervical. *done*

6. Conduct a rectal exam (using anoscope if possible) if rectal injury is suspected or if there is any sign of rectal bleeding.

a. Rectal exam done: ☒ Yes ☐ Not applicable

b. Rectal bleeding: ☒ No ☐ Yes

c. Was an anoscopic exam done? ☒ No ☐ Yes

d. If exam was done, what position was used? ☐ Supine Lithotomy ☐ Other (describe) *N/A*

e. If exam was done, describe findings: f. Collect a rectal swab if indicated.

Diagram G**Diagram H****Diagram I****Diagram J****LEGEND: TYPES OF FINDINGS. RECORD ALL SPECIMENS COLLECTED IN SECTION O.**

AB Abrasion	BU Bum	DF Deformity	FB Foreign Body	MS Moist Secretion	PE Petechiae	SW Swelling
ALS Alternate Light Source	CS Control Swab	DS Dry Secretion	IN Induration	OF Other Foreign Materials (describe)	PS Potential Saliva	TB Toluidine Blue®
BI Bite	CT Contusion (bruise)	ER Erythema (redness)	IW Incised Wound	OI Other Injury (describe)	SHX Sample Per History	TE Tenderness
	DE Debris	F/H Fiber/Hair	LA Laceration		SI Suction Injury	V/S Vegetation/Soil

Locator #	Type	Description	Locator #	Type	Description

1. GENITAL EXAMINATION - MALE - Record all findings, including tenderness and pain, using diagrams, legend, and a consecutive numbering system. - If injuries are described or if remarkable findings or possible trauma are observed, please photograph.		Patient Identification																																																																			
1. Examine the inner thighs, external genitalia, and perineal area. If there are findings, describe (including location). (If available and appropriate, consider the use of toluidine blue dye.) <input type="checkbox"/> Abdomen <input type="checkbox"/> Urethral meatus <input type="checkbox"/> Findings <input type="checkbox"/> No Findings Observed <input type="checkbox"/> Thighs <input type="checkbox"/> Shaft <input type="checkbox"/> Glans <input type="checkbox"/> Foreskin <input type="checkbox"/> Scrotum <input type="checkbox"/> Testes		<div style="position: relative; height: 300px;"> <div style="position: absolute; top: 0; left: 0; right: 0; bottom: 0; pointer-events: none;"> </div> </div>																																																																			
2. Circumcised: <input type="checkbox"/> No <input type="checkbox"/> Yes				3. Scan the area with an Alternate Light Source (such as a Wood's Lamp). Collect dried and moist secretions, stains, and foreign materials. <input type="checkbox"/> Findings <input type="checkbox"/> No Findings Observed																																																																	
4. Collect pubic hair combing or brushing. If no pubic hair, conduct external swab at base of penis.				5. If indicated by assault history, collect the following swabs: 2 penile and 2 scrotal.																																																																	
6. Examine the buttocks and perineum (if indicated by history). a. Findings from buttocks, anus, or perineum. <input type="checkbox"/> Yes <input type="checkbox"/> None Observed b. Collect dried and moist secretions, and foreign materials. <input type="checkbox"/> Findings <input type="checkbox"/> No Findings Observed				If there are findings, describe (including location). (If available and appropriate, consider the use of toluidine blue dye.)																																																																	
7. Collect 2 anal swabs.				8. Conduct a rectal exam (using anoscope if possible) if rectal injury is suspected or if there is any sign of rectal bleeding. a. Rectal exam done? <input type="checkbox"/> Yes <input type="checkbox"/> No b. Rectal bleeding: <input type="checkbox"/> Yes <input type="checkbox"/> None Observed c. Was an anoscopic exam done? <input type="checkbox"/> Yes <input type="checkbox"/> No d. If exam was done, what position was used? <input type="checkbox"/> Supine <input type="checkbox"/> Other (describe) e. If exam was done, describe findings:																																																																	
Diagram K 		Diagram L 																																																																			
Diagram M 		Diagram N 																																																																			
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M. TOXICOLOGY

Toxicology examples must be collected as soon as possible due to the limited time frame in which they can be collected. If the assault happened within 96 hours of the examination and the answer to any of these questions is Yes or Unsure, use the DoD Toxicology Kit.

1. Loss of memory? (If yes, describe)

☐ No ☒ Yes

PT DIN RECALL ALL DETAILS; ETOH UNK.
ATT.

2. Lapse of consciousness? (If yes, describe)

☒ No ☐ Yes ☐ Unsure

4.a. Voluntary ingestion of alcohol/drugs?

☐ No ☒ Yes ☐ UnsureIf yes: ☒ Alcohol ☐ Drugs 4-5 BEERS / 2-3 SHOTS

b. Involuntary ingestion of alcohol/drugs?

☒ No ☐ Yes ☐ UnsureIf yes: ☐ Alcohol ☐ Drugs

5. Was a clinical toxicology lab conducted?

☐ No ☐ Yes

6. FOR UNRESTRICTED REPORTS: Was a DoD Toxicology Kit completed?

☐ No ☐ Yes**N. RECORD EXAM METHODS**

1. Direct visualization only

☒ No ☐ Yes

2. Alternate Light Source

☐ No ☒ Yes

3. Digital Camera

☐ No ☒ Yes

4. Colposcope or Other Magnifier

☒ No ☐ Yes

5. Toluidine Blue Dye

☐ No ☒ Yes

(If Other, describe)

6. Anoscopic exam

☒ No ☐ Yes

7. Vaginal speculum exam

☐ No ☒ Yes

8. Other

☒ No ☐ Yes**O. OBSERVATIONS.** Please describe your observations.

[Handwritten: XHE OFS]

P. EVIDENCE COLLECTED									
	No	Yes	Time Completed						
1. TOXICOLOGY KIT		X	1458						
Completed By	Released To								
SMITH, JOE	N/A (RR)								
			Patient Identification						
2. CLOTHING	No	Yes	Time Completed	Completed By	Released To				
a. Undergarments placed in evidence kit		X	1405						
b. Clothing placed in bags		X							
3. OTHER:	No	Yes	Time Completed	Completed By	Released To				
a. Swabs, suspected blood	X								
b. Dried secretions		X	1409						
c. Fiber/loose hairs	X								
d. Vegetation	X								
e. Soil/debris	X								
f. Swabs/suspected semen	X								
g. Swabs/suspected saliva	X								
h. Swabs/Alternate Light Source area(s)	X								
i. Fingernail cuttings	X								
j. Fingernail scrapings/swabbings	X	X	1415						
k. Matted hair cuttings	X								
l. Pubic hair combings/brushings	X								
m. Intravaginal foreign body (If yes, describe)									
n. Other types (If yes, describe)									
PANTIES / SKIRT WORN BY PT. ON 16 JUL 2015; BROUGHT BY PT. TO EXAM; WORRIED PREGNANT			X	1425					
4. ORAL, GENITAL, RECTAL SAMPLES									
	# Swabs	Time Completed	Completed By		# Swabs	Time Completed	Completed By		
a. External oral swab(s)	2	1407	Joe Smith	f. Perineal swab(s)	2	1420	Joe Smith		
b. Oral cavity swab(s)	2	1410	Joe Smith	g. Anal swab(s)	0				
c. Vaginal swab(s)	2	1412	Joe Smith	h. Rectal swab(s)	0				
d. Cervical swab(s)	2	1417	Joe Smith	i. Other (If yes, describe)					
e. Pubic mound swab(s)	2	1419	Joe Smith						
5. REFERENCE SAMPLES									
	No	Yes	Time Completed	Completed By		No	Yes	Time Completed	Completed By
a. Blood Card		X	1435	Joe Smith	d. Other (describe)	X			
b. Known Head Hair		X	1440	Joe Smith					
c. Known Pubic Hair		X							

Page 12 of 14 Pages

DoD SEXUAL ASSAULT FORENSIC EXAMINATION REPORT

PART II - DoD TOXICOLOGY KIT - FOR UNRESTRICTED REPORTS ONLY

BLOOD AND URINE SPECIMEN COLLECTION INSTRUCTIONS

Notes:

- (A) This kit is to be used in conjunction with a DoD Medical Forensic Examination Kit when the patient indicates that there was memory loss, lapse of consciousness, involuntary or voluntary ingestion of drugs or alcohol, or if toxicology testing is otherwise indicated.
- (B) Collect **both** blood and urine specimens in all cases.
- (C) Urine samples should be collected from the victim as soon as possible due to the short window of detection for many of the drugs (including alcohol) involved in sexual assault.
- (D) Based on timing of evidence pick up, refrigerate the sealed kit. However, if you are in a deployed or natural disaster environment that does not have refrigeration, it will be unlikely to preserve specimen.

STEP 1: Fill out the information requested on the Victim Information Form (next page).

BLOOD SPECIMEN COLLECTION

Note: Blood specimen collection must be performed only by a physician, registered nurse or trained phlebotomist.

STEP 2: Cleanse the blood collection site with the alcohol-free prep pad provided. Following normal hospital/clinic procedure, collect blood using two 10 ml blood collection tubes with 100 mg of sodium fluoride and 20 mg of potassium oxalate. Allow blood tubes to fill to maximum volume.

Notes:

- (A) Immediately after blood collection, assure proper mixing of anticoagulant powder by slowly and completely inverting the blood tube at least five times. **Do NOT shake!**
- (B) Discard venipuncture needle(s) and prep pads as recommended by OSHA guidelines. **Do NOT** place the venipuncture needle(s) or prep pads in the specimen collection box.

STEP 3: Fill out all information requested on two of the three Specimen Security Seals provided. Then remove backing from the two Specimen Seals. Affix center of seals to the blood tube rubber stoppers, and press ends of seals down sides of the blood tubes, then place both filled and sealed blood tubes in specimen holder.

URINE SPECIMEN COLLECTION

STEP 4: Have subject void directly into the urine specimen bottle provided. A minimum of 60 ml is required.

STEP 5: After specimen is collected, replace cap and tighten down to prevent leakage.

STEP 6: Fill out the information requested on the remaining Specimen Security Seal. Affix center of seal to the bottle cap and press ends of seal down sides of bottle, then place urine bottle in specimen holder.

STEP 7: Place specimen holder inside the zip lock bag, then squeeze out excess air and close the bag. Place specimen holder in kit box.

Note: Do not remove liquid absorbing sheet from specimen bag.

STEP 8: Place DoD Toxicology Kit Victim Information form in Toxicology Kit. Retain a copy of the form with the SAFE Report.

STEP 9: Close kit box and affix kit box shipping seal where indicated.

STEP 10: Fill out all information requested on kit box top under "For Hospital Personnel".

STEP 11: Hand sealed kit to investigating agent.

Note: If the officer is not present at this time, place sealed kit in secure and refrigerated area, and hold for pickup by investigating officer. Work with law enforcement/investigating agent to ensure the **CHAIN OF CUSTODY IS MAINTAINED**.

MCIO or investigating agent should mail kit with Form 1323, Toxicological Request Form (found at: www.afip.org) to:

Armed Forces Medical Examiner
Division of Forensic Toxicology
Bldg 1102
1413 Research Boulevard
Rockville, MD 20850

EFFECTIVE 1 DEC 2011:
Armed Forces Medical Examiner
Division of Forensic Toxicology
Bldg 115
Purple Heart Drive
Dover AFB, DE 19902

DoD TOXICOLOGY KIT
VICTIM INFORMATION FORM
FOR UNRESTRICTED REPORTS ONLY

Patient Identification

1. VICTIM'S NAME (Last, First, Middle Initial)

PATTERSON, SHARON V.

2. VICTIM'S DATE OF BIRTH (YYYY/MM/DD)

19950515

3a. DATE OF SPECIMEN COLLECTION (YYYY/MM/DD)

b. TIME

1458

4. IS VICTIM A SMOKER?



Yes



No

5. IS VICTIM TAKING ANY PRESCRIPTION DRUGS?



Yes



No

a. IF YES, NAME OF DRUG(S)

AMBIEN
BIRTH CONTROL PILLS

b. DATE DRUG(S) LAST TAKEN (YYYY/MM/DD)

c. TIME

20151214

2230

6. IS VICTIM TAKING ANY OVER-THE-COUNTER DRUGS?



Yes



No

a. IF YES, NAME OF DRUG(S)

IBUPROFEN

b. DATE DRUG(S) LAST TAKEN (YYYY/MM/DD)

c. TIME

20151217

0800

7. WHY IS DRUG SCREEN BEING REQUESTED?

VICTIM REPORTS ALCOHOL CONSUMPTION ON NIGHT OF ASSAULT

8. PERSON COLLECTING SAMPLE

a. NAME (Last, First, Middle Initial)

b. TITLE

c. DATE (YYYY/MM/DD)

SMITH, JOE

SANE

20151217



DEPARTMENT OF THE ARMY
54TH INFANTRY DIVISION AND FORT ATTERBURY
1972 ABBEY ROAD
FORT ATTERBURY, IN 46124

AFZA-JA-LA

22 December 2015

MEMORANDUM FOR

Criminal Investigation Division
Chief of Justice
Senior Defense Counsel
Victim's Command

SUBJECT: Notification of Representation of PV Sharon Patterson

1. I am the Special Victim Counsel for PV2 Sharon Patterson. As you know, my client has specific rights during any investigation and subsequent court-martial. My goal is to represent PV2 Patterson's interests throughout the investigative and judicial processes and ensure that her rights are protected.
2. I will be present with PV2 Patterson when she meets with trial counsel, defense counsel, and investigators. I plan to appear for and with her at all hearings or court-martial proceedings.
3. Please do not contact my client directly. As PV2 Patterson's legal representative, I request that you coordinate all contact and communication with her through me. Should you need to set up a meeting or interview with my client, I will facilitate her participation should she so desire.
4. Please contact me any time that you need to do so. I can be reached by phone at (555) 324-3395 or (555) 867-5309 or via email at renae.starr77.mil@mail.mil.

Renaë Starr

Renaë Starr
CPT, JA
Special Victim Counsel

NOTIFICATION OF SPECIAL VICTIM COUNSEL SERVICES

I, Sharon Patterson, have been advised of my right to consult with a Special Victim Counsel (SVC) provided by the Government at no cost to me.

I understand that the SVC's mission is to provide victims with confidential legal representation related to issues that may arise as a result of being sexually assaulted.

The SVC may provide the following services:

- Accompany to and advise client during interviews, examinations, hearings, and court-martial proceedings
- Represent client in courts-martial as permitted by law
- Refer to Trial Defense Service for collateral misconduct, if necessary
- Advocate client's interest with Government counsel on disposition options
- Assist client with post-trial submissions to include victim impact statements
- Advise client on collateral civil issues arising from the crime
- Provide other legal assistance services

I understand that I may speak with an SVC and elect representation at any time during the legal, medical, or investigative process. At this time (initial in the applicable blank):

X I want to speak to an SVC.

 I do not want to speak to an SVC.

Sharon Patterson
(Signature of Victim)

22 Dec 2015
(Date)

Annie Christiansen
Signature of SHARP/SARC/UVA/VWL/TC/CID

22 Dec 2015
(Date)

You may contact the servicing SVC directly at any of the following numbers:

54th ID and Fort Atterbury, IN:

- CPT Renae Starr – Office: (555) 324-3395, Mobile: (555) 867-5309

Notifying Official:

Return a copy of this signed form to CPT Renae Starr at renae.starr77.mil@mail.mil or to the Legal Assistance Office, 2nd Floor, Soldier Support Center (Building #1984)



DEPARTMENT OF THE ARMY
54th INFANTRY DIVISION AND FORT ATTERBURY
1972 ABBEY ROAD
FORT ATTERBURY, IN 46124

December 22, 2015

SUBJECT: Special Victim Counsel Scope of Representation

Private Sharon Patterson
Room #105, Building #1775
Fort Atterbury, IN 46124
traci.vance95.mil@mail.mil

Dear Private Patterson,

I am an attorney licensed to practice law and serve as a Legal Assistance Attorney with the United States Army. In that capacity, I will serve as your Special Victim Counsel (SVC) and represent you with respect to issues that may arise as a result of the assault. The purpose of this letter is to detail the scope of this representation.

1. Attorney-Client Confidentiality. Your privacy and your confidentiality is the most important thing to me. With limited exceptions, I cannot share information you provide to me with anyone else without your express permission. I may discuss your case with my supervising attorneys or paralegals, but I will do so only if it is in furtherance of my representation of you and the same rules of confidentiality apply to them.

2. Victim Rights. You have the following rights under 18 U.S.C. Sec. 3771 in any federal court proceeding, including courts-martial:

- The right to be treated with fairness and with respect for your dignity and privacy;
- The right to be reasonably protected from the accused offender;
- The right to be notified of court proceedings;
- The right to be present at all public court proceedings related to the offense, unless the court determines that your testimony would be materially affected if you as the victim heard other testimony at the trial;
- The right to confer with the attorney for the government in the case;
- The right to available restitution;
- The right to information about the conviction, sentencing, imprisonment, and release of the offender.

3. Special Victim Counsel Duties. As a SVC, I am able to represent you by providing the following services:

- Accompany to and advise you during interviews, examinations, hearings, and court-martial proceedings
- Represent you in court-martial as permitted by law
- Referral to Trial Defense Service for collateral misconduct, if necessary
- Advocate your interest with Government counsel on disposition options
- Assist you with post-trial submission to include victim impact statements
- Advise you on collateral civil issues arising from the crime
- Provide legal assistance services as needed

4. Termination of Representation. My representation of you will terminate upon initial action by the Convening Authority should the case be referred to court-martial. In the event that judicial action is not taken in your case, I will represent you until such time as any action taken is completed. Of course, you may terminate my representation at anytime.

5. Contact Information. Please feel free to contact me as indicated below.

CPT Renae Starr
 54th Infantry Division and Fort Atterbury Legal Assistance Office
 2nd Floor – Soldier Support Center (Building #1984)
 Mailing Address: 1972 Abby Road, Fort Atterbury, IN 46124-5000
 Office: (555) 324-3395
 Mobile: (555) 867-5309
 paula.mccartney77.mil@mail.mil

Renae Starr

Renae Starr
 CPT, JA
 Special Victim Counsel

I have read and understand the above letter describing the scope of representation. I agree to these terms of representation.

Sharon Patterson

Name of Client

22 December 2015

Date

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED <i>(Last, First, Middle Initial)</i> Abbott, William C.			2. SSN 000-11-2222	3. GRADE OR RANK SGT	4. PAY GRADE E-5
5. UNIT OR ORGANIZATION B Company, Brigade Support Battalion, 3rd Brigade, 54th Infantry Division				6. CURRENT SERVICE	
				a. INITIAL DATE	b. TERM
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED None.	9. DATE(S) IMPOSED N/A	
a. BASIC 2,580.60	b. SEA/FOREIGN DUTY 0.00	c. TOTAL 2,580.60			

II. CHARGES AND SPECIFICATIONS

10. CHARGE: VIOLATION OF THE UCMJ, ARTICLE Article 92

I SPECIFICATION:

In that Sergeant William C. Abbott, U.S. Army, on divers occasions did, at or near Fort Atterbury, Indiana, between on or about 1 January 2015 and 1 January 2016, violate a lawful general regulation, to wit: Army Regulation 600-20, dated 6 November 2014, by wrongfully engaging in personal relationships with Soldiers of junior grade which appeared to compromise the integrity of supervisory authority, caused actual or perceived partiality or unfairness, and appeared to involve the improper use of grade or position for personal gain.

CHARGE II: Violation of the UCMJ, Article 120

SPECIFICATION 1: In that Sergeant William C. Abbott, U.S. Army, did, at or near Fort Atterbury, Indiana, on or about December 16, 2015, commit a sexual act upon Private (E-2) Sharon Patterson, U.S. Army, to wit: penetration of her vulva by his penis, by unlawful force, to wit: physical strength and violence sufficient to overcome, restrain, or injure the said Private Patterson and inflicting physical harm sufficient to coerce or compel submission by the said Private Patterson.

SPECIFICATION 2: In that Sergeant William C. Abbott, U.S. Army, did, at or near Fort Atterbury, Indiana, on or about 13 January 2015, commit a sexual act upon Private First Class (E-3) Dawn Wells, U.S. Army, to wit: penetration of her vulva by his penis, by unlawful force, to wit: physical strength and violence sufficient to overcome, restrain, or injure the said Private First Class Wells and inflicting physical harm sufficient to coerce or compel submission by the said Private First Class Wells

III. PREFERRAL

11a. NAME OF ACCUSER <i>(Last, First, Middle Initial)</i> WELLESLEY, ARTHUR	b. GRADE O-3	c. ORGANIZATION OF ACCUSER CO B, 1st BSB, 3rd BDE, 54th ID, Fort Atterbury, IN
d. SIGNATURE OF ACCUSER		e. DATE (YYYYMMDD) 20160107

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oath in cases of this character, personally appeared the above named accuser this 7th day of January, 2016, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

PARKER, THOMAS

Typed Name of Officer

54th ID, Fort Atterbury, IN

Organization of Officer

O-3

Grade

Judge Advocate

*Official Capacity to Administer Oath
(See R.C.M. 307(b) must be commissioned officer)*


Signature

12. On 7 January, 2016, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me (See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.)

WELLESLEY, ARTHUR
Typed Name of Immediate Commander

B CO, 1st BSB, 3rd BDE, 54th ID, Fort Atterbury, IN
Organization of Immediate Commander

O-3
Grade


Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1500 hours, 7 January, 2016 at 1st BSB, 3rd BDE, 54th ID
Designation of Command or

Fort Atterbury, IN

Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE

ESPOSITO, JOSEPH
Typed Name of Officer

COMMANDING OFFICER
Official Capacity of Officer Signing

O-5
Grade


Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY
54th Infantry Division and Fort Atterbury

b. PLACE
Fort Atterbury, Indiana

c. DATE (YYYYMMDD)
20160615

Referred for trial to the General court-martial convened by Court-Martial convening order #11 dated

June 1, 2016, subject to the following instructions: ²

By Command of Major General Lex Lloyd
Command or Order

Kelly James
Typed Name of Officer

Official Capacity of Officer Signing

CW3
Grade


Signature

15. On June 17, 2016, I (caused to be) served a copy hereof on (each of) the above named accused.

PARKER, THOMAS
Typed Name of Trial Counsel

CAPTAIN
Grade or Rank of Trial Counsel


Signature

FOOTNOTES: 1 - When an appropriate commander signs personally, inapplicable words are stricken.
2 - See R.C.M. 601(e) concerning instructions. If none, so state.

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, Middle Initial) Abbott, William C.		2. SSN 000-11-2222	3. GRADE OR RANK SGT	4. PAY GRADE E-5
5. UNIT OR ORGANIZATION B Company, Brigade Support Battalion, 3rd Brigade, 54th Infantry Division			6. CURRENT SERVICE	
			a. INITIAL DATE	b. TERM
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED	
a. BASIC 2,580.60	b. SEA/FOREIGN DUTY 0.00	c. TOTAL 2,580.60	None.	
			9. DATE(S) IMPOSED N/A	

II. CHARGES AND SPECIFICATIONS

10. CHARGE: VIOLATION OF THE UCMJ, ARTICLE Article 81

ADDITIONAL CHARGE I
SPECIFICATION:

In that Sergeant William C. Abbott, U.S. Army, did, at or near Fort Atterbury, Indiana, between on or about 22 December 2015 and 1 January 2016, conspire with Sergeant Robert Lamotta, U.S. Army, to commit offenses under the Uniform Code of Military Justice, to wit: willfully disobeying a superior commissioned officer and obstructing justice, and in order to effect the object of said conspiracy the said Sergeant Abbot requested the said Sergeant Lamotta to contact Sharon Patterson to encourage the said Sharon Patterson to recant her assertion that the said Sergeant Abbott raped her.

ADDITIONAL CHARGE II: Violation of the UCMJ, Article 90

SPECIFICATION: In that Sergeant William C. Abbott, U.S. Army, having received a lawful command from Captain Arthur Wellesley, U.S. Army, his superior commissioned officer, then known by the said Sergeant Abbott to be his superior commissioned officer, to refrain from initiating direct or indirect communication with Private Sharon Patterson, U.S. Army, did, at or near Fort Atterbury, Indiana, between on or about 22 December 2015 and 1 January 2016, willfully disobey the same.

ADDITIONAL CHARGE III: Violation of the UCMJ, Article 134

SPECIFICATION: In that Sergeant William C. Abbott, U.S. Army, did, between on or about 22 December 2015 and 1 January 2016, wrongfully endeavor to impede an investigation in the case of the said Sergeant William C. Abbott by requesting Sergeant Robert Lamotta, U.S. Army, to encourage Private Sharon Patterson, U.S. Army, to recant her assertion that the said Sergeant Abbott had raped her.

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, Middle Initial) WELLESLEY, ARTHUR	b. GRADE O-3	c. ORGANIZATION OF ACCUSER CO B, 1st BSB, 3rd BDE, 54th ID, Fort Atterbury, IN
d. SIGNATURE OF ACCUSER		e. DATE (YYYYMMDD) 20160111

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oath in cases of this character, personally appeared the above named accuser this 11th day of January, 2016, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

PARKER, THOMAS

Typed Name of Officer

54th ID, Fort Atterbury, IN

Organization of Officer

O-3

Grade

Judge Advocate

Official Capacity to Administer Oath
(See R.C.M. 307(b) must be commissioned officer)



Signature

12. On 11 January, 2016, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me (See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.)

WELLESLEY, ARTHUR
Typed Name of Immediate Commander

B CO, 1st BSB, 3rd BDE, 54th ID, Fort Atterbury, IN
Organization of Immediate Commander

O-3
Grade


Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1500 hours, 31 January, 2016 at 1st BSB, 3rd BDE, 54th ID
Fort Atterbury, IN
Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE

ESPOSITO, JOSEPH
Typed Name of Officer

COMMANDING OFFICER
Official Capacity of Officer Signing

O-5
Grade


Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY
54th Infantry Division and Fort Atterbury

b. PLACE
Fort Atterbury, Indiana

c. DATE (YYYYMMDD)
20160615

Referred for trial to the General court-martial convened by Court-Martial convening order #11 dated

June 1, 2016, subject to the following instructions: ²

By Command of Major General Lex Lloyd
Command or Order

Kelly James
Typed Name of Officer
CW3
Grade

Official Capacity of Officer Signing


Signature

15. On June 17, 2016, I (caused to be) served a copy hereof on (each of) the above named accused.

THOMAS PARKER
Typed Name of Trial Counsel

CAPTAIN
Grade or Rank of Trial Counsel


Signature

FOOTNOTES: 1 - When an appropriate commander signs personally, inapplicable words are stricken.
2 - See R.C.M. 601(e) concerning instructions. If none, so state.



DEPARTMENT OF THE ARMY
HEADQUARTERS, 2ND BRIGADE, 54TH INFANTRY DIVISION
FORT ATTERBUY, INDIANA 46124-9000

AMJO-BC

8 April 2016

MEMORANDUM FOR MAJ Richard M. Gardner, HHC, 2nd Brigade, 54th Infantry Division,
Fort Atterbury, IN 46124-9000

SUBJECT: Appointment of Article 32(b) Preliminary Hearing Officer in the Case of United States v. SGT William Abbott

1. You are hereby appointed as a Preliminary Hearing Officer (PHO) under Article 32(b) of the Uniform Code of Military Justice (UCMJ) to inquire into the attached charges against:

SGT William Abbott, B Company, Brigade Support Battalion, 2nd Brigade, 54th Infantry Division, Fort Atterbury, IN 46214

2. In accordance with Article 32(b), UCMJ, and Rule for Court-Martial (RCM) 405, Manual for Courts-Martial (2012), the purpose of this hearing is to:

a. Determine whether there is probable cause to conclude that offenses have been committed and whether the accused committed them;

b. Determine whether a court-martial would have jurisdiction over the offense(s) and the accused;

c. Consider whether the form of the charge(s) is/are proper; and

d. Make a recommendation as to the disposition of the charge(s).

3. This preliminary hearing takes precedence over all other duties, TDY, and leave. You should be relieved of all duties that interfere with the prompt completion of the hearing. The hearing will begin on 28 April 2016 at 0900 in the Fort Atterbury courtroom. If the accused or the accused's attorney cannot proceed on the selected date, you shall obtain a request for delay from the accused's counsel in writing and attach it to your report. To avoid delay, consider conducting the hearing during the evening hours or on a weekend. You may approve a request for delay up to a total of seven days from the initial seven (7) day suspense. Requests for delay beyond seven (7) days must be submitted to me in writing through the Staff Judge Advocate or his designee.

4. Government representatives will be appointed by the Criminal Law Division, Office of the Staff Judge Advocate (OSJA), 54th ID. The Government representatives are authorized to participate in this case. The accused's counsel will be detailed by the Senior Defense Counsel, Trial Defense Service. Both of these parties play an adversarial role in the proceedings.

AETS-SBQ-CO

SUBJECT: Appointment of Article 32(b) Preliminary Hearing Officer in the Case of United States v. SGT William Abbott

Therefore, you should avoid discussing the merits of the case with either party outside formal sessions where all parties have the opportunity to be heard.

5. Your clerical and administrative support will be provided by the Military Justice Section, OSJA, 54th ID. Inform them of the date, time, and location of the hearing and a notification memorandum will be prepared for your signature. You will forward the notification to the accused through the respective unit commander to ensure that the unit commander is aware of the time and location of the hearing, thereby ensuring the presence of the accused at the hearing. If the accused is already represented by counsel, you should also send the written notice to the accused's counsel and courtesy copy the Government representatives. The duty uniform should be worn at this hearing to facilitate witnesses returning to regular duties.

6. During the preliminary hearing, you may be required to conduct a closed hearing in accordance with M.R.E. 412 or M.R.E. 513. In such circumstances, in determining the admissibility of proffered evidence under these rules, you will not admit evidence under the "constitutional exception" of M.R.E. 412(b)(1)(C) and M.R.E. 513(d)(8). If you find it necessary to conduct such a closed hearing, you will order the reporter to seal the recording of testimony taken and any exhibits offered during the closed hearing.

7. You are personally responsible for summarizing relevant testimony, which is not already reduced to a written statement. A reporter from the OSJA, 54th ID, will be appointed by the Chief of Justice, OSJA, 54th ID. The reporter will make and maintain an audio recording of testimony during open sessions of the hearing, and the reporter will reduce this recording to a summarized transcript. The preliminary hearing transcript will not be verbatim unless approved by the Staff Judge Advocate, 54th ID. Upon completion of the hearing, you will submit a report to me within 72 hours. You will deliver your original report, DD Form 457, any enclosures, and a detailed chronology of the hearing to the Military Justice Section, OSJA, 54th ID.

Frank R. Myers

FRANK R. MYERS
COL, LG
Commanding

The Article 32 Preliminary Hearing was called to order at 0920, 28 April, 2016 at Building 102,
1st Brigade Support Battalion, 2nd Brigade, 54th Infantry Division, Fort Atterbury, Indiana

PERSONS PRESENT:

MAJOR RICHARD M. GARDNER, Preliminary Hearing Officer, Headquarters and
Headquarters Company, 1st Brigade Support Battalion, 2nd Brigade, 54th Infantry Division.

CAPTAIN GEORGE HARRISON, Trial Counsel, 2nd Brigade, 54th Infantry Division

CAPTAIN JAN LENNON, Defense Counsel, United States Army Trial Defense Service, with
duty at Fort Atterbury, Indiana

CAPTAIN BRETT SPEARS, Special Victim Counsel, 25th Infantry Division and Fort
Richardson, Alaska

CAPTAIN RANAE STARR, Special Victim's Counsel, 54th Infantry Division and Fort
Atterbury, Indiana

SERGEANT WILLIAM C. ABBOTT, Accused, Bravo Company, 1st Brigade Support
Battalion, 2nd Brigade, 54th Infantry Division, Fort Atterbury, Indiana

SERGEANT DARRYL T. GUZMAN, Recorder, Headquarters and Headquarters Company,

1st Brigade Support Battalion, 2nd Brigade, 54th Infantry Division.

The Preliminary Hearing Officer (PHO) noted that the Brigade Commander had authorized a delay that moved the date of the hearing to 28 January, 2016.

The accused waived his right to have the charges read against him.

The Preliminary Hearing Officer advised the accused of his rights and rights waiver in the Article 32 Preliminary Hearing.

The Preliminary Hearing Officer read the list of witnesses.

PV2 Sharon Patterson was present but declined to testify and was deemed unavailable for purposes of the Art. 32 Hearing. PV2 Sharon Patterson's statement dated 22 December, 2015 was admitted by TC. in lieu of her testimony.

PFC, Dawn Wells, U.S. Army, Headquarters and Headquarters Company (HHC), 4th ABCT, 25th Infantry, Division, Fort Richardson, AK, was called, sworn, and testified telephonically without objection from any party. What follows is a verbatim record of the testimony of PFC Wells. Following the transcription of her testimony, PFC Wells reviewed and initialed this transcript.

ANSWERING QUESTIONS FROM THE TRIAL COUNSEL:

My name is Dawn Wells. I joined the Army about a year and a half ago, and went to boot camp and then AIT. I'm currently stationed in Alaska as a 42L. That's an administrative clerk.

I know I don't have to testify at this hearing. My SVC has informed me that I don't have to testify at this hearing. I want to testify. I'm done being quiet about this. I shouldn't have made a restricted report in the first place. If I would have come forward sooner, PVT Patterson never would have been raped by SGT ABBOTT.

I first met SGT Abbott about a year ago right after I checked into my first duty station. He was assigned to the 1st BSB, Ft. Atterbury when I was also assigned there. I knew him a little bit from seeing him around the BSB and the company work spaces, but didn't know him well. He was kinda famous because he's a sergeant, and has been in combat in Afghanistan. He got a Bronze Star with Valor there, and the other Soldiers really respect him. He's got a reputation around the unit for being a really good Soldier, and that's what I thought he was too until all this happened. He is at least 6 feet tall and weighed about 190 pounds. I'm only 5'5" and weigh 115 pounds, I weighed the same back in January of 2015. Last January, I think it was around the 13th, I went to Fritzels to celebrate a birthday of one of my friends in the Company. I can't remember who. There were about 20-25 people there including SGT ABBOTT. I ordered one glass of wine and I don't believe I finished it. I was only there for one hour. I knew about SGT ABBOTT but I didn't know him personally.

At about 2130 that evening I was about to leave when SGT ABBOTT grabbed my arm and asked where I was going. I told him I was leaving and he insisted on buying me a drink. I said "no thanks," and walked out of Fritzels. He followed me to the back parking lot where I had

parked my car. He kept trying to grab me but I just shrugged him off and told him he probably had too much to drink and should go back inside. He got forceful with me and grabbed my arm. He pinned me up against my car and started to lean into me like he was going to kiss me. I turned my head. I had my car keys in my right hand, and he was somehow able to get the keys out of my hand. I think he may have cut my hand as he was pulling them from me. I remember my hand had a cut that I had to bandage for a couple days, which hurt.

He opened my car door and pushed me inside. He got on top of me and was pushing his knees into my thighs while he was undoing his pants. It really hurt. I started to scream and he came down and covered my mouth with his hands. I felt I was going to pass out. He moved my underwear to the side and then he penetrated my vagina with his penis really forcefully. He jabbed at me at least 10-12 times. I was crying 'cuz it hurt so bad. When he was finished he said "you're welcome" then kind of laughed at me and headed back to Fritzels. I was completely humiliated and scared and just sat in my car and cried. I didn't go to the SARC or the hospital until the next day. I didn't tell anyone what happened except the SARC, the nurse and my SVC attorney. I didn't even tell them it was SGT ABBOTT. I wanted the whole thing to just go away.

I have no idea if SGT ABBOTT wore a condom. I don't think so. I don't know if he ejaculated or not, I just know it hurt. I do not think SGT ABBOTT is handsome. Although some people say he is. I had a boyfriend when all this was going down but we broke it off when I left for Alaska. I was the one who broke up. He is not a Soldier, but a boyfriend from back home. We were going to get married. His name is Shaun Thornton. I don't know where he lives or how to get a hold of him anymore.

I made a restricted report. I got PCS'd to Fort Richardson, Alaska. I don't think it had anything to

do with my restricted report. When I got to Alaska, I didn't talk to anyone about this. I didn't want anyone to know about it, and intended to never mention it again. It already cost me one relationship and I didn't want it to make any more problems in my life. But when I heard that SGT ABBOTT had assaulted another young Soldier, I called my SVC lawyer CPT Beagul and told her that I wanted to go unrestricted and help in whatever way I could. I feel like it's my fault that PVT PATTERSON got raped. That's when CPT Spears and I contacted CID.

I have been informed I will be deployed in the next week or so and I might not be available for trial or other things that have to happen with this case. That's why they said this has to be a verbatim transcript, whatever that means. They also said I should initial this transcript at the end of the hearing so they can use it later if they need to. My SVC also told me that I don't have to testify here—some rule or something. I don't care. I'm done being quiet about this. It's my fault that Sharon got raped, and I just want to get everything out in the open.

DW

ANSWERING QUESTIONS FROM THE DEFENSE COUNSEL:

I know I wasn't allowed to drink when I went to Fritzels. I was underage but I drank anyway. I guess I just thought it wasn't that big of a deal—everyone there knew that people underage go to Fritzels to drink. Lots of NCOs go there to hang out with other NCOs and even junior Soldiers. I only had one drink. I can't remember specifically any of the people who were there that night—I do not even remember whose birthday we were celebrating.

I did not name SGT ABBOTT in my original restricted report. They told me no one would ever find out about what was in the restricted report unless I made it unrestricted, and because I never

intended to make it an unrestricted report I didn't see the point in telling them who raped me back then. I also didn't want to get anyone in trouble.

I know SGT ABBOTT is a well-respected and good Soldier. I just didn't want to cause waves. I did not start screaming until I was inside the car with SGT ABBOTT. I did not want anyone to find out about what happened including my then fiance, Shaun Thornton. Shaun and I had stopped having sex for awhile...

DW

CAPTAIN SPEARS: Objection.

CAPTAIN HARRISON: Objection.

MAJOR GARDNER: What's the basis for your objections?

CAPTAIN SPEARS: MRE 412, Sir.

CAPTAIN HARRISON: Same objection from the Government, Sir.

MAJOR GARDNER: I get that 412 applies, but why can't I close the hearing and take testimony to determine whether I should consider this information during the 32?

MAJOR GARDNER: Defense counsel, any issues here?

CAPTAIN LENNON: Yes Sir, this information is clearly required by the constitution. I'd proffer that...

MAJOR GARDNER: Before you proffer anything and we get any further down this road, I'm going to exercise my authority under RCM 405(h) and close this hearing. All personnel not counsel or without a statutory or other specific right to be present must leave the hearing until I have reopened it.

(All personnel other than counsel for the parties, the witness, victims and victims' counsel, and the hearing officer departed the room).

MAJOR GARDNER: Defense counsel, you were saying?

CAPTAIN LENNON: Yes Sir. This is constitutionally required. I'd proffer that what PFC WELLS will say is that she and her fiancée had an agreement, a pact or covenant, if you will, that neither would cheat on the other. They had had an incident of that in their past and it was really destructive; after that, they made this promise. That's bias and motive to fabricate, sir.

MAJOR GARDNER: SVC, you're standing...

CAPTAIN SPEARS: Yes Sir, the new RCM 405 prohibits consideration of matters based on the argument that they're constitutionally required under MRE 412(b)(1)(C). That may be an issue at trial, but it can't be discussed at the Article 32 hearing.

MAJOR GARDNER: Government?

CAPTAIN HARRISON: Same objection from the Government, Sir.

MAJOR GARDNER: OK. We're going to have a recess for a while so I can consult with the Legal Advisor. We're in recess.

After consulting with his Advisor from the Administrative Law Division, the Preliminary Hearing Officer reconvened the hearing.

MAJOR GARDNER: Captain Spears, I agree with you that the new RCM 405(h)(2) says that the exception under MRE 412 for constitutionally required evidence doesn't apply at an Article 32. I've carefully considered the fact that the purpose of this hearing is limited. However, I've also considered both the Defense purpose for eliciting testimony from this witness—that the mutual promises between PFC WELLS and Mr. Thornton may, in the context of their fragile relationship, have given rise to bias, motive to fabricate, or both—as well as the means by which the Government has elected to preserve that testimony. Even the witness has testified that she may not be available for trial, which is why the Government wants her testimony recorded verbatim. In my view, that militates in favor of affording more robust opportunity to confront this

witness through cross-examination at this time.

I've also carefully considered the construction of RCM 405(h), specifically the fact that the president has carefully outlined what specific portions of the MRE do and do not apply at this hearing. However, the expression of those limitations necessarily implies that the president meant for the other authorities conveyed on a PHO must remain intact, including but not limited to those authorities afforded the PHO to act as a military judge. Under RCM 405(h), the term military judge means the PHO, and I have the authority to exclude and, by implication, to include evidence unless the rule specifies otherwise. The only express limitations on that authority are those with respect to not being able to order produced certain types of classified information, and information that's privileged under MREs 513 and portions of 514. If Congress or the president wanted the same limitations to apply with respect to the PHO's authority under 412, they would have said so.

So, PFC WELLS, you may continue answering questions, and Defense Counsel may continue cross examination. The hearing remains closed. Anything further from either side before we proceed?

DW

CAPTAIN SPEARS: I just want to preserve my objection under MRE 412, Sir.

CAPTAIN HARRISON: Same objection from the Government, Sir.

MAJOR GARDNER: Noted.

The witness, PFC WELLS, continued answering questions in response to cross-examination by the defense.

Yes, Shaun and I had stopped having sex for a while. But we got back together. We used to have sex all the time, at least a couple times a day when we were together, which wasn't that often because he was back home. We were on a break because he had cheated on me, and I was really

mad. He finally convinced me to talk to him on the phone, then we got together and talked things over. Basically, he promised me that he would never ever violate my trust again. He made me promise the same thing, because he didn't want me to hurt him the way he hurt me.

Shaun broke up with me when he found out about Sergeant Abbott. I guess Sergeant Abbott told some of his buddies that he had had sex with me. Obviously, he wouldn't tell them that he raped me. I could not convince my fiancée that it was SGT Abbott who was coming onto me not the other way around. I had been intimate with my boyfriend, but I hadn't seen him for months before this happened. I believed my boyfriend would break off our engagement if he knew I had consensual sex with anyone. I did not kiss SGT ABBOTT – he might have kissed me but I did not kiss him back. I do remember making a statement to CID. I took an oath and swore to tell the truth when I made my statement at CID, just like I swore to tell the truth at this hearing.

I never mentioned the hand injury to the people at the hospital. I don't know if they took a photo of it or not. I realize that the statement was made over 8 months after the incident. My memory was probably better when I was at the hospital. I never kissed SGT ABBOTT. I did think SGT Abbott was handsome – but not my type. Besides, I was engaged. I don't think SGT Abbott knew I was engaged. No, I never told him that. I like it better in Alaska than I did at Fort Atterbury. I did say in my statement I kissed SGT ABBOTT. I never told anyone I had a crush on SGT ABBOTT. I did not know PV2 PATTERSON before this. I do not remember telling PV2 Oliver I had a crush on SGT ABBOTT.

I told my therapist about a lot of this stuff too, when I was talking about how messed up I was after Sergeant Abbott raped me. My head was really spinning about the whole thing, and talking to my therapist really helped. We talked about...

DW

CAPTAIN SPEARS: Objection.

CAPTAIN HARRISON: Objection.

MAJOR GARDNER: What's the basis for your objections?

CAPTAIN SPEARS: MRE 513, Sir. We're going down this whole other road about what's privileged communications between PFC WELLS and her psychotherapist.

CAPTAIN HARRISON: Same objection from the Government, Sir.

MAJOR GARDNER: Defense counsel, any issues here?

CAPTAIN LENNON: Yes Sir, this information is clearly required by the constitution. I'd proffer that...

MAJOR GARDNER: Not so fast. I found in your favor on the 412 issue because the rule is crafted in a way that makes clear I have the authority to do so. The same rule—and I'm reading from RCM 405(h) here—says that the rules of privilege apply, with certain exceptions we noted earlier. That same RCM says I don't have the authority to order production of any MRE 513 records. She's not required to answer any questions on matters that are privileged and, for that matter, isn't required to be here at all.

Private Wells, do you want to answer any questions about your conversations with your psychotherapist?

WITNESS: No, sir, I thought that stuff was private. I was just answering questions, you know.

MAJOR GARDNER: Do you want to keep those conversations with your psychotherapist confidential?

WITNESS: Yes, sir.

MAJOR GARDNER: Very well. Move on, Defense Counsel.

CAPTAIN LENNON: Yes Sir.

At this time, the Defense Counsel conferred with the Accused at counsel table.

CAPTAIN LENNON: Sir, we have no further questions for this witness.

MAJOR GARDNER: Are you sure?

CAPTAIN LENNON: Yes, Sir.

Special Agent William Henderson, U.S. Army Criminal Investigation Division Office, Fort Atterbury, was sworn, and testified in substance as follows:

ANSWERING QUESTIONS FROM THE TRIAL COUNSEL:

I am assigned to the General Crimes Team at the Fort Atterbury CID office. I received a call on the morning of 22 December 2015 from the 1SG of Alpha Company, 1st Brigade Support Battalion, about a rape allegation. I was coming off shift as the on-duty Special Agent. I took the case and was assisted by the on-coming shift agent, SA Brown. I interviewed PV2 Patterson, in the company of her SVC, CPT STARR, CPT Greggson, PVT Griffin, PVT Toomey and SGT ABBOTT. I witnessed the signing of all statements. SGT ABBOTT initially acted confused and surprised. He made two separate statements. His first statement was very short. He had difficulty remembering much as he said he was drunk. He admitted to having had sex with PV2 Patterson at some point. He claimed that it had been consensual. He claimed that they were both drunk. Later that day we went to get an MPO. SGT ABBOTT came back into CID about 3 days later. He made a second statement in which he admitted to having sexual intercourse with PV2 Patterson but again claimed it was consensual. He also admitted that he may have grabbed onto to her ankles but that it was part of their consensual sex. I went to

Fritzels and made a diagram of the facilities. I then also subsequently interviewed SGT LAMOTTA and tried to interview Shaun Thornton, PFC Wells' boyfriend at the time but I have not been able to locate him. On 4 January, 2016, I received a call from SA WINFIELD at Fort Richardson, Alaska indicating he had another victim who wished to speak with CID on the SGT Abbott case. CID Investigator Peter Rose took a statement from PFC Dawn Wells in the company of her SVC, CPT Spears wherein she indicated that she had filed a restricted report in January of 2015 of a sexual assault perpetrated by SGT Abbott. On 4 January she filed an unrestricted report.

ANSWERING QUESTIONS FROM THE DEFENSE COUNSEL:

We do have a Special Agent designated to handle Sexual Assault crimes, but she was TDY when this case came in. No, I have not been able to interview her boyfriend. No, I did not interview PV2 Wells about her boyfriend. SGT Abbott voluntarily came into the CID office on 27 December, 2015. I had not asked that he come in for second interview. He came on his own. I don't know if anyone in his chain of command talked to him between his first and second statement. Yes, SGT Abbott was told to come to CID. No, I don't think he was forced into making his first statement, or either of his statements for that matter. Yes, in both statements SGT Abbott maintained that he believed that both he and PFC Patterson were intoxicated at the time of the consensual sex. No, SGT Abbott never made a statement that he forced PV2 Patterson to have sex. Yes, I did retrieve the SAFE kit from both PFC Wells restricted report and from PV2 Patterson's restricted report and submitted them to the crime lab for analysis following proper chain of custody procedures. Yes, I am aware that neither SAFE kit contained

any DNA evidence with respect to the vaginal swabs of either PV2 Patterson, or PFC Wells.

Yes, SGT Abbott voluntarily gave me his cell phone which contained texts between PV2

Patterson and SGT Abbott. Yes, PV2 Patterson gave me her cell phone however all of the texts

during the relevant timeframe had been deleted. I sent the phone to the crime lab for forensic

analysis. Yes, PV2 Patterson told me that she had not had any communication with SGT Abbott

via text etc. after the assault. Yes, I am aware that forensics indicate there were texts exchanged

between PV2 Patterson and SGT Abbott. Yes, SGT ABBOTT was called in and gave a

statement relative to the WELLS assault. Yes, he indicated that the sexual intercourse was

consensual between SGT ABBOTT and PFC WELLS.

PVT Melissa Toomey, Company B, 1st Brigade Support Battalion, 4th Brigade, 54th ID, Fort Atterbury, was called, sworn, and testified in substance as follows:

ANSWERING QUESTIONS FROM THE TRIAL COUNSEL:

I am assigned to B Company, Brigade Support Battalion, Fort Atterbury. I didn't know PV2 Patterson personally, prior to 17 December, 2015. On 17 December, 2015, I was in the women's gym at Fort Atterbury, It was BLDG 124 ADC. PV2 Patterson was in the shower area laying in a heap and sobbing. There was no one else around. I asked if there was anything else I could do and she said "no, there's nothing you can do – you wouldn't believe me anyway." and waved me away. I tried to get nearer to make certain she wasn't hurt but she kept waving me off and telling me to leave her alone. I know SGT Abbott. I believe he's a womanizer. I have seen him regularly at Fritzels and there's always some young Soldier on his arm. He seems to like them drunk and vulnerable.

ANSWERING QUESTIONS FROM THE DEFENSE COUNSEL:

Yes, I am aware SGT Abbott is a good Soldier. No, he never made any kind of pass at me. No, I never stated in my statement I believed SGT ABBOTT to be a womanizer. No, I never reported the incident to anyone at the time. No, she wasn't that hysterical for me to try and get assistance. No, she never mentioned anything about being raped or assaulted.

Captain Mitch Greggson, A Company, 1st Brigade Support Battalion, 2nd Brigade, 54th Infantry Division, Fort Atterbury, was called, sworn, and testified in substance as follows:

ANSWERING QUESTIONS FROM THE TRIAL COUNSEL:

I have been at Fort Atterbury for almost a year. I did not know personally either SGT Abbott or PV2 Patterson prior to 21 December, 2015. At around 1630 that afternoon, I was walking out of my barracks when I saw PV2 Patterson collapse on the ground. She was hysterically crying. When I came up to her and asked her what was wrong, she immediately blurted out "He raped me" and pointed out the person I now know as SGT Abbott. I called CPT Dora Marx and ask that she drive us to the hospital. When we were in the car, PV2 PATTERSON kept trying to text someone, I did not see who she was texting.

ANSWERING QUESTIONS FROM THE DEFENSE COUNSEL:

Yes, I did see SGT Abbott walking with a woman. She was a young woman maybe 20-24 years old. I did not notice if she was attractive. She was dressed in civilian attire. Yes, I do think I saw both of them entering a car.

Sergeant R. A. LaMotta, B Company, 1st Battalion, 15th Infantry Regiment, 2nd Brigade, 54th Infantry Division, Fort Atterbury, Indiana:

ANSWERING QUESTIONS FROM THE DEFENSE COUNSEL:

I have known SGT Abbott for over three years. SGT Abbott is a good Soldier and received the Bronze Star with Valor for saving 3 Soldiers in the line of fire when he was deployed in Afghanistan. I served with him in Afghanistan and although I wasn't on that particular mission, everyone was talking about it. He's a hero, a great leader and a great Soldier. I was with him on 16 December 2015 when all of this went down. PV2 Patterson was flirting with SGT Abbott all night. She was all over him. They were kissing and grabbing each other at Fritzels that night until someone told them to "get a room." The two of them left Fritzels and SGT Abbott came back alone maybe 10-15 minutes later. I did not see PV2 Patterson come back. PV2 Patterson has a reputation for lying. All she wants to do is get back to her folks in SC. SGT Abbott's always been truthful even when it doesn't suit him to do so.

ANSWERING QUESTIONS FROM THE TRIAL COUNSEL:

Yes, I tried to contact PV2 Patterson after all this came out. Yes, I tried to talk her out of it. No, it wasn't SGT Abbott's idea. No, I wasn't able to reach PV2 Patterson. Yes, I have been friends with SGT Abbott for over three years. Yes, I would do anything for him, but he would never tell me to do something that wasn't right. Yes, I've received a (NJP) for being untruthful about my prior fight with SGT O'Roarke. No, I don't like PV2 Patterson. I don't like what she's trying to do to SGT Abbott's exemplary career.

The witnesses were warned not to discuss their testimony in this case with anyone excluding the Preliminary Hearing Officer, Trial Counsel, SVC or Defense Counsel and was excused to return to duty.

No other live witnesses were called.

The Trial Counsel made a closing statement. The Defense Counsel made a closing statement.

The Article 32 Investigation closed at 1445, 28 January, 2016.



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**DEPARTMENT OF THE ARMY
US ARMY CRIMINAL INVESTIGATION LABORATORY
4930 N 31st STREET FOREST PARK, GA 30297-5205**

DNA Report USACIL: 2016·CID000-11-2222

To:
SPECIAL AGENT IN CHARGE
CRIMINAL INVESTIGATIVE SERVICE
FIELD OFFICE WEST BUILDING
1234 ABBEY RD.
FORT OZ, 92055-5238

Date of Report: 30 January 2016
IA Number: 15Aug15-MMXX-0123
Type of Exam: DNA

RESULTS OF EXAMINATION

The following results are opinions and interpretations formed using accepted scientific and professional practices.

1. Semen was identified on the following:
Exhibit 1.5 (UNDERWEAR/PATTERSON)
Exhibit 2 (CLOTHING (SKIRT)/PATTERSON)
2. DNA extraction procedures were performed on the following:
Exhibit 1.5 (UNDERWEAR/PATTERSON)
Exhibit 2 (CLOTHING (SKIRT)/PATTERSON)
Exhibit 9 (BUCCAL SWAB/ABBOTT).
3. DNA profiles were obtained using PCR (polymerase chain reaction) technology on fifteen STR (short tandem repeat) loci and a gender identification locus from the Applied Biosystems Identifier Plus kit.
4. A mixture of DNA profiles consistent with originating from two individuals was obtained from Exhibit 1.5 (UNDERWEAR/PATTERSON).
 - a. The semen DNA profile obtained matches the DNA profile from ABBOTT. The frequency of occurrence of this profile among unrelated individuals selected at random from the U.S. population is estimated to be:

Caucasian	1 in 6.5 sextillion
Black	1 in 1.1 septillion
Hispanic	1 in 1.3 septillion

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- b. The non-semen DNA profile obtained is consistent with originating from an unknown individual that genetically types as female.
 - c. These DNA results may be compared to other potential DNA contributors when suitable standards for comparison [and/or elimination] are submitted to this laboratory.
5. A mixture of DNA profiles consistent with originating from two individuals was obtained from the Exhibit 2 (CLOTHING (SKIRT)/PATTERSON).
- a. The semen DNA profile obtained matches the DNA profile from ABBOTT. The frequency of occurrence of this profile among unrelated individuals selected at random from the U.S. population is estimated to be:

Caucasian	1 in 33,000
Black	1 in 67,000
Hispanic	1 in 95,000.
 - b. The non-semen DNA profile obtained is consistent with originating from an unknown individual that genetically types as female.
 - c. These DNA results may be compared to other potential DNA contributors when suitable standards for comparison [and/or elimination] are submitted to this laboratory.
6. The semen DNA profile from the UNDERWEAR/PATTERSON will be submitted to CODIS (Combined DNA Index System).
7. Additional exhibits were submitted but not analyzed based on the results and circumstances of the case.

DISPOSITION OF EVIDENCE

Unless otherwise noted, evidence received in this case will be returned according to laboratory policy. Items may have been altered to take samples required for examination or to recover materials from the item. If recovered evidence was collected and preserved during laboratory examinations, the material is being returned with the item from which it originated.

SUPA SMAHT
Forensic Biologist
CM 404-469-XXXX, DSN 797-XXXX
supah.smaht.civ@mail.mil

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DNA Branch Report - Approved - Ver. ISS

USACIL Number: 2016-CID000-11-2222

IA Number: 14Jan16-MMXX-0123

Date of Report: 30 January 2016

DNA Exhibit List				
Exhibit	Description	ECD#	Item	Received Date
1	Sexual assault kit (PATTERSON)	106-15	B	16Jan2016
1.1	Genital swabs	106-15	B	16Jan2016
1.1.1	Vaginal swabs	106-15	B	16Jan2016
1.1.2	Cervical swabs	106-15	B	16Jan2016
1.2	Pubic mound swabs	106-15	B	16Jan2016
1.3	Anal/perineal swabs	106-15	B	16Jan2016
1.4	Ear lobe swabs	106-15	B	16Jan2016
1.5	Underwear	106-15	B	16Jan2016
1.6	Finger swabs	106-15	B	16Jan2016
1.7	Known head hair	106-15	B	16Jan2016
2	Clothing (SKIRT) (PATTERSON)	106-15	C	16Jan2016
3	Foreign material collection	106-15	D	16Jan2016
8	Textile material	097-15	G	16Jan2016
9	Buccal swabs (ABBOTT)	099-15	A	16Jan2016

UNITED STATES)	GENERAL COURT-MARTIAL
)	
v.)	STIPULATION OF EXPECTED
)	TESTIMONY
William C. Abbott)	(Mr. Supah Smaht)
B Co., Brigade Support Battalion)	
3rd Brigade, 54th Infantry Division)	
Fort Atterbury, Indiana)	30 June 2016
)	

It is hereby agreed by trial counsel and defense counsel, with the express consent of the accused, that if called to testify, Mr. Supa Smaht would testify substantially as follows:

My name is Mr. Supa Smaht. I am employed by the U.S. Army Criminal Investigative Laboratory (known commonly as USACIL) as a forensic biologist. USACIL is a fully accredited forensic laboratory which services all branches of the Department of Defense. The lab is routinely audited both internally and externally to ensure that its procedures for handling and analyzing evidence are accurate and sound. In addition, all of the scientific instruments I use are regularly maintained and updated. I am routinely recognized by courts as an expert in the fields of DNA analysis and serology. My duties include the analysis of items submitted to me by law enforcement agencies for testing. In general, I analyze items to detect the presence of bodily fluids such as blood and semen. I also test items for the presence of DNA. DNA is the basic building block material of human life. A person's DNA profile is unique to them.

I analyzed several items in this case. First, I analyzed buccal swabs submitted by the CID agent assigned to this case. The buccal swabs contained skin cells of Sergeant Abbott. I analyzed these cells in order to establish a known DNA profile associated with Sergeant Abbott. I later used this profile to compare it to other items of possible evidentiary value, to either include or exclude Sergeant Abbott as a contributor to unknown DNA found on those items.

The CID agent submitted several cotton swabs taken from portions of PVT Sharon V. Patterson's body during a forensic medical examination. These items were cotton swabs of PVT Patterson's vaginal, cervical, anal/perineal areas, and pubic mound. No biological material was present in sufficient quantities to establish a DNA profile on the swabs.

I next analyzed PVT Patterson's clothing (a skirt) and underwear for the presence of DNA. After examining these items with an alternate light source, I detected stains on both items. I then obtained swatches of fabric from both the clothing (skirt) and underwear for testing. Semen was present on the exterior rear area of the underwear and interior rear area of the skirt. Semen is a biological material secreted by a male during ejaculation.

A mixture of two DNA profiles was found on both items. The first DNA profile was an unknown female DNA profile, though it should be noted that I was never asked to analyze a buccal swab of PVT Patterson's DNA in order to establish her DNA profile, as would be standard practice. The second DNA profile present on both the clothing (skirt) and underwear

was associated with the semen that was found on the buccal swabs obtained by the CID agent from Sergeant Abbott. The DNA profile of the semen found on the clothing and underwear matched Sergeant Abbott's DNA profile.

I wrote a report in this case, and labeled that report with a unique case number (USACIL: 2016·CID000-11-2222). I prepared that report contemporaneously with the performance of the testing I recorded in that report. As part of my duties, I am required to write a report on my findings. The preparation of such reports is a routine practice at USACIL. We prepare several hundred such reports annually, and doing so is part of the regular course of performance of duties for personnel employed at USACIL. My report was quality control reviewed by another forensic biologist in the lab to ensure its accuracy before it was published. I published the report on 30 September 2015.

Captain, U.S. Army
Defense Counsel

Captain, U.S. Army
Trial Counsel

William C. Abbott

W. C. ABBOTT
Sergeant, U.S. Army
Accused

Name: Private Second Class Sharon Patterson

Date: January 15, 20xx

IDENTIFICATION:

The patient is a 20-year-old, single, white female Private Second Class in the United States Army who was referred to me by Chaplain Ann Melton. The patient came to the chaplain in considerable distress. She did not wish to see any military mental health professional.

Chaplain Melton was concerned about her reported suicidal thoughts. And, she thought Pvt Patterson was significantly enough depressed that she would likely require medications as well as therapy, so she referred her to me for an assessment, medications, and possible therapy. Since it was a sexual assault case, the patient understood that the therapy might be referred out to a woman therapist or trauma specialist at some point after assessment and stabilization.

SOURCES OF INFORMATION:

1. Phone call from Chaplain Melton, (December 28, 20-1).
2. Interview of the patient (December 28, 20-1).

CHIEF COMPLAINT AND HISTORY OF PRESENT PROBLEMS:

The patient was scheduled for a full intake. She came in with the primary complaints of being unable to sleep, nightmares, flashbacks, difficulty with concentration, depression, anxiety, and panic attacks. She could not get to sleep, and when she did finally fall asleep, she would have nightmares of the alleged assault.

She became increasingly depressed in the last few weeks. She could not motivate herself to do much of anything. She lost interest in work, noticed a reduced appetite, but with urges to binge and purge again, and contemplated suicide. She experienced almost continuous anxiety and occasional panic attacks.

One of her preoccupations was that her military career was over now that charges were being filed and her case is being investigated. She found herself having sudden flashbacks anytime she drove by a bar and especially the bar where the recent assault occurred.

She was also preoccupied with seeing perpetrator on base or some of his friends. She knew there were rumors that she had "cried rape after being blown off by him."

The alleged rape occurred on Wednesday, December 16, 20-1. The patient said she went to Fritzel's Beer Hall outside of the fort. She was with several fellow members of C Company. She drove her car to the bar. There were two or three cars full of friends. They had several drinks, mostly beers. She claimed she had maybe three or four, but one of the guys bought a round of shots, and she had some. She thinks only one.

She remembered being at the bar for about an hour when she saw Sergeant Abbott, the alleged assailant. He was with several of his friends, and they called her and her friends over. They started talking, and she acknowledged she talked mostly to Sergeant Abbott. She had seen him before.

With some embarrassment, she acknowledged that she had been with him at the same bar approximately two weeks previously. They had become very friendly and went to the back of the bar near the bathrooms

where they started kissing. She said she was not truthful with the investigator and had claimed she had not talked to Abbott since that first time at the bar. She acknowledged that they had exchanged texts between the two times at that bar. The investigators discovered the texts on Abbott's phone.

With some further discomfort, she acknowledged that she had a crush on Abbott since first seeing him. She was very defensive and said all the women who had been around Abbott had felt that way. He was very good looking and charming.

That second night at the bar he asked her if she wanted to go outside. She acknowledged that she did agree to go outside with him. He reportedly took her hand, and they went out into the parking lot. He walked her over to his car, and they were talking for a while. They were leaning up against his car and started kissing. She said that was okay, but then he asked her to get in the car. She acknowledged she was aroused and "turned on." She did go ahead and get into his car with him. She said some people were walking by while they were kissing, and she was becoming uncomfortable kissing him in front of others.

Once inside his car, he started kissing her again, but then he started to forcefully grab at her breasts. She became uncomfortable and pushed him away. He started to pull up her skirt. She remembered telling him that things were going too fast and to please stop. He kept trying to kiss her, and she tried to move away from him. He stopped and asked her what was wrong. She claimed that she said she didn't want this. According to her he said that was what he wanted and said that he knew that she wanted it, too.

He then pushed her backwards, forced her legs open, climbed on top of her and attempted to rape her. She tried to bang her foot on the window, but didn't think anybody heard her. She then started to feel "anxious and panicky and trapped." "I froze." He saw that she was banging her left foot and grabbed her left lower leg very hard and pinned the leg under him. He managed to get his penis inside her vagina, and she couldn't stop him. He was much stronger. She tried to force him off her, but felt "paralyzed." He ejaculated. Then, since they had not removed their clothes, he was able to quickly get out of the car and return to the bar.

At that point she started crying, felt awful, went to her car and left. She did not tell any of the women or men who had come with her to the bar that she was leaving or what happened with Sergeant Abbott.

She had not said anything to anybody for a few days. She knew people saw her kissing him a couple weeks before the assault. "I figured they'd just think I was crying rape over a drunken hook up I wish I'd not had." She avoided him as much as she could.

She said Abbott tried to text her a couple of times after the incident, but she didn't answer. She knows the investigators have found the deleted messages, and she knows that it appears as if there was something between them.

Sometime after the incident, she broke down in the shower and couldn't stop crying. One of her colleagues, a Private Toomy, saw her and asked what was wrong. She didn't say anything, but went to the SARC office and told them what had happened. They asked her whether she wanted a restricted or unrestricted report at that time, and she didn't understand that. She just knew she didn't want people to know. They gave her some names, but she was upset and lost the slip of paper with the names and phone numbers.

On December 21, 20-1 she saw Sergeant Abbott walking to his car out of uniform. It reminded her of that night. She started crying right then and there. Another soldier came by whom she didn't know. She pointed to Abbott and told the soldier Abbott raped her. This other soldier started asking her questions, but she "froze up and couldn't say anything." The next thing she knew a woman soldier, unknown to Pvt

Patterson came in a car. They went to the hospital. Her foot and ankle had been hurt when she tried to bang it against the window and when he grabbed it. It was her left ankle, which had been broken in the past.

She said everything since the hospital is a bit of a blur. She has had to answer questions. She is frightened that her family is now going to find out.

She went to one of the chaplains, Ann Melton, and told Melton what happened. The chaplain knew this provider and was concerned enough about Pvt Patterson that she referred Patterson for psychiatric help.

Since this is an off-base out of network private practice, she wasn't certain about being able to afford treatment. She decided to call her oldest brother in San Diego who was willing to help pay for at least the assessment and some of the treatment. She did not want to see any military mental health provider.

PAST PSYCHIATRIC HISTORY:

She had been a poor student in high school. For years, they thought she was just being difficult. Finally, one of the high school teachers convinced her and the family to agree to neuropsychological testing. She was diagnosed with ADHD (Attention Deficit Hyperactivity Disorder). She was placed on Ritalin, which helped, and she graduated from high school with an improved, but still poor GPA.

She then attended community college (the Woodbridge campus of Prince William Community College in Virginia) for one year, but didn't do well, felt frustrated, and decided to enlist.

Later in the interview, after we had reviewed the family and personal history, she acknowledged that her mother had taken her to a counselor at age 14. The mother had seen that the patient was depressed, which she acknowledged. She said to her mother that it was because she wasn't doing well in school or with soccer. She wouldn't tell her mother or the counselor the real problem. Her first cousin had molested her and had also tried to rape her during one of the annual summer family reunions. This was her mother's sister's oldest son. At the time he started molesting her, he was fifteen years old and was probably seventeen when he tried to rape her.

Apparently, the extended maternal family would go to river cottages near Dahlgren, Virginia, where the mother was raised and her family remained. The mother's extended family would be there in the summers. Pvt Patterson grew up with this cousin. He was the oldest son in that family and could do no wrong. She went through an early puberty, and when she developed breasts, he started noticing her. They had always been close, and she admits she idolized him. But then his interest changed. On several occasions, in the basement of the family cottage, when no one was around, he would molest her. She did not want to discuss the details. He told her no one would believe her if she told. She was frightened and never said anything. I did not push her for the details.

She would try to stay away from him after that. There was one evening when she was thirteen and the family was at the summer place when her mother insisted this cousin drive her to Dahlgren to purchase something. She resisted, but couldn't explain the real reason for her reluctance to her mother or aunt. She and the cousin drove into the town. On the way back, he pulled into a dark corner of a city park and tried to have sex with her. He was very threatening and rough. But, she was able to fight him off and prevent full penetration. The cousin ejaculated on her, and the experience terrified her. She never said anything about this to anyone until she told her high school boyfriend. She's never told anyone since then until now. She said the assault by Sergeant Abbott felt just like this cousin's assault, and the flashbacks at times contain both of them.

PAST MEDICAL HISTORY:

She is on birth control pills. Initially, she said it was for acne, but later she said she was started on birth control pills after a pregnancy and abortion in her senior year of high school. (See below.)

She has had two surgeries, one a left ACL repair and the second a left ankle repair after a fracture. She had been a soccer player in middle school and the beginning of high school. Before the injuries, her hope had been to receive a scholarship to play soccer in college.

As noted above, she has been pregnant once and had one abortion. When she had the abortion, it was a severe humiliation in the home. She had it at a Planned Parenthood clinic in Northern Virginia.

There have been no head injuries or loss of consciousness.

SUBSTANCE USE:

Alcohol:

She started drinking alcohol on the weekends with friends at age 13 while still in middle school. She was drinking regularly on the weekends in high school. She acknowledged that it was when she was really drunk one time that she had unprotected sex with her boyfriend and became pregnant. It was consensual. This was a long-term boyfriend in high school.

After the abortion, she stopped drinking for a while, but alcohol has been a continued problem. It contributed to her leaving community college because she had failed several classes in part because she stated she was too hung over to go to school. She acknowledges that since her enlistment in the military, she will on many occasions get drunk on the weekends to the point of passing out.

She had had multiple blackouts by the time she became pregnant and continued to suffer blackouts including early in her military career. The patient was adamant she did not suffer a blackout on the date of the assault.

The patient reports trying to stop “cold turkey” on numerous occasions when she was in community college and when she joined the military. She indicated she would develop “the shakes” and sometimes just having a beer could calm her down. She has never been able to give up alcohol completely nor has she sought out any treatment, even though she acknowledges she has a problem with it.

Marijuana:

She began smoking marijuana at age thirteen. She was smoking it regularly by sophomore or junior year of high school. She claimed she discontinued marijuana when she enlisted. But, she did not disclose the scope or frequency of her drug use to the recruiter when she enlisted. She believed it would have made her ineligible for service in the military.

Stimulants:

Even though she used it appropriately for her ADHD, she has abused stimulant medication, primarily Ritalin. She has never injected this substance. She either ingested it orally while drinking or occasionally crushed and snorted the substance to get an immediate high.

Other drugs:

She acknowledged experimenting with Molly, mushrooms, LSD, and cocaine.

She denied ever using intravenous drugs.

CRIMINAL HISTORY:

She has speeding tickets in high school “during that wild period of my life,” but nothing else. Patient denies any arrests for DUI, public intoxication or any other alcohol related incidents.

FAMILY HISTORY:

She is the youngest of three children. Her father, Russell Patterson, is a Master Gunnery Sergeant in the United States Marines. Her father has been in the Marines for over 20 years. He has had a very successful career, and is one of the chief mechanics on Marine One, the Presidential helicopter, which is kept at Quantico. Because of that, the family had continuous tours at Quantico through her middle school and high school years.

As far as she knows, her father has no psychiatric history. He is a teetotaler because of alcoholism in the paternal grandfather and two of the paternal uncles. Also he abstains because of the mother's opposition to alcohol.

The paternal grandfather died of complications of alcoholism. He had been a successful noncommissioned officer in the U.S. Army.

She said she loved her grandfather deeply even though he alienated the family because of his alcohol. She always felt she was his favorite grandchild. He was always kind to her, and she remembers always wanting to please him. His death in 2012 affected her deeply. She thinks now, looking back, his death contributed to her heavy drinking and some of her behaviors in high school for which she is now ashamed.

The paternal grandmother is still alive. She thinks her paternal grandmother has a history of recurrent depression and has been treated with antidepressants, but the family doesn't talk about it.

The patient's father has three brothers. All three have been in the military. Two of the three have substantial histories of alcohol problems.

The patient's father has two sisters. One is married with children and lives in Oklahoma and has no psychiatric history known to her. The other sister never married, but has a successful career as a military nurse.

The patient's mother, Grace, has been primarily a homemaker, but has worked as a teacher's aide.

She is described as deeply religious.

The maternal grandparents are both deceased. They had no history of psychiatric illness known to the patient. Her maternal grandfather was a minister in Dahlgren, Virginia and served numerous churches in the area of the Potomac and Northern Neck.

The patient's mother has two sisters. They both are married and have children. They remained in the Dahlgren and Northern Neck area. Each of them had two children. The oldest of the aunts, Marie, had the son, David, who allegedly molested the patient when she was a teen. She knows of no psychiatric history in the extended maternal family.

Private Patterson is the youngest of three siblings.

The oldest sibling, John, is a pilot in the U.S. Navy. He has been, she said, the pride of the family. He received an appointment to the U.S. Naval Academy where he did well, and he became a carrier based Navy pilot. He is currently stationed in San Diego. He is the only one in the family that knows about the rape and the investigation. He is the one who was willing to support her treatment off base. He is married with an infant son. He has no psychiatric history known to her.

Her brother, Alan, the second born, she described as "the black sheep" of the family. He always had to live under John's shadow. She was closer to Alan initially as John was older and more or less separate from them. Alan had significant substance abuse and legal problems.

Alan managed to receive treatment and have a sustained recovery. He finished an IT degree at Northern Virginia Community College and works running the IT of a law firm in Northern Virginia. He is now married and has a child. He seems to have turned his life around and maintains a sustained recovery from his substance abuse problems. He has no other psychiatric history. During the time he became alienated from the family their close relationship faded. She thinks she could call on him to be supportive. But, now she is closer to John.

Private Patterson is the youngest of three.

PERSONAL HISTORY:

As far as she knows, she was the product of a normal pregnancy, labor, and delivery. The family moved in the early years of her life because of her father's military service. When her father was overseas, her mother and brothers would live in Dahlgren with the maternal family. She doesn't really remember much of the pre elementary school years.

Because of the father's connection with Marine One, they settled in the Prince William County area of Virginia. He was there for the remainder of her elementary school, middle school, and high school years. She started playing soccer, and said that she was very good at it. Her hope was that she could be a star like her older brother. Her route would be a college scholarship in soccer.

She remembered school never came easily for her. She was often in trouble because she couldn't stop moving around or talking. Because of Alan's problems, and their closeness then, the family assumed that she was just behaving like him. As noted previously, the diagnosis of ADHD was not made until later.

She went through puberty starting at age eleven. As noted above, she reported the molestation and attempted assault by her cousin that occurred in the summer when she was fourteen.

Looking back, she said it was after her grandfather's death that she really started running with the wrong crowd and drinking too much.

During those years she also felt ugly and started bingeing and purging. She also went on diets on and off. The eating disorder symptoms persisted up until the present, primarily now occasional binges and purges.

She also acknowledged that there were times she'd be particularly distressed and would do non-suicidal self-injuries like cutting on her hips. She always found it odd that they brought relief, and she quickly understood why people do it. She has never told anybody about that.

She said, however, her boyfriend at the time was very nice to her, which countered some of her poor self-image. One night when they were stoned and drunk, they had unprotected sex, and she became pregnant. They decided on an abortion. The families were very upset, and his family sent him to relatives in rural Idaho. His family forbade contact with her and successfully enforced it. Their relationship did not survive. She became depressed again, but no one in the family seemed to notice. She admitted she hid it well. The drinking, bingeing, purging, and occasional cutting intensified.

Because of the father's prominence and the mother's religiosity, she said the abortion had a profound impact on her relationships with the parents. She described her father as somewhat rigid, but she said she has always admired him and wanted to be close and to please him. She felt constantly that she could never please him, and she could never gain the kind of attention and love he seemed to feel for her brother John.

The relationship with her mother was never good. But, when she was a child, it was not bad. She said they are just different. She never shared her mother's religious devotion, and her mother could never enthusiastically support her soccer ambitions. Like father, her mother's attention seemed focused on John. When she seemed headed down the same path as her brother Alan, the relationship with mother deteriorated further. The mother has frozen her out somewhat because of the abortion.

RELATIONSHIP HISTORY:

As noted earlier, she had a boyfriend of two years in high school who treated her kindly. It took a long time for her to feel comfortable with him and for her to allow a sexual relationship even though "in other ways we were kind of wild." "We'd party a lot, and never be any teacher's favorite." She always found it unsettling that he seemed to find her attractive and accept her for who she was. He is the only one who knows about the molestation and attempted rape by her cousin. After the abortion she did not date anybody the rest of high school or at community college. She thought when she came into the military it would be like starting life over. Sergeant Abbott was the first guy since high school she had a crush on.

MENTAL STATUS EXAM:

The patient presented dressed in uniform. She came into the office and was clearly anxious and nervous.

After some reassurance, she did start to open up and gave the history outlined above, though it was not in the order it is recorded here.

Thought processes were linear and logical.

Speech was logical and coherent.

She denied any delusions, hallucinations, or any current or past psychotic symptoms.

She denied mania, hypomania, or other symptoms of bipolar disorder.

Immediate, recent, and remote memory were seemingly intact. There were no obvious cognitive problems.

With regards to suicidality, she said in the week after she reported the assault, she felt suicidal and had a fantasy of driving at high speed and making it look like a car accident. She denied any prior suicidal episodes. She denied feeling utterly alone. She denied any feelings that her family would be better off without her. She said she felt shame, but she knows her brothers and parents would be devastated if she took her life. When asked if she felt she had the capacity or determination now to kill herself, she said she did not.

RISK ASSESSMENT:

Risk to others:

She denied any homicidal or aggressive fantasies or impulses towards anyone in the present or in the past. She denied any history of violence towards others. She acknowledged being angry often with her mother, but she said much of it was hurt that mother seemed so distant at times.

Risk to self:

Protective factors: female, seeking treatment, no sense of burdensomeness, some aloneness - but confided in brother, no prior attempts, no plans, no persistent fantasies of suicide, no private firearms, no determination or capacity now to end her life.

Risk factors: depression, high stress, history of childhood sexual abuse, eating disorder, history of non-suicidal self-harm, recent suicidal fantasies, shame.

IMPRESSION:

1. Major depression, maybe single episode, maybe recurrent.
2. PTSD secondary to rape.
3. Alcohol abuse, maybe dependency
4. Other substance abuse, primarily marijuana and Ritalin.
5. ADHD
6. History of eating disorder characterized by bingeing and purging and some restriction.
7. History of non-suicidal self-harm – cutting on legs.
8. Status post pregnancy and medical abortion.

TREATMENT PLAN:

1. Fix sleep cycle, Trazodone 50 mg tablets #30 one to two h.s. as needed for sleep. Avoid benzodiazepines because of alcohol history.
2. Begin Lexapro 10 mg, an SSRI, for her PTSD symptoms. Effects and side effects reviewed with her including black box warnings. Reviewed need to not drink with these medications.
3. Sleep hygiene was reviewed.
4. Explanation of PTSD symptoms.
5. Discussed with her initial supportive therapy. We will monitor her progress. If and when more in-depth therapy is indicated, either we'd continue or I'll refer her to woman therapist and/or trauma specialist.
6. She resists any treatment for alcohol at the moment because she knows that will involve AA groups. She knows she would run into someone she knows who knows about the investigation.

FIRST FOLLOWUP (January 5, 20xx):

She is sleeping better taking Trazodone 50 mgm at night. She can get to sleep and stay asleep for 7 hours. Only a few nightmares of the assault, and she can return to sleep. Groggy when wakes. We might reduce to 25 mgm.

She has only had two panic attacks in the daytime. Ativan might help but concerned about a benzodiazepine. Hopefully the SSRI will kick in.

She did the Lexapro as instructed 5 mg for four days then increased it to 10. Some GI side effect, but nothing else. She had no suicidal feelings after starting the drug.

She said she is feeling a little bit better, but is still completely preoccupied with the investigation and what is going to happen legally to her and her career now.

I tried to explain what I knew about what she could expect and strongly encouraged her to talk with her lawyer.

She claims she has had no alcohol or other drugs.

She denied any bingeing and purging or restricting. She denied any cutting or urge to cut.

Denied any suicidality.

THIRD VISIT (January 12, 2016):

Medication management and supportive therapy.

She feels like she is calmer. She reports fewer flashbacks. She said that because of the investigation, she really doesn't want to talk about what happened with Sergeant Abbott. She just wants to get through the coming weeks. She thinks that she would prefer a woman therapist to talk to about all of this, but is uncomfortable as long as the investigation is going on. We will start to find an appropriate therapist.

She continues on Lexapro 10 mgm with some side effects. She notes some emotional flattening, but almost welcomes it. She notes diminished sexual feelings from the drug, but feels those were already dampened because of what happened.

Sleep continues to be about seven hours with a few nightmares.

The depression and anxiety are still there but lessened. She's had no panic attacks.

She denies any return of suicidal feelings.

At the end of our session she admitted she'd not been truthful last week. She has continued to have urges to binge and purge and has done so on three or four occasions. She also cut on her thighs after learning they had found the texts messages.

And, she had not been truthful about the alcohol. She has continued to have a beer or two most nights, and last weekend she drank to the point of passing out.

The plan is to raise the Lexapro to 15 mgm and continue to use Trazodone 25 – 50 mgm at night.

FOURTH VISIT (January 19, 2016):

The patient came to the appointment twenty minutes late and said this would be our last appointment.

She will continue the medications but wants a PCP to prescribe them. She learned that my records will be subpoenaed, and I will be called to testify. She is angry because she thought the chaplain and I had assured her this would be all confidential.

Further questions about emotional state and risk assessment were deflected.

AFFIDAVIT SUPPORTING REQUEST FOR AUTHORIZATION TO SEARCH AND SEIZE OR APPREHEND

For use of this form, see AR 27-10; the proponent agency is OTJAG.

BEFORE COMPLETING THIS FORM, SEE INSTRUCTIONS ON PAGE 2

I, Special Agent William Henderson, U.S. Army CID, Fort Atterbury Office, Indiana
(Name) (Organization or Address)

having been duly sworn, on oath depose and state that:

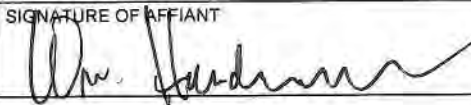
See attached affidavit related to SGT William Abbott.

2. The affiant further states that:

3. In view of the foregoing, the affiant requests that an authorization be issued for a search of the Fort Atterbury CID Evidence Room
(the person) (and)
located at 123 Telegraph Road, Fort Atterbury, Indiana 18099
(the quarters or billets) (and)
(the automobile) { } and (seizure) (apprehension) of the items described in Attachment A and the
(items persons searched for)
subsequent search of the item for records/information set out in Attachment B, for offenses listed therein and seizure thereof.

TYPED NAME AND ORGANIZATION OF AFFIANT
William Henderson, U.S. Army CID, Fort Atterbury CID Office

SIGNATURE OF AFFIANT



SWORN TO AND SUBSCRIBED BEFORE ME THIS 29th DAY OF December 2015 AT 0800

TYPED NAME, ORGANIZATION AND OFFICIAL CAPACITY OF AUTHORITY
ADMINISTERING THE OATH

Jain D. Pedden
Major, U.S. Marine Corps
Notary and Consul of the U.S.
Authority: 10 U.S.C §936 and §1044a

SIGNATURE OF AUTHORITY ADMINISTERING THE OATH



NO SEAL REQUIRED

INSTRUCTIONS FOR

AFFIDAVIT SUPPORTING REQUEST FOR AUTHORIZATION TO SEARCH AND SEIZE OR APPREHEND

1. In paragraph 1, set forth a concise, factual statement of the offense that has been committed or the probable cause to believe that it has been committed. Use additional page if necessary.
2. In paragraph 2, set forth facts establishing probable cause for believing that the person, premises, or place to be searched and the property to be seized or the person(s) to be apprehended are connected with the offense mentioned in paragraph 1, plus facts establishing probable cause to believe that the property to be seized or the person(s) to be apprehended are presently located on the person, premises, or place to be searched. Before a person may conclude that probable cause to search exists, he or she must first have a reasonable belief that the person, property or evidence sought is located in the place or on the person to be searched. The facts stated in paragraphs 1 and 2 must be based on either the personal knowledge of the person signing the affidavit or on hearsay information which he/she has plus the underlying circumstances from which he/she has concluded that the hearsay information is trustworthy. If the information is based on personal knowledge, the affidavit should so indicate. If the information is based on hearsay information, paragraph 2 must set forth some of the underlying circumstances from which the person signing the affidavit has concluded that the informant (whose identity need not be disclosed) or his/her information was trustworthy. Use additional pages if necessary.
3. In paragraph 3, the person, premises, or place to be searched and the property to be seized or the person(s) to be apprehended should be described with particularity and in detail. Authorization for a search may issue with respect to a search for fruits or products of an offense, the instrumentality or means of committing the offense, contraband or other property the possession of which is an offense, the person who committed the offense, and under certain circumstances for evidentiary matters.

**AFFIDAVIT IN SUPPORT OF AN
APPLICATION UNDER MILITARY RULE OF
EVIDENCE 315 FOR A SEARCH AND
SEIZURE AUTHORIZATION**

I, William Henderson, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of an application under Military Rule of Evidence (MRE) 315 for authorization to search for and seize an electronic device which is currently in law enforcement possession, and to subsequently search that device for the electronically stored information described in Attachment B.

2. I am a Special Agent (SA) with the United States Army Criminal Investigation Command (USACIDC), and have been for four years. I have been trained and accredited through the CID Criminal Investigation Course, Domestic Violence Intervention Training, Child Abuse and Prevention/Intervention Training and Special Victim's Unit Interview Course. As a USACIDC Military Special Agent, I have worked general crimes at duty locations in Kuwait and Virginia, and general and sex offense crimes while stationed at Fort Atterbury, Indiana. Over the past four years I have participated in the execution of multiple search authorizations related to crimes involving computers and other criminal offenses. As a USACIDC Special Agent, I am authorized to investigate criminal offenses involving violations of the Uniform Code of Military Justice and other applicable federal laws where there is an Army interest. As a criminal investigator, I am authorized under MRE 315 to conduct a search when a search authorization has been granted.

3. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other agents and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the requested search authorization and does not set forth all of my knowledge about this matter. I have not, however, omitted any fact that would tend to defeat a finding of probable cause.

4. Based on my training and experience and the facts as set forth in this affidavit and incorporated herein by reference, there is probable cause to believe that SGT William C. Abbott has committed violations of Article 92 (Violation of a General Order) and Article 120 (Rape and/or Sexual Assault). There is also probable cause to search the property described below for records and information further described in Attachment B which constitute evidence of this offense.

5. The electronic device is currently in the lawful possession of the USACIDC. It came into USACIDC possession when it was seized for safekeeping. Although there was a subsequent authorization to search the device, it has not been searched, as explained below.

OFFENSES

6. There is probable cause to believe that Sergeant William C. Abbott has committed the following offenses under the Uniform Code of Military Justice:

Article 92, Failure to Obey Order or Regulation

Any person subject to this chapter who violates or fails to obey any lawful general order or regulation...

Article 120, Rape

(a) *Rape*. Any person subject to this chapter who commits a sexual act upon another person by using unlawful force against that other person...

THE PLACE TO BE SEARCHED AND THE PROPERTY TO BE SEIZED

7. The place to be searched is the Fort Atterbury CID Office Evidence Room at 123 Randolph Street, Fort Atterbury, Indiana. The thing to be seized and subsequently searched is a mobile phone LGL41C Ultimate 2, MEID 270113184015451989, hereinafter the DEVICE.

8. The applied for search authorization would authorize the forensic examination of the DEVICE for the purpose of identifying records and information more particularly described in Attachment B related to the offenses set out there.

PROBABLE CAUSE

9. I hereby incorporate the written memorialization of the verbal search authorization issued on 29 December 2015 by CPT Keith Jamison, Part-time Military Magistrate, permitting the seizure of a cell phone from SGT Abbott pursuant to a search of his person, and placing the phone in the custody of CID. I am submitting this affidavit to provide additional facts to aid the Part-time Military Magistrate in making a probable cause determination related to a search of the DEVICE.

10. On 29 December 2015, PV2 Sharon Patterson, a Soldier in Basic Training at Fort Atterbury, reported that she had been raped by her drill sergeant, SGT William Abbott in the early morning hours of 17 December 2015. PV2 Patterson related that on the evening of 16 December, 2015, she went with several of her friends to Fritzel's Beer Hall, about a mile outside Fort Atterbury. Her friends and she went to Fritzel's in several vehicles, one of which PV2 Patterson drove. Once at the beer hall, within approximately 1 hour PV2 Patterson drank about 3-4 glasses of beer and 1 shot

of an unknown hard alcohol. The beers were on a “Drink Special” price, and the round of shots was bought by one of her friends.

11. Shortly thereafter SGT William Abbott, also at Fritzel's Beer Hall with some of his friends, called PV2 Paterson and another female recruit over to talk. SGT Abbott was PV2 Patterson's drill sergeant at the time. PV2 Patterson had encountered SGT Abbott at Fritzel's about 2 weeks earlier, and they had gotten “friendly” and started kissing while standing near the bathrooms. They also had texted back and forth on their smart phones messages of a personal nature (not related to training issues).

12. After talking for a few minutes, SGT Abbott asked PV2 Patterson if she wanted to go outside. PV2 Patterson agreed. Shortly after midnight on 17 December, SGT Abbott took PV2 Patterson's hand and walked her out to Fritzel's back parking lot. There SGT Abbott leaned PV2 Patterson up against a parked car and began kissing her. PV2 Patterson kissed him back. When SGT Abbott asked PV2 Patterson to get inside the car, PV2 Patterson was uncomfortable with the request, but did as SGT Abbott had asked her. She thought SGT Abbott just wanted more privacy to continue kissing her.

13. Once the two were in the car, SGT Abbott continued kissing PV2 Patterson. He then began touching her sexually, first by grabbing her breasts. PV2 Patterson pushed SGT Abbott away. SGT Abbott also began pulling up PV2 Patterson's skirt. PV2 Patterson told SGT Abbott, “Wait a minute – things are going too fast.” SGT Abbott tried to kiss PV2 Patterson again, but PV2 Patterson tried to avoid the kiss, by moving her face away from him. SGT Patterson stopped the

contact for a minute, and asked PV2 Patterson what was wrong. PV2 Patterson told SGT Abbott "This is not what I want." SGT Abbott responded, "Yeah, but this is what I want and you know you want it too."

14. SGT Abbott then forced PV2 Patterson's legs open and sexually assaulted her, penetrating her vagina with his penis, without her consent. SGT Abbott was in the car, on top of PV2 Patterson, and she could not get out from under him. She described feeling totally trapped, trying to bang her foot on the window but not being heard by anyone. She kept banging her foot against the window until SGT Abbott grabbed it and stopped her. PV2 Patterson tried to pull her legs together, but described SGT Abbott as much stronger than she was. PV2 Patterson does not think SGT Abbott wore a condom while sexually assaulting her.

15. After he was done, SGT Abbott pulled PV2 Patterson out of the car and headed back to Fritzel's. He looked back over his shoulder at PV2 Patterson and asked if she was headed back into the bar, saying, "You coming?" as if nothing had happened. PV2 Patterson began crying and ran to her car. She drove away, saying nothing to the friends she'd driven to the bar with, and went home, totally embarrassed, and in a daze.

16. For the next few weeks, PV2 Patterson avoided SGT Abbott as much as she could. SGT Abbott tried texting PV2 Patterson a couple of times, but she did not respond, deleting his messages. Then one day PV2 Patterson broke down in the shower, unable to stop crying. When a fellow trainee, PVT Toomey asked her what was wrong, PV2 Patterson said, "Nothing," but got dressed and went straight to the SARC office and reported SGT Abbott's sexual assault. PV2 Patterson wasn't really

clear on the types of reporting (restricted vs. unrestricted) at the time, but was very upset. She wanted as few people to know about the assault as possible, and so didn't follow up with the help offered by the SARC office.

17. Recently, when she saw SGT Abbott out of uniform and walking to his car, PV2 Patterson was reminded of the night Abbott assaulted her. She broke down on the spot, crying uncontrollably. PV2 Patterson told a Soldier passing by that SGT Abbott had raped her. That Soldier and another drove PV2 Patterson to the hospital. With PV2 Patterson's permission, the hospital notified CID. Subsequently, PV2 Patterson was interviewed, providing a sworn statement which has been summarized, above.

18. On 22 December 2015, at about 0900 hours, I advised SGT William Abbott of his rights, which he waived. SGT Abbott, when interviewed, swore the sexual encounter in Fritzel's parking lot was consensual. He stated he'd drunk a couple beers that night, before Patterson and he went out to his car, and that, when they'd headed to the car, PV2 Patterson looked "buzzed" and "happy and flirty" – but not really "drunk." SGT Abbott acknowledged having exchanged texts with PV2 Patterson in the weeks before 16/17 December at Fritzel's. He said that after their parking lot sexual encounter, he texted PV2 Patterson the next two days, but that PV2 Patterson did not respond. He agreed that whenever he approached her the several weeks since the sexual encounter, PV2 Patterson seemed to do her best to avoid him. SGT Abbott stated he never spoke to PV2 Patterson after their night in the car at Fritzel's. He denied raping PV2 Patterson.

19. At about 0900 hours on 29 December 2015, I seized SGT Abbott's cell phone to preserve the text messages. I submitted a request for a digital forensic examination. The DEVICE is stored in the Fort Atterbury CID Office Evidence Room at 123 Randolph Street, Fort Atterbury, Indiana.

20. On 29 December 2015, I discussed search and seizure of SGT Abbott's cellphone with CPT Keith Jamison, who provided verbal authorization to seize the smart phone belonging to SGT Abbott. The phone number associated with the seized DEVICE is 888-555-1234 (Abbott phone). PV2 Patterson consented (consent provided in a separate document) to the search and seizure of her phone for any communications between her name/her phone (phone number 888-555-7777) and SGT Abbott or his phone. In their sworn statements, SGT Abbott and PV2 Patterson acknowledged exchanging a number of text communications with one another prior to the events at Fritzel's on 16/17 December. Both parties acknowledge SGT Abbott's texts to PV2 Patterson after that encounter.

21. It is believed that evidence of an improper relationship between SGT Abbott and PV2 Patterson, as well as evidence corroborative of sexual assault by SGT Abbott, still resides on the DEVICE. I am submitting a DA Form 3744 and affidavit in support of this request for a search authorization to search the Fort Atterbury CID Office's Evidence Room and seize the DEVICE and then to search the DEVICE for all call activity, text messages, SMS, MMS, IM Messages, and email communications between SGT William Abbott and PV2 Sharon Patterson related to an improper drill sergeant-trainee relationship or sexual assault.

BACKGROUND ON WIRELESS TELEPHONES AND DEVICES

22. Based on my training and experience, I use the following technical terms to convey the following meanings:

Wireless telephone: A wireless telephone (commonly referred to as a mobile phone or cellular phone) is a handheld device used for voice and data communication through radio signals (hereinafter MOBILE PHONE). These telephones send signals through networks of transmitter/receivers, enabling communication with other wireless telephones or traditional "land line" telephones using a combination of wire, cable and other facilities. A wireless telephone usually contains a "call log," which records the telephone number, date, and time of calls made to and from the phone. In addition to enabling voice communications, wireless telephones offer a broad range of capabilities. These capabilities include: storing names and phone numbers in electronic "address books;" sending, receiving, and storing text messages and e-mail; taking, sending, receiving, and storing still photographs and moving video (digital cameras); storing and playing back audio files (media player); storing dates, appointments, and other information on personal calendars; and accessing and downloading information from the Internet. Many of these functions are very similar to those provided by PDAs, as described below. Wireless telephones may also include global positioning system ("GPS") technology for determining the location of the device. Many mobile or cellular phones are also known as "smart" phones; that is, these communication devices essentially are hand-held, mobile computers which also contain voice communication ("calling") capabilities, and are primarily operated by touching the device screen. These phones function as wireless communication devices and can be used to access the

Internet through cellular networks, 802.11 “Wi-Fi” networks, or otherwise. These devices typically contain programs called applications, or “apps,” which, like programs on a personal computer, perform different functions and save data associated with those functions. Apps can, for example, permit accessing the Web, sending and receiving e-mail and messages, and participating in Internet social networks.

23. Based on my training, experience, and research, I know that the DEVICE has capabilities that allows it to serve as a wireless telephone, digital camera, portable media player, GPS navigation device, and PDA, and offer Internet connectivity. In my training and experience, examining data stored on devices of this type can uncover, among other things, deleted information and evidence that reveals or suggests who possessed or used the device.

ELECTRONIC STORAGE AND FORENSIC ANALYSIS

24. Based on my knowledge, training, and experience, I know that electronic devices can store information for long periods of time. Similarly, information related to material that has been viewed via the Internet is typically stored for some period of time on the device. This information can sometimes be recovered with forensics tools.

25. There is probable cause to believe that records and information that were once stored on the MOBILE PHONE may still be stored there, for at least the following reasons:

a. Based on my knowledge, training, and experience, I know that files or remnants of such files can be recovered months or even years after they have been downloaded onto a storage medium, deleted, or viewed via the Internet. Electronic files

downloaded to a storage medium can be stored for years at little or no cost. Even when files have been deleted, they can be recovered months or years later using forensic tools. This is so because when a person “deletes” a file on a computer, the data contained in the file does not actually disappear; instead, the link to the data is removed and the user can no longer see or use it. The data, however, remains on the storage medium until it is overwritten by new data. Computers – to include mobile phones, depending upon their operating systems - may contain and retain recoverable data for many months or years.

b. Deleted files, or remnants of deleted files, may reside in free space or slack space—that is, in space on the storage medium that is not currently being used by an active file—for long periods of time before they are overwritten. In addition, a computer’s operating system may also keep a record of deleted data in a “swap” or “recovery” file.

c. Wholly apart from user-generated files, storage media contains electronic evidence of how a device has been used, what it has been used for, and who has used it. To give a few examples, this forensic evidence can take the form of operating system configurations, artifacts from operating system or application operation, file system data structures, and virtual memory “swap” or paging files. Users typically do not erase or delete this evidence, because special software is typically required for that task. However, it is technically possible to delete this information.

d. Similarly, files that have been viewed via the Internet are sometimes automatically downloaded into a temporary Internet directory or “cache.”

26. *Forensic evidence.* As further described in Attachment B, this application seeks permission to locate not only records and information that might serve as direct evidence of the offense described, but also forensic evidence that establishes how the MOBILE PHONE was used, the purpose of its use, who used it, and when. There is probable cause to believe that this forensic evidence might be on the MOBILE PHONE because:

a. Data on a storage medium¹ can provide evidence of a file that was once on the storage medium but has since been deleted or edited, or of a deleted portion of a file (such as a photograph that has been deleted after being used in a message). Virtual memory paging systems can leave traces of information on the storage medium that show what tasks and processes were recently active. Web browsers, e-mail programs, and chat programs store configuration information on the storage medium that can reveal information such as online nicknames and passwords. Operating systems can record additional information, such as the attachment of peripherals, the attachment of USB flash storage devices or other external storage media, and the times and dates the device was in use. The file systems can record information about the dates files were created and the sequence in which they were created.

¹ The term “storage medium” includes any physical object upon which computer data can be recorded. Examples include hard disks (including those in mobile phones), RAM, floppy disks, flash memory, CD-ROMs, and other magnetic or optical media.

b. Forensic evidence on a device can also indicate who has used or controlled the device. This “user attribution” evidence is analogous to the search for “indicia of occupancy” while executing a search authorization at a residence.

c. A person with appropriate familiarity with how an electronic device works may, after examining this evidence in its proper context, be able to draw conclusions about how electronic devices were used, the purpose of their use, who used them, and when.

d. The process of identifying the exact records and information on a storage medium that are necessary to draw an accurate conclusion is a dynamic process. Electronic evidence is not always data that can be merely reviewed by a review team and passed along to investigators. Whether data stored on a device is evidence may depend on other information stored on the device and the application of knowledge about how the operating program of the device behaves. Therefore, contextual information necessary to understand other evidence also falls within the scope of the search authorization.

e. Further, in finding evidence of how a device was used, the purpose of its use, who used it, and when, sometimes it is necessary to establish that a particular thing is not present on a storage medium.

27. *Nature of examination.* Based on the foregoing, and consistent with MRE 315, the search authorization I am applying for would permit a subsequent search of the DEVICE which is reasonably believed to contain records and information related to the offense set out in Attachment B and seizure of those records and

information. The search of the mobile phone would consist of a forensic examination which may require digital forensic examiners to employ techniques, including but not limited to computer-assisted scans of the entire medium, that might expose many parts of the device to human inspection in order to determine whether it is evidence described by the search authorization. The forensic examination will be completed by a certified Digital Forensic Examiner (DFE) who is a USACIDC Special Agent or a non-agent, certified Digital Forensic Examiner designated by USACIDC to conduct Digital Forensic Examinations.

CONCLUSION

28. I submit that this affidavit supports probable cause for a search authorization authorizing the search of the PLACE described in Attachment A for the thing described therein (the DEVICE) and a subsequent search of the DEVICE for records and information set out in Attachment B which are related to the offense also set out there, and seizure of those records and information.

William Henderson

Special Agent
USACIDC

Subscribed and sworn to before me on 29 December, 2015

Oliver Wendell Holmes

PART-TIME MILITARY MAGISTRATE

ATTACHMENT A

The place to be searched is the Fort Atterbury CID Office Evidence Room at 123 Randolph Street, Fort Atterbury, Indiana.

The thing to be seized and subsequently searched is a mobile phone LGL41C Ultimate 2, MEID 270113184015451989, hereinafter the DEVICE.

This search and seizure authorization authorizes a search of the Fort Atterbury CID Office Evidence Room for the DEVICE, seizure of the DEVICE and the subsequent search of the DEVICE for the records and information described in Attachment B related to the offenses set out there.

ATTACHMENT B

1. All records and information on the Device described in Attachment A that relate to violation of Article 120, Rape and Sexual Assault; Article 92, Violation of a lawful order; or Fraternization, Article 134, which involves SGT William Abbott since on or about 16 December 2015, including:

- a. Records and information related to communications of a personal nature, to include coordination to meet outside of proper drill sergeant-trainee activities, between SGT William Abbott/phone number 888-555-1234 and PV2 Sharon Patterson/phone number 888-555-7777;
- b. Records and information related to the sexual encounter that occurred between SGT Abbott and PV2 Patterson on 16/17 December 2015, to include any reference to the alleged sexual assault occurring at that time; and
- c. Records and information relating to the Device's installation, storage, use, or deletion of applications or other messaging programs and any artifacts left behind.

2. For any computer or storage medium whose seizure is authorized by this authorization, and any image of such computer or storage medium (hereinafter, "COMPUTER"):

- a. evidence of who used, owned, or controlled the original COMPUTER at the time the things described in this search authorization were created,

edited, or deleted, such as phone contacts, text messages, text messaging logs, instant messaging logs, activity logs, photographs, email contacts, email, correspondence logs, registry entries, configuration files, saved usernames and passwords, documents, browsing history, and user profiles;

- b. evidence of software that would allow others to control the original COMPUTER, such as viruses, Trojan horses, and other forms of malicious software, as well as evidence of the presence or absence of security software designed to detect malicious software;
- c. evidence of the lack of such malicious software;
- d. evidence of the attachment to the original COMPUTER of other storage devices or similar containers for electronic evidence;
- e. evidence of counter-forensic programs (and associated data) that are designed to eliminate data from the original COMPUTER;
- f. evidence of the times the original COMPUTER was used;
- g. passwords, encryption keys, and other access devices that may have been necessary to access the original COMPUTER;
- h. records of or information about Internet Protocol addresses used by the original COMPUTER;
- i. records of or information about the original COMPUTER's Internet activity, including firewall logs, caches, browser history and cookies, "bookmarked"

or “favorite” web pages, search terms that the user entered into any Internet search engine, and records of user-typed web addresses;

- j. contextual information necessary to understand the evidence described in this attachment.

As used above, the terms “records” and “information” includes all forms of creation or storage, including any form of computer or electronic storage (such as hard disks or other media that can store data).

The term “computer” includes all types of electronic, magnetic, optical, electrochemical, or other high speed data processing devices performing logical, arithmetic, or storage functions, including mobile phones, desktop computers, notebook computers, tablets, server computers, and network hardware.

The term “storage medium” includes any physical object upon which computer data can be recorded. Examples include hard disks (including those in mobile phones), RAM, floppy disks, flash memory, CD-ROMs, and other magnetic or optical media.

SEARCH AND SEIZURE AUTHORIZATION

For use of this form, see AR 27-10; the proponent agency is OTJAG

TO: (Name and Organization of the person to whom authorization is given)

Special Agent William Henderson or any U.S. Army Criminal Investigation Command (USACIDC) Special Agent or Digital Forensic Examiner designated by USACIDC

(An affidavit) (A sworn) or (unsworn) oral statement) having been made before me by SA William Henderson

(Name of Affiant)

35th Military Police Detachment (CID), 123 Randolph Street, Fort Atterbury, Indiana

(Organization or Address of Affiant)

(which affidavit is attached hereto and made a part of this authorization), and as I am satisfied that there is probable cause to believe that the matters mentioned in the affidavit are true and correct, that the offense set forth therein has been committed, and that the property to be seized is located (on the person) (at the place) to be searched, you are hereby ordered to search the (person) (place) known as

the Fort Atterbury CID Office Evidence Room, 123 Randolph Street, Fort Atterbury, Indiana (Attachment A)

for the property described as the item described in Attachment A and seize it; thereafter search the item for the records/information

described in Attachment B related to the offense described therein and seizure thereof (this authorization is related to offenses

believed to have been committed by SGT William Abbott)

bringing this order to the attention of the (person searched) (person in possession, if any person be found at the place or on the premises searched). The search will be made in the (daytime) (nighttime), and if the property is found there, you shall seize it, issue a receipt therefor to the person from whom the property is taken or in whose possession the property is found, deliver the property to:

CW3 Lee Patterson, Special Agent in Charge, 35nd Military Police Detachment (CID), 123 Randolph Street, Fort Atterbury, IN

(Name and Organization of Authorized Custodian)

and prepare a written inventory of the property. If there is no person at the searched place to whom the receipt may be delivered, the receipt will be left in a conspicuous location at the place or on the premises where the property is found.

Dated this

29th

day of

DECEMBER

2015

TYPED NAME AND GRADE OF AUTHORIZING OFFICIAL

MG, REX LLOYD, USA

ORGANIZATION OF AUTHORIZING OFFICIAL

FT ATTERBURY

DUTY POSITION OF AUTHORIZING OFFICIAL

CG

SIGNATURE OF AUTHORIZING OFFICIAL

Rex Lloyd

AFFIDAVIT SUPPORTING REQUEST FOR AUTHORIZATION TO SEARCH AND SEIZE OR APPREHEND

For use of this form, see AR 27-10; the proponent agency is OTJAG.

BEFORE COMPLETING THIS FORM, SEE INSTRUCTIONS ON PAGE 2

1. I, Special Agent William Henderson, U.S. Army CID, Fort Atterbury Office, Indiana
(Name) (Organization or Address)

having been duly sworn, on oath depose and state that:

See attached affidavit related to SGT William Abbott.

2. The affiant further states that:

3. In view of the foregoing, the affiant requests that an authorization be issued for a search of

the Fort Atterbury CID Evidence Room

(the person) (and)

located at 123 Telegraph Road, Fort Atterbury, Indiana 18099

(the quarters or billets) (and)

(the automobile)

(

place

)

and (seizure) ~~(apprehension)~~ of

the items described in Attachment A and the

(items/persons searched for)

subsequent search of the item for records/information set out in Attachment B, for offenses listed therein and seizure thereof.

TYPED NAME AND ORGANIZATION OF AFFIANT

William Henderson, U.S. Army CID, Fort Atterbury CID Office

SIGNATURE OF AFFIANT

SWORN TO AND SUBSCRIBED BEFORE ME THIS 29th DAY OF December 2015 AT 0800

TYPED NAME, ORGANIZATION AND OFFICIAL CAPACITY OF AUTHORITY
ADMINISTERING THE OATH

I. M. Hardcharger

SIGNATURE OF AUTHORITY ADMINISTERING THE OATH

Hardcharger, I.M.

INSTRUCTIONS FOR

AFFIDAVIT SUPPORTING REQUEST FOR AUTHORIZATION TO SEARCH AND SEIZE OR APPREHEND

1. In paragraph 1, set forth a concise, factual statement of the offense that has been committed or the probable cause to believe that it has been committed. Use additional page if necessary.

2. In paragraph 2, set forth facts establishing probable cause for believing that the person, premises, or place to be searched and the property to be seized or the person(s) to be apprehended are connected with the offense mentioned in paragraph 1, plus facts establishing probable cause to believe that the property to be seized or the person(s) to be apprehended are presently located on the person, premises, or place to be searched. Before a person may conclude that probable cause to search exists, he or she must first have a reasonable belief that the person, property or evidence sought is located in the place or on the person to be searched. The facts stated in paragraphs 1 and 2 must be based on either the personal knowledge of the person signing the affidavit or on hearsay information which he/she has plus the underlying circumstances from which he/she has concluded that the hearsay information is trustworthy. If the information is based on personal knowledge, the affidavit should so indicate. If the information is based on hearsay information, paragraph 2 must set forth some of the underlying circumstances from which the person signing the affidavit has concluded that the informant (whose identity need not be disclosed) or his/her information was trustworthy. Use additional pages if necessary.

3. In paragraph 3, the person, premises, or place to be searched and the property to be seized or the person(s) to be apprehended should be described with particularity and in detail. Authorization for a search may issue with respect to a search for fruits or products of an offense, the instrumentality or means of committing the offense, contraband or other property the possession of which is an offense, the person who committed the offense, and under certain circumstances for evidentiary matters.



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
UNITED STATES ARMY CRIMINAL INVESTIGATION COMMAND
COMPUTER CRIME INVESTIGATIVE UNIT
DIGITAL FORENSICS AND RESEARCH BRANCH
27130 TELEGRAPH ROAD
QUANTICO, VIRGINIA 22134-2253

CISA-CCI-DF

30 December 2015

MEMORANDUM FOR Special Agent in Charge, CID Office, Camp Blank, MO 12345

SUBJECT: Forensic Examination Report
Report of Investigation: 00000-15-CID000-000000
Computer Analysis File: 000000-15-CID000

1) EXECUTIVE SUMMARY

a. On 29 Dec 15, this office received a request for assistance to a United States Government (USG) computer for evidence of [OFFENSE] utilized by SGT William.C.ABBOTT, Fort Atterbury. The submitting office provided a signed search authorization which only allowed for the examination of any email messages between the user accounts william.c.abbott@us.army.mil and dawn.g.wells@us.army.mil.

b. On 30 Dec 15, the undersigned conducted a forensic examination of the submitted evidence, which disclosed there were over 500,000 emails within the user profile William.c.abbott. However, there were only six emails between the user accounts william.c.abbott@us.army.mil and dawn.g.wells@us.army.mil.

2) EVIDENCE EXAMINED

a. Item 1, Evidence Property Custody Document (EPCD), Document Number (DN) 011-15 (CCIU), Toshiba 60GB hard disk drive (HDD), serial number (SN) 13432590, removed from the Dell Desktop Computer SN: KJDN836.

3) DETAILED FINDINGS

a. An examination of the Toshiba image disclosed it contained the Microsoft Windows 7 Operating System, United States Army Gold Master version 10.0.5 which was last shutdown on 29 Dec 15. The registered owner was "US Army", the computer name was ATTERBURY01 and there were three unique user accounts [profiles] for: Administrator, cciu.sa, and william.c.abbott. The system time was set to Eastern Standard Time (EST), and the computer date and times were consistent with the actual time.

(1) A review of the user account william.c.abbott's email revealed there were over 500,000 individual email messages.

FOR OFFICIAL USE ONLY
LAW ENFORCEMENT SENSITIVE

CISA-CCI-DF

SUBJECT: Forensic Examination Report

Report of Investigation: 000000-YY-CID000-000000

Computer Analysis File: 000000-YY-CID000

(2) The search identified only six emails between the user accounts william.c.abbott@us.army.mil and dawn.g.wells@us.army.mil. See figures below for screen shots of the messages.

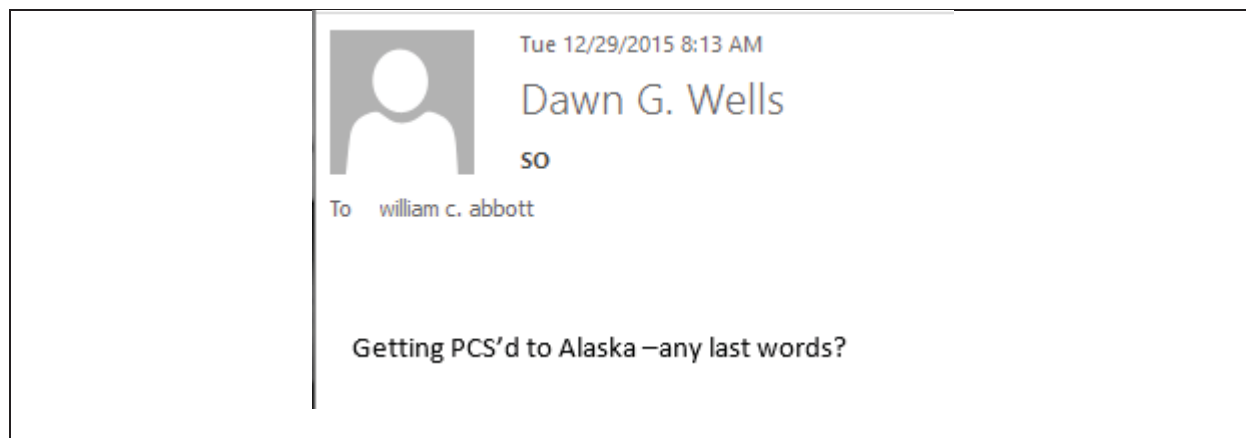


Figure 1 – Message from wells to abbott, 08:13, 29 Dec 15

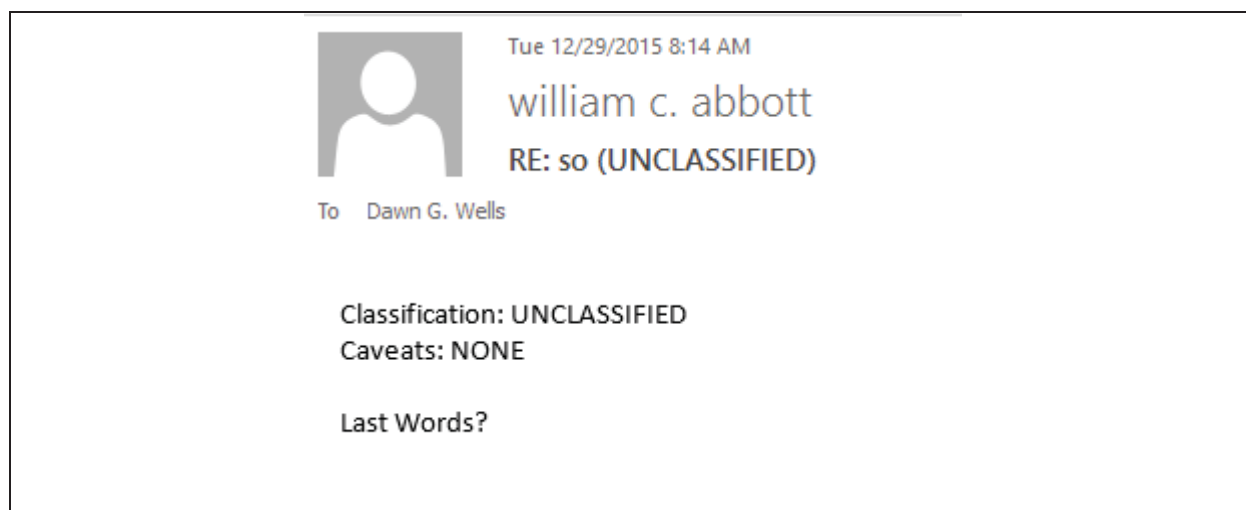


Figure 2 - Message from abbott to wells, 08:14, 29 Dec 15

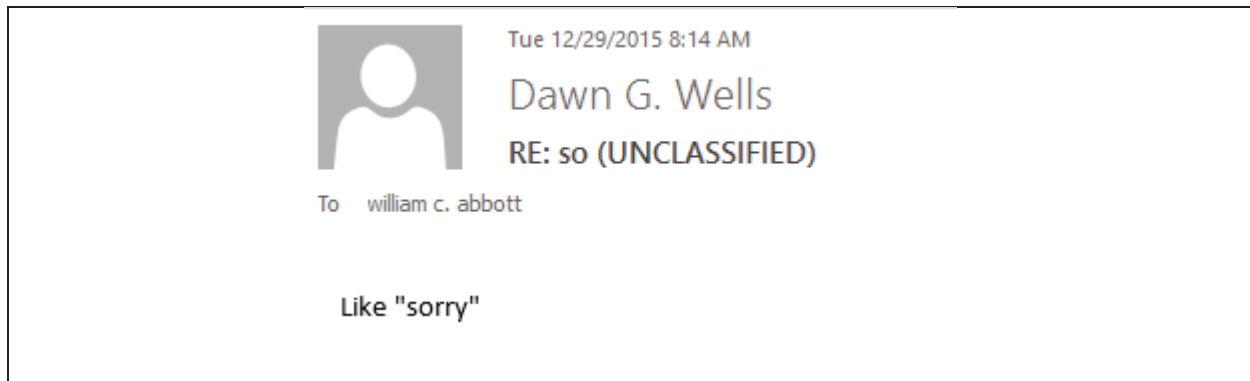


Figure 3 - Message from wells to abbott, 08:14, 29 Dec 15

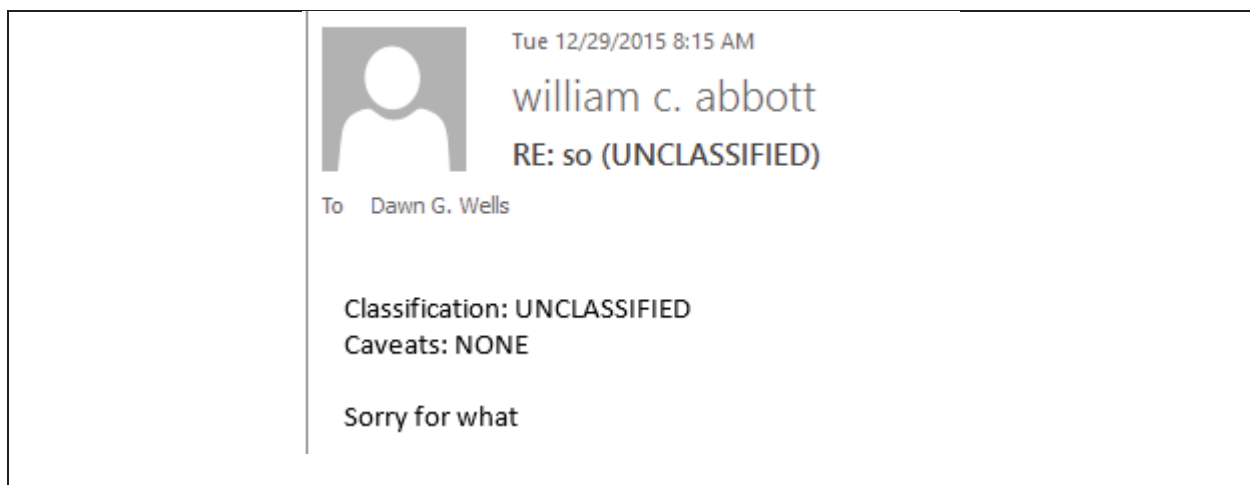


Figure 4 - Message from abbott to wells, 08:15, 29 Dec 15

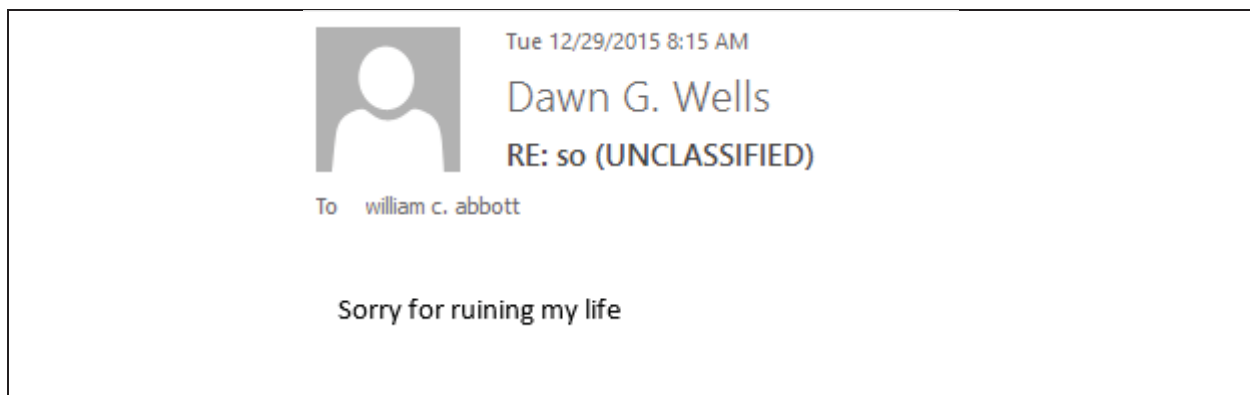


Figure 5 - Message from wells to abbott, 08:15, 29 Dec 15

SUBJECT: Forensic Examination Report
Report of Investigation: 000000-YY-CID000-000000
Computer Analysis File: 000000-YY-CID000

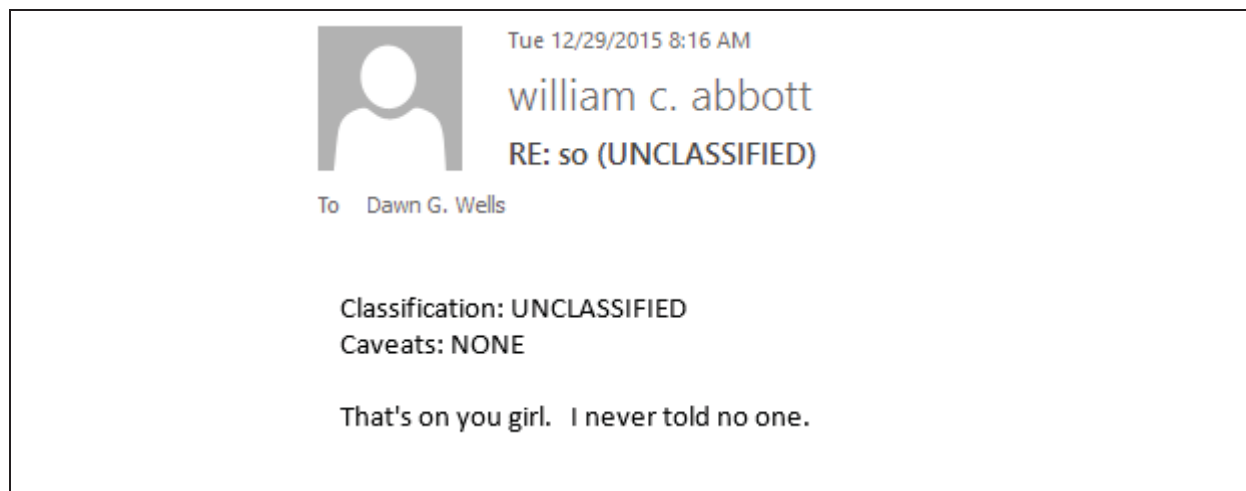


Figure 6 - Message from abbott to wells, 08:16, 29 Dec 15

4) **CONCLUSION.** The forensic examination determined that on 29 Dec 15 there were six email communications between the user accounts william.c.abbott@us.army.mil and dawn.g.wells@us.army.mil.

5) The point of contact for this examination is the undersigned at COM: (703) 555-8888; or email: john.doe@us.army.mil.

DIGITAL SIGNATURE OF JOHN DOE

John Doe
Special Agent, 5555
Digital Forensic Examiner



Extraction Report

Cellebrite UFED Reports

Summary

Connection Type	Cable No. 100
Extraction start date/time	1/4/2016 11:02:13 AM
Extraction end date/time	1/4/2016 11:46:07 AM
Extraction Type	Logical
Extraction ID	22FCE1C7-FCA0-4B3F-A465-13B9D03A04D6
Report type	Phone
Selected Manufacturer	LG CDMA
Selected Device Name	LGL41C Ultimate 2
Unit Identifier	5925500
UFED Version	4.2.7.6
UFED Physical Analyzer version	4.5.0.230
Version type	
Time zone settings (UTC)	Original UTC value
Case number	00000-15-CID000-000000
Case name	Abbott Phone
Evidence number	002-15-CID000
Examiner name	SA Eller
Department	HQUSACIDC
Location	Quantico, VA







Device Information

#	Name	Value	Deleted
1	Client Used for Extraction	Yes	
2	DeviceInfoDetectedManufacturer	LGE	
3	DeviceInfoDetectedModel	LGL16C	
4	DeviceInfoPhoneDateTime	1/4/2016 11:03:17 AM	
5	DeviceInfoRevision	4.4.2 KOT49I.L16CV11a L16CV11a.1436403467	
6	IMSI	3100005719709375	
7	MEID	270113184015451989 (HEX: A1000040EBC755)	
8	MSISDN	5717195532	
9	MSISDN Type	MDN	
10	SMS	SMS drafts and threads created using Hangouts as an SMS application, will not be extracted.	

Plugins

#	Name	Author	Version
1	UFED Logical Report Reader Reads the report generated by the UFED	Cellebrite	2.0
2	Physical Analyzer Report Reader Reads report generated by the Physical Analyzer	Cellebrite	2.0
3	Garbage Cleaner		
4	DataFilesHandler Tags data files according to extensions and file signatures	Cellebrite	2.0
5	ContactsCrossReference Cross references the phone numbers in a device's contacts with the numbers in SMS messages and Calls. Will fill in the Name field of calls and SMS if there's a match.	Cellebrite	2.0
6	Analytics Generates the Analytics section information	Cellebrite	2.0

Contents

Type	Included in report	Total
 Call Log	3	3
 Contacts	11	11
 SMS Messages	48	48
 Timeline	51	51
 Activity Analytics	15	15
 Analytics Phones	7	7

Call Log (3)

#	Type	Parties	Timestamp	Duration	Country code	Network code	Network Name	Video call	Source	Deleted
1	Outgoing	To: 24719	12/16/2015 3:49:07 PM(UTC-5)	00:00:02						
2	Incoming	From: No Number	12/15/2015 6:39:40 PM(UTC-5)	00:00:04						
3	Outgoing	To: 7038019381 Sharon Patterson	12/15/2015 6:37:50 PM(UTC-5)	00:00:02						

Contacts (11)

#	Contact	Timestamp	Entries	Addresses	Notes	Deleted
1	Name: Source: Phone		Email: robert.squarepants@ncsus.org			
2	Name: Abbott William Source: Phone		Phone: Mobile (571) 719-5532			
3	Name: Black Josh Source: Phone					
4	Name: Hennessy OH Shack Source: Phone		Email: oh.shack.hennessy@gmail.com			
5	Name: LaMotta Sgt Source: Phone		Phone: Mobile (703) 486-6123			
6	Name: Patterson Sharon Source: Phone		Phone: Mobile (703) 801-9381			
7	Name: Roberts Finn Source: Phone					
8	Name: Roomba Rolin Source: Phone		Email: svtybalz@gmail.com			
9	Name: Squarepants Robert Source: Phone		Email: papapandasexypants@outlook.com			
10	Name: stark_naked Source: Phone		Email: stark_naked@hushmail.com			
11	Name: sumos4ever Source: Phone		Email: sumos4ever@gmail.com			

SMS Messages (48)

⚠ * These details are cross-referenced from this device's contacts

#	Folder	Party	Time	Status	Message	Deleted
1	Inbox	From 54676	1/4/2016 10:59:16 AM(UTC-5)	Read	FREE MSG: Straight Talk Reserve allows u 2 purchase service plans & have them automatically added on ur service end date. Visit straighttalk.com/reserve for info	
2	Inbox	From 21663	12/24/2015 1:02:11 PM(UTC-5)	Read	FREE MSG: Accidents happen! Protect your phone from broken screens, water & electrical damage and more with Easy Exchange PLUS. Call 1-877-430-2355 to enroll.	
3	Inbox	From 7034866123 LaMotta Sgt *	12/24/2015 8:07:14 AM(UTC-5)	Read	Roger -- will do	
4	Sent	To (703) 486-6123 LaMotta Sgt *	12/24/2015 8:06:44 AM(UTC-5)	Sent	U got 2 get her man!	
5	Inbox	From 7034866123 LaMotta Sgt *	12/24/2015 8:04:15 AM(UTC-5)	Read	no	
6	Sent	To (703) 486-6123 LaMotta Sgt *	12/24/2015 6:58:57 AM(UTC-5)	Sent	Anything? Did u get her?	
7	Sent	To (703) 486-6123 LaMotta Sgt *	12/23/2015 8:33:10 PM(UTC-5)	Sent	Keep at it	
8	Inbox	From 7034866123 LaMotta Sgt *	12/23/2015 8:32:37 PM(UTC-5)	Read	Can't get her not connecting.	
9	Inbox	From 7034866123 LaMotta Sgt *	12/23/2015 8:02:50 PM(UTC-5)	Read	Roger that!!!	
10	Sent	To (703) 486-6123 LaMotta Sgt *	12/23/2015 8:02:23 PM(UTC-5)	Sent	NOW	
11	Inbox	From 7034866123 LaMotta Sgt *	12/23/2015 8:02:04 PM(UTC-5)	Read	Rt now?	
12	Sent	To (703) 486-6123 LaMotta Sgt *	12/23/2015 8:01:22 PM(UTC-5)	Sent	No not me need to call Sharon	
13	Inbox	From 7034866123 LaMotta Sgt *	12/23/2015 7:14:43 PM(UTC-5)	Read	OK call?	
14	Sent	To (703) 486-6123 LaMotta Sgt *	12/23/2015 1:03:00 PM(UTC-5)	Sent	Need to talk	
15	Inbox	From 7038019381 Patterson Sharon *	12/21/2015 5:02:45 PM(UTC-5)	Read	Y no call? Need 2 talk	
16	Inbox	From 7038019381 Patterson Sharon *	12/19/2015 4:02:49 PM(UTC-5)	Read	Call me now!!!	
17	Inbox	From 7038019381 Patterson Sharon *	12/19/2015 3:22:13 PM(UTC-5)	Read	Call me	
18	Inbox	From 54676	12/19/2015 2:07:22 PM(UTC-5)	Read	Straight Talk MSG: Stop annoying telemarketer and debt collector calls. Block them with the Call Detector App. It's free! Download now at http://b.calldet.co	
19	Inbox	From 7038019381 Patterson Sharon *	12/18/2015 7:56:42 PM(UTC-5)	Read	I bet	
20	Sent	To (703) 801-9381 Patterson Sharon *	12/18/2015 7:55:51 PM(UTC-5)	Sent	I said SORRY	
21	Sent	To (703) 801-9381 Patterson Sharon *	12/18/2015 7:53:34 PM(UTC-5)	Sent	Sorry	
22	Inbox	From 7038019381 Patterson Sharon *	12/18/2015 7:53:09 PM(UTC-5)	Read	Sick	
23	Sent	To (703) 801-9381 Patterson Sharon *	12/18/2015 6:41:27 PM(UTC-5)	Sent	Miss u 2day	
24	Inbox	From 54676	12/18/2015 2:13:05 PM(UTC-5)	Read	STRAIGHT TALK MSG: Visit www.straighttalk.com to take advantage of special offers and save every month, when you buy Extended Plans or enroll in Auto-Refill!	
25	Inbox	From 7038019381 Patterson Sharon *	12/17/2015 4:41:16 PM(UTC-5)	Read	Yup	
26	Sent	To (703) 801-9381 Patterson Sharon *	12/17/2015 4:40:36 PM(UTC-5)	Sent	U ok?	
27	Inbox	From 7038019381 Patterson Sharon *	12/17/2015 4:40:10 PM(UTC-5)	Read	Nada	
28	Sent	To (703) 801-9381 Patterson Sharon *	12/17/2015 3:23:50 PM(UTC-5)	Sent	Last chance	
29	Sent	To (703) 801-9381 Patterson Sharon *	12/17/2015 3:21:02 PM(UTC-5)	Sent	Going to BK. Need carbs. U?	

30	Sent	To (703) 801-9381 Patterson Sharon *	12/17/2015 3:04:57 PM(UTC-5)	Sent	Hey u up?	
31	Sent	To (703) 801-9381 Patterson Sharon *	12/17/2015 2:57:29 PM(UTC-5)	Sent	Hey U up? Wanna est?	
32	Inbox	From 21663	12/17/2015 2:02:12 PM(UTC-5)	Read	Straight Talk MSG: In order to maximize your device's web browser please validate your phone number. Click this link: http://m.tracfone.com/sid?mdn=5717195532	
33	Sent	To (703) 801-9381 Patterson Sharon *	12/16/2015 8:13:19 PM(UTC-5)	Sent	C U soon	
34	Inbox	From 7038019381 Patterson Sharon *	12/16/2015 8:12:53 PM(UTC-5)	Read	Yup	
35	Sent	To (703) 801-9381 Patterson Sharon *	12/16/2015 8:11:54 PM(UTC-5)	Sent	U ok?	
36	Sent	To (703) 801-9381 Patterson Sharon *	12/16/2015 7:54:56 PM(UTC-5)	Sent	Hey u home?	
37	Inbox	From 7038019381 Patterson Sharon *	12/16/2015 6:34:35 PM(UTC-5)	Read	Ha	
38	Sent	To (703) 801-9381 Patterson Sharon *	12/16/2015 6:33:53 PM(UTC-5)	Sent	Haha	
39	Inbox	From 7038019381 Patterson Sharon *	12/16/2015 6:33:29 PM(UTC-5)	Read	Rt b-hind u if lucky!!!	
40	Sent	To (703) 801-9381 Patterson Sharon *	12/16/2015 6:21:40 PM(UTC-5)	Sent	IM headin out in 10 C U	
41	Inbox	From 24719	12/16/2015 12:24:18 PM(UTC-5)	Read	ive a notification on your phone. Please click 'Install' to updat	
42	Inbox	From 24719	12/16/2015 12:24:17 PM(UTC-5)	Read	e. It's safe and secure.	
43	Inbox	From 24719	12/16/2015 12:24:14 PM(UTC-5)	Read	Service Msg: Your phone requires a software update. You will rece	
44	Inbox	From 7038019381 Patterson Sharon *	12/16/2015 6:51:52 AM(UTC-5)	Read	Roger C U!!!!	
45	Sent	To (703) 801-9381 Patterson Sharon *	12/16/2015 5:52:49 AM(UTC-5)	Sent	Not if u no/go? C U am	
46	Inbox	From 7038019381 Patterson Sharon *	12/15/2015 11:25:54 PM(UTC-5)	Read	No not 2nite u?	
47	Sent	To (703) 801-9381 Patterson Sharon *	12/15/2015 6:41:41 PM(UTC-5)	Sent	Hey, u headin 2 F's?	
48	Other	To (703) 801-9381 Patterson Sharon *	12/15/2015 2:35:56 PM(UTC-5)	Unsent	Tedt	

Timeline (51)

#	Type	Direction	Attachments	Locations	Timestamp	Party	Description	Deleted
1	SMS Messages	To			12/15/2015 2:35:56 PM(UTC-5)	To: (703) 801-9381 Patterson Sharon	Tedt	
2	Call Log	To			12/15/2015 6:37:50 PM(UTC-5)	To: 7038019381 Sharon Patterson		
3	Call Log	From			12/15/2015 6:39:40 PM(UTC-5)	From: No Number		
4	SMS Messages	To			12/15/2015 6:41:41 PM(UTC-5)	To: (703) 801-9381 Patterson Sharon	Hey, u headin 2 F's?	
5	SMS Messages	From			12/15/2015 11:25:54 PM(UTC-5)	From: 7038019381 Patterson Sharon	No not 2nite u?	
6	SMS Messages	To			12/16/2015 5:52:49 AM(UTC-5)	To: (703) 801-9381 Patterson Sharon	Not if u no/go? C U am	
7	SMS Messages	From			12/16/2015 6:51:52 AM(UTC-5)	From: 7038019381 Patterson Sharon	Roger C U!!!!	
8	SMS Messages	From			12/16/2015 12:24:14 PM(UTC-5)	From: 24719	Service Msg: Your phone requires a software update. You will rece	
9	SMS Messages	From			12/16/2015 12:24:17 PM(UTC-5)	From: 24719	e. It's safe and secure.	
10	SMS Messages	From			12/16/2015 12:24:18 PM(UTC-5)	From: 24719	ive a notification on your phone. Please click 'Install' to updat	
11	Call Log	To			12/16/2015 3:49:07 PM(UTC-5)	To: 24719		
12	SMS Messages	To			12/16/2015 6:21:40 PM(UTC-5)	To: (703) 801-9381 Patterson Sharon	IM headin out in 10 C U	
13	SMS Messages	From			12/16/2015 6:33:29 PM(UTC-5)	From: 7038019381 Patterson Sharon	Rt b-hind u if lucky!!!	
14	SMS Messages	To			12/16/2015 6:33:53 PM(UTC-5)	To: (703) 801-9381 Patterson Sharon	Haha	
15	SMS Messages	From			12/16/2015 6:34:35 PM(UTC-5)	From: 7038019381 Patterson Sharon	Ha	
16	SMS Messages	To			12/16/2015 7:54:56 PM(UTC-5)	To: (703) 801-9381 Patterson Sharon	Hey u home?	
17	SMS Messages	To			12/16/2015 8:11:54 PM(UTC-5)	To: (703) 801-9381 Patterson Sharon	U ok?	
18	SMS Messages	From			12/16/2015 8:12:53 PM(UTC-5)	From: 7038019381 Patterson Sharon	Yup	
19	SMS Messages	To			12/16/2015 8:13:19 PM(UTC-5)	To: (703) 801-9381 Patterson Sharon	C U soon	
20	SMS Messages	From			12/17/2015 2:02:12 PM(UTC-5)	From: 21663	Straight Talk MSG: In order to maximize your device's web browser please validate your phone number. Click this link: http://m.tracfone.com/sid?mdn=5717195532	
21	SMS Messages	To			12/17/2015 2:57:29 PM(UTC-5)	To: (703) 801-9381 Patterson Sharon	Hey U up? Wanna est?	
22	SMS Messages	To			12/17/2015 3:04:57 PM(UTC-5)	To: (703) 801-9381 Patterson Sharon	Hey u up?	
23	SMS Messages	To			12/17/2015 3:21:02 PM(UTC-5)	To: (703) 801-9381 Patterson Sharon	Going to BK. Need carbs. U?	
24	SMS Messages	To			12/17/2015 3:23:50 PM(UTC-5)	To: (703) 801-9381 Patterson Sharon	Last chance	
25	SMS Messages	From			12/17/2015 4:40:10 PM(UTC-5)	From: 7038019381 Patterson Sharon	Nada	
26	SMS Messages	To			12/17/2015 4:40:36 PM(UTC-5)	To: (703) 801-9381 Patterson Sharon	U ok?	
27	SMS Messages	From			12/17/2015 4:41:16 PM(UTC-5)	From: 7038019381 Patterson Sharon	Yup	
28	SMS Messages	From			12/18/2015 2:13:05 PM(UTC-5)	From: 54676	STRAIGHT TALK MSG: Visit www.straighttalk.com to take advantage of special offers and save every month, when you buy Extended Plans or enroll in Auto-Refill!	
29	SMS Messages	To			12/18/2015 6:41:27 PM(UTC-5)	To: (703) 801-9381 Patterson Sharon	Miss u 2day	
30	SMS Messages	From			12/18/2015 7:53:09 PM(UTC-5)	From: 7038019381 Patterson Sharon	Sick	
31	SMS Messages	To			12/18/2015 7:53:34 PM(UTC-5)	To: (703) 801-9381 Patterson Sharon	Sorry	
32	SMS Messages	To			12/18/2015 7:55:51 PM(UTC-5)	To: (703) 801-9381 Patterson Sharon	I said SORRY	
33	SMS Messages	From			12/18/2015 7:56:42 PM(UTC-5)	From: 7038019381 Patterson Sharon	I bet	
34	SMS Messages	From			12/19/2015 2:07:22 PM(UTC-5)	From: 54676	Straight Talk MSG: Stop annoying telemarketer and debt collector calls. Block them with the Call Detector App. It's free! Download now at http://b.calldet.co	
35	SMS Messages	From			12/19/2015 3:22:13 PM(UTC-5)	From: 7038019381 Patterson Sharon	Call me	
36	SMS Messages	From			12/19/2015 4:02:49 PM(UTC-5)	From: 7038019381 Patterson Sharon	Call me now!!!	
37	SMS Messages	From			12/21/2015 5:02:45 PM(UTC-5)	From: 7038019381 Patterson Sharon	Y no call? Need 2 talk	
38	SMS Messages	To			12/23/2015 1:03:00 PM(UTC-5)	To: (703) 486-6123 LaMotta Sgt	Need to talk	
39	SMS Messages	From			12/23/2015 7:14:43 PM(UTC-5)	From: 7034866123 LaMotta Sgt	OK call?	
40	SMS Messages	To			12/23/2015 8:01:22 PM(UTC-5)	To: (703) 486-6123 LaMotta Sgt	No not me need to call Sharon	

41	SMS Messages	From		12/23/2015 8:02:04 PM(UTC-5)	From: 7034866123 LaMotta Sgt	Rt now?	
42	SMS Messages	To		12/23/2015 8:02:23 PM(UTC-5)	To: (703) 486-6123 LaMotta Sgt	NOW	
43	SMS Messages	From		12/23/2015 8:02:50 PM(UTC-5)	From: 7034866123 LaMotta Sgt	Roger that!!!	
44	SMS Messages	From		12/23/2015 8:32:37 PM(UTC-5)	From: 7034866123 LaMotta Sgt	Can't get her not connecting.	
45	SMS Messages	To		12/23/2015 8:33:10 PM(UTC-5)	To: (703) 486-6123 LaMotta Sgt	Keep at it	
46	SMS Messages	To		12/24/2015 6:58:57 AM(UTC-5)	To: (703) 486-6123 LaMotta Sgt	Anything? Did u get her?	
47	SMS Messages	From		12/24/2015 8:04:15 AM(UTC-5)	From: 7034866123 LaMotta Sgt	no	
48	SMS Messages	To		12/24/2015 8:06:44 AM(UTC-5)	To: (703) 486-6123 LaMotta Sgt	U got 2 get her man!	
49	SMS Messages	From		12/24/2015 8:07:14 AM(UTC-5)	From: 7034866123 LaMotta Sgt	Roger -- will do	
50	SMS Messages	From		12/24/2015 1:02:11 PM(UTC-5)	From: 21663	FREE MSG: Accidents happen! Protect your phone from broken screens, water & electrical damage and more with Easy Exchange PLUS. Call 1-877-430-2355 to enroll.	
51	SMS Messages	From		1/4/2016 10:59:16 AM(UTC-5)	From: 54676	FREE MSG: Straight Talk Reserve allows u 2 purchase service plans & have them automatically added on ur service end date. Visit straighttalk.com/reserve for info	

Activity Analytics (15)

#	Name	Entries	Total	Phone Events	Email Events	Other Events
1	Patterson Sharon	Phone: Mobile (703) 801-9381	29	29	0	0
2	LaMotta Sgt	Phone: Mobile (703) 486-6123	12	12	0	0
3	24719	Phone: 24719	4	4	0	0
4	54676	Phone: 54676	3	3	0	0
5	21663	Phone: 21663	2	2	0	0
6	No Number	Phone: No Number	1	1	0	0
7		Email: robert.squarepants@ncsus.org	0	0	0	0
8	Abbott William	Phone: Mobile (571) 719-5532	0	0	0	0
9	Black Josh		0	0	0	0
10	Hennessy OH Shack	Email: oh.shack.hennessy@gmail.com	0	0	0	0
11	Roberts Finn		0	0	0	0
12	Roomba Rolin	Email: svtybalz@gmail.com	0	0	0	0
13	Squarepants Robert	Email: papapandasexypants@outlook.com	0	0	0	0
14	stark_naked	Email: stark_naked@hushmail.com	0	0	0	0
15	sumos4ever	Email: sumos4ever@gmail.com	0	0	0	0

Analytics Phones (7)

#	Phone	In Contacts	Total	Total Calls Duration	Calls Details	SMS Details	MMS Details
1	7038019381	True	29	00:00:02	Contact: Patterson Sharon Incoming: 0 Outgoing: 1 Missed: 0 Unknown: 0 Total Calls: 1	Sent SMS: 15 Received SMS: 12 Draft SMS: 1 Unknown SMS: 0 Total SMS: 28	Received MMS: 0 Draft MMS: 0 Unknown MMS: 0 Total MMS: 0 Sent MMS: 0
2	7034866123	True	12	00:00:00	Contact: LaMotta Sgt Incoming: 0 Outgoing: 0 Missed: 0 Unknown: 0 Total Calls: 0	Sent SMS: 6 Received SMS: 6 Draft SMS: 0 Unknown SMS: 0 Total SMS: 12	Received MMS: 0 Draft MMS: 0 Unknown MMS: 0 Total MMS: 0 Sent MMS: 0
3	24719	False	4	00:00:02	Contact: Incoming: 0 Outgoing: 1 Missed: 0 Unknown: 0 Total Calls: 1	Sent SMS: 0 Received SMS: 3 Draft SMS: 0 Unknown SMS: 0 Total SMS: 3	Received MMS: 0 Draft MMS: 0 Unknown MMS: 0 Total MMS: 0 Sent MMS: 0
4	54676	False	3	00:00:00	Contact: Incoming: 0 Outgoing: 0 Missed: 0 Unknown: 0 Total Calls: 0	Sent SMS: 0 Received SMS: 3 Draft SMS: 0 Unknown SMS: 0 Total SMS: 3	Received MMS: 0 Draft MMS: 0 Unknown MMS: 0 Total MMS: 0 Sent MMS: 0
5	21663	False	2	00:00:00	Contact: Incoming: 0 Outgoing: 0 Missed: 0 Unknown: 0 Total Calls: 0	Sent SMS: 0 Received SMS: 2 Draft SMS: 0 Unknown SMS: 0 Total SMS: 2	Received MMS: 0 Draft MMS: 0 Unknown MMS: 0 Total MMS: 0 Sent MMS: 0
6	No Number	False	1	00:00:04	Contact: Incoming: 1 Outgoing: 0 Missed: 0 Unknown: 0 Total Calls: 1	Sent SMS: 0 Received SMS: 0 Draft SMS: 0 Unknown SMS: 0 Total SMS: 0	Received MMS: 0 Draft MMS: 0 Unknown MMS: 0 Total MMS: 0 Sent MMS: 0
7	5717195532	True	0	00:00:00	Contact: Abbott William Incoming: 0 Outgoing: 0 Missed: 0 Unknown: 0 Total Calls: 0	Sent SMS: 0 Received SMS: 0 Draft SMS: 0 Unknown SMS: 0 Total SMS: 0	Received MMS: 0 Draft MMS: 0 Unknown MMS: 0 Total MMS: 0 Sent MMS: 0



Extraction Report

Cellebrite UFED Reports

Summary

Connection Type	Cable No. 100
Extraction start date/time	1/4/2016 10:41:34 AM
Extraction end date/time	1/4/2016 10:47:22 AM
Extraction Type	Logical [Android Backup]
Extraction ID	D3943FE6-1826-41F8-B9A3-A5AA932497DD
Report type	Phone
Selected Manufacturer	LG CDMA
Selected Device Name	LGL41C Ultimate 2
Unit Identifier	5925500
UFED Version	4.2.7.6
UFED Physical Analyzer version	4.5.0.230
Version type	
Time zone settings (UTC)	Original UTC value
Case number	00000-15-CID000-000000
Case name	Patterson Phone
Evidence number	003-15-CID000
Examiner name	SA Eller
Department	HQUSACIDC
Location	Quantico, VA







Device Information

#	Name	Value	Deleted
1	Client Used for Extraction	Yes	
2	DeviceInfoDetectedManufacturer	LGE	
3	DeviceInfoDetectedModel	LGL16C	
4	DeviceInfoPhoneDateTime	1/4/2016 10:42:32 AM	
5	DeviceInfoRevision	4.4.2 KOT49I.L16CV10a L16CV10a.1419242289	
6	IMSI	3100007038019381	
7	MEID	270113183814182574 (HEX: A100003ED868AE)	
8	MSISDN	7038019381	
9	MSISDN Type	MDN	
10	SMS	SMS drafts and threads created using Hangouts as an SMS application, will not be extracted.	

Plugins

#	Name	Author	Version
1	UFED Logical Report Reader Reads the report generated by the UFED	Cellebrite	2.0
2	Physical Analyzer Report Reader Reads report generated by the Physical Analyzer	Cellebrite	2.0
3	AndroidADBBBackup Decodes the android ADB backup file, generated by the shell command "adb backup".	Cellebrite	2.0
4	Android Databases Decodes user-data and 3rd party application databases for Android devices	Cellebrite	2.0
5	AndroidUnlockPattern Decodes Android Unlock pattern	Cellebrite	2.0
6	AndroidUnlockPassword Decrypts the numeric lock password for Android devices	Cellebrite	2.0
7	Garbage Cleaner		
8	DataFilesHandler Tags data files according to extensions and file signatures	Cellebrite	2.0
9	ContactsCrossReference Cross references the phone numbers in a device's contacts with the numbers in SMS messages and Calls. Will fill in the Name field of calls and SMS if there's a match.	Cellebrite	2.0
10	Analytics Generates the Analytics section information	Cellebrite	2.0

Contents

Type	Included in report	Total
 Call Log	1	1
 SMS Messages	30	30
 Timeline	31	31
 Data Files	25	25
● Databases	11	11
● Text	14	14
 Activity Analytics	4	4
 Analytics Phones	4	4

Call Log (1)

#	Type	Parties	Timestamp	Duration	Country code	Network code	Network Name	Video call	Source	Deleted
1	Missed	From: 8148231589	12/15/2015 6:29:55 PM(UTC-5)	-						

SMS Messages (30)

#	Folder	Party	Time	Status	Message	Deleted
1	Sent	To (571) 719-5532	12/21/2015 5:02:36 PM(UTC-5)	Sent	Y no call? Need 2 talk	
2	Sent	To (571) 719-5532	12/19/2015 4:02:40 PM(UTC-5)	Sent	Call me now!!!	
3	Sent	To (571) 719-5532	12/19/2015 3:22:05 PM(UTC-5)	Sent	Call me	
4	Sent	To (571) 719-5532	12/18/2015 7:56:37 PM(UTC-5)	Sent	I bet	
5	Inbox	From 5717195532	12/18/2015 7:55:54 PM(UTC-5)	Read	I said SORRY	
6	Inbox	From 5717195532	12/18/2015 7:53:46 PM(UTC-5)	Read	Sorry	
7	Sent	To (571) 719-5532	12/18/2015 7:52:53 PM(UTC-5)	Sent	Sick	
8	Inbox	From 5717195532	12/18/2015 6:41:35 PM(UTC-5)	Read	Miss u 2day	
9	Inbox	From 54676	12/18/2015 2:14:25 PM(UTC-5)	Read	STRAIGHT TALK MSG: Visit www.straighttalk.com to take advantage of special offers and save every month, when you buy Extended Plans or enroll in Auto-Refill!	
10	Sent	To (571) 719-5532	12/17/2015 4:41:11 PM(UTC-5)	Sent	Yup	
11	Inbox	From 5717195532	12/17/2015 4:40:43 PM(UTC-5)	Read	U ok?	

12	Sent	To (571) 719-5532	12/17/2015 4:40:03 PM(UTC-5)	Sent	Nada	
13	Inbox	From 5717195532	12/17/2015 3:23:56 PM(UTC-5)	Read	Last chance	
14	Inbox	From 5717195532	12/17/2015 3:21:07 PM(UTC-5)	Read	Going to BK. Need carbs. U?	
15	Inbox	From 5717195532	12/17/2015 3:05:04 PM(UTC-5)	Read	Hey u up?	
16	Inbox	From 5717195532	12/17/2015 2:57:34 PM(UTC-5)	Read	Hey U up? Wanna est?	
17	Inbox	From 21663	12/17/2015 2:01:30 PM(UTC-5)	Read	Straight Talk MSG: In order to maximize your device's web browser please validate your phone number. Click this link: http://m.tracfone.com/sid?mdn=7038019381	
18	Inbox	From 5717195532	12/16/2015 8:13:27 PM(UTC-5)	Read	C U soon	
19	Sent	To (571) 719-5532	12/16/2015 8:12:38 PM(UTC-5)	Sent	Yup	
20	Inbox	From 5717195532	12/16/2015 8:12:00 PM(UTC-5)	Read	U ok?	
21	Inbox	From 5717195532	12/16/2015 7:55:02 PM(UTC-5)	Read	Hey u home?	
22	Sent	To (571) 719-5532	12/16/2015 6:34:20 PM(UTC-5)	Sent	Ha	
23	Inbox	From 5717195532	12/16/2015 6:33:57 PM(UTC-5)	Read	Haha	
24	Sent	To (571) 719-5532	12/16/2015 6:33:22 PM(UTC-5)	Sent	Rt b-hind u if lucky!!!	
25	Inbox	From 5717195532	12/16/2015 6:22:58 PM(UTC-5)	Read	IM headin out in 10 C U	
26	Sent	To (571) 719-5532	12/16/2015 6:51:41 AM(UTC-5)	Sent	Roger C U!!!!	
27	Inbox	From 5717195532	12/16/2015 5:52:57 AM(UTC-5)	Read	Not if u no/go? C U am	
28	Sent	To 5717195532	12/15/2015 11:25:48 PM(UTC-5)	Sent	No not 2nite u?	
29	Inbox	From 5717195532	12/15/2015 6:41:48 PM(UTC-5)	Read	Hey, u headin 2 F's?	
30	Inbox	From 54676	12/15/2015 6:17:45 PM(UTC-5)	Read	STRAIGHT TALK MSG: Track your Data usage, refill Service Plans & more. Do it all with the My Account App. Download here http://a.st-app.co	

Timeline (31)

#	Type	Direction	Attachments	Locations	Timestamp	Party	Description	Deleted
1	SMS Messages	From			12/15/2015 6:17:45 PM(UTC-5)	From: 54676	STRAIGHT TALK MSG: Track your Data usage, refill Service Plans & more. Do it all with the My Account App. Download here http://a.st-app.co	
2	Call Log	From			12/15/2015 6:29:55 PM(UTC-5)	From: 8148231589		
3	SMS Messages	From			12/15/2015 6:41:48 PM(UTC-5)	From: 5717195532	Hey, u headin 2 F's?	
4	SMS Messages	To			12/15/2015 11:25:48 PM(UTC-5)	To: 5717195532	No not 2nite u?	
5	SMS Messages	From			12/16/2015 5:52:57 AM(UTC-5)	From: 5717195532	Not if u no/go? C U am	
6	SMS Messages	To			12/16/2015 6:51:41 AM(UTC-5)	To: (571) 719-5532	Roger C U!!!!	
7	SMS Messages	From			12/16/2015 6:22:58 PM(UTC-5)	From: 5717195532	IM headin out in 10 C U	
8	SMS Messages	To			12/16/2015 6:33:22 PM(UTC-5)	To: (571) 719-5532	Rt b-hind u if lucky!!!	
9	SMS Messages	From			12/16/2015 6:33:57 PM(UTC-5)	From: 5717195532	Haha	
10	SMS Messages	To			12/16/2015 6:34:20 PM(UTC-5)	To: (571) 719-5532	Ha	
11	SMS Messages	From			12/16/2015 7:55:02 PM(UTC-5)	From: 5717195532	Hey u home?	
12	SMS Messages	From			12/16/2015 8:12:00 PM(UTC-5)	From: 5717195532	U ok?	
13	SMS Messages	To			12/16/2015 8:12:38 PM(UTC-5)	To: (571) 719-5532	Yup	
14	SMS Messages	From			12/16/2015 8:13:27 PM(UTC-5)	From: 5717195532	C U soon	
15	SMS Messages	From			12/17/2015 2:01:30 PM(UTC-5)	From: 21663	Straight Talk MSG: In order to maximize your device's web browser please validate your phone number. Click this link: http://m.tracfone.com/sid?mdn=7038019381	
16	SMS Messages	From			12/17/2015 2:57:34 PM(UTC-5)	From: 5717195532	Hey U up? Wanna est?	
17	SMS Messages	From			12/17/2015 3:05:04 PM(UTC-5)	From: 5717195532	Hey u up?	
18	SMS Messages	From			12/17/2015 3:21:07 PM(UTC-5)	From: 5717195532	Going to BK. Need carbs. U?	
19	SMS Messages	From			12/17/2015 3:23:56 PM(UTC-5)	From: 5717195532	Last chance	
20	SMS Messages	To			12/17/2015 4:40:03 PM(UTC-5)	To: (571) 719-5532	Nada	
21	SMS Messages	From			12/17/2015 4:40:43 PM(UTC-5)	From: 5717195532	U ok?	
22	SMS Messages	To			12/17/2015 4:41:11 PM(UTC-5)	To: (571) 719-5532	Yup	
23	SMS Messages	From			12/18/2015 2:14:25 PM(UTC-5)	From: 54676	STRAIGHT TALK MSG: Visit www.straighttalk.com to take advantage of special offers and save every month, when you buy Extended Plans or enroll in Auto-Refill!	
24	SMS Messages	From			12/18/2015 6:41:35 PM(UTC-5)	From: 5717195532	Miss u 2day	
25	SMS Messages	To			12/18/2015 7:52:53 PM(UTC-5)	To: (571) 719-5532	Sick	
26	SMS Messages	From			12/18/2015 7:53:46 PM(UTC-5)	From: 5717195532	Sorry	
27	SMS Messages	From			12/18/2015 7:55:54 PM(UTC-5)	From: 5717195532	I said SORRY	
28	SMS Messages	To			12/18/2015 7:56:37 PM(UTC-5)	To: (571) 719-5532	I bet	
29	SMS Messages	To			12/19/2015 3:22:05 PM(UTC-5)	To: (571) 719-5532	Call me	
30	SMS Messages	To			12/19/2015 4:02:40 PM(UTC-5)	To: (571) 719-5532	Call me now!!!	
31	SMS Messages	To			12/21/2015 5:02:36 PM(UTC-5)	To: (571) 719-5532	Y no call? Need 2 talk	

Data Files (25)

Databases (11)

#	File Info	Additional file info	Deleted
1	Name: calendar.db Path: /apps/com.android.providers.calendar/db/calendar.db SHA256: BEF296A0B8D0CD4BCC4283B5D3106B225D5FC121D8A47215ACF157706073C071	Size (bytes): 131072 Modified: 12/26/2015 1:23:39 AM(UTC+0) Row count: 8	
2	Name: com.google.android.apps.youtube.common.task.ScheduledTaskStore Path: /apps/com.google.android.youtube/db/com.google.android.apps.youtube.common.task.ScheduledTaskStore SHA256: 944D3189B5B99BA176F03BBD08B91C3171A06CAB0ECCABADC95770C1E09516B9	Size (bytes): 20480 Modified: 1/4/2016 3:46:46 PM(UTC+0) Row count: 5	
3	Name: downloads.db Path: /apps/com.google.android.youtube/db/downloads.db SHA256: B7FBFB23558772F07B322AE95D58B1D234F45BE2936FEA42094F727E0A4CF7595	Size (bytes): 24576 Modified: 11/24/2015 1:14:55 PM(UTC+0) Row count: 1	
4	Name: gmm_myplaces.db Path: /apps/com.google.android.apps.maps/db/gmm_myplaces.db SHA256: 37CF7C48EB5DEB18749BDD8788BFC35ACCED207688DAB7B5FF1CA3BBEF8A936D	Size (bytes): 40960 Modified: 12/27/2015 4:15:24 AM(UTC+0) Row count: 1	
5	Name: google_analytics.db Path: /apps/com.google.android.youtube/db/google_analytics.db SHA256: 9B49C892571E59C1FCF15DC04204EB72784FFDDE53E100E2C21D8A25EE808B05	Size (bytes): 65536 Modified: 11/24/2015 1:14:54 PM(UTC+0) Row count: 8	
6	Name: iu.upload.db Path: /apps/com.google.android.apps.plus/db/iu.upload.db SHA256: 954BA672DC58A9B091D6E292C4FC608AE7FEC2C24674DACCA037DA222BD008C0	Size (bytes): 81920 Modified: 11/24/2015 1:14:38 PM(UTC+0) Row count: 1	
7	Name: keyValueByteStores Path: /apps/com.google.android.youtube/db/keyValueByteStores SHA256: 1B1FE0DBA46F3AB9807939E23F65897D1AA1CAE8FD6D083F07005AF4C0E3BA2B	Size (bytes): 20480 Modified: 1/4/2016 2:02:00 PM(UTC+0) Row count: 4	
8	Name: library.db Path: /apps/com.android.vending/db/library.db SHA256: FF29CCA8A38987A4E2BBBAA560C9241D2E6276F39B7C4279DC8EBBD88D1762DA	Size (bytes): 20480 Modified: 11/24/2015 2:15:08 PM(UTC+0) Row count: 1	
9	Name: localappstate.db Path: /apps/com.android.vending/db/localappstate.db SHA256: C61CDD23FD26C89D205A60B2BD348A34266B98BA99BE03D85B241B7F377BE691	Size (bytes): 20480 Modified: 11/24/2015 1:14:37 PM(UTC+0) Row count: 1	
10	Name: package_verification.db Path: /apps/com.android.vending/db/package_verification.db SHA256: BD203D818048EDD5C21B5908BF37E1EAD30FD0AA237A56B3F0378CAB45D7CF99	Size (bytes): 20480 Modified: 12/17/2015 12:04:08 AM(UTC+0) Row count: 1	
11	Name: trash.db Path: /apps/com.google.android.apps.plus/db/trash.db SHA256: 6158B5F8E8ECDC66E1C1EB4F35CC16D545C1D670B6B503CE62ACE2059EADDAD9	Size (bytes): 20480 Modified: 11/24/2015 1:14:38 PM(UTC+0) Row count: 1	

#	File Info	Additional file info	Deleted
1	Name: _has_set_default_values.xml Path: /apps/com.google.android.apps.maps/sp/_has_set_default_values.xml SHA256: 70B6EECD62C222A39F6A2F3D8164714D CFCC2E7AFCFBF0A7E773887266230CE2	Size (bytes): 130 Modified: 12/15/2015 11:17:29 PM(UTC+0)	
2	Name: accounts.xml Path: /apps/com.google.android.apps.plus/sp/accounts.xml SHA256: 31D8DA8D50813116C34FFD816BD358EA 26837615C85ADF4E4AB945C702E873A7	Size (bytes): 299 Modified: 11/24/2015 1:14:38 PM(UTC+0)	
3	Name: account-SMS.xml Path: /apps/com.google.android.talk/sp/account-SMS.xml SHA256: 5DC8A8CAB719A1F2C81DC28A6BF30ED4 22487C84B49D84390C1933BE5DCC8486	Size (bytes): 111 Modified: 1/4/2016 3:46:48 PM(UTC+0)	
4	Name: cache_settings_preference.xml Path: /apps/com.google.android.apps.maps/sp/cache_settings_preference.xml SHA256: 3325D2A819FDD8062C2CDC48A09B995C 9B012915BCDF88B1CF9742A7F057C793	Size (bytes): 65 Modified: 12/15/2015 11:17:29 PM(UTC+0)	
5	Name: CalendarUpgradeReceiver.xml Path: /apps/com.android.providers.calendar/sp/CalendarUpgradeReceiver.xml SHA256: B22ACB452EFF3B4C32F173D6E6D90EA3 B683BE756FC6E4F443A1943D357964AE	Size (bytes): 112 Modified: 1/2/1970 12:00:45 AM(UTC+0)	
6	Name: com.android.chrome_preferences.xml Path: /apps/com.android.chrome/sp/com.android.chrome_preferences.xml SHA256: 546AF3A5E0A4B8D218381F0D736F69D9 89DE2135EB05DD1F290D37460A1240F7	Size (bytes): 134 Modified: 11/24/2015 1:15:07 PM(UTC+0)	
7	Name: com.google.android.apps.plus_preferences.xml Path: /apps/com.google.android.apps.plus/sp/com.google.android.apps.plus_preferences.xml SHA256: CA46DC8F915929FC12F73E03A432DCA8 8C8EA39B4D7C07ECE30C8817E19D6090	Size (bytes): 470 Modified: 1/4/2016 2:15:03 PM(UTC+0)	
8	Name: com.google.android.youtube_preferences.xml Path: /apps/com.google.android.youtube/sp/com.google.android.youtube_preferences.xml SHA256: 44817A74CB040CF64A4AFC39B214BCD1 5BE76C7E170A5EDA00DACACC885CC05B	Size (bytes): 131 Modified: 11/24/2015 1:14:54 PM(UTC+0)	
9	Name: DriveAbout.xml Path: /apps/com.google.android.apps.maps/sp/DriveAbout.xml SHA256: 1A4F9B32BE3785BB59EE5E48FD8727DF ACF3CFFFE660CD74F6ED433FEF1114D6	Size (bytes): 152 Modified: 12/27/2015 4:15:24 AM(UTC+0)	
10	Name: finsky.xml Path: /apps/com.android.vending/sp/finsky.xml SHA256: CB506F67D8ECA943DF776090EC4E692E 72E0616FD8DBA91634D7D16D33F00F02	Size (bytes): 559 Modified: 1/4/2016 2:01:56 PM(UTC+0)	
11	Name: l.prefs.xml Path: /apps/com.google.android.youtube/sp/l.prefs.xml SHA256: 4939BD95D865624EF499424D6685223E 827A1D146B6C1D708A6F73F9311AC377	Size (bytes): 123 Modified: 1/4/2016 2:02:00 PM(UTC+0)	
12	Name: settings_preference.xml Path: /apps/com.google.android.apps.maps/sp/settings_preference.xml SHA256: E0F6A4BC1EE915E04948CD7A227C4085 51EB89686B8D6B83A04DE996AE7F1AE1	Size (bytes): 292 Modified: 12/15/2015 11:17:32 PM(UTC+0)	
13	Name: SetupWizardPrefs.xml Path: /apps/com.google.android.setupwizard/sp/SetupWizardPrefs.xml SHA256: 4F70E4D29AFBC302077FAD81F7B83159 911B399E98ABD3EB58823BA9A3449516	Size (bytes): 314 Modified: 12/23/2015 12:41:38 PM(UTC+0)	
14	Name: youtube.xml Path: /apps/com.google.android.youtube/sp/youtube.xml SHA256: 9C40D00AB54EE2990A183F2285707C3F 46813B5978C24F73375E65460F18216F	Size (bytes): 570 Modified: 11/24/2015 1:14:55 PM(UTC+0)	

Activity Analytics (4)

#	Name	Entries	Total	Phone Events	Email Events	Other Events
1	5717195532	Phone: 5717195532	27	27	0	0
2	54676	Phone: 54676	2	2	0	0
3	8148231589	Phone: 8148231589	1	1	0	0
4	21663	Phone: 21663	1	1	0	0

Analytics Phones (4)

#	Phone	In Contacts	Total	Total Calls Duration	Calls Details	SMS Details	MMS Details
1	5717195532	False	27	00:00:00	Contact: Incoming: 0 Outgoing: 0 Missed: 0 Unknown: 0 Total Calls: 0	Sent SMS: 12 Received SMS: 15 Draft SMS: 0 Unknown SMS: 0 Total SMS: 27	Received MMS: 0 Draft MMS: 0 Unknown MMS: 0 Total MMS: 0 Sent MMS: 0
2	54676	False	2	00:00:00	Contact: Incoming: 0 Outgoing: 0 Missed: 0 Unknown: 0 Total Calls: 0	Sent SMS: 0 Received SMS: 2 Draft SMS: 0 Unknown SMS: 0 Total SMS: 2	Received MMS: 0 Draft MMS: 0 Unknown MMS: 0 Total MMS: 0 Sent MMS: 0
3	8148231589	False	1	00:00:00	Contact: Incoming: 0 Outgoing: 0 Missed: 1 Unknown: 0 Total Calls: 1	Sent SMS: 0 Received SMS: 0 Draft SMS: 0 Unknown SMS: 0 Total SMS: 0	Received MMS: 0 Draft MMS: 0 Unknown MMS: 0 Total MMS: 0 Sent MMS: 0
4	21663	False	1	00:00:00	Contact: Incoming: 0 Outgoing: 0 Missed: 0 Unknown: 0 Total Calls: 0	Sent SMS: 0 Received SMS: 1 Draft SMS: 0 Unknown SMS: 0 Total SMS: 1	Received MMS: 0 Draft MMS: 0 Unknown MMS: 0 Total MMS: 0 Sent MMS: 0

**Presentation on the Mechanics of a Military
Sexual Assault Case
Documents and Forms**

Table of Contents

1. Victim and Witness Information

- a. Victim Reporting Preference Statement (DD form 2910)
- b. Domestic Abuse Victim Reporting Option Statement (DD form 2967)
- c. Initial Information for Victims and Witnesses of Crime (DD form 2701)
- d. Court-Martial Information for Victims and Witnesses of Crime (DD form 2702)
- e. Victim/Witness Certification and Election Concerning Prisoner Status (DD form 2704)
- f. Post-Trial Information for Victims and Witnesses of Crime (DD form 2703)

2. Preferral

- a. Prosecution Memorandum
- b. Charge Sheet (DD form 458)

3. Referral

- a. Preliminary Hearing Officer's Report (DD form 457)
- b. Article 34 Advice on Disposition of Court-Martial Charges
- c. Court-Martial Convening Order (CMCO)

4. Trial

- a. Request for Trial Before Military Judge Alone (DD form 1722)
- b. Offer to Plead Guilty
- c. Stipulation of Fact
- d. Post-Trial and Appellate Rights Advisement (DCAP form 3.4)
- e. Offer to Plead Guilty Appendix I (Quantum)

5. Post-Trial

- a. Report of Result of Trial (DD form 2707-1)
- b. Summarized Record of Trial (DD form 491)
- c. Record of Trial (DD form 490)
- d. Staff Judge Advocate's Recommendation (SJAR)
- e. Addendum to Staff Judge Advocate's Recommendation (SJAR)
- f. Promulgating Order
- g. Action

Victim Reporting Preference Statement
DD form 2910

VICTIM REPORTING PREFERENCE STATEMENT*(Read Privacy Act Statement before completing this form.)***PRIVACY ACT STATEMENT**

AUTHORITY: 10 U.S.C. 113 note, Department of Defense Policy and Procedures on Prevention and Response to Sexual Assaults Involving Members of the Armed Forces; 10 U.S.C. 136; 32 U.S.C.; DoD Directive 6495.01; DoD Instruction 6495.02; 10 U.S.C. 3013; Army Regulation 600-20, Chapter 8; 10 U.S.C. 5013; Secretary of the Navy Instruction 1752.4A; Marine Corps Order 1752.5A; 10 U.S.C. 8013; Air Force Instruction 36-6001; and E.O. 9397 (SSN), as amended.

PRINCIPAL PURPOSE(S): Information will be used to document elements of the sexual assault response and/or reporting process and comply with the procedures set up to effectively manage the sexual assault prevention and response program. At the local level, Service SAPR Program Management, Major Command Sexual Assault Response Coordinator(s) (SARCs), Installation and Brigade SARCs use information to ensure that victims are aware of services available and have contact with medical treatment personnel and DoD law enforcement entities. At the DoD level, only de-identified data is used to respond to mandated congressional reporting requirements. The DoD Sexual Assault Prevention and Response Office has access to identified closed case information and de-identified, aggregate open case information for congressional reporting, study, research, and analysis purposes. Collected information is covered by DHRA 06 DoD, Defense Sexual Assault Incident Database (<http://dpcio.defense.gov/Privacy/SORNsIndex/tabid/5915/Article/6841/dhra-06-dod.aspx>).

ROUTINE USE(S): The DoD blanket routine uses found at <http://dpcio.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx> may apply to this record. Note: Any release made as a blanket routine use will be consistent with the principal purpose of its original collection.

DISCLOSURE: Voluntary. However, if you decide not to provide certain information, it may impede the ability of the SARC to offer the full range of care and support established by the Sexual Assault Prevention and Response program. You will not be denied advocacy services or healthcare (medical and mental health) because you selected the Restricted Reporting option. The Social Security Number (SSN) is one of several unique personal identifiers that may be provided. This form will be retained for 50 years.

1. REPORTING PROCESS AND OPTIONS DISCUSSED WITH THE SAPR VA OR SARC **DSAI CASE NUMBER:**

a. I, (full name) _____ (Social Security Number) _____ and (DoD Identification Number) _____,

had the opportunity to talk with a Sexual Assault Prevention and Response Victim Advocate (SAPR VA) or a Sexual Assault Response Coordinator (SARC) before selecting a reporting option.

INITIALS

(1) The SARC or SAPR VA has explained to me the services, protective orders, and reporting options that are available to me.

(2) The SARC or SAPR VA explained to me that if my case is prosecuted in a civilian jurisdiction there will be different procedures in place, e.g., SAFE kit retention and DD Form 2701.

(3) Please initial here if this sexual assault occurred PRIOR TO ENTRY into military service. (includes both as a child or adult.)

b. UNRESTRICTED REPORTING - REPORTING A CRIME WHICH IS INVESTIGATED.

(1) I understand that law enforcement and my command will be notified that I am a victim of sexual assault. An investigation into the crime will be started by a Military Criminal Investigation Organization (MCIO) investigator (e.g. CID, NCIS, AFOSI) or the appropriate civilian law enforcement. I can receive medical treatment, support services, and counseling. I can also choose to have a Sexual Assault Forensic Examination (SAFE) if indicated. In a UCMJ case, I will be provided a DD Form 2701 (which contains important information about my rights as a victim) from the law enforcement or MCIO. I should retain the DD Form 2701. In accordance with DoD policy, if reporting a sexual assault that occurred prior to or while not performing active service or inactive training, National Guard and Reserve Component members are eligible to receive SAPR advocacy support services from a SARC and a SAPR VA and are eligible to file both a Restricted or an Unrestricted Report.

(2) In accordance with DoD Instruction (DoDI) 6495.02, as a service member, I understand that (through a separate form) I may request an Expedited Transfer (temporary or permanent) from my installation or to a different location within my installation.

(3) Depending on the facts of my case, I may request a Military Protective Order (MPO). If a written and/or verbal MPO is issued against a service member, my commander will provide me with a copy of the DD Form 2873.

(4) I also have the option of requesting a Civilian Protective Order (CPO) from civilian courts.

(5) If the crime is prosecuted under the Uniform Code of Military Justice (UCMJ), any communication with my SARC or SAPR VA are confidential under the Victim-Victim Advocate Privilege unless an exception applies.

c. RESTRICTED REPORTING - CONFIDENTIALLY REPORTING A CRIME WHICH IS NOT INVESTIGATED.

(1) I understand that I may confidentially receive medical treatment, advocacy services, legal services, and counseling. I may also choose to have a Sexual Assault Forensic Examination (SAFE), if indicated. Law enforcement and my command will NOT be notified. My report will NOT cause an investigation of the crime. No action will be taken against the offender(s) as the result of my report. If reporting a sexual assault that occurred prior to or while not performing active service or inactive training, National Guard and Reserve Component members are eligible to receive SAPR advocacy support services from a SARC and a SAPR VA and are eligible to file both a Restricted Report and an Unrestricted Report.

(2) I understand that there are exceptions to Restricted Reporting (see Page 2) and they have been explained to me. If an exception applies, the details of my assault may be disclosed.

(3) I understand the evidence collected from my SAFE will be stored for 5 years from the date I sign this form, if the SAFE was conducted at a Military Treatment Facility. If the evidence is collected by a civilian healthcare facility, the civilian healthcare facility will handle the SAFE kit storage in accordance with the established Memorandum of Understanding (MOU) with the DoD. I will be contacted in 1 year by my SARC to discuss my options as they relate to this evidence. If the SAFE was conducted by a civilian facility with no formal MOU with DoD, then the SAFE kit will be handled in accordance with state and local laws.

(4) All state laws, local laws or international agreements that may limit some or all of DoD's Restricted Reporting protections have been explained to me. In the (state, city/county of _____), medical authorities must report the sexual assault to _____.

(5) I understand that the SARC will provide information that does not reveal my identity, nor that of my alleged offender, to the installation commander. This notification takes place within 24 hours of my Restricted Report. If I may be at a deployed location or there are extenuating circumstances, the notification will be made within 48 hours. Commanders require this information for public safety and other responsibilities.

(6) I understand that certain protective actions, such as a Military Protective Order and/or a Civilian Protective Order against the alleged offender, or an Expedited Transfer and my victim's rights, will NOT be available to me if I choose Restricted Reporting.

1.c. RESTRICTED REPORTING (Continued)			
INITIALS	<p>(7) I understand that speaking to others about my sexual assault may result in the crime being reported to command and law enforcement if those persons are not authorized to accept Restricted Reports as set forth in DoDI 6495.02. Communications with chaplains and lawyers may be protected to the extent authorized by law.</p>		
	<p>(8) I understand that I may change my Restricted Report to an Unrestricted Report, and law enforcement and my command will be notified. However, delays in changing the report from restricted to unrestricted may affect the amount of evidence gathered by an investigation and may impact the ability to hold offender(s) appropriately accountable.</p>		
d. OTHER IMPORTANT CONSIDERATIONS FOR UNRESTRICTED AND RESTRICTED REPORTS			
	<p>(1) I understand that if I do not choose a reporting option right now or if I refuse to sign this form, the SARC or SAPR VA has no obligation to inform investigators or commanders about my sexual assault. The SARC or SAPR VA may only disclose information about our conversation according to the exceptions to the Victim-Victim Advocate privilege.</p>		
	<p>(2) I understand that I have the right to decline any or all SAPR services. I may also ask for a different SAPR VA if one is available.</p>		
	<p>(3) I have been advised to keep a signed and dated copy of this form for my records. This form may be used in other matters before other agencies (e.g., Department of Veterans Affairs) or for other lawful purposes. <u>Restricted Reports:</u> By signing this form I am giving consent that for Restricted Reports, this form will be retained for 50 years, as required by law. For Restricted Reports, the law requires that this form is retained in a manner that protects confidentiality. <u>Unrestricted Reports:</u> By signing this form I am giving consent that for Unrestricted Reports, this form will be stored electronically in DSAID for 50 years. For Unrestricted Reports, access to it will be limited to persons with an official need to know.</p>		
	<p>(4) I understand that I cannot request an Expedited Transfer, a Military Protective Order, or a Civilian Protective Order through this form.</p>		
	<p>(5) I understand that I am eligible for a Special Victims Counsel, who will be my attorney and not the government's attorney, and who will provide me with legal advice and representation.</p>		
	<p>(6) I understand that if I experience coercion, retaliation, reprisal, or ostracism from my supervisors or peers, I can report it to the SARC, Special Victims Counsel, my commander, Victim Witness Assistance Program personnel or my Service Inspector General.</p>		
	<p>(7) I understand that I can also request a defense counsel to advise and assist me in the event that there is evidence that I committed misconduct around the time of the sexual assault allegation (for example, underage drinking).</p>		
2. CHOOSE A REPORTING OPTION (Initial)			
	<p>a. I elect Unrestricted Reporting. I have decided to report that I am a victim of sexual assault to my command, law enforcement, or other military authorities for investigation of this crime. I understand that a Restricted Report is no longer available to me.</p>		
	<p>b. I elect Restricted Reporting. I have decided to confidentially report that I am a victim of sexual assault. Law enforcement or other military authorities will NOT be notified unless one of the exceptions applies. I understand the information I provide will NOT start an investigation or be used to hold the alleged offender(s) appropriately accountable. I understand that I can convert to Unrestricted Reporting at any time.</p>		
RESTRICTED REPORT CASE NUMBER:			
3.a. SIGNATURE OF VICTIM		b. DATE (YYYYMMDD)	4.a. SIGNATURE OF SARC/SAPR VA
			b. DATE (YYYYMMDD)
5. I have reconsidered my previous selection of Restricted Reporting and am now choosing to make an Unrestricted Report.			
a. SIGNATURE OF VICTIM		b. DATE (YYYYMMDD)	c. SIGNATURE OF SARC/SAPR VA
			d. DATE (YYYYMMDD)
EXCEPTIONS TO RESTRICTED REPORTING			
<p>There are exceptions to Restricted Reporting. This means that sometimes circumstances require that your Restricted Report of sexual assault must be disclosed. The following persons or organizations may be told about your sexual assault report for the following reasons:</p> <ol style="list-style-type: none"> 1. Command officials or law enforcement when you provide written authorization. 2. Command officials or law enforcement to prevent or lessen a serious and imminent threat. This may be a threat to the health or safety of you or another person. Multiple reports involving the same alleged suspect may also meet this criteria. 3. Disability Evaluation Boards, Medical Evaluation Boards, and the officials participating in the boards. The report may be disclosed to these parties when it is required for fitness for duty or disability retirement determinations. Disclosure is limited to only that information necessary to make a determination for disability processing. 4. SARC, SAPR VA or healthcare personnel when required for the direct supervision of victim services. 5. Military or civilian courts when ordered, or if disclosure is required by Federal or state statute. <p>Before disclosing any information, SARCs, SAPR VAs and healthcare personnel will first consult with the servicing legal office. The legal office will determine if any of the above exceptions apply, if there is a duty to disclose the information, and who will make the disclosure when required.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No The exceptions to Restricted Reporting have been explained to me.</p>			
<p>6. VICTIM CONSENTED TO TRANSFER OF (RR/UR) CASE DOCUMENTS TO ANOTHER SARC: (X and complete as applicable)</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No If yes: Date (YYYYMMDD) _____ Location of Transfer: _____</p>			
<p>7. VICTIM CONTACTED AT 1-YEAR MARK OF THE RESTRICTED REPORT: (X and complete as applicable)</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No If yes: Date (YYYYMMDD) _____ If not, document how the SARC attempted to locate the victim: _____</p>			
<p>8. VICTIM REQUESTED A SECOND COPY OF THE DD FORM 2910: (X and complete as applicable)</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No If yes: Date (YYYYMMDD) _____</p>		<p>9. VICTIM REQUESTED A COPY OF THE DD FORM 2911 FROM SAFE KIT AND THE SARC FACILITATED THIS REQUEST: (X and complete as applicable)</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No If yes: Date (YYYYMMDD) _____</p>	

Domestic Abuse Victim Reporting Option Statement
DD form 2967

DOMESTIC ABUSE VICTIM REPORTING OPTION STATEMENT

(Please read Privacy Act Statement before completing this form.)

PRIVACY ACT STATEMENT

AUTHORITY: 10 U.S.C. 136 and DoD Instruction 6400.06, Domestic Abuse Involving DoD Military and Certain Affiliated Personnel.

PRINCIPAL PURPOSE(S): Information on this form documents your decision of whether to file a restricted or unrestricted report of domestic abuse. This document is filed in accordance with the appropriate Military Department Family Advocacy Program System of Records Notice (SORN). The SORNs are:

Air Force: http://dpclo.defense.gov/privacy/SORNs/component/airforce/F044_AF_SG_Q.html;

Navy: <http://dpclo.defense.gov/privacy/SORNs/component/navy/N01752-1.html>;

Army: http://dpclo.defense.gov/privacy/SORNs/component/army/A0608-18_DASG.html.

ROUTINE USE(S): Please check the appropriate SORN (link provided above) to review specific Military Department routine uses. The DoD "Blanket Routine Uses" listed at http://dpclo.defense.gov/privacy/SORNs/blanket_routine_uses.html may apply to this document. Any release made pursuant to a "blanket routine use" will be reviewed to ensure the release is appropriate and consistent with the purpose for which the record was collected.

DISCLOSURE: Voluntary; however, if you decide not to provide certain information, it may impede the ability of the Military Department to provide effective management of care and support to you which have been established by the procedures of the domestic abuse prevention and response program.

1. REPORTING PROCESS AND OPTIONS DISCUSSED WITH THE VICTIM ADVOCATE

I, (Full name) _____, had the opportunity to talk with a Victim Advocate (VA),
VA Supervisor, or Healthcare Provider (HCP) before selecting a reporting option.

2. UNRESTRICTED REPORTING - REPORTING A CRIME WHICH IS INVESTIGATED.

INITIALS

I understand that law enforcement and command will be notified that I am a victim of domestic abuse and an investigation will be started. I understand I can receive medical treatment, advocacy services, and counseling. The full range of victim protection actions may be available to me, such as being separated from the offender or receiving a military protective order against the offender.

3. RESTRICTED REPORTING - CONFIDENTIALLY REPORTING A CRIME WHICH IS NOT INVESTIGATED.

INITIALS

a. I understand that I can confidentially receive medical treatment, advocacy services, and counseling, but law enforcement and command will NOT be notified. My report will NOT trigger an investigation; therefore, no action will be taken against the offender as the result of my report.

INITIALS

b. I understand that there are exceptions to "Restricted Reporting" (see back). If an exception applies, limited details of my abuse may be revealed to satisfy the exception.

INITIALS

c. I understand that all state laws, local laws or international agreements that may limit some or all of DoD's restricted reporting protections have been explained to me. In _____, medical authorities must report the domestic abuse to _____.

INITIALS

d. I understand that the VA or his/her supervisor will provide information that does not reveal my identity, nor that of my offender, to the responsible senior commander. This information is required for the purposes of public safety and providing command a clear picture of the type of domestic abuse incidents within their command to enhance the ability of command to provide a safe environment.

INITIALS

e. I understand that by choosing "Restricted Reporting," the full range of victim protection actions may not be available, such as being separated from the offender or receiving a military protective order against the offender.

INITIALS

f. I understand that if I talk about my abuse to anyone other than designees under the "Restricted Reporting" option (VA, VA supervisor, or HCP), it may be reported to my command and law enforcement which could lead to an investigation.

INITIALS

g. I understand that I may change my mind and report this offense at a later time as an "Unrestricted Report," and law enforcement and the command will be notified. Delayed reporting may limit the ability to prosecute the offender. If the case goes to court, my VA and others providing care may be called to testify about any information I shared with them.

INITIALS

h. I understand that if I do not choose a reporting option at this time, the commander or designated person within the chain of command and law enforcement will be notified.

4. CHOOSE A REPORTING OPTION	
INITIALS	a. Unrestricted Report. I elect Unrestricted Reporting and have decided to report that I am a victim of domestic abuse to command, law enforcement, or other military authorities for investigation of this crime.
INITIALS	b. Restricted Report. I elect Restricted Reporting and have decided to confidentially report that I am a victim of domestic abuse. The command will NOT be provided with information about my identity. Law enforcement or other military authorities will NOT be notified unless one of the exceptions applies. I understand the information I provide will NOT start an investigation or be used to punish an offender.
5. RESTRICTED REPORT CASE NUMBER (If applicable)	
6.a. SIGNATURE OF VICTIM	b. DATE (YYYYMMDD)
7.a. SIGNATURE OF VICTIM ADVOCATE, VICTIM ADVOCATE SUPERVISOR, OR HEALTHCARE PROVIDER	b. DATE (YYYYMMDD)
8. I have reconsidered my previous selection of "Restricted Reporting," and I would like to make an "Unrestricted Report" of my domestic abuse to authorities for a possible investigation.	
a. SIGNATURE OF VICTIM	b. DATE (YYYYMMDD)
c. SIGNATURE OF VICTIM ADVOCATE, VICTIM ADVOCATE SUPERVISOR, OR HEALTHCARE PROVIDER	d. DATE (YYYYMMDD)
<p style="text-align: center;">EXCEPTIONS TO "RESTRICTED REPORTING"</p> <p>In cases in which a victim elects restricted reporting, the prohibition on disclosing covered communications to the following persons or entities will be suspended when disclosure would be for the following reasons:</p> <ol style="list-style-type: none"> 1. Named individuals when disclosure is authorized by the victim in writing. 2. Command officials or law enforcement when necessary to prevent or lessen a serious and imminent threat to the health or safety of the victim or another person, including dependent children. 3. FAP and any other agencies authorized by law to receive reports of child abuse or neglect when, as a result of the victim's disclosure, the VA or HCP has a reasonable belief that child abuse has also occurred. However, disclosure will be limited only to information related to the child abuse. 4. Disability Retirement Boards and officials when disclosure by a HCP is required for fitness for duty for disability retirement determinations, limited to only that information which is necessary to process the disability retirement determination. 5. Supervisors of the VA or HCP when disclosure is required for the supervision of direct victim treatment or services. 6. Military or civilian courts of competent jurisdiction when a military, Federal or State judge issues a subpoena for the covered communications to be presented to the court or to officials or entities when the judge orders such disclosure; or to other officials or entities when required by Federal or State statute or applicable U.S. international agreement. 	

Initial Information for Victims and Witnesses of Crime
DD form 2701

Your Rights as a Victim.

As a crime victim, you have the following rights:

- The right to be treated with fairness and respect for your dignity and privacy;
 - The right to be reasonably protected from the accused offender;
 - The right to reasonable, accurate, and timely notice of public preliminary hearings, pretrial confinement hearings, court proceedings, and clemency and parole hearings related to the offense;
 - The right to be present at all public proceedings related to the offense unless the hearing officer or military judge determines that your testimony would be materially altered if you as the victim heard other testimony;
 - The right to reasonably confer with the prosecutor/Trial Counsel in the case;
 - The right to receive available restitution;
 - The right to be reasonably heard at: 1) a public hearing concerning the continuation of any pretrial confinement of the accused; 2) a sentencing hearing related to the offense; 3) a public Military Department Clemency and Parole Board hearing related to the offense;
 - The right to submit a written statement for the consideration of the Convening Authority prior to taking action on findings and sentence;
 - The right to proceedings free from unreasonable delay;
 - The right to be provided information, if applicable, about the conviction, sentencing, imprisonment, Convening Authority's action, appellate review, and release of the offender.
- For further information on crime issues, see the DoD Victim and Witness Assistance Council web page at: <http://wwac.defense.gov/>

If You Need Additional Assistance:

In regard to the status of the investigation, contact the investigator below:

(Name)

(Telephone Number)

In regard to other assistance available, contact the command Victim/Witness Liaison (VWL), or the person identified below:

(Name)

(Telephone Number)

In regard to the prosecution, contact the legal office below:

(Name)

(Telephone Number)

In regard to compensation for medical or other expenses, contact the state office for Crime Victim Compensation:

(Office/Name)

(Telephone Number)

In regard to any reprisal, retaliation, or ostracism you experienced as a result of reporting a crime, contact:

(Office/Name)

(Telephone Number)

You may be eligible for legal assistance and/or a Special Victims' Counsel (SVC) or Victims' Legal Counsel (VLC), depending on the specific offense. To determine eligibility or obtain assistance, contact these offices at:

(Legal Assistance Office)

(Telephone Number)

(SVC/VLC Office Number)

(Telephone Number)

If you believe one of your rights as a victim or witness of a crime has been violated, contact the following authority responsible for receiving and investigating such complaints:

(Office/Name)

(Telephone Number)

DEPARTMENT OF DEFENSE



INITIAL INFORMATION FOR VICTIMS AND WITNESSES OF CRIME

Initial Information

For Victims and Witnesses of Crime

Introduction. We are concerned about the problems often experienced by victims and witnesses of crime. We know that as a victim or witness, you may experience anger, frustration, or fear. The Victim/Witness Liaison (VWL) can help. His or her name is listed on the back of this brochure.

We have prepared this brochure to help you deal with the problems and questions which often surface during an investigation and to provide you with a better understanding of how the military criminal justice system works. Your continued assistance is greatly needed and appreciated.

A criminal investigation can be both complex and lengthy and may involve several agencies, some Federal and some local. You can request a status report of the investigation by contacting the investigator handling the case. His or her name is listed on the back of this brochure. It is important to keep the assigned investigator and your VWL informed of any changes to your address, email, or telephone number.

If You Are Threatened or Harassed. If anyone threatens you or you feel that you are being harassed because of your cooperation with this investigation, contact the investigator or the VWL right away. It is a crime to threaten or harass a victim or witness.

Safety. For your safety, you may want a civilian restraining order, military protective order, or temporary shelter. Certain victims may request a transfer, and dependents may request a personal safety move. Your VWL, Victim Advocate, and the Family Advocacy Program (FAP) can assist you in safety planning and obtaining counseling. For further information, please call your VWL, Victim Advocate, or FAP official. If you fear for your immediate safety, call 911, or notify law enforcement.

If You Were a Victim of Spouse or Child Abuse.

For information about these steps or about counseling services, call the Family Advocacy Office or the VWL. If the offender is convicted or discharged for abusing you or your children, you may be eligible for "transitional compensation" benefits. Contact the VWL identified on the back of this brochure for further information.

Restitution. If an individual is arrested and prosecuted in federal court, you may be eligible for restitution. Restitution is court-ordered payment to you as a victim of crime, generally for out-of-pocket costs. It is made by the offender for any out of pocket expenses caused by the crime. Restitution cannot be ordered as a sentence in a military court-martial, but it can be used as a condition of a pre-trial agreement to plead guilty to an offense, or as a condition of clemency or parole. Under Article 139, Uniform Code of Military Justice, victims may be provided with relief if the property loss or damage resulted from wrongful taking or willful damage by a Service member due to riotous, violent, or disorderly conduct. Contact your VWL for further information on available restitution.

If your property was stolen, we hope to recover it as part of our investigation. If we do, we will notify you and return it to you as quickly as possible. Sometimes property needs to be held as evidence for trial. We will return your property once it is no longer needed as evidence.

If You Need Assistance With Your Employer or Command. If you have problems at work because of the crime or the investigation, we can contact your employer or Commanding Officer to discuss the importance of your role in the case.

Pretrial Confinement. If an accused offender is placed in pretrial confinement, there may be a 7-day review on whether to continue such confinement. Victims have the right to be reasonably heard at this review. Both victims and witnesses can seek a military or civilian protective order if safety is a concern and the accused offender is released before trial.

Trial. Once an offense has been referred to trial, you will be contacted by the Trial Counsel (prosecutor), district attorney, or the Assistant U.S. Attorney assigned to handle your case, as appropriate. Each command, district attorney, and U.S. Attorney has a Victim/Witness Responsible Official to help answer your questions and deal with your concerns during the prosecution. You may have the right to be consulted at key stages in the trial and will be informed of these rights by trial counsel. If you are the victim of a sexual assault, and the case goes to court-martial, you will be entitled to receive a copy of the record of the trial.

Legal Assistance and Special Victims' Counsel/Victims' Legal Counsel (SVC/VLC). If you are a member of the Armed Forces or a dependent, you have the right to speak with a legal assistance attorney, at no cost. You may contact the legal assistance office listed on the back of this form. If you are the victim of sexual assault and certain related offenses, you may also be entitled to the assistance of a SVC/VLC, in addition to services provided by a Sexual Assault Response Coordinator and your Victim Advocate.

If You Believe You Were the Victim of Reprisal, Retaliation, or Ostracism. Federal law prohibits military members, civilian employees, and contractors from reprisal, retaliating, or ostracizing individuals who report a crime or provide information relating to a criminal investigation. Prohibited actions may include taking, or threatening to take an unfavorable personnel action; withholding, or threatening to withhold a favorable personnel action; or socially ostracizing you for making a protected communication. If you believe someone has reprisal, retaliated, or ostracized you for reporting a crime or participating in a criminal investigation, contact the corresponding official listed on the back of this form.

If You Were Injured. If you do not have insurance to pay the cost of your medical or counseling bills, or related expenses, the State Crime Victim Compensation office may be able to assist.

Financial and Emotional Impact of Crime. Many victims and witnesses are emotionally affected by the crime. Although everyone reacts differently, victims and witnesses report some common behaviors, such as increased concern for their personal safety and that of their family, trouble concentrating on the job, difficulty handling everyday problems, feeling overwhelmed, and thinking of the crime repeatedly.

Some or all of these behaviors may occur and should ease with time. They are normal reactions but you may wish to see a counselor. State resources may be available to assist you with recovery, to include possible reimbursement for costs or financial losses you may have had, such as lost wages. Your VWL will have further information.

Court-Martial Information for Victims and Witnesses of Crime
DD form 2702

Victims' Rights in Trial Process.

- You may choose to participate in the trial at several stages. Your rights include being:
- Notified in a reasonable, accurate, and timely manner of public preliminary hearings, pretrial confinement hearings, court proceedings, and clemency and parole hearings related to the offense;
 - Being present at all public proceedings related to the offense unless the hearing officer or military judge determines that your testimony would be materially altered if you as the victim heard other testimony;
 - Consulted on pre-trial confinement of accused and release of accused from pre-trial confinement;
 - Consulted about the proposed dismissal of any and all charges;
 - Consulted on decision not to prosecute;
 - Consulted on proposed terms of any pre-trial agreement;
 - Notified of the acceptance of a guilty plea; to present to the court evidence on sentencing.
- Crime victims have the opportunity to present a written statement to the Convening Authority before any action on findings and sentence.
- Informed about the conviction, sentencing, and imprisonment of the accused;
 - Consulted about testifying as a witness.
- If You Believe You Were the Victim of Reprisal, Retaliation, or Ostracism.**
- Federal law prohibits military members, civilian employees, and contractors from reprisal, retaliating, or ostracizing individuals who report a crime or provide information relating to a criminal investigation. Prohibited actions may include taking, or threatening to take an unfavorable personnel action; withholding, or threatening to withhold a favorable personnel action; or socially ostracizing you for making a protected communication. If you believe someone has reprisal, retaliated, or ostracized you for reporting a crime or participating in a criminal investigation, contact the corresponding official listed on the back of this form.
- If You Are Threatened or Harassed.**
- If anyone threatens you or you feel that you are being harassed because of your cooperation with this investigation, contact Law Enforcement, the Trial Counsel, and your VWL right away. It is a crime to threaten or harass a victim or witness. If you fear for your immediate safety, call 911 or law enforcement immediately. You may also seek a military protective order and/or civilian restraining order.

Legal Assistance and Special Victims' Counsel/ Victims' Legal Counsel (SVC/VLC).

If you are a member of the Armed Forces or a dependent, you have the right to speak with a legal assistance attorney, at no cost. You may contact the legal assistance office listed below. If you are the victim of sexual assault and certain related offenses, you may also be entitled to the assistance of a SVC/VLC, in addition to services provided by a Sexual Assault Response Coordinator and your Victim Advocate.

Points of Contact:

Victim/Witness Liaison (VWL)

(Name)

(Telephone Number)

Trial Counsel

(Name)

(Telephone Number)

Legal Assistance and SVC/VLC.

You may be eligible for legal assistance and/or a Special Victims' Counsel (SVC) or Victims' Legal Counsel (VLC), depending on the specific offense. To determine eligibility or obtain assistance, contact these offices at:

(Legal Assistance Office)

(Telephone Number)

(SVC/VLC Office)

(Telephone Number)

In regard to any **reprisal, retaliation, or ostracism** you experienced as a result of reporting a crime, contact:

(Telephone Number)

For further information on crime issues, see the DoD Victim and Witness Assistance Council web page at: <http://wwac.defense.gov/>

DEPARTMENT OF DEFENSE



COURT-MARTIAL INFORMATION FOR VICTIMS AND WITNESSES OF CRIME

Court-Martial Information For Victims and Witnesses of Crime

Introduction.

The Department of Defense is concerned about the problems often experienced by victims and witnesses of crime. We know that as a victim or witness, you may feel anger, confusion, frustration, or fear and then feel added frustration in the course of the trial. The information in this brochure will explain the criminal justice procedures, and your role as a witness.

In the military, a prosecutor is called the Trial Counsel. The Trial Counsel's office will make every effort to keep you informed of the times and places you may be needed. However, it is not unusual for court dates to change several times before the trial. It is very important to keep the Trial Counsel informed of your current address and telephone number.

Preferal of Charges.

Like a civilian criminal "complaint," the preferal of charges begins the criminal trial process. Upon preferal, you may participate in the case at several points as outlined below.

Pretrial Conference.

You will be asked to speak with the Trial Counsel handling the case at least once before you testify. The Trial Counsel will answer any questions you may have at this time, and will tell you what will be expected of you as a witness.

Article 32 Hearing.

Crimes dealt with in a General Court-Martial require an Article 32 hearing. An Article 32 preliminary hearing officer (PHO) reviews the charges to determine if probable cause exists to believe the accused committed the crimes charged. In the Article 32 hearing, testimony is given to a PHO, rather than a judge or jury. You may have to appear at the hearing and testify under oath regarding what you know about the charges. After the Article 32 hearing, the PHO recommends whether to "refer" (send) the case to trial. The preliminary hearing is not required in cases referred directly to a Special Court-Martial.

If you are the victim of a crime, it is your decision whether or not you want to testify at the Article 32 hearing. You also have the right to attend the hearing and may only be excluded if the hearing officer finds that your testimony may be influenced by watching the proceedings. If you are a witness, you may be required to testify under oath regarding what you know about the charges.

Court-Martial.

This is the trial of the accused. It generally has two parts: findings (guilty or not guilty) and sentencing (punishment). In the findings phase the accused has the right to choose whether a military judge sitting alone or a panel of "members" (jury) will decide whether the accused is guilty of any offenses. If you are the victim of a crime, you have the right to attend the court-martial unless the military judge finds that your testimony may be influenced by watching the testimony of the other witnesses.

Testimony.

If you testify, you will be placed under oath and asked questions by the Trial Counsel, and, in most cases, cross-examined by the Defense Counsel. If you have concerns about embarrassing questions that could be asked, tell the Trial Counsel before trial.

Pointers When Testifying.

- Dress Appropriately: Be neat. Dress conservatively.
- Tell the Truth.
- Speak Clearly and Loudly: Everyone in the courtroom must be able to hear what you have to say. No gum chewing.
- Don't Guess or Speculate: If you don't know, say you don't know. Give positive, definite answers when you remember positively.
- Be Courteous: Answer politely and address the judge as "Your honor."
- Don't Lose Your Temper: Stay calm.

Closing Argument.

After all evidence is received by the court, each side makes a closing argument. After argument, the judge or members will adjourn to deliberate on the issue of guilt or innocence. If there is a finding of "not guilty," the accused is released and the court-martial process ends. If there is a finding of "guilty," the trial goes to the sentencing phase.

Sentencing.

In this phase, the judge or members (jury) decide the appropriate types and amount of punishment. The Trial Counsel may call witnesses to show aggravating factors concerning the offenses, who may be cross-examined by the Defense Counsel. The defense may call witnesses to explain the circumstances, lessen the potential punishment, or establish grounds for clemency. You may be asked to return to the witness stand and testify as to how the crime has affected you. This may include any emotional, physical and financial suffering you experienced. A crime victim may also elect to submit an unsworn statement, oral or written, which is not subject to cross-examination.

Punishment.

The court-martial ends when the judge or members read the sentence to the accused. Normally, any confinement ordered begins at the time the sentence is announced. Forfeitures of pay and reductions in rank usually begin 14 days after the sentence is announced, unless deferred by the Convening Authority, who is typically a senior officer. Other parts of the sentence take effect only after the "Convening Authority" takes "action" on the case, which generally occurs within two to four months after trial. Depending on the offense, the Convening Authority may, in his or her action, give clemency to the offender in the form of dismissing charges or reducing the sentence. If you are a victim, you have the right to submit a written statement to the Convening Authority, which may include your feelings about whether the accused should receive clemency and how you have been impacted by the crime. The VWL will inform you of the process for how to do this.

If the accused is sentenced to prison, you have additional rights to notification of any changes in the inmate's status. These will be explained to you by the VWL or Family Advocacy Program (FAP) official, or a designated representative.

If the offender is convicted or discharged for abusing you or your children, you may be eligible for "transitional compensation" benefits. Contact the Trial Counsel or VWL for an application (DD Form 2698) and for further information.

Victim/Witness Certification and Election
Concerning Prisoner Status
DD form 2704

VICTIM/WITNESS CERTIFICATION AND ELECTION CONCERNING PRISONER STATUS

PRIVACY ACT STATEMENT

AUTHORITY: 42 U.S.C. 10607 et seq.; 18 U.S.C. 1512 et seq; DoDI 1325.07; DoDI 1030.2; and DoDD 1030.1.

PRINCIPAL PURPOSES: To inform victims and witnesses of their post-trial rights; to determine whether the victim or witness of a crime elects to be notified of changes in the confinement status of a convicted criminal offender; and to record the election by the victim or witness of their desire to be notified about subsequent changes in prisoner status.

ROUTINE USES: None.

DISCLOSURE: Voluntary; however, failure to provide identifying information will prevent the correctional facility from notifying victim or witness of changes in a criminal offender's status.

SECTION 1 - ADMINISTRATIVE INFORMATION

Incident Number _____
Installation _____ City _____ State _____ ZIP Code _____
Court-martial case of United States v. _____
Print Name of Accused (Last, First, Middle Initial) *Social Security Number (last 4 only)*
Convened by _____
Court-Martial Convening Order Number, Date, and Issuing Command

SECTION 2 - CERTIFICATION OF NO VICTIM(S) OR WITNESS(ES)

I certify that this case does not involve a victim or witness entitled to receive information about the confinement status of the defendant as required by 42 U.S.C. 10607 et seq., and U.S.C. 3771 et seq.

Date (YYYYMMDD) *Signature of Trial Counsel or Designee* *Type Name (Last, First, Middle Initial)*

Grade and Title *Telephone Number (Include area code)*

IF THERE ARE NO VICTIM(S) OR WITNESS(ES), STOP HERE AND SKIP TO SECTION 4.

SECTION 3 - CERTIFICATION OF ADVICE TO VICTIM(S) AND WITNESS(ES)

I certify that on this date I personally notified the victim(s) and witness(es) in the above-named court-martial case that included a sentence to confinement, of their right under 42 U.S.C. 10607 et seq., and U.S.C. 3771 et seq., to receive information about the status of the prisoner named in Section 1 of this form, to include length of sentence, anticipated earliest release date, likely place of confinement, the possibility of transfer, and the right to receive notification of a new place of confinement. I advised of the possibility of parole or clemency with an explanation of these terms. Additionally, I advised of the right to prior notification of the prisoner's parole hearings, release from confinement, escape and death. I advised the victim(s) and witness(es) that to receive notification of the prisoner's transfer, parole hearings, and release confinement, the victim or witness **MUST PROVIDE THE INFORMATION REQUIRED ON PAGE 2 OF THIS FORM**. I advised all victim(s) and witness(es) that if they elect to terminate or reinstate notifications, or if they change their address, they must contact the Military Service Central Repository listed in Section 4. When a Victim or Witness is not present to initial box 4 (on page 2 of this form) the Trial Counsel or Designee shall contact the Victim or Witness in order to determine their election choice (Yes or No). Once verified, the Trial Counsel or Designee shall initial box 4 indicating and validating the Victim's or Witness's election choice.

Date (YYYYMMDD) *Signature of Trial Counsel or Designee* *Type Name (Last, First, Middle Initial)*

Grade and Title *Telephone Number (Include area code)*

SECTION 4 - DISTRIBUTION

1. MILITARY SERVICE CENTRAL
REPOSITORY

2. LAW ENFORCEMENT/SPECIAL
INVESTIGATION

3. CORRECTIONAL FACILITY

SECTION 5 - LIST OF VICTIM(S) AND WITNESS(ES)
VICTIM/WITNESS CERTIFICATION AND ELECTION CONCERNING PRISONER STATUS

Court-martial case of United States v. _____

(Printed Name of Accused - Last, First, Middle Initial)

(SSN - last 4 only)

STATEMENT OF UNDERSTANDING: The victim(s) and witness(es) that have elected to receive information about changes in the status of the prisoner are required to notify the respective Military Central Repository with an accurate address and telephone number to continue receiving notifications on the prisoner's status, if their relocation results in changes to their address and/or telephone numbers.

STATEMENT OF TRANSFER NOTIFICATION: This transfer notification only applies in the event the above named prisoner is permanently transferred to another Federal, State or local law enforcement agency or correctional facility. The victim(s) and witness(es) will be notified using the address on file by DD Form 2705 of the prisoner's new location. The receiving Federal, State, or local agency will be responsible for all further notifications to the victim(s) and witness(es) about the prisoner's status. The military correctional facility retains responsibility for clemency board notifications.

INSTRUCTIONS: LIST ALL VICTIMS AND WITNESSES INVOLVED IN THE CASE. Using the drop-down box, indicate whether Adult, Parent, Legal Guardian, Minor/Age, Incompetent, Incapacitated. If under 18 years old, incompetent or incapacitated, also list parent or legal guardian's name. Using the next drop-down box, indicate whether victim (V), witness (W), or victim and witness (V&W). For all minor victims/witnesses, ensure minor status and age (at time of CM) are identified after their full name in Column 1. All minors, incapacitated and incompetent persons require a competent adult to be notified on their behalf by placing an adult and minor victim in the same row. Individuals that elect to be notified of prisoner status changes initial the "Yes" block in Column 4; otherwise initial the "No" block adjacent the respective name. The Trial Counsel or Designee (TC/D) are required to enter their initials in the Yes or No box in Column 4 for unavailable victims or witnesses.

1. NAME - Last, First, Middle Initial/AFFILIATION/STATUS <i>(Select affiliation and status from drop-down lists.) (Provide age if Victim/Witness is a minor.) (List Parent or Guardian if Victim/Witness is under 18 or incompetent or incapacitated.)</i>	2. ADDRESS - Street, Apartment No., City, State, ZIP Code <i>(If under 18 years old, incompetent or incapacitated, also list Parent or Legal Guardian's address, if different from victim/witness)</i>	3. TELEPHONE NUMBER <i>(Include Area Code) (If under 18 years old, incompetent or incapacitated, also list Parent or Legal Guardian's number, if different from victim/witness)</i>	4. NOTIFY <i>(Initial)</i>	
			YES	NO
			TC/D:	
			TC/D:	
			TC/D:	
			TC/D:	
			TC/D:	
			TC/D:	
			TC/D:	
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			TC/D:	

**INSTRUCTIONS FOR COMPLETING DD FORM 2704,
VICTIM/WITNESS CERTIFICATION AND ELECTION CONCERNING PRISONER STATUS**

PURPOSE: This form shall be used for victims and appropriate witnesses (those who fear harm by the offender) to elect to be notified of changes in the offender's status while in confinement. For all cases resulting in a sentence to confinement, the DD Form 2704 shall be completed and forwarded to the Service Central Repository, the gaining confinement facility, local responsible official, and the victim or witness, if any.

SECTION 1 - ADMINISTRATIVE INFORMATION

Incident Number: Obtained from the DD Form 1569.

Installation, City, State and Zip Code: The geographical location of the Convening Authority (CA).

Court-Martial Case of United States v.: Add the offender's name and last four digits of his/her Social Security number.

Convened By: Add the court-martial convening order number, date, and issuing command.

SECTION 2 - CERTIFICATION OF NO VICTIM(S) OR WITNESS(ES)

Complete this section only if there are no victims or witnesses who are entitled to notification under the Victim's Rights and Restitution Act of 1990, and DoD Instruction 1030.2.

Date and Signature certifying there are no victim(s) or witness(es) who are entitled to notification under the Victim's Rights and Restitution Act of 1990, and DoD Instruction 1030.2.

Print Name (Last, First, Middle Initial), **Grade, Title and Telephone Number.** Add the same identification as the individual signing the form.

If there are no victims or witnesses involved in this case, stop and go to Section 4.

Forward Page 1 only to the respective Military Central Repository.

SECTION 3 - CERTIFICATION OF ADVICE TO VICTIM(S) AND WITNESS(ES)

Complete this section, print, date and sign, certifying the victim(s) and/or witness(es) have been advised of their rights to be notified by the person signing this document.

Date and Signature certifying that any victim(s) or witness(es) have been advised of their rights to notification under the Victim's Rights and Restitution Act of 1990, and DoD Instruction 1030.2. The authorized signature per DoDI 1030.2 is the "Trial Counsel or Designee" as identified by Service specific regulations.

Print Name (Last, First, Middle Initial), **Grade, Title and Telephone Number.** Add the same identification as the individual signing the form.

When a victim or witness is not present to initial box 4 (on Page 2 of this form), the certifying official of this document shall contact the Victim or Witness in order to determine their election choice (Yes or No). Once verified, the certifying official shall initial box 4 indicating and validating the Victim's or Witness's election choice.

Forward Page 1 and all other pages listing victims and witnesses to the Military Central Repository.

SECTION 4 - DISTRIBUTION

A copy of the completed form shall be forwarded to each of the listed agencies.

Block 1 - Military Service Central Repository. Add the address for the offender's branch affiliation.

Block 2 - Law Enforcement/Special Investigation. Add the address for the offender's branch affiliation.

Block 3 - Correctional Facility. Add the location of the prisoner's confinement.

SECTION 5 - LIST OF VICTIM(S) AND WITNESS(ES)

Statement of Understanding should be read to the victim(s) and witness(es) when possible.

Statement of Transfer Notification should be read to the victim(s) and witness(es) when possible.

Column 1. Add the identified victim(s) and witness(es). Provide age if victim/witness is a minor. Indicate whether Adult, Parent, Legal Guardian, Minor, Incompetent, Incapacitated. If under 18 years old, incompetent or incapacitated, also list parent or legal guardian's name. Indicate whether victim (V), witness (W), or victim and witness (V&W) in this case.

Column 2. Add the address of the identified victim(s) and witness(es). If under 18 years old, incompetent or incapacitated, also list parent or legal guardian's address (if different from that of victim or witness).

Column 3. Add the complete telephone number of the identified victim(s) and witness(es). If under 18 years old, incompetent or incapacitated, also list parent or legal guardian's telephone number (if different from that of victim or witness).

Column 4. Victim, witness, or Trial Counsel or Designee are required to enter initials in the Yes or No column, indicating desire to be notified regarding the prisoner's status.

NOTE: Prevent victim(s) and witness(es) personal information from being released to other victim(s) and witness(es).

NOTE: DO NOT provide this form to the prisoner. This form (when filled in) is FOIA and PA exempt from release under DoD 5400.7R and 5 U.S.C.

TERMS AND DEFINITIONS

Victim: A person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime committed in violation of the UCMJ (Chapter 47 of the U.S.C., reference (b)) or in violation of the law of another jurisdiction if any portion of the investigation is conducted primarily by the DoD Components. Refer to DoDD 1030.1, Enclosure 1, E1.1.5 - E1.1.5.4. for the list of individuals included as victims. When Victim is under 18 years of age, the term includes Parent, etc. (loco parentis precedence) and are afforded the same notification status as the victim due to the minor victim relationship. Ensure their loco parentis title, e.g., Parent, is completed after their name in Column 1.

Witness: A person who has information or evidence about a crime, and provides that knowledge to a DoD Component about an offense in the investigative jurisdiction of a DoD Component. When the victim is a minor, that term includes a family member or legal guardian.

THE TERM "WITNESS" DOES NOT INCLUDE A DEFENSE WITNESS OR AN INDIVIDUAL INVOLVED IN THE CRIME AS A PERPETRATOR OR ACCOMPLICE. Further state - when the parent or guardian are crime witnesses for which the accused is found guilty and ordered a confinement sentence (witnessed charges), in addition of being afforded the Victim status for the notification of a minor, as a parent/guardian, they are also afforded the Witness status - annotate as (V & W). Those parent(s)/legal guardians of minors who assume the Victim status for notification purposes but did not witness or provide evidence of the crime only assume the Witness status.

Post-Trial Information for Victims and Witnesses of Crime
DD form 2703

Your Rights as a Victim.

As a crime victim, you have the following rights:

- The right to be treated with fairness and respect for your dignity and privacy;
- The right to be reasonably protected from the accused offender;
- The right to reasonable, accurate, and timely notice of public preliminary hearings, pretrial confinement hearings, court proceedings, and clemency and parole hearings related to the offense;
- The right to be present at all public proceedings related to the offense unless the hearing officer or military judge determines that your testimony would be materially altered if you as the victim heard other testimony;
- The right to reasonably confer with the prosecutor/Trial Counsel in the case;
- The right to receive available restitution;
- The right to be reasonably heard at: 1) a public hearing concerning the continuation of any pretrial confinement of the accused; 2) a sentencing hearing related to the offense; 3) a public Military Department Clemency and Parole Board hearing related to the offense;
- The right to submit a written statement for the consideration of the Convening Authority prior to taking action on findings and sentence;
- The right to proceedings free from unreasonable delay;
- The right to be provided information, if applicable, about the conviction, sentencing, imprisonment, Convening Authority's action, appellate review, and release of the offender.

Points of Contact:

From now on, your point of contact will be the confinement facility or the Service Central Repository listed below. Please call if you have any questions.

Service Central Repository

(Name)

(Telephone Number)

Confinement Facility

(Name)

(Telephone Number)

Service Clemency and Parole Board

(Name)

(Telephone Number)

Other

(Name)

(Telephone Number)

For further information on crime issues, see the DoD Victim and Witness Assistance Council web page at: <http://vwac.defense.gov/>

DEPARTMENT OF DEFENSE



POST-TRIAL INFORMATION FOR VICTIMS AND WITNESSES OF CRIME

Post-Trial Information

For Victims and Witnesses of Crime

Introduction.

This brochure details the post-trial process and your rights in that process. This includes your right to be notified of changes in the confinement status of the offender in your case, and for a victim to submit matters.

Record of Trial.

After the trial, a transcript of the proceedings will be prepared. If you are the victim of a qualifying sexual offense, you are entitled to a no-cost copy of the record of trial as soon as it is authenticated.

Location of Confinement Facility.

The Victim and Witness Assistance Program does not end with the completion of the court-martial. If the accused is convicted of any offense, the court-martial will sentence the accused. If the sentence includes confinement, the accused, now called "prisoner", is usually taken immediately to jail. If there is a confinement facility at the installation where the trial was held, the prisoner will be held there temporarily.

Depending on the security level of the prisoner, he/she may be assigned to various work details around the installation. If the prisoner's period of confinement is minimal, and there are adequate facilities on the installation or in a locally-contracted confinement facility, the prisoner may serve the entire sentence at the installation or local facility.

If there is no confinement facility at the installation, the facility is not adequate to house the prisoner, or the sentence is in excess of what is handled on the installation, he/she will be taken to a regional confinement facility. The prisoner may later be transferred to other facilities available, based on length of sentence, programs and security levels.

You can be notified of these changes if you fill out a form called DD Form 2704, "Victim/Witness Certification and Election Concerning Prisoner Status." It is very important that you keep the confinement facility informed of your current address, email, and telephone number.

Convening Authority Action.

Forfeitures of pay and reductions in rank usually begin 14 days after the sentence is announced, unless deferred by the Convening Authority, who is typically a senior officer. Other parts of the sentence take effect only after the "Convening Authority" takes "action" on the case, which generally occurs within two to four months after trial. Depending on the charges, the Convening Authority may disapprove findings, disapprove or reduce part of the sentence, or approve everything except a punitive discharge. The Convening Authority cannot increase any part of the sentence. A victim has the right to submit a written statement to the Convening Authority, which may include an opinion on whether the accused should receive clemency and how the victim has been impacted by the crime. A victim also has the right to receive notification of the Convening Authority's action and the outcome of any appeal. You will be informed of the process for how to do this, if applicable.

Appellate Review.

All court-martial convictions are either reviewed by a judge advocate or subject to some form of appellate review. An appeal is when a higher court reviews the decisions made by lower courts to determine if a legal error was made. The post-trial appeal process can take a long time. Depending on the offense, an accused can choose to waive appellate review. A victim has the right to be notified in advance of the date and time of any appellate courtroom hearings, and to be notified of the final decision of any appellate court or judge advocate review.

Clemency and Parole Consideration.

Military prisoners are generally eligible for clemency consideration within their first year of confinement. Military prisoners are generally eligible for parole consideration when they have completed 1/3 of their confinement, and every year thereafter. A victim may make a statement to the confining Correctional Facility or directly to the Clemency and Parole Board on how the crime affected him/her. This statement may be given in person, or submitted by a victim in writing or on audio or videotape to the Service Clemency and Parole Board at the address on the back of this page.

Notification Rights.

You have the right to be notified in writing of the following changes in the prisoner's status: transfer to another facility, parole, escape, release from confinement, or death while in confinement. If the prisoner is released on temporary home leave (for example, to visit a dying parent), the confinement facility will make every effort to notify you in advance.

How To Exercise Your Rights.

If you want to exercise any of your post-trial rights, you must make your elections on the DD Form 2704, "Victim/Witness Certification and Election Concerning Prisoner Status," and DD Form 2704-1, "Victim Election of Post-Trial Rights." You will be provided an opportunity to make your elections and to receive a copy of this form after sentencing. You MUST notify the appropriate offices of any change in your address or contact information if you want to receive these notices. Your information will be kept confidential.

PREFERRAL
Prosecution Memo



DEPARTMENT OF THE ARMY
HEADQUARTERS, 3D BRIGADE, 54TH INFANTRY DIVISION (10)(A)
FORT ATTERBURY, INDIANA 46124

AJBC-JA

26 April 2017

MEMORANDUM THRU Brigade Judge Advocate, Headquarters, 3d BRIGADE, 54TH
INFANTRY DIVISION (10)(A), Fort Atterbury, Indiana 46124

FOR Chief, Criminal Law, OSJA, Headquarters, 54TH INFANTRY DIVISION
(MECHANIZED) (A), Fort Atterbury, Indiana 46134

SUBJECT: Prosecution Memorandum - United States v. SGT Richard M. Archie, Bravo
Company, 3d Battalion, 3d Armor(10)(A), Fort Atterbury, IN 46124

1. ACCUSED KEY DATA:

Accused Key Data	
Military Occupational Specialty	88M Motor Transport Operator
Years in Service	Over 4
Current Term of Service began:	4yr 0mo 0d
ETS date:	09/11/2016
General Technical Score	89
Education	High School Diploma
Pretrial Confinement/Restriction	What: When: How:
Dependants	1
Companion Case/Accused	None

2. THEORY OF THE CASE: *CONCISE overview of what crimes/events are at the heart of this case.*

3. FACTS: *Key SPECIFIC facts that will form the basis of the government case and/or a stipulation of fact.*

4. PEOPLE: *List of witnesses and other individuals essential to prosecuting the case, along with contact information and notes on their roles/involvement/value/particulars. Include notes on needed/planned follow-up, travel considerations, etc.*

AJJBC-JA

SUBJECT: Prosecution Memorandum - United States v. SGT Richard M. Archie, Bravo Company, 3d Battalion, 3d Armor(10)(A), Fort Atterbury, IN 46124

NAME: PV2 Traci Vance Witness	CONTACT INFO: POC Phone:
SYNOPSIS:	

NAME: PFC Stephanie Taylor Witness	CONTACT INFO: POC Phone:
SYNOPSIS:	

NAME: SPC Peter Jacobs Witness	CONTACT INFO: POC Phone:
SYNOPSIS:	

NAME: Ms. Lynn Smith Witness	CONTACT INFO: POC Phone:
SYNOPSIS:	

NAME: SPC Thomas Randolph Witness	CONTACT INFO: POC Phone:
SYNOPSIS:	

5. ANTICIPATED MOTIONS: *List defense motions that are likely to be filed in the course of the case.*

PREFFERAL

Charge Sheet

DD form 458

CHARGE SHEET				
I. PERSONAL DATA				
1. NAME OF ACCUSED (<i>Last, First, Middle Initial</i>)		2. SSN	3. GRADE OR RANK	4. PAY GRADE
5. UNIT OR ORGANIZATION			6. CURRENT SERVICE	
			a. INITIAL DATE	b. TERM
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED	
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL	9. DATE(S) IMPOSED	
		0.00		
II. CHARGES AND SPECIFICATIONS				
10. CHARGE: VIOLATION OF THE UCMJ, ARTICLE SPECIFICATION:				
III. PREFERRAL				
11a. NAME OF ACCUSER (<i>Last, First, Middle Initial</i>)		b. GRADE	c. ORGANIZATION OF ACCUSER	
d. SIGNATURE OF ACCUSER			e. DATE (YYYYMMDD)	
<p>AFFIDAVIT: Before me, the undersigned, authorized by law to administer oath in cases of this character, personally appeared the above named accuser this _____ day of _____, _____, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%;"> <p>_____ <i>Typed Name of Officer</i></p> <p>_____ <i>Grade</i></p> <p>_____ <i>Signature</i></p> </div> <div style="width: 45%;"> <p>_____ <i>Organization of Officer</i></p> <p>_____ <i>Official Capacity to Administer Oath</i> (See R.C.M. 307(b)_ must be commissioned officer)</p> </div> </div>				

12.

On _____, _____, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me (See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.)

Typed Name of Immediate Commander

Organization of Immediate Commander

Grade

Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13.

The sworn charges were received at _____ hours, _____, _____ at _____
Designation of Command or

Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE _____

Typed Name of Officer

Official Capacity of Officer Signing

Grade

Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

b. PLACE

c. DATE (YYYYMMDD)

Referred for trial to the _____ court-martial convened by _____

_____, _____, subject to the following instructions: ²

By _____ of _____
Command or Order

Typed Name of Officer

Official Capacity of Officer Signing

Grade

Signature

15.

On _____, _____, I (caused to be) served a copy hereof on (each of) the above named accused.

Typed Name of Trial Counsel

Grade or Rank of Trial Counsel

Signature

FOOTNOTES: 1 - When an appropriate commander signs personally, inapplicable words are stricken.

2 - See R.C.M. 601(e) concerning instructions. If none, so state.

AJJBC-JA

SUBJECT: Prosecution Memorandum - United States v. SGT Richard M. Archie, Bravo Company, 3d Battalion, 3d Armor(10)(A), Fort Atterbury, IN 46124

Anticipated Defense Motions	
Motion	Notes
<i>Type of motion</i>	<i>Brief description</i>

6. CHARGES AND MAXIMUM PUNISHMENT: *List the charges and the maximum punishments for each charge.*

Article	Discharge	Confinement	Forfeitures
Article 92 - Failure to obey order or regulation			
Article 92 - Failure to obey order or regulation		.	
Article 120 - Rape, sexual assault, and other sexual misconduct			
Total Confinement			

7. SENTENCING FACTORS:

- a. Aggravation: *Include any aggravating pieces of information*
- b. Mitigation: *Include any mitigating pieces of information*
- c. Extenuation: *Include any items in extenuation*

8. TRIAL COUNSEL RECOMMENDATION:

- a. Case Disposition: *Summary of TC's thoughts about how the case should go and why, including summary of command concerns and issues.*
- b. Proposed Quantum: *TC's thoughts on the "worth" of the case if pled out, including specific considerations for any anticipated LIOs, dropped charges, etc.*

9. OTHER CONCERNS / ISSUES:

AJBC-JA

SUBJECT: Prosecution Memorandum - United States v. SGT Richard M. Archie, Bravo Company, 3d Battalion, 3d Armor(10)(A), Fort Atterbury, IN 46124

10. POC is the undersigned at 555-6255 and (*your email*) .

(*INSERT YOUR NAME*)

(*YOUR RANK*), JA

Trial Counsel

REFERRAL

Preliminary Hearing Officer's Report

DD form 457

PRELIMINARY HEARING OFFICER'S REPORT*(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)*

1a. FROM: (Name of Preliminary Hearing Officer - Last, First, MI)	b. GRADE	c. ORGANIZATION	d. DATE OF REPORT
2a. TO: (Name of Officer who directed the Preliminary Hearing - Last, First, MI)	b. TITLE	c. ORGANIZATION	
3a. NAME OF ACCUSED (Last, First, MI)	b. GRADE	c. ORGANIZATION	d. DATE OF CHARGES

(Check appropriate answer)

YES NO

4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I CONDUCTED A PRELIMINARY HEARING CONCERNING THE CHARGES APPENDED HERETO (Exhibit 1)					
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)					
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d) (2), 502(d)					
7a. NAME OF DEFENSE COUNSEL (Last, First, MI)	b. GRADE	8a. NAME OF ASSISTANT DEFENSE COUNSEL (If any)	b. GRADE		
c. ORGANIZATION (If appropriate)		c. ORGANIZATION (If appropriate)			
d. ADDRESS (If appropriate)		d. ADDRESS (If appropriate)			
9. TO BE SIGNED BY ACCUSED IF ACCUSED WAIVES COUNSEL. (If accused does not sign, preliminary hearing officer will explain in detail in item 23.)					
a. PLACE			b. DATE		

I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED AT THIS PRELIMINARY HEARING BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL AT THIS PRELIMINARY HEARING.

c. SIGNATURE OF ACCUSED

10. AT THE BEGINNING OF THE PRELIMINARY HEARING, I INFORMED THE ACCUSED OF: <i>(Check appropriate answer)</i>	YES	NO
a. THE NATURE OF THE CHARGE(S)		
b. THE IDENTITY OF THE ACCUSER		
c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31		
d. THE PURPOSE OF THE PRELIMINARY HEARING		
e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE		
f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED THE GOVERNMENT TO PRESENT		
g. THE RIGHT TO CROSS-EXAMINE WITNESSES		
h. THE RIGHT TO PRESENT MATTERS IN DEFENSE AND MITIGATION		
i. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING		
11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE <i>(If the accused or counsel were absent during any part of the presentation of evidence, complete b below.)</i>		
b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL		

NOTE: If additional space is required for any item, enter the additional material in Item 23 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading. (Example: "7c.") Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet."

12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH:				
NAME (Last, First, MI)	GRADE (If any)	ORGANIZATION/ADDRESS (Whichever is appropriate)	YES	NO
b. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES IS ATTACHED				
c. AT THE HEARING, EVIDENCE WAS OFFERED UNDER MILITARY RULES OF EVIDENCE <input type="checkbox"/> 412 <input type="checkbox"/> 513 <input type="checkbox"/> 514 <i>(Check appropriate box(es))</i>				
d. PORTIONS OF THE HEARING WERE CLOSED				
e. SEALED MATERIALS ARE INCLUDED IN THIS REPORT				
13a. THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED; THE ACCUSED WAS PERMITTED TO EXAMINE EACH				
DESCRIPTION OF ITEM	LOCATION OF ORIGINAL (If not attached)			
b. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED				
14. THERE ARE GROUNDS TO BELIEVE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE FOR THE OFFENSE(S) OR NOT COMPETENT TO PARTICIPATE IN THE DEFENSE <i>(See R.C.M. 909, 916(k))</i>				
15. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL				
16. AN EXPLANATION OF ANY DELAYS IN THE HEARING IS ATTACHED HERETO				
17. THE CHARGE(S) AND SPECIFICATION(S) ARE IN PROPER FORM				
18. THERE IS PROBABLE CAUSE TO BELIEVE AN OFFENSE HAS BEEN COMMITTED AND THAT THE ACCUSED COMMITTED THE OFFENSE				
19. THE UNITED STATES HAS JURISDICTION OVER THE OFFENSE(S) AND THE ACCUSED				
20. ADDITIONAL UNCHARGED MISCONDUCT WAS CONSIDERED AND A RECOMMENDATION FOR DISPOSITION IS ATTACHED HERETO				
21. I AM NOT AWARE OF ANY GROUNDS THAT WOULD DISQUALIFY ME FROM ACTING AS A PRELIMINARY HEARING OFFICER				
22. I RECOMMEND:				
a. TRIAL BY: <input type="checkbox"/> SUMMARY <input type="checkbox"/> SPECIAL <input type="checkbox"/> GENERAL COURT-MARTIAL b. <input type="checkbox"/> OTHER (Specify) _____				
23. REMARKS (Include, as necessary, explanation for any answers above.)				
24a. TYPED NAME OF PRELIMINARY HEARING OFFICER		b. GRADE	c. ORGANIZATION	
d. SIGNATURE OF PRELIMINARY HEARING OFFICER			e. DATE	

REFERRAL

Article 34 Advice on Disposition of Court-Martial Charges



DEPARTMENT OF THE ARMY
HEADQUARTERS, 54th INFANTRY DIVISION
AND FORT ATTERBURY
FORT ATTERBURY, INDIANA

2 June 16

ATCL-JA

MEMORANDUM FOR Commander, 54th Infantry Division and Fort Atterbury, Fort Atterbury, Indiana

SUBJECT: Advice on Disposition of Court-Martial Charges – SGT Richard Archie, Bravo Company, Brigade Support Battalion, 3rd Brigade, 54th Infantry Division, Fort Atterbury, Indiana

1. **LEGAL CONCLUSIONS:** After reviewing the attached charges and specifications, allied papers, and Article 32 preliminary hearing, I have reached the following legal conclusions:

- a. The charges and their specifications allege offenses under the UCMJ;
- b. The allegations in the specifications are warranted by the evidence; and
- c. There is court-martial jurisdiction over the accused and the charged offenses.

2. **RECOMMENDATIONS:**

- a. The Company, Battalion, and Brigade Commanders all recommend trial by General Court-Martial.
- b. The Article 32 preliminary hearing was conducted on 2 May 2016. The Investigating Officer recommended that the charges and their specifications be tried by general court-martial.
- c. I recommend referral of all charges and specifications (to include the Additional Charge and its Specification) to trial by General Court-Martial convened by Court-Martial Convening Order Number 11, dated 1 May 2016.

Bailey Jamison

BAILEY JAMISON
COL, JA
Staff Judge Advocate

- 6 Encls
1. CG's Action
 2. Charge Sheets & Commanders' Recommendations
 3. CMCO No. 11 dtd 1 May 2016
 4. Article 32 Investigating Officer's Report
 5. Allied Documents
 6. Enlisted Record Brief

ATCL-JA

SUBJECT: Advice on Disposition of Court-Martial Charges – SGT Richard Archie, Bravo Company, Brigade Support Battalion, 3rd Brigade, 54th Infantry Division, Fort Atterbury, Indiana

DIRECTION OF THE CONVENING AUTHORITY:

The recommendations of the Staff Judge Advocate are approved/disapproved.

REX LLOYD
Major General, US Army
Commanding

REFERRAL

Court-Martial Convening Order (CMCO)

**DEPARTMENT OF THE ARMY
HEADQUARTERS, 13TH INFANTRY DIVISION AND FORT BLANK
FORT BLANK, MISSOURI 63899**

COURT-MARTIAL CONVENING ORDER
NUMBER 14

3 January 2017

Pursuant to authority contained in paragraph 5, General Order No. 25, Department of the Army dated 30 July 1977, a general court-martial is hereby convened. It may try such persons as may properly be brought before it, and shall meet at this Headquarters, unless otherwise directed. The court-martial will be constituted as follows:

MEMBERS

COL ALBERT F. LONG, IN, 1st Bde, 13th Inf Div
COL DALE C. INGRAM, AR, 2d Bde, 13th Inf Div
LTC HERBERT C. SMITH, CE, 20th Eng Bn
MAJ WILLARD T. PERRY, FA, 1st Sqdn, 21st Cav
MAJ FRANCIS H. LEE, IN, 1st Bn, 73d Inf
CPT JOHN R. DIXON, AR, 1st Bn, 2d Armor
CPT WILLIAM C. SNYDER, QM, 20th. S&T Bn

/s/
JOHN T. BLUNT
Major General, USA
Commanding

OFFICIAL:

DISTRIBUTION "X"

**DEPARTMENT OF THE ARMY
HEADQUARTERS, 13TH INFANTRY DIVISION AND FORT BLANK
FORT BLANK, MISSOURI 63899**

COURT-MARTIAL CONVENING ORDER
NUMBER 17

15 April 2017

The following members are detailed to the general court-martial convened by Court-Martial Convening Order Number 14, this Headquarters dated 3 January 2017.

MAJ ROY A. WILLIARD, QM, HHC, 20th S&T Bn
1LT CHARLES C. CARMICHAEL, AG, 20th Admin. Co

VICE:

MAJ FRANCIS H. LEE, IN, 1st, Bn, 73d Inf
CPT JOHN R. DIXON, AR, 1st Bn, 2d Armor

In the case of SPC Anthony A. Carter, 348-46-3179, HHC, 1st Battalion, 18th Infantry, Fort Blank, Missouri, only.

/s/
JOHN T. BLUNT
Major General, USA
Commanding

DISTRIBUTION "X"

TRIAL

Offer to Plead Guilty

UNITED STATES

V.
WILLIAM W. WILLIAMS
342-34-4770, Specialist (E-4)
U.S. Army, Fort Blank, Missouri

*
*
*
*
*
*

APPENDIX I

1 April 2017

I, Specialist William W. Williams, offer to plead guilty to the Charge and Specification provided the convening authority will disapprove any confinement adjudged in excess of eighteen months. The convening authority may approve any other lawfully adjudged punishment, including a fine.

SMITH, PEYTON S.
CPT, US Army
Defense Counsel

WILLIAM W. WILLIAMS
SPC, US Army
Accused

JOHN T. BLUNT
Major General, USA
Commanding

Appellate Exhibit

_____ for ID

TRIAL

Post-Trial and Appellate Rights Advisement

DCAP form 3.4

UNITED STATES

v.

XXX X. XXXX
XXX, U.S. Army

Post-Trial and Appellate Rights Advisement

Special Courts-Martial
and
General Courts-Martial (non-capital)

The accused is to initial where there is a ____ and where indicated, either provide information or strike out inapplicable language.

I am the accused whose name appears above. I certify that my trial defense counsel has advised me of the following post-trial and appellate rights in the event that I am convicted of a violation of the Uniform Code of Military Justice (UCMJ).

1. In exercising my post-trial rights, or in making any decision to waive them, I am entitled to the advice and assistance of military counsel provided free of charge or civilian counsel provided at no expense to the government.
2. After the record of trial is prepared, the convening authority will act on my case in accordance with Article 60(c), UCMJ.
3. Under Rules for Court-Martial 1105 and 1106, I have the right to submit any matters I wish the convening authority to consider in deciding what action to take in my case. These matters include, but are not limited to, a personal statement, personal letters and documents, letters and documents from any other person, requests for deferment and waiver of forfeitures, and any other matter I desire the convening authority to consider before taking action in my case.

a. Before the convening authority takes action, the staff judge advocate will submit a recommendation to the convening authority. This recommendation will be sent to me and/or my defense counsel before the convening authority takes action.

b. If I have matters that I wish the convening authority to consider, or matters in response to the staff judge advocate's recommendation, such matters must be submitted within 10 days after I receive a copy of the record of trial or the recommendation of the staff judge advocate, whichever occurs later. If I authorize substitute service in accordance with paragraph 12 of this form, the 10 day period begins to run after my counsel receives the record of trial or the staff judge advocate's recommendation, whichever occurs later.

c. Upon my request, the convening authority may extend this period, for good cause, for not more than 20 days.

d. I understand that I must work with my defense counsel to assist him/her in collecting and preparing those matters I want to be submitted to the convening authority, and in that regard I must remain in contact with my defense counsel even after my case has been tried.

e. **(Strike through inapplicable portions).** I *(authorize) (do not authorize)* my defense counsel to submit matters pursuant to RCM 1105 and 1106 on my behalf in the event that (s)he is unable to contact me after making reasonable efforts to find me in accordance with TDS policy.

4. If the convening authority approves an adjudged punitive discharge (dismissal for officers; bad-conduct or dishonorable discharge for enlisted Soldiers) or confinement for one year or longer, my case will be automatically reviewed by the Army Court of Criminal Appeals (ACCA). I am entitled to be represented by counsel before such court. If I so request, military counsel will be appointed to represent me at no cost to me. If I so choose, I may also be represented by civilian counsel at no expense to the United States.

5. After the ACCA completes its review, I may petition the United States Court of Appeals for the Armed Forces (CAAF) to review my case. If that Court grants my petition, I may request review by the Supreme Court of the United States. I have the same rights to counsel before those courts as I have before the ACCA. If I am pending an approved dishonorable or bad-conduct discharge it may only be ordered executed after completion of the appellate process in accordance with Rule for Court-Martial 1209, unless I waive appellate review.

6. ***THIS PARAGRAPH IS APPLICABLE TO ONLY GENERAL COURTS-MARTIAL.*** If the convening authority approves no punitive discharge and approves confinement for less than a year, my case will be examined in the Office of The Judge Advocate General for any legal errors and to determine if the sentence is appropriate. The Judge Advocate General (TJAG) may take corrective action as appropriate. This mandatory review under Article 69(a), UCMJ, will constitute the final review of my case unless TJAG directs review by the ACCA.

7. ***THIS PARAGRAPH IS APPLICABLE TO ONLY SPECIAL COURTS-MARTIAL.*** If the convening authority approves no punitive discharge and approves confinement for less than a year, my case will be examined by a legal officer for any legal errors and to determine if the sentence is appropriate. The convening authority may take corrective action as appropriate. This mandatory review will constitute the final review of my case; however pursuant to Article 69(b), UCMJ, I may seek review by The Judge Advocate General within two years of action being taken in my case.

8. I may waive or withdraw review by the appellate courts after action has been taken by the Convening Authority. I cannot waive or withdraw appellate review before action. I understand that if I waive or withdraw review:

a. My decision is final and I cannot change my mind.

b. My case will then be reviewed by a military lawyer for legal error. It will also be sent to the general court-martial convening authority for final action.

c. Within two (2) years after the sentence is approved, I may request The Judge Advocate General (TJAG) to take corrective action on the basis of newly discovered evidence, fraud on the court-martial, lack of jurisdiction over me or the offense, error prejudicial to my substantial rights, or the appropriateness of the sentence.

9. I understand that any period of confinement included in my sentence begins to run from the date the court-martial adjudges my sentence. I may request that the convening authority defer commencement of confinement. The decision to defer confinement is within the sole discretion of the convening authority.

10. Adjudged forfeitures and reduction in rank.

a. Any forfeitures adjudged in my case are effective 14 days after the sentence is adjudged or when the convening authority takes action, whichever occurs first, unless adjudged forfeitures are deferred. If forfeitures are adjudged at the court-martial, I understand that I may ask the convening authority to defer them until action and to disapprove, mitigate, or suspend them at action.

b. Adjudged reduction (enlisted personnel only). Any reduction in rank adjudged in my case is effective 14 days after the sentence is adjudged or when the convening authority takes action, whichever occurs first, unless the reduction is deferred. If a reduction is adjudged at the court-martial, I understand that I may ask the convening authority to defer a reduction in rank until action and to disapprove or suspend it at action.

11. Automatic forfeitures. I understand that by operation of Article 58b of the Uniform Code of Military Justice, any sentence that includes confinement for more than 6 months, or confinement for 6 months or less and a punitive discharge, will result in automatic forfeitures during any period of confinement even if no forfeitures are adjudged. In the case of a General Court-Martial, automatic forfeitures are for all pay and allowances. In a Special Court-Martial, the automatic forfeitures are for two-thirds of pay. Automatic forfeitures go into effect 14 days after my sentence is adjudged or when the convening authority takes action, whichever occurs first.

_____ a. I understand I may ask the convening authority to defer adjudged or automatic forfeitures, if any, until the time of final action, but such relief is solely within the discretion of the convening authority, who may rescind deferment at any time.

_____ b. I understand that if I have dependents, I may ask the convening authority to waive, for a period not to exceed six months, all or part of the forfeitures for the purpose of providing support for my dependents. Any amount of pay or allowances waived would be paid to my dependents.

_____ c. I understand that if I reach my ETS date while I am in confinement all my pay and allowances will stop on my ETS date, even if a request for deferment or waiver of automatic forfeitures is granted.

_____ d. I further understand that if I reach my ETS date while I am in confinement all my pay and allowances will stop on my ETS date, even if a request for deferment or disapproval of adjudged forfeitures is granted.

_____ e. (*Applicable if accused has a pretrial agreement*). I further understand that if I reach my ETS date while I am in confinement all my pay and allowances will stop on my ETS date, regardless of what is in my pretrial agreement.

_____ f. I understand that if adjudged forfeitures are not deferred or disapproved, I will not receive pay even if automatic forfeitures are waived.

12. I have read and had my post-trial rights explained to me by counsel and I acknowledge these rights and make the elections set forth below.

_____ a. I understand my post-trial and appellate review rights.

_____ b. I understand that a copy of the authenticated record of trial will be served on me, or if I so request, will be forwarded to my defense counsel pursuant to RCM 1104(b).

_____ c. I further understand that individual copies of the staff judge advocate's post trial recommendation (SJAR) will be served on me and/or my defense counsel pursuant to RCM 1106(f).

Select only one of the following three numbered options. Option (3) is the recommended best option in most cases.

_____ (1) I want the record of trial sent to only me; or

_____ (2) I want the record of trial forwarded to my defense counsel _____
_____ ; or

_____ (3) I want the record of trial sent to me AND I request that my defense counsel _____ be provided a copy at the same time I receive my copy in order to expedite preparation of post-trial matters.

_____ d. **(Strike through inapplicable portions.)** I (do) (do not) authorize service of the record of trial and the SJAR on me at the email address provided in paragraph 16.

_____ e. My defense counsel _____, will submit R.C.M. 1105 and 1106 matters in my case in accordance with my election in paragraph 3e above. I further understand that I must stay in contact with this counsel to assist him/her in collecting and preparing the matters for submission.

13. (Strike through inapplicable portions.) My counsel (has) (has not) advised of me of the criteria which require registration as a sex offender.

14. (Strike through inapplicable portions.) My counsel (has) (has not) advised me of the possible adverse consequences a conviction may have on my immigration status.

15. I understand that if my case is to be heard by the Army Court of Criminal Appeals, I have the right to be represented free of charge by Appellate Defense Counsel appointed by The Judge Advocate General (TJAG) of the Army. I may also waive this right after the Convening Authority takes action. I understand that I may contact my Appellate Defense Counsel by writing to Defense Appellate Division, U.S. Army Legal Services Agency (JALS-DA). Phone: 703-693-0736 or 703-693-0737. DSN: 223-0736/0737.

_____ I have been informed that I have the right to retain civilian counsel at my own expense to represent me in my appellate decisions. If I have already retained civilian counsel, his/her name and address is written below:

_____ If I later retain civilian counsel, I must provide the attorney's name and address to: Clerk of Court, The U.S. Army Court of Criminal Appeals, 9275 Gunston Road, Fort Belvoir, VA 22060. Phone: (703) 693-0736 or 0737. DSN: 223-0736. FAX: (703) 806-0124. DSN 223-0124.

16. Pending action on my case, I can be contacted or a message may be left for me at the following address:

NAME: _____

STREET: _____

CITY/ STATE / ZIP CODE: _____

AREA CODE / TELEPHONE NUMBER: _____

CIVILIAN / PERMANENT EMAIL ADDRESS: _____

PERSONAL CONTACT: _____

Date: _____

XXXX X. XXXX

XXX, US Army

Accused

I certify that I have advised the accused whose name appears above regarding his/her post trial and appellate rights as set forth above, that he/she has received a copy of this document, and that he/she has personally made all the elections herein.

Date: _____

XXXX X. XXXX

XXX, JA

Defense Counsel

TRIAL

Stipulation of Fact

UNITED STATES

V.

WILLIAM W. WILLIAMS
Specialist, U.S. Army
342-34-4770

* Fort Blank Missouri
*
*
* STIPULATION OF FACT
*
*
* 19 April 2017

It is hereby agreed by the trial counsel and the defense counsel, with the express agreement of the accused, that the following facts are true and admissible at the court-martial of SPC William W. Williams:

While working as an undercover narcotics agent on 15 January 2017, Sergeant Jan Tuborg, then assigned to the Joint Drug Suppression Team (DST), Fort Blank, Missouri met with the accused, Specialist William W. Williams, in the Day Room of B Company, 1st Battalion, 18th Infantry Regiment, Fort Blank, Missouri. Sergeant Tuborg asked Specialist Williams if he (Specialist Williams) had any marijuana to sell. Specialist Williams said he did and showed Sergeant Tuborg four (4) separate bags of marijuana. Sergeant Tuborg picked out one of the four bags, containing approximately 20 grams of marijuana, and paid SPC Williams \$50.00 in cash. As Sergeant Tuborg was leaving with the purchased bag of marijuana, Specialist Williams told Sergeant Tuborg that he should "check with me [Specialist Williams], if you [Sergeant Tuborg] ever need to buy any more marijuana."

At the time of the sale of marijuana by Specialist Williams to Sergeant Tuborg, Specialist Williams was fully aware that he was in fact selling marijuana, that marijuana is an illegal drug, and that the possession and sale of marijuana is wrongful. Subsequent laboratory tests have confirmed that the substance sold by Specialist Williams was in fact marijuana.

Specialist William W. Williams was married on 19 November 2014. His wife, Mrs. Rose Williams, is nineteen years of age and is expecting their first child in September 2016. Mrs. Williams is presently employed as a cashier at Wal-Mart in Blanktowne. Mrs. Williams will be required to give up her job at Wal-Mart shortly before she delivers. Mrs. Williams will be totally dependent upon Specialist Williams for her income before and after her delivery. Specialist Williams was, in part, motivated to sell marijuana because of his desire to assist his spouse and his mother financially. Specialist Williams' mother is an alcoholic and was recently divorced from Specialist Williams' father. Specialist Williams' father did not provide adequate financial support to Specialist Williams' mother during their divorce and separation. Specialist Williams' mother has many unpaid bills and owes money to numerous creditors.

SPC Williams' overall military duty performance has been above average. He has good military bearing and appearance. He performs assigned tasks in an effective and dependable manner without the need for close supervision. Specialist Williams wants to stay in the Army and believes he would be a useful, reliable soldier if given the opportunity to be rehabilitated.

The Government and the Defense, with the express consent of the accused, hereby incorporate by reference the following attachment:

1. The accused's Enlisted Records Brief.

CASEY T. JONES
CPT, JA
Trial Counsel

WILLIAM W. WILLIAMS
SPC, U.S. Army
Accused

PEYTON S. SMITH
CPT, JA
Defense Counsel

TRIAL

Offer to Plead Guilty Appendix I (Quantum)

UNITED STATES

V.
WILLIAM W. WILLIAMS
342-34-4770, Specialist (E-4)
U.S. Army, Fort Blank, Missouri

*
*
*
*
*
*

OFFER TO PLEAD GUILTY

1 April 2017

I, Specialist William W. Williams, the accused in a general court-martial now pending, having had an opportunity to examine the charges preferred against me, and all statements and documents attached thereto; and after consulting with my defense counsel, and being fully advised that I have a legal and moral right to plead not guilty to the Charge and Specification under which I am about to be tried, I offer:

a. To plead as follows: To the Specification of the Charge and the Charge: Guilty.

b. To waive and not raise a speedy trial motion under R.C.M. 707.

c. To be tried by military judge alone.

d. To enter into a written stipulation with the trial counsel of the facts and circumstances surrounding the offense and further agree that this stipulation may be used to inform the members of the court or the military judge, if tried by a judge alone, of matters pertinent to an appropriate finding and/or sentence.

e. To waive my right to a pretrial hearing pursuant to Article 32, UCMJ.

In exchange for the above agreements, the convening authority agrees to not approve any sentence in excess of the sentence attached hereto as Appendix I.

In offering the above agreement, I further state that:

I am satisfied with the defense counsel who has been detailed to defend me.

My defense counsel has advised me of the meaning and effect of my guilty plea and I understand the meaning and effect thereof. I understand that I may request a withdrawal of this plea at any time before sentence is announced and the military judge determines whether the request should be granted.

I understand this offer and agreement and the fact that I have agreed to enter into the stipulation of fact as set out above. If my plea is not accepted, this offer to stipulate is null and void.

I further understand that this agreement will be automatically canceled upon the following events:

1. Failure of agreement with the trial counsel on the contents of the stipulation of fact;
2. The withdrawal by either party from the agreement prior to trial;
3. The changing of my plea by anyone during the trial from guilty to not guilty; or,
4. The refusal of the military judge to accept my plea of guilty.

SMITH, PEYTON S.
CPT, US Army
Defense Counsel

WILLIAM W. WILLIAMS
SPC, US Army
Accused

JOHN T. BLUNT
Major General, USA
Commanding

TRIAL

Request for Trial Before Military Judge Alone

DD Form 1722

REQUEST FOR TRIAL BEFORE MILITARY JUDGE ALONE

(Article 16, UCMJ)

UNITED STATES

v.

SPC William W. Williams

1. ACCUSED

I have been informed that _____ is the military judge detailed to the court-martial to which the charges and specifications pending against me have been referred for trial. After consulting with my defense counsel, I hereby request that the court be composed of the military judge alone. I make this request with full knowledge of my right to be tried by a court-martial composed of (commissioned)¹ officers (and, if I so request, enlisted personnel).²

a. TYPED NAME (Last, First, Middle Initial)	b. RANK	c. SIGNATURE	d. DATE SIGNED
Williams, William W.	SPC		

2. DEFENSE COUNSEL

Prior to the signing of the foregoing request, I fully advised the above accused of his/her right to trial before a court-martial composed of (commissioned)¹ officers (and of his/her right to have such court consist of at least one-third enlisted members not of his/her unit, upon his/her request).²

a. TYPED NAME (Last, First, Middle Initial)	b. RANK	c. SIGNATURE	d. DATE SIGNED
Smith, Peyton S.	CPT		

3. TRIAL COUNSEL

Argument is (not) requested.

a. TYPED NAME (Last, First, Middle Initial)	b. RANK	c. SIGNATURE	d. DATE SIGNED
Jones, Casey T.	CPT		

4. MILITARY JUDGE

The foregoing request for trial before me alone is hereby: (X one)

☒

APPROVED

☐

DISAPPROVED³

a. TYPED NAME (Last, First, Middle Initial)	b. RANK	c. SIGNATURE	d. DATE SIGNED

¹ Delete when the accused is a warrant officer or enlisted member.

² Delete when the accused is a commissioned officer or warrant officer.

³ When request is disapproved, the basis for denial must be put on the record. (See MCM, 1984, RCM 903(c)).

POST-TRIAL
Report of Result of Trial
DD form 2707-1

DEPARTMENT OF DEFENSE REPORT OF RESULT OF TRIAL				1. DATE OF TRIAL (YYYYMMDD)	
TO: (Convening Authority)					
1. NOTIFICATION UNDER R.C.M. 1101 IS HEREBY GIVEN IN THE CASE OF THE UNITED STATES VERSUS:					
a. NAME (Last, First, Middle Initial)		b. BRANCH OF SERVICE	c. RANK/GRADE	d. DoD ID/SSN (Last 4)	
e. ORGANIZATION (Full address)		2.a. TYPE OF COURT-MARTIAL (X one) <input type="checkbox"/> GENERAL <input type="checkbox"/> SPECIAL <input type="checkbox"/> SUMMARY <input type="checkbox"/> JUDGE ALONE <input type="checkbox"/> JUDGE ALONE			
b. CONVENED BY: COURT MARTIAL ORDER NUMBER(S)		c. ISSUING COMMAND		d. DATE (YYYYMMDD)	
3. SUMMARY OF OFFENSES, PLEAS AND FINDINGS					
a. CHARGE/ SPECIFICATION NO(S).	b. UCMJ ARTICLE(S)	c. DIBRS CODE	d. BRIEF DESCRIPTION OF OFFENSE	e. PLEA	f. FINDING
4.a. DATE ADJUDGED (YYYYMMDD)			b. DATE OF ANY FORFEITURES OR REDUCTIONS (YYYYMMDD)		
5. SENTENCE					
6.a. CONTENTS OF PRE-TRIAL AGREEMENT CONCERNING SENTENCE TO CONFINEMENT (If any)					
b. DAYS OF PRE-TRIAL CREDIT		c. DAYS OF OTHER JUDGE ORDERED CREDIT		d. TOTAL PRESENTENCE CREDIT TOWARD POST-TRIAL CONFINEMENT	
7. DNA PROCESSING: IAW 10 U.S.C. §1566		IS		IS NOT REQUIRED.	
8. SEX OFFENDER REGISTRATION: IAW 42 U.S.C. § 14071		IS		IS NOT REQUIRED.	
9. COMPANION ACCUSED/CO-ACCUSED (Name(s) and Social Security Number(s) (If any))					
10. DISTRIBUTION (Copy provided to named Agencies/Unit(s))					
11. SIGNED BY (X one)		TRIAL COUNSEL		SUMMARY COURT-MARTIAL OFFICER	
a. NAME (Last, First, Middle Initial)		b. RANK/GRADE		c. BRANCH OF SERVICE	
d. SIGNATURE				e. DATE SIGNED (YYYYMMDD)	

INSTRUCTIONS FOR COMPLETING DD FORM 2707-1, "DEPARTMENT OF DEFENSE REPORT OF RESULT OF TRIAL"

Date of Trial: Enter date (and all other dates) as 4 digit year, 2 digit month and 2 digit day, no separators.

To: Address to the Convening Authority (CA). Include at least two elements of CA unit, geographical location and ZIP code.

1. United States versus:

- a. Name. Enter the accused name (Last, First, Middle Initial).
- b. Branch of Service (Army, Navy, Air Force, etc.).
- c. Rank/Grade (E-6, etc.).
- d. DoD ID number or Social Security Number (Last 4 only).
- e. Organization. Accused full unit address. Include at least two elements of the accused unit, geographical location and ZIP code.

2. Type of Court Martial. a. Enter an "X" in the appropriate box.

b. - d. Convened by: Convening Order number(s), issuing command, and date(s) of the Court Martial Order Number(s), or, if the trial is by SCM, note on form as appropriate and enter the date of detail of the SCM from the referral on Part V, DD Form 458.

3. Summary of Offenses, Pleas, and Findings.

- a. Charge Number(s) and Specification(s), if any.
- b. UCMJ Article(s). Article number list from the Uniform Code of Military Justice (example: ART 121).
- c. DIBRS Code. Offense severity scale, reference DoDI 1325.7 for code listing (example: ART 121-A1).
- d. Brief Description of Offense (example: Larceny).
- e. - f. Pleas/Findings. Respective pleas and findings or other disposition.

4.a. Date Adjudged. Date of court-martial.

b. Date of Forfeitures or Reductions. Any forfeiture of pay or allowances or reduction in grade that is included in a sentence of a CM takes effect on the earlier of: (1) the date that is 14 days after date on which the sentence is adjudged; or (2) the date on which the sentence is approved by the convening authority.

5. Sentence. Enter the sentence of the court-martial. If trial resulted in an acquittal, enter "N/A".

6. Admin/Judicial Credit/Pre-Trial Agreement.

- a. Enter the content of pre-trial agreement concerning sentence, if any. If none, enter "None".
- b. Enter the number of days the accused was in pre-trial (pre-sentence confinement). If none, enter "N/A".
- c. Enter the number of days of judge ordered administrative credit for illegal pre-trial (pre-sentence) confinement restriction found tantamount to confinement, if any. If none, enter "N/A".
- d. Enter the total number of days of pre-trial and judge ordered credit (pre-sentence) confinement credit towards post-trial confinement, if any. If none, enter "N/A".

7. DNA Processing. In accordance with 10 U.S.C. 1565, DNA samples are required on each person subject to UCMJ who is or has been convicted of a "Qualifying Military Offense" (QMO). A QMO is any offense under UCMJ punishable by a sentence to confinement for more than one year, regardless of the sentence imposed. The Service is authorized to collect DNA samples at any time after a general or special court-martial sentence is adjudged for one or more QMO(s). It is the Court-Martial Convening Authority (CMCA) action under Article 60 that determines whether the result of trial concludes with a QMO conviction.

NOTE: DNA sample does not apply to the finding of SCM or proceeding under Article 15, UCMJ.

8. Sex Offender Registration. In accordance with 42 U.S.C. 14071: a person convicted of any of the offenses punishable under the UCMJ (reference DoDI 1325.7 -E27 for listing). NOTE: A "Qualifying Military Offense" is a felony or sexual offense determined by the Secretary of Defense to be a QMO for the purpose of 10 U.S.C.

9. Companion Accused/Co-Accused. Enter the name(s) and Social Security Number(s) (last 4 digits only) of companion or co-accused, if any. If none, enter "N/A".

10. Distribution. Enter a list of copies furnished to named agencies or units (example: Finance, Company, etc.). NOTE: Make sufficient copies after the form is signed by the trial counsel or SCM Officer. Forward the original to the convening authority.

11. Signed By. Enter an "X" in the box to indicate whether Trial Counsel or Summary Court-Martial Officer.

a. - e. Enter the full name, rank/grade and branch of service of the trial counsel or the summary court-martial officer.

NOTE: You should ensure that a copy of the Department of Defense Result of Trial is expeditiously provided to the Finance and Accounting Office (FAO) in any case involving a reduction in rank or forfeiture of pay or fine.

POST-TRIAL
Report of Result of Trial
DD form 2707-1

SUMMARIZED RECORD OF TRIAL¹

(and accompanying papers)

of

(Name: Last, First, Middle Initial)

(Social Security Number)

(Rank)

(Unit/Command Name)

(Branch of Service)

(Station or Ship)

By

COURT-MARTIAL

Convened by

(Title of Convening Authority)

(Unit/Command of Convening Authority)

Tried at

on

(Place or Places of Trial)

(Date or Dates of Trial)

ACTION OF JUDGE ADVOCATE OR GENERAL COURT-MARTIAL CONVENING AUTHORITY(SPCM)/JAG(GCM) (RCM 1111 and 1112, MCM, 1984)

UNIT/COMMAND NAME		LOCATION OF JUDGE ADVOCATE OR GENERAL COURT-MARTIAL CONVENING AUTHORITY/JAG	DATE RECORD RECEIVED
ACTION		DATE	REMARKS
FINAL DISPOSITION: Findings and sentence, as approved by convening authority, correct in law and fact; to file			
OR Findings and sentence, as modified or corrected (see remarks), correct in law and fact; to file			
Acquittal or sentence set aside (see remarks); to file			
Copies of CMO disposed of in accordance with departmental regulations			
JUDGE ADVOCATE OR LAW SPECIALIST			
SIGNATURE		RANK	DATE SIGNED

¹ See inside back cover for instructions as to use, preparation and arrangement.

CHRONOLOGY SHEET ¹

In the case of _____
(Rank and Name of Accused: Last, First, Middle Initial)

Date of alleged commission of earliest offense tried: _____ , _____
(Enter Date)

Date record forwarded to The Judge Advocate General: ² _____ , _____
(Enter Date)

(Signature and Rank of Staff Judge Advocate or Legal Officer)

<p>¹ In a case forwarded to The Judge Advocate General, the staff judge advocate or legal officer is responsible for completion of the Chronology Sheet. Trial counsel should report any authorized deductions and reasons for unusual delay in the trial of the case.</p> <p>² Or officer conducting review under Article 64(a) (MCM, 1984, RCM 1112).</p> <p>³ In computing days between two dates, disregard first day and count last day. The actual number of days in each month will be counted.</p> <p>⁴ Item 1 is not applicable when accused is not restrained, (see MCM, 1984, RCM 304) or when he/she is in confinement under a sentence or court-martial at time charges are preferred. Item 2 will be the zero date if Item 1 is not applicable.</p> <p>⁵ May not be applicable to trial by special court-martial.</p> <p>⁶ Only this item may be deducted.</p> <p>⁷ If no further action is required, items 1 to 8 will be completed, and chronology signed, by such convening authority or his/her representative.</p> <p>⁸ When further action is required under Article 64 or service directives.</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">ACTION</th> <th style="text-align: center;">DATE</th> <th style="text-align: center;">CUMULATIVE ELAPSED DAYS ³</th> </tr> </thead> <tbody> <tr> <td>1. Accused placed under restraint by military authority ⁴</td> <td></td> <td></td> </tr> <tr> <td>2. Charges preferred <i>(date of affidavit)</i></td> <td></td> <td></td> </tr> <tr> <td>3. Article 32 investigation <i>(date of report)</i> ⁵</td> <td></td> <td></td> </tr> <tr> <td>4. Charges received by convening authority</td> <td></td> <td></td> </tr> <tr> <td>5. Charges referred for trial</td> <td></td> <td></td> </tr> <tr> <td>6. Sentence or acquittal</td> <td></td> <td></td> </tr> <tr> <td>Less days:</td> <td></td> <td></td> </tr> <tr> <td>Accused sick, in hospital, or AWOL</td> <td></td> <td></td> </tr> <tr> <td>Delay at request of defense</td> <td></td> <td></td> </tr> <tr> <td>Total authorized deduction ⁶</td> <td style="text-align: center;">0</td> <td></td> </tr> <tr> <td>7. Net elapsed days to sentence or acquittal</td> <td></td> <td></td> </tr> <tr> <td>8. Record received by convening authority</td> <td></td> <td></td> </tr> <tr> <td>Action ⁷</td> <td></td> <td></td> </tr> <tr> <td>9. Record received by officer conducting review under Article 64(a)</td> <td></td> <td></td> </tr> <tr> <td>Action ⁸</td> <td></td> <td></td> </tr> </tbody> </table>	ACTION	DATE	CUMULATIVE ELAPSED DAYS ³	1. Accused placed under restraint by military authority ⁴			2. Charges preferred <i>(date of affidavit)</i>			3. Article 32 investigation <i>(date of report)</i> ⁵			4. Charges received by convening authority			5. Charges referred for trial			6. Sentence or acquittal			Less days:			Accused sick, in hospital, or AWOL			Delay at request of defense			Total authorized deduction ⁶	0		7. Net elapsed days to sentence or acquittal			8. Record received by convening authority			Action ⁷			9. Record received by officer conducting review under Article 64(a)			Action ⁸			
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REMARKS

**SUMMARIZED
RECORD OF TRIAL**

of

(Name: Last, First, Middle Initial)

(Social Security Number)

(Rank)

(Unit/Command Name)

(Branch of Service)

(Station or Ship)

By

COURT-MARTIAL

Convened by

(Title of Convening Authority)

(Unit/Command of Convening Authority)

Tried at

on

(Place or Places of Trial)

(Date or Dates of Trial)

COPIES OF RECORD ¹

_____ copy of record furnished the accused or defense counsel as per attached certificate or receipt.

_____ copy(ies) of record forwarded herewith.

RECEIPT FOR COPY OF RECORD ²

I hereby acknowledge receipt of a copy of the above-described record of trial, delivered to me at

_____ this _____ day of _____, _____

(Signature of accused)

I hereby acknowledge receipt of a copy of the above-described record of trial, delivered to me at

_____ this _____ day of _____, _____

(Signature of accused)

¹ For instructions as to preparation of copies of record, see back cover or appendices 13 and 14, MCM, 1984.

² If copy of record prepared for accused contains matters requiring security protection, see RCM 1104(b)(1)(D), MCM, 1984.

CERTIFICATE IN LIEU OF RECEIPT

(Place)

(Date)

I certify that on this date a copy of the above-described record of trial was transmitted (delivered) to the accused,

(Rank and name of accused: last, first, middle initial)

at

(Place of delivery)

by

(Means of effecting delivery, i.e., mail, messenger, etc.)

and

that the receipt of the accused had not been received on the date this record was forwarded to the convening authority. The receipt of the accused will be forwarded as soon as it is received.

(Signature of trial counsel)

OR

(Place)

(Date)

I certify that on this date a copy of the above-described record of trial was transmitted (delivered) to the accused's defense counsel, _____

(Rank and name: last, first, middle initial)

at

(Place of delivery or address sent to)

, by

(Means of effecting delivery, i.e., mail, messenger, etc.)

because (it was impracticable to serve the record of trial on the accused because he/she was transferred to _____) (the accused requested such at trial) (the accused so requested in writing, which is attached) (the accused is absent without leave) (_____).
(Place) (Other reason)

(Signature of trial counsel)

OR

The accused was not served personally because (he/she is absent without leave) (_____)

(Other reason)

Accused has no defense counsel to receive the record because (defense counsel has been excused under

RCM 505(d)(2)(B)) (_____)

(Other reason)

(Date)

(Signature of trial counsel)

PROCEEDINGS OF A _____ COURT-MARTIAL

SESSION WITH COURT-MEMBERS

The court was called to order (at) (on board) _____ at _____ hours,
_____, _____ ¹ (pursuant to the following orders) (pursuant to the orders
previously inserted in the record). ²

¹ The time and date of the beginning and ending of each session of the court should be noted.

² Here insert a copy of the convening orders and copies of any amending orders. Any written orders detailing the military judge or counsel will be attached. Any request of an enlisted accused for enlisted court members will be inserted immediately following the convening orders, together with any declaration of the nonavailability of such enlisted persons. Any written request for trial by the military judge alone (MCM, 1984, RCM 903(b)) or statement that qualified defense counsel (Article 27(c)) or military judge (RCM 201(f)(2)) could not be obtained will also be inserted at this point. If the above documents were previously inserted in the record of an Article 39(a) session of the case, they need not be reinserted at this point.

PERSONS PRESENT ¹

PERSONS ABSENT ²

The accused and the following (regularly detailed defense counsel) (and assistant defense counsel) (individual counsel) were present.

The following detailed (reporter) (and) (interpreter) (was/were) (had been previously) sworn. ³

The following legal specialist was present to record the proceedings.

The trial counsel stated that the status as to prior participation and legal qualifications of all members of the prosecution was the same as was announced at the prior session of this trial held on _____.

The defense counsel stated that the status as to prior participation and legal qualifications of all members of the defense was the same as was announced at the prior session of this trial held on _____.

The trial counsel announced the legal qualifications and status as to oaths of all members of the prosecution (and that he/she) (and _____) had been detailed by _____.

The trial counsel further stated that no member of the prosecution had acted as investigating officer, military judge, court member, or as a member of the defense in this case, or as counsel for the accused at a pretrial investigation or other proceeding involving the same general matter except as indicated below. ⁴

¹ List military judge, counsel, and members by rank and name.

² Reasons for absence will be shown (RCM 805(b)).

³ Applicable only when a reporter or interpreter is used.

⁴ If a member of the prosecution is disqualified because of prior participation, the disqualifying fact will be shown, together with the action taken under RCM 505(d)(1) and 805(c).

The defense counsel announced the legal qualifications and status as to oaths of all members of the defense (and that he/she) (and _____) had been detailed by (_____).

The (military judge) (president) ascertained that the accused had been informed of his/her right to be defended by legally qualified counsel, certified by The Judge Advocate General, at no expense to the accused. The (military judge) (president) asked the accused if he/she understood this right. The accused responded that he/she did. ¹

The (military judge) (president) ascertained that the accused had been informed of his/her rights concerning counsel as set forth in Article 38(b). The (military judge) (president) asked if the accused understood that he/she had the right to be represented by civilian counsel if the accused provided such counsel; that the accused had the right to be represented by military counsel of his/her own selection if reasonably available, and if he/she did have civilian counsel, the detailed counsel or military counsel of his/her own selection, if available, would act as associate counsel if the accused so desired. The accused responded that he/she understood his/her rights with respect to counsel. ²

The defense counsel stated that no member of the defense had acted as the accuser, a member of the prosecution, investigating officer, military judge, or a member of the court in this case except as indicated below. ³

¹ The record should reflect that the accused was afforded the opportunity to be defended by qualified counsel, declined qualified counsel, or that qualified counsel could not be obtained. Delete if accused represented by detailed qualified counsel.

² If the accused is represented by civilian counsel or military counsel of his/her choice, that part of the inquiry need not be conducted and the inapplicable words should be deleted.

³ If a member of the defense has acted as a member of the prosecution, the record will show that he/she was excused and withdrew from the court. If a member of the defense acted in another capacity, the record will show that the (military judge) (president) explained to the accused that this counsel could represent him/her only at his/her express request, and that the accused so requested, or that suitable action was taken, either by excusing the particular counsel or by adjournment pending the procurement of a counsel satisfactory to the accused (RCM 502(d)(4), 505(d)).

The following detailed members of the defense were excused at the express request of the accused.

The military judge ascertained that the accused had been advised of his/her right to request trial by the military judge alone and that the accused (did not desire) (desired) to submit such a request. ¹ The military judge, after ascertaining that the accused's request was made voluntarily and understandingly, (approved) ² (disapproved) ³ the accused's request for trial by the military judge alone (and directed that the written request be appended to the record as Appellate Exhibit _____).

The trial counsel announced that the accused (had) (had not) made a request in writing that the membership of the court include enlisted persons. The defense counsel announced that the accused had been advised of his/her rights in this respect prior to trial and had stated that he/she (did) (did not) desire enlisted persons as court members. ⁴

¹ Omit if trial is by special court-martial without a military judge.

² If the military judge approved the accused's request for trial before the military judge alone, the record should reflect that the military judge immediately announced that the court was assembled. The proceedings following assembly should then be summarized, using the applicable pages of this summarized record.

³ If the military judge disapproves the accused's request for trial by the military judge alone, the fact of such disapproval and the reason therefor must be recorded.

⁴ The second statement concerning defense counsel's announcement should be omitted if the military judge had previously ascertained at an Article 39(a) session that the accused had been advised of his/her right to the presence of enlisted members, and if the military judge did not again inquire into this matter at the session with members present.

The accused was arraigned on the following charges and specifications: ¹

¹ Insert, following this page, the charge sheet. Use the accused's copy of the charge sheet to prepare his/her copy of the record. If the arraignment took place at the Article 39(a) session and the accused pleaded there, the record need only reflect - "The military judge announced that the accused had been arraigned at a previous session of the trial held on _____. The accused pleads as follows: _____." If the accused pleaded guilty at the Article 39(a) session and the findings of guilty were entered, the record should reflect the military judge reported the findings to the members.

(Rank and Name)

was in command on the date of

the reference for trial.

The defense had no motions to present except as indicated below. ¹

The accused pleaded as follows:

¹ The substance of any motions made by the defense before pleas are entered will be recorded here, together with the ruling of the court thereon. The substance of any motions made by the defense after pleas are entered will be recorded at the proper chronological point at the record, together with the ruling of the court thereon.

PLEA OF GUILTY ¹

The (military judge) (president) inquired into the providence of the accused's pleas of guilty. The (military judge) (president) informed the accused of: the right to counsel if the accused had no counsel; of the right to plead not guilty and to be tried by the court-martial and that at such court-martial the accused would have the right to confront and cross-examine witnesses against the accused and the right against self-incrimination; that by pleading guilty, the accused waived the rights to trial of the offense(s), to confront and cross-examine witnesses, and against self-incrimination; and that the military judge would question the accused, under oath, about the offense(s) to which the accused pleaded guilty and that if the accused answered those questions under oath, on the record, and in the presence of counsel, the accused's answers could be used against the accused in a prosecution for perjury or false statement. The accused states that he/she understood these rights.

The (military judge) (president) questioned the accused and determined that the plea(s) of guilty (was) (were) voluntary and not the result of force or threats or of promises (other than those in the pretrial agreement). The (military judge) (president) informed the accused of the elements of the offense(s) and the maximum punishment which could be imposed for (this) (these) offense(s). The accused stated that he/she understood. The (military judge) (president) asked the accused about the offense(s) to which the accused pleaded guilty. Under oath, the accused stated as follows: ²

¹ Omit if the accused does not plead guilty.

² Here summarize the accused's description of the offense(s).

The (military judge) (president) ascertained that there was (not) a pretrial agreement in the case.

(The pretrial agreement was marked as Appellate Exhibit(s) _____. (The (military judge) (president) did not examine Appellate Exhibit _____ at this time.) The (military judge) (president) inquired and ensured that the accused understood the agreement and that the parties agreed to its terms.) 1

The (military judge) (president) found the accused's pleas of guilty provident and accepted them. 2

1 If there was a question or dispute as to the meaning of any term in the agreement, the resolution of that matter should be described.

2 When authorized by regulations of the Secretary concerned, findings of any charge and specification (except to lesser included offense(s)) may be entered immediately without vote after a plea of guilty has been accepted and the record should so reflect if this has been done. The findings are entered by the announcement of the military judge or president that the accused has been found guilty in accordance with his/her plea (RCM 910(g)). If the plea of guilty is not accepted, the record will so indicate with the reasons therefor. If the accused decides to withdraw his/her plea of guilty, this will be indicated.

The (military judge) (members of the court) and the personnel of the prosecution and defense who were not previously sworn in accordance with Article 42(a) were sworn.

Each accused was extended the right to challenge any member of the court (or the military judge) for cause and to exercise one peremptory challenge against any member.

The following members of the court (and the military judge) were excused and withdrew for the reasons stated opposite their respective names:

_____ (Excused without challenge as being the accuser.)
(Rank and name of member)

_____ (Excused upon peremptory challenge by the accused.)

_____ (Excused upon challenge for cause by the accused.)

There was no contest with respect to the challenging of any of the members (or the military judge) for cause except as indicated below: ¹

¹ Insert a summary of the proceedings with respect to each contest. For example, if a member of the military judge was challenged for cause, but was not excused from the court, the record will show the grounds for the challenge, a summary of evidence presented, if any, and the action of the military judge or court.

PRESENTATION OF PROSECUTION CASE

The trial counsel made (an) (no) opening statement.

The following witnesses for the prosecution were sworn and testified in substance as follows: ¹

¹ Unless otherwise prescribed by departmental regulations, the convening authority may direct that testimony be recorded verbatim if a reporter is present. If a witness testifies through an interpreter, that fact will be shown. Additional testimony will be shown on blank pages immediately following this page.

PRESENTATION OF DEFENSE CASE

The defense counsel made (an) (no) opening statement.

The following witnesses for the defense were sworn and testified in substance as follows:

The prosecution made (an) (no) argument on findings.

The defense made (an) (no) argument on findings.

The prosecution made (a) (no) closing argument.

The (military judge) (president) instructed the court in accordance with RCM 920 including the elements of each offense, the presumption of innocence, reasonable doubt, and burden of proof as required by Article 51(c) (and affirmative defenses). ¹

Neither prosecution nor defense having anything further to offer, the court was closed at _____ hours, _____ for deliberation. Thereafter the court opened ² at _____ hours with all parties present. The president announced that, the accused was found:

The military judge announced the following general (and specific) findings (and directed that _____ be appended to the record as Appellate Exhibit _____) (filed an opinion or memorandum of decision, Appellate Exhibit _____, a copy of which was furnished to counsel for both sides) (and stated that the special findings (and opinion or memorandum of decision) would be furnished to the reporter prior to authentication for insertion in the record as Appellate Exhibit _____):

¹ In a trial by the military judge alone, there would be no instructions given. Any request for special finding should be summarized, and if submitted in writing, the request should be attached as an appellate exhibit.

² "Parties to the trial" must be accounted for when court opens after being in closed session, but the accounting need not be shown in a summarized record. After a recess or adjournment, record should show, "All parties to the trial who were present when the court (adjourned) (recessed) were again present (except _____)." The reason for the subsequent absence of any member who was present at assembly must be shown.

The trial counsel read the data as to pay, service, and restraint of the accused as shown on the charge sheet. The defense counsel stated that (the data were correct) ().

(The trial counsel had no evidence of previous convictions to submit.) (The attached evidence of previous convictions was offered) (and admitted) (in evidence as Prosecution Exhibit _____). The defense counsel stated that (the accused had no objection to the evidence of previous convictions.) ()

(The trial counsel offered the attached service records (and they were admitted) in evidence as Prosecution Exhibit(s) _____. The defense counsel stated that (the accused had no objection.) ()).

The trial counsel presented the following additional (documents) (real evidence) (and) (testimony) in aggravation:

After the accused was advised by the (military judge) (president) of his/her right to present evidence in extenuation or mitigation, including the right to remain silent or to make a sworn or unsworn statement, (the defense counsel stated that he/she had nothing further to offer). (The defense presented the following matters):

The prosecution made (an) (no) argument on sentence.

The defense made (an) (no) argument on sentence.

The (military judge) (president) instructed the court that the maximum permissible punishment which could be adjudged for the offense(s) of which the accused had been found guilty was:

and further instructed with respect to the specific facts of this case in accordance with RCM 1005(e). ¹

There were no objections to the instructions given nor requests for additional instructions, except as indicated below.

¹ If the military judge announces what he/she considers to be the maximum permissible punishment in a case tried by him/her alone, the record should reflect the stated maximum.

Neither the prosecution nor the defense having anything further to offer, the court was closed at _____ hours, _____, _____ for deliberation on the sentence. Thereafter, the court opened at _____ hours, _____, _____ with all parties present.

The president announced that, the accused was sentenced to:

The court opened at _____ hours, _____, _____ with all parties present.

The military judge informed the accused that the court sentenced him/her to: ¹

¹ Use if trial by military judge alone.

The military judge examined Appellate Exhibit _____. The military judge stated that, based on the sentence adjudged, the convening authority (was obligated, under the agreement to approve no sentence in excess of _____) (could approve the sentence adjudged if the convening authority so elected) (_____).
(Other)

The military judge informed the accused of: the right to submit matters to the convening authority to consider before taking action; (the right to have the case examined in the office of the Judge Advocate General and the effect of waiver or withdrawal of such right); the right to apply for relief from the Judge Advocate General; and the right to the advice and assistance of counsel in the exercise of the foregoing rights or any decision to waive them.

The court adjourned at _____ hours, _____, _____.

¹ Use only in cases with a pretrial agreement.

AUTHENTICATION OF RECORD OF TRIAL

in the case of

(Military Judge) ¹

_____ / _____

I have examined the record of trial in the foregoing case.

(Defense Counsel)

_____ / _____

¹ Delete and insert "President" for special court-martial without a military judge.

INSTRUCTIONS FOR PREPARING AND ARRANGING DD FORM 491, RECORD OF TRIAL

USE OF FORM - Use this form and MCM, 1984, Appendix 13, or applicable departmental instructions as a guide to the preparation of the record of trial in general and special court-martial cases in which a summarized record is authorized. When an Article 39(a) session is held in a special court-martial with a military judge, DD Form 491-1 should be used and combined with DD Form 491 to complete the record of trial. Those procedures covered at the Article 39(a) session and summarized in DD Form 491-1 will not be resummarized in DD Form 491.

DELETIONS - In preparing the record, inapplicable words of the printed text must be deleted. Deletions may be made by striking over the inapplicable word or phrase, or by ruling it out in ink. When several consecutive lines are to be deleted, a single line, ruled in ink, from upper left to lower right will suffice. No deletion or remark is necessary when there are no exceptions after an item ending "except as indicated below."

RECORDING TESTIMONY - A summarized record need contain only a summarized report of the testimony.

COPIES - See MCM, 1984, RCM 1103(g) for summarized record. The convening authority may direct the preparation of additional copies.

ARRANGEMENT - When forwarded to a judge advocate for review pursuant to Article 64(a), the record will be arranged and bound with allied papers in the sequence indicated below. Trial counsel is responsible for arranging the record as indicated, except that items 5, 7, and 13e will be inserted by the convening or reviewing authority, as appropriate, and items 8 and 12 will be inserted by either trial counsel or the convening or reviewing authority, whichever has custody of them.

1. Front cover and inside front cover (chronology sheet) of DD Form 491.
2. Briefs of counsel submitted after trial, if any (Article 38(c)).
3. DD Form 494, "Court-Martial Data Sheet."
4. Court-martial orders promulgating the result of trial as to each accused, in 10 copies when the record is of a GCM and in 4 copies if it is of a SPCM.

5. When required, signed review of reviewing judge advocate, in duplicate, together with all clemency papers, including clemency recommendations by court members.

6. Matters submitted by the accused pursuant to Article 60 (MCM, 1984, RCM 1105).

7. DD Form 458, "Charge Sheet" (unless included at the appropriate place in a summarized record).

8. Congressional inquiries and replies, if any.

9. DD Form 457, "Investigating Officer's Report," pursuant to Article 32, if such investigation was conducted, followed by any other papers which accompanied the charges when referred for trial, unless included in the record of trial proper.

10. Advice of staff judge advocate or legal officer, when prepared pursuant to Article 34 or otherwise.

11. Requests by counsel and action of the convening authority taken thereon (e.g., requests concerning delay, witnesses and depositions).

12. Records of former trials.

13. Record of trial in the following order:

- a. Errata sheet, if any.
- b. Index sheet with reverse side containing receipt of accused or defense counsel for copy of record or certificate in lieu of receipt.
- c. Record of proceedings in court.
 - (1) Record of Article 39(a) session at appropriate place in proceedings.
- d. Authentication sheet, followed by Certificate of Correction, if any.
- e. Action of convening authority and, if appropriate, action of officer exercising general court-martial jurisdiction.
- f. Exhibits admitted in evidence.
- g. Exhibits not received in evidence. The page of the record of trial where each exhibit was offered and rejected will be noted on the front of each exhibit.
- h. Appellate exhibits, such as proposed instructions, written offers of proof or preliminary evidence (real or documentary), and briefs of counsel submitted at trial.

POST-TRIAL
Record of Trial
DD form 490

_____ ¹

RECORD OF TRIAL ²

(and accompanying papers)

of

(Name: Last, First, Middle Initial)

(Social Security Number)

(Rank)

(Unit/Command Name)

(Branch of Service)

(Station or Ship)

By

COURT-MARTIAL

Convened by

(Title of Convening Authority)

(Unit/Command of Convening Authority)

Tried at

(Place or Places of Trial)

on

(Date or Dates of Trial)

¹ Insert "verbatim" or "summarized" as appropriate. (This form will be used by the Army and Navy for verbatim records of trial only.)

² See inside back cover for instructions as to preparation and arrangement.

CHRONOLOGY SHEET ¹

In the case of _____
(Rank and Name of Accused)

Date of alleged commission of earliest offense tried: _____ , _____
(Enter Date)

Date record forwarded to The Judge Advocate General: ² _____ , _____
(Enter Date)

(Signature and Rank of Staff Judge Advocate or Legal Officer)

¹ In a case forwarded to The Judge Advocate General, the staff judge advocate or legal officer is responsible for completion of the Chronology Sheet. Trial counsel should report any authorized deductions and reasons for unusual delay in the trial of the case. ² Or officer conducting review under Article 64(a) (MCM, 1984, RCM 1112). ³ In computing days between two dates, disregard first day and count last day. The actual number of days in each month will be counted. ⁴ Item 1 is not applicable when accused is not restrained, (see MCM, 1984, RCM 304) or when he/she is in confinement under a sentence or court-martial at time charges are preferred. Item 2 will be the zero date if Item 1 is not applicable. ⁵ May not be applicable to trial by special court-martial. ⁶ Only this item may be deducted. ⁷ If no further action is required, items 1 to 8 will be completed and chronology signed by such convening authority or his/her representative. ⁸ When further action is required under Article 64 or service directives.	ACTION	DATE _____	CUMULATIVE ELAPSED DAYS ³
	1. Accused placed under restraint by military authority ⁴		
	2. Charges preferred <i>(date of affidavit)</i>		
	3. Article 32 investigation <i>(date of report)</i> ⁵		
	4. Charges received by convening authority		
	5. Charges referred for trial		
	6. Sentence or acquittal		
	Less days:		
	Accused sick, in hospital, or AWOL		
	Delay at request of defense		
	Total authorized deduction ⁶	0	
	7. Net elapsed days to sentence or acquittal		
	8. Record received by convening authority		
	Action ⁷		
	9. Record received by officer conducting review under Article 64(a)		
	Action ⁸		

REMARKS

RECORD OF TRIAL

of

(Name: Last, First, Middle Initial)

(Social Security Number)

(Rank)

(Unit/Command Name)

(Branch of Service)

(Station or Ship)

By

COURT-MARTIAL

Convened by

(Title of Convening Authority)

(Unit/Command of Convening Authority)

Tried at

on

(Place or Places of Trial)

(Date or Dates of Trial)

INDEX	RECORD
Article 39(a) Sessions:	
On	R-
On	R-
On	R-
On	R-
Introduction of counsel	R-
Challenges	R-
Arraignment	R-
Motions	R-
Pleas	R-
Prosecution evidence	R-
Defense evidence	R-
Instructions on findings	R-
Findings	R-
Prosecution evidence	R-
Defense evidence	R-
Sentence	R-
Appellate rights advisement	R-
Proceedings in revision	R-

TESTIMONY

NAME OF WITNESS <i>(Last, First, Middle Initial)</i>	DIRECT AND INDIRECT	CROSS AND RECROSS	COURT
PROSECUTION			
DEFENSE			
COURT			

EXHIBITS ADMITTED IN EVIDENCE

NUMBER OR LETTER	DESCRIPTION	PAGE WHERE -	
		OFFERED	ADMITTED

COPIES OF RECORD ¹

_____ copy of record furnished the accused or defense counsel as per attached certificate or receipt.

_____ copy(ies) of record forwarded herewith.

RECEIPT FOR COPY OF RECORD ²

I hereby acknowledge receipt of a copy of the record of trial in the case of United States v. _____,

delivered to me at _____ this _____ of _____,

(Signature of accused)

I hereby acknowledge receipt of a copy of the record of trial in the case of United States v. _____,

delivered to me at _____ this _____ of _____,

(Signature of accused)

¹ For instructions as to preparation of copies of record, see back cover or appendices 13 and 14, MCM, 1984.

² If copy of record prepared for accused contains matters requiring security protection, see RCM 1104(b)(1)(D), MCM, 1984.

CERTIFICATE IN LIEU OF RECEIPT

(Place)

(Date)

I certify that on this date a copy of the record of trial in the case of United States v. _____

was transmitted (delivered) to the accused, _____
(Rank and Name of accused)

at _____, by _____
(Place of delivery, or address sent to) (Means of effecting delivery, i.e., mail, messenger, etc.)

and that the receipt of the accused had not been received on the date this record was forwarded to the convening authority. The receipt of the accused will be forwarded as soon as it is received.

(Signature of trial counsel)

OR

(Place)

(Date)

I certify that on this date a copy of the record of trial in the case of United States v. _____

was transmitted (delivered) to the accused's defense counsel, _____
(Rank and Name)

at _____, by _____
(Place of delivery, or address sent to) (Means of effecting delivery, i.e., mail, messenger, etc.)

because (it was impracticable to serve the record of trial on the accused because he/she was transferred to

_____) (the accused requested such at trial) (the accused so
(Place)
requested in writing, which is attached) (the accused is absent without leave) (_____)
(Other reason)

(Signature of trial counsel)

OR

The accused was not served personally because (he/she is absent without leave) (_____)
(Other reason)

Accused has no defense counsel to receive the record because (defense counsel has been excused under
RCM 505(d)(2)(B)) (_____)
(Other reason)

(Date)

(Signature of trial counsel)

PROCEEDINGS OF A _____ COURT-MARTIAL

The military judge called the Article 39(a) session to order.

The court met (at) (on board) ¹

at _____ hours, _____, _____, pursuant to the following orders. ²

¹ Delete inapplicable language.

² Insert a copy of the convening orders and copies of any amending orders. Any request of an enlisted accused for enlisted court members will be inserted immediately following the convening orders, together with any declaration of the non-availability of such enlisted persons. Any written request for trial by the military judge alone (RCM 903(b)) or, in a special court-martial, any statement that qualified defense counsel (Article 27(c)) or military judge (RCM 201(f)(2)) could not be obtained, will also be inserted at this point.

ACCUSER			
a. NAME <i>(Last, First, Middle Initial)</i>	b. RANK	c. UNIT/COMMAND NAME	d. SIGNATURE /S/
AFFIDAVIT ¹ Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above-named accuser this _____ day of _____, _____, and signed the foregoing charges and specifications and attested under oath that he/she is a person subject to the Uniform Code of Military Justice, that he/she either has personal knowledge of or has investigated the matters set forth therein, and that the same are true in fact, to the best of his/her knowledge and belief.			
OFFICER ADMINISTERING OATH			
a. TYPED NAME <i>(Last, First, Middle Initial)</i>	b. RANK ²	c. SIGNATURE /S/	
d. UNIT/COMMAND NAME		e. OFFICIAL TITLE	
REFERRAL <div style="display: flex; justify-content: space-between; margin-bottom: 10px;"> _____ <i>(Designation of unit/command of convening authority)</i> _____ <i>(Place)</i> _____ <i>(Date)</i> </div> Referred for trial to the _____ court-martial convened by _____ _____ _____, _____, _____, subject to the following instructions: _____ _____ <div style="text-align: center; margin-top: 20px;"> By _____ of _____ <i>(Command or order)</i> </div>			
CONVENING AUTHORITY OR PERSON SIGNING THEREFOR			
a. TYPED NAME <i>(Last, First, Middle Initial)</i>	b. RANK	c. SIGNATURE /S/	
d. UNIT/COMMAND NAME		e. OFFICIAL TITLE	
¹ When a verbatim record is prepared, this page will follow the charges and specifications, which are copied verbatim into the record at the point indicated in the sidenote. "Arraignment," Appendix 14, MCM, 1984. In the alternative, the original charge sheet (DD Form 458) may be inserted. The entries on this page will be copied from the charge sheet. No signatures will be made on the page, but the names of the persons signing the charge sheet will be entered in the signature blocks. ² Person administering oath must be a commissioned officer. (MCM, 1984, RCM 307(a))			

The following named accused (was) (were) present: ¹

¹ This notation should be made by the reporter, unless trial counsel announces that each named accused is present in court; in the latter event, this page need not be used.

After the reporter is sworn or trial counsel announces that the reporter had previously been sworn, the record will reflect such fact, as follows:

"The detailed reporter, _____, (was sworn) (had previously been sworn)."

When a verbatim record is prepared, the reporter records the proceedings verbatim, subject to the instructions set forth in MCM, 1984, Appendix 14. Those appendices should be followed as to notations to be made in the record and facts to be recorded by the reporter, as well as matters which need not be recorded verbatim (such as the administration of oaths and warning to a witness upon his/her being excused from the stand). No separate listing of the persons present and absent need be made as shown in the appendices, however, since trial counsel's announcement of such matters will be recorded verbatim.

When a summarized record is authorized under MCM, 1984, RCM 1103(b) and (c), the form and content of the record will be as indicated in MCM, 1984, Appendix 13, or departmental instructions. Air Force see AFR 111-1; Navy and Army use DD Form 491.

AUTHENTICATION OF RECORD OF TRIAL

in the case of

(Military Judge) ¹

_____, _____

I have examined the record of trial in the foregoing case.

(Defense Counsel)

_____, _____

¹ Delete and insert "President" for special court-martial without a military judge.

INSTRUCTIONS FOR PREPARING AND ARRANGING RECORD OF TRIAL

USE OF FORM - Use this form and MCM, 1984, Appendix 14, will be used by the trial counsel and the reporter as a guide to the preparation of the record of trial in general and special court-martial cases in which a verbatim record is prepared. Air Force uses this form and departmental instructions as a guide to the preparation of the record of trial in general and special court-martial cases in which a summarized record is authorized.

Army and Navy use DD Form 491 for records of trial in general and special court-martial cases in which a summarized record is authorized. Inapplicable words of the printed text will be deleted.

COPIES - See MCM, 1984, RCM 1103(g). The convening authority may direct the preparation of additional copies.

ARRANGEMENT - When forwarded to the appropriate Judge Advocate General or for judge advocate review pursuant to Article 64(a), the record will be arranged and bound with allied papers in the sequence indicated below. Trial counsel is responsible for arranging the record as indicated, except that items 6, 7, and 15e will be inserted by the convening or reviewing authority, as appropriate, and items 10 and 14 will be inserted by either trial counsel or the convening or reviewing authority, whichever has custody of them.

1. Front cover and inside front cover (chronology sheet) of DD Form 490.

2. Judge advocate's review pursuant to Article 64(a), if any.

3. Request of accused for appellate defense counsel, or waiver/withdrawal of appellate rights, if applicable.

4. Briefs of counsel submitted after trial, if any (Article 38(c)).

5. DD Form 494, "Court-Martial Data Sheet."

6. Court-martial orders promulgating the result of trial as to each accused, in 10 copies when the record is verbatim and in 4 copies when it is summarized.

7. When required, signed recommendation of staff judge advocate or legal officer, in duplicate, together with all clemency papers, including clemency recommendations by court members.

8. Matters submitted by the accused pursuant to Article 60 (MCM, 1984, RCM 1105).

9. DD Form 458, "Charge Sheet" (unless included at the point of arraignment in the record).

10. Congressional inquiries and replies, if any.

11. DD Form 457, "Investigating Officer's Report," pursuant to Article 32, if such investigation was conducted, followed by any other papers which accompanied the charges when referred for trial, unless included in the record of trial proper.

12. Advice of staff judge advocate or legal officer, when prepared pursuant to Article 34 or otherwise.

13. Requests by counsel and action of the convening authority taken thereon (e.g., requests concerning delay, witnesses and depositions).

14. Records of former trials.

15. Record of trial in the following order:

a. Errata sheet, if any.

b. Index sheet with reverse side containing receipt of accused or defense counsel for copy of record or certificate in lieu of receipt.

c. Record of proceedings in court, including Article 39(a) sessions, if any.

d. Authentication sheet, followed by certificate of correction, if any.

e. Action of convening authority and, if appropriate, action of officer exercising general court-martial jurisdiction.

f. Exhibits admitted in evidence.

g. Exhibits not received in evidence. The page of the record of trial where each exhibit was offered and rejected will be noted on the front of each exhibit.

h. Appellate exhibits, such as proposed instructions, written offers of proof or preliminary evidence (real or documentary), and briefs of counsel submitted at trial.

POST-TRIAL

Addendum to Staff Judge Advocate's Recommendation (SJAR)



DEPARTMENT OF THE ARMY
HEADQUARTERS, 54th INFANTRY DIVISION
AND FORT ATTERBURY
FORT ATTERBURY, INDIANA

ATCL-JA

30 October 20XX

MEMORANDUM FOR Commander, 54th Infantry Division and Fort Atterbury, Fort Atterbury, Indiana

SUBJECT: Addendum to the Staff Judge Advocate's Recommendation, United States v. Sergeant Richard Archie

1. The defense counsel in the case of Sergeant (E-5) Richard M. Archie, has submitted matters for your consideration pursuant to R.C.M. 1105. These matters consist of: a memorandum from the accused's defense counsel, a statement from the accused, and five (5) letters of support. You must consider these matters prior to taking action.
2. You must consider the result of trial. You may also consider the record of trial and the personnel records of the accused.
3. The defense counsel alleges that the post-trial processing time in this case is excessive and merits relief. I disagree. In my opinion, no corrective action is required.
4. The defense counsel also alleges that the military judge committed legal error by not granting the defense motion to admit evidence under M.R.E. 412. I disagree. In my opinion, no corrective action is necessary.
5. RECOMMENDATION: After reviewing the defense submissions, I recommend that you waive automatic forfeitures in this case for a period of six (6) months, to be paid to Miss Taylor Armstrong. I also recommend that you approve only so much of the sentence as provides for reduction to the grade of E-1, confinement for thirty (30) months, and a Dishonorable Discharge. I recommend that you order the punishment executed, excepting the part of the sentence extending to the dishonorable discharge. You must credit the accused with three (3) days of confinement credit against his sentence to confinement.

Bailey Jamison

BAILEY JAMISON
COL, JA
Staff Judge Advocate

3 Encls

1. Defense Memo, CPT Lennon
2. Statement, SGT Archie
3. Letters of Support (5)

POST-TRIAL
Promulgating Order

DNA Processing Required. 10 U.S.C. § 1565

DEPARTMENT OF THE ARMY
HEADQUARTERS, 54th Infantry Division and Fort Atterbury
FORT ATTERBURY, INDIANA 23801

GENERAL COURT-MARTIAL ORDER
NUMBER

17

30 October 2014

Sergeant (E-5) Richard M. Archie, 000-11-2222, U.S. Army, B Company, 1st Brigade Support Battalion, Fort Atterbury, Indiana, was arraigned at Fort Atterbury, Indiana on the following offenses at a general court-martial convened by Commander, 54th Infantry Division and Fort Atterbury.

Charge I. Article 92. Plea: Guilty. Finding: Guilty.

Specification 1: In that Sergeant Richard Archie, U.S. Army, did, at or near Fort Atterbury, Indiana, on or about 25 March 2011, violate a lawful general regulation, to wit: Army Regulation 600-20, paragraph 4-14b, dated 18 March 2008, by wrongfully engaging in a relationship with Private (E-2) T.V., U.S. Army, that compromised or appeared to compromise the integrity of his supervisory authority, or created an actual or clearly predictable adverse impact on discipline, authority or morale. Plea: Guilty. Finding: Guilty.

Specification 2: In that Sergeant Richard Archie, U.S. Army, did, at or near Fort Atterbury, Indiana, on or about 25 March 2011, violate a lawful general order, to wit: Fort Atterbury Command Policy Memorandum #11, paragraph 3(b), dated 1 October 2010, by providing alcoholic beverages to another person whom he knew or had reason to know was less than 21 years of age, to wit: Private (E-2) T.V., U.S. Army. Plea: Guilty. Finding: Guilty.

Charge II. Article 120. Plea: Not Guilty. Finding: Guilty.

The Specification: In that Sergeant Richard M. Archie, U.S. Army, did, at or near Fort Atterbury, IN, on or about 25 March 2011, cause Private (E-2) T.V., U.S. Army, to engage in a sexual act, to wit: penetration of her vulva by his penis, by using strength and restraint applied to Private V sufficient that she could not avoid or escape the sexual conduct. Plea: Not Guilty. Finding: Guilty.

Additional Charge. Article 90. Plea: Guilty. Finding: Guilty.

The Specification: In that Sergeant Richard M. Archie, U.S. Army, having received a lawful command from CPT Arthur Wellesley, his superior commissioned officer, then known by the said Sergeant Archie to be his superior commissioned officer, to refrain from initiating direct contact or communication with PV2 T.V., U.S. Army, and to remain at least 150 feet from said PV2 T.V. at all times, or words to that effect, did, at or near Fort Atterbury, IN, on or about 14 April 2014, willfully disobey the same. Plea: Guilty. Finding: Guilty.

SENTENCE

The sentence was adjudged on 10 July 2014. To be reduced to the grade of Private (E-1), total forfeiture of all pay and allowances, confinement for thirty months, and to be discharged with a dishonorable discharge.

ACTION

In the case of Sergeant (E-5) Richard M. Archie, 000-11-2222, U.S. Army, B Company, 1st Brigade Support Battalion, Fort Atterbury, Indiana, only so much of the sentence as provides for reduction to Private E1, confinement for thirty months, and a Dishonorable Discharge is approved and except for that part of the sentence extending to Dishonorable Discharge, will be executed. The automatic and adjudged forfeiture of all pay and allowances were deferred effective 23 July 2014 and the deferments are terminated on this date. The automatic forfeiture of all pay and allowances required by Article 58b, UCMJ is waived effective this date for a period of six months with direction that these funds be paid to the daughter of the accused Miss Taylor Armstrong. The accused will be credited with three days of confinement against the sentence to confinement.

BY COMMAND OF MAJOR GENERAL LLOYD:

RICHARD STARKEY
MAJ, JA
Chief of Justice

DISTRIBUTION:

[Assume this is correct IAW AR 27-10, para. 12-7]

POST-TRIAL Action

ACTION

DEPARTMENT OF THE ARMY
Headquarters, 54th Infantry Division and Fort Atterbury
Fort Atterbury, Indiana

31 October 20XX

In the case of Sergeant (E-5) Richard Archie, 000-11-2222, U.S. Army, Company B, 1st Brigade Support Battalion, 3rd Brigade, 54th Infantry Division, Fort Atterbury, Indiana, only so much of the sentence as provides for reduction to Private E1, confinement for thirty months, and a Dishonorable Discharge is approved and, except for that part of the sentence extending to Dishonorable Discharge, will be executed. The automatic and adjudged forfeitures of all pay and allowances were deferred effective 31 October 20XX and the deferments are terminated on this date. The automatic forfeiture of all pay and allowances required by Article 58b, UCMJ is waived effective this date for a period of six months with direction that these funds be paid to the daughter of the accused, Miss Taylor Armstrong. The accused will be credited with four days of confinement against the sentence to confinement.

**Defense Advisory Committee on Investigation, Prosecution, and Defense of
Sexual Assault in the Armed Forces (DAC-IPAD) Public Meeting
April 28, 2017**

Table of Contents

Materials for Administrative Session

- Tab 1** Public Meeting Agenda
- Tab 2** Biographies of Meeting Presenters
- Tab 3** Information Paper: Federal Advisory Committee Act
- Tab 4** Federal Advisory Committee Act (5 U.S.C. app., as amended.)
- Tab 5** Federal Advisory Committee Management; Final Rule, 41 CFR Parts 101-6 and 102-3 (July 19, 2001)
- Tab 6** Department of Defense Instruction (DODI) 5105.04, “Department of Defense Federal Advisory Committee Management Program” (August 6, 2007)

Materials for Presentation on the Mechanics of a Military Sexual Assault Case

- Tab 7** Military Justice Process: Disposition Decisions, Courts-Martial, and Alternative Outcomes – DAC-IPAD Briefing (April 28, 2017)
- *PowerPoint presentation of Colonel Christopher Kennebeck, professor and chair of the Criminal Law Department at the Army Judge Advocate General’s Legal Center and School (TJAGLCS) in Charlottesville, Virginia.*
- Tab 8** Abbott Sample Case File
- *A sample case file of 22 documents utilized by TJAGLCS for instruction of judge advocates including an investigation report, charge sheet, sexual assault forensic examination report, special victims’ counsel documentation, and expert witness materials.*
- Tab 9** Mechanics of a Military Sexual Assault Case: Documents and Forms

Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) Public Meeting

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Materials for the Presentation on Department of Defense Annual Sexual Assault Reporting Data

Tab 10 Military Sexual Assault Case Adjudication Data Analysis

- *PowerPoint presentation of Dr. Cassia Spohn, Foundation Professor and Director, Arizona State University School of Criminology and Criminal Justice and Ms. Meghan Peters, Attorney-Advisor. Judicial Proceedings Panel and DAC-IPAD*

Tab 11 National Defense Authorization Act (NDAA) Provisions Regarding the Department of Defense Annual Report on Sexual Assault, Fiscal Year 2011 – Fiscal Year 2017

- *Document prepared by DAC-IPAD staff providing the statutory reporting requirements for DoD annual reporting to Congress on sexual assault incidents occurring each year.*

Materials for DAC-IPAD Strategic Planning Session

Tab 12 Some Initial General Thoughts for Consideration in Developing a Structure for a 4+ Year Work Plan for DAC-IPAD

- *Document prepared by Judge Leo Brisbois, Committee member, outlining proposed areas of inquiry for the DAC-IPAD.*

Tab 13 Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-PAD) Committee Planning Session Outline

- *Overview of key issues and questions for the Committee members to discuss during the planning session. This document was prepared by the DAC-IPAD staff.*



DEPARTMENT OF DEFENSE
**SEXUAL ASSAULT PREVENTION
AND RESPONSE OFFICE**



Sexual Assault Prevention and Response

Nate Galbreath, PhD, MFS
Deputy Director

Who We Are



Overview: DoD SAPRO represents the Secretary of Defense as the central authority charged with preventing sexual assault in the military and facilitating recovery for survivors

Mission: SAPRO promotes military readiness by reducing sexual assault through prevention, advocacy, and execution of SAPR Program policy, planning, and oversight across the DoD Community

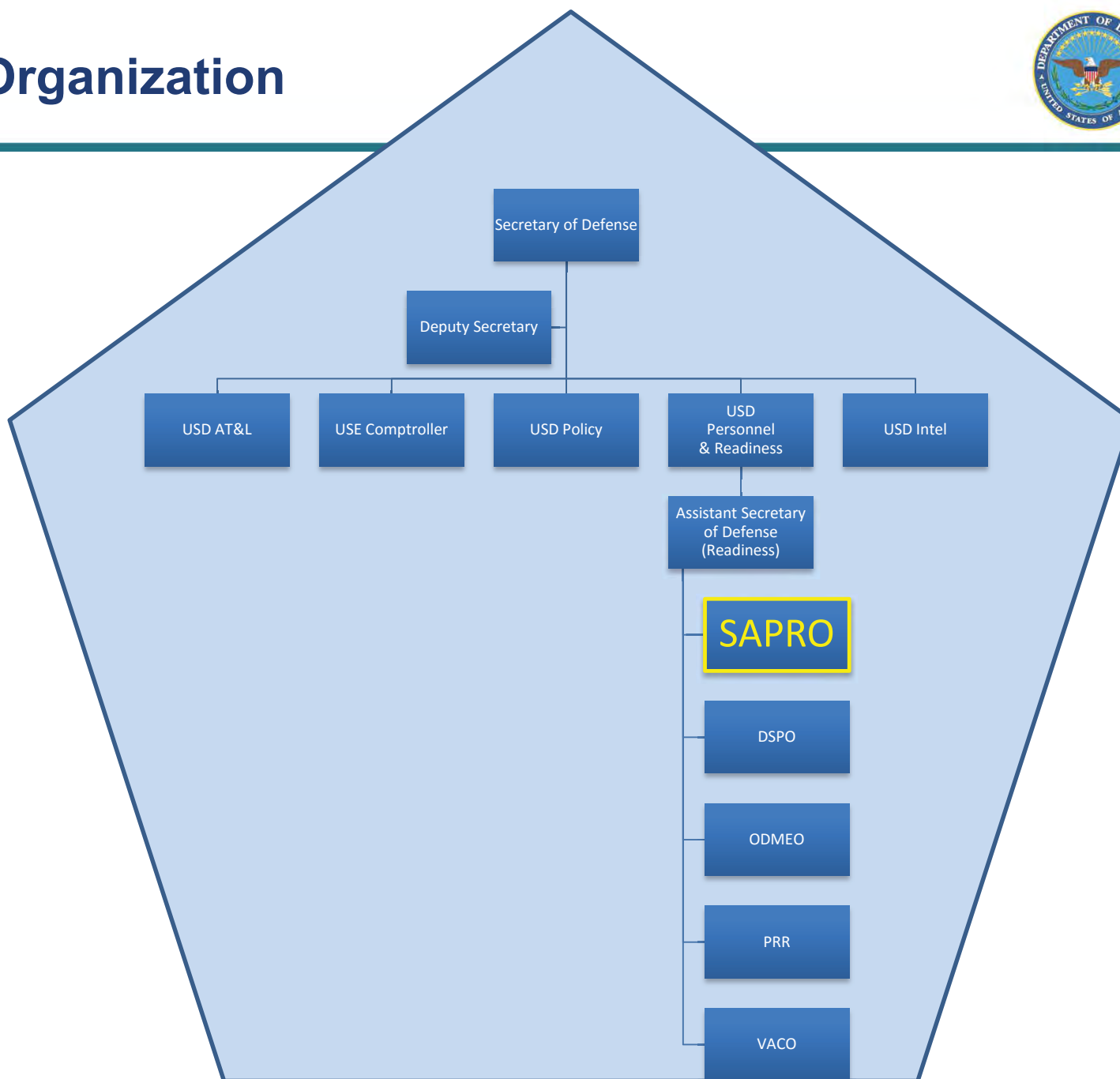
Vision: A DoD Community free of sexual assault



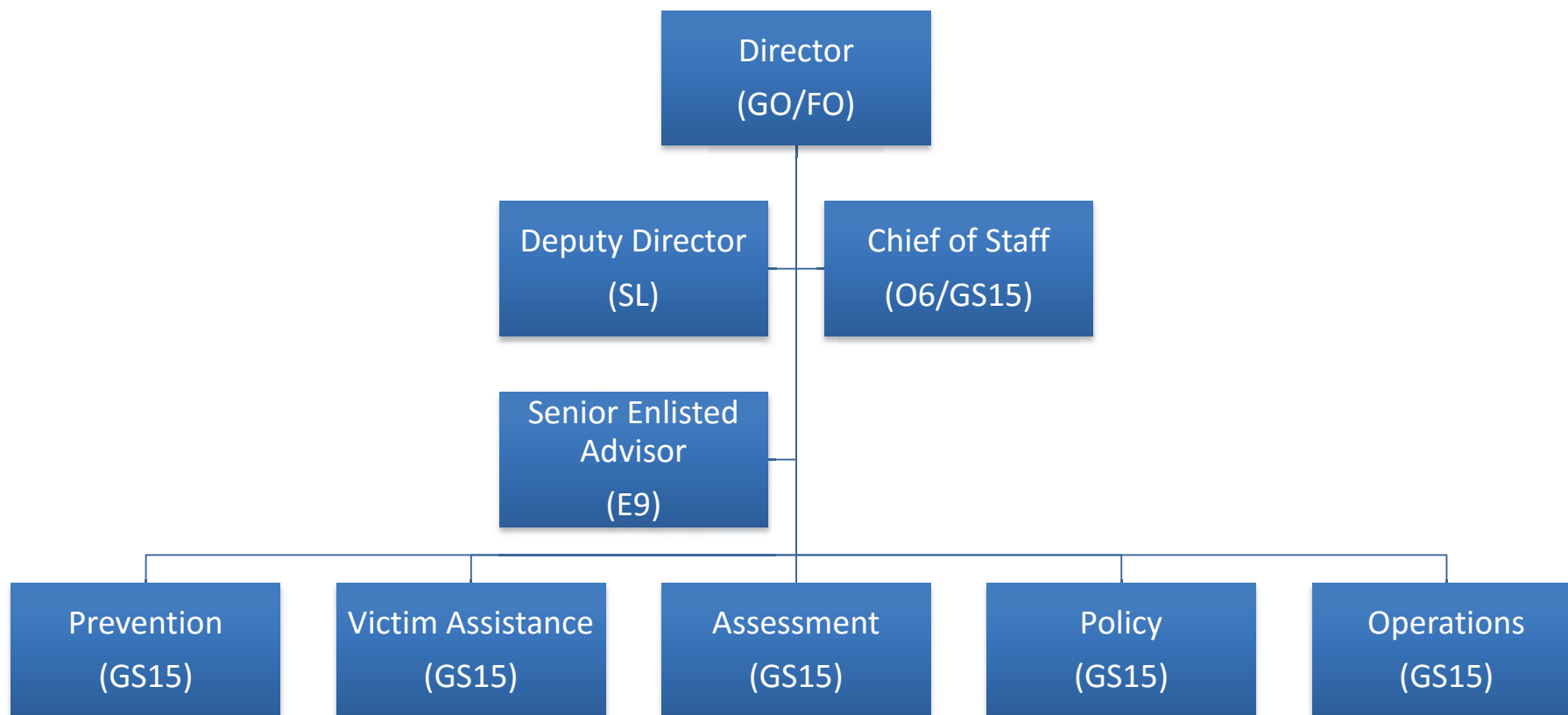
Our approach is prevention-focused with an uncompromising commitment to victim assistance



DoD Organization



SAPRO Office Structure



What We Do



We execute **policy**, **planning**, and **oversight** across the DoD Community

- **Policy:** to establish and reinforce prevention efforts, victim protections, and procedures for SAPR personnel
- **Planning:** to apply a strategic approach to combatting sexual assault with actions guided by five critical focus areas: *Prevention, Victim Assistance, Investigation, Accountability, and Assessment*
- **Oversight:** to unify prevention and response efforts of the Services by ensuring equal emphasis on critical challenge areas and making best practices common

Additionally, SAPRO's **operational portfolio** includes:



What We Do (cont.)



SAPRO works hand-in-hand with the Army, Marine Corps, Navy, Air Force, and National Guard to standardize prevention and response efforts and institutionalize practices and services across the force

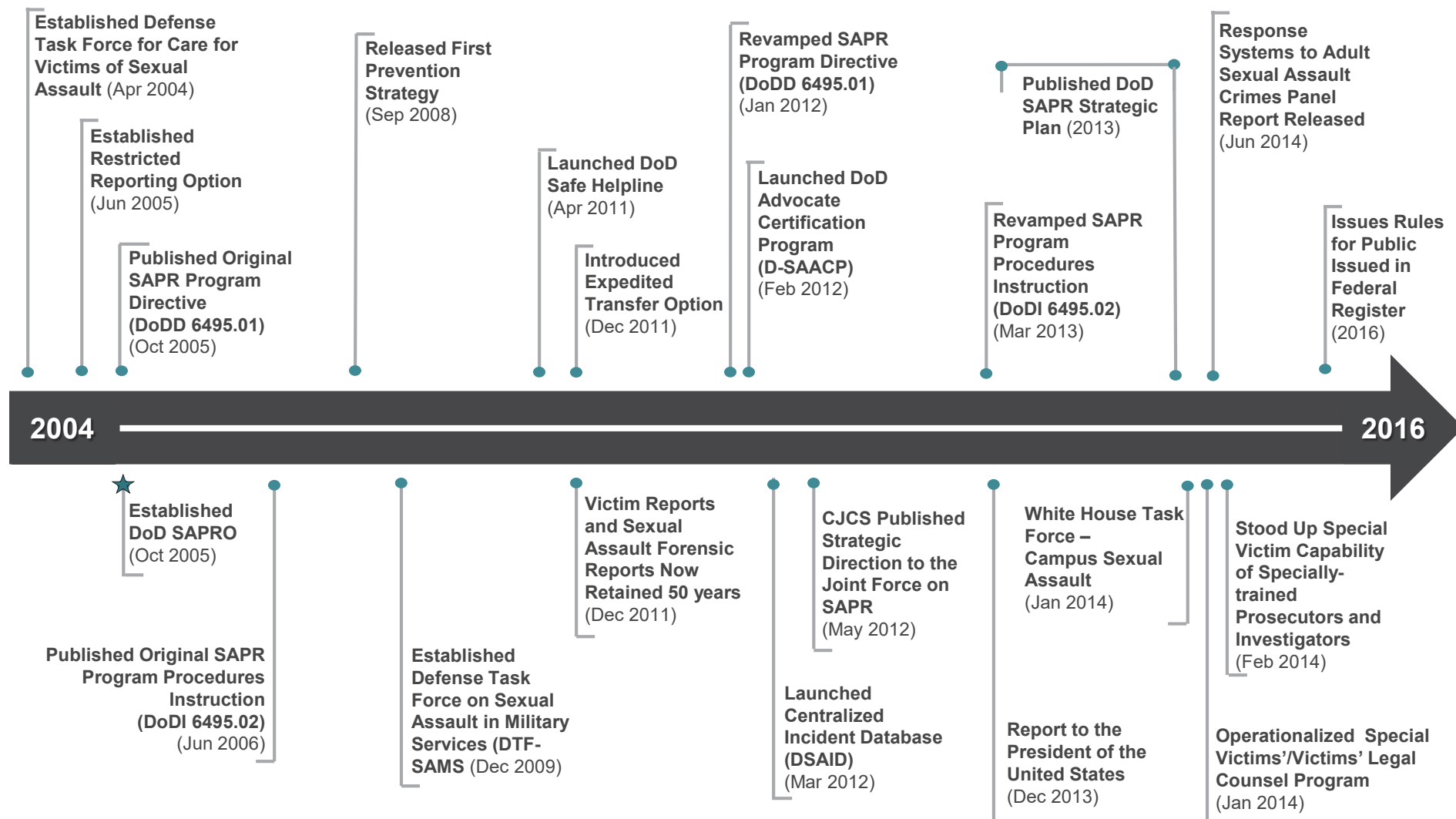


Core Elements:

- Restricted and Unrestricted reporting options
- Anonymous, one-on-one crisis intervention support worldwide through DoD Safe Helpline
- Specially-trained attorneys to help victims exercise their rights and understand the military justice system
- Certified cadre of trauma-informed Service men and women serving as Sexual Assault Response Coordinators (SARCs) and SAPR Victim Advocates (VAs)
- Prevention program that engages leaders at all levels and requires a personal commitment from every Service member to uphold military core values



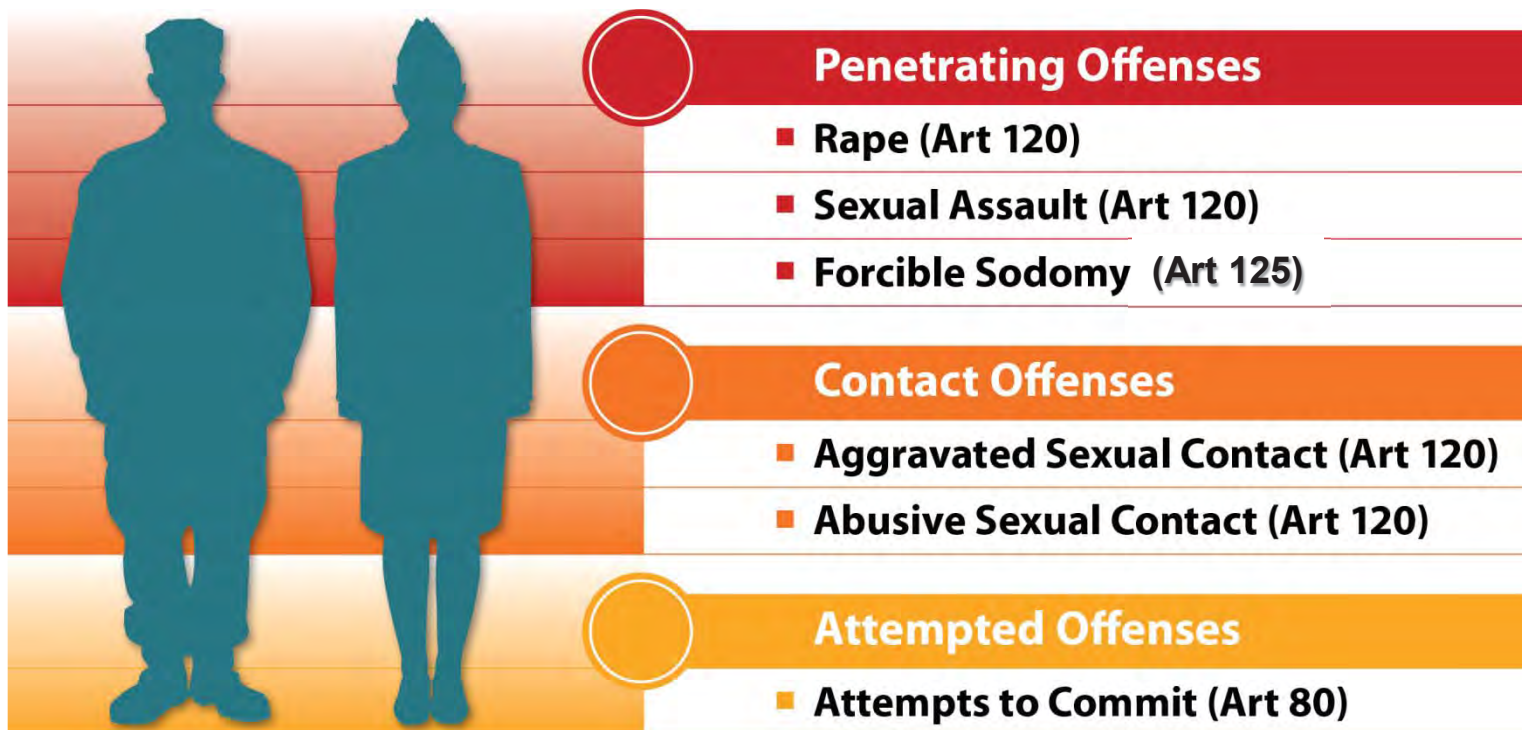
Milestones of the DoD SAPR Program





What Constitutes Sexual Assault in DoD

In the DoD, sexual assault encompasses a range of sexual contact offenses between adults, prohibited by the Uniform Code of Military Justice (UCMJ) - divided into three categories



Resources We Offer

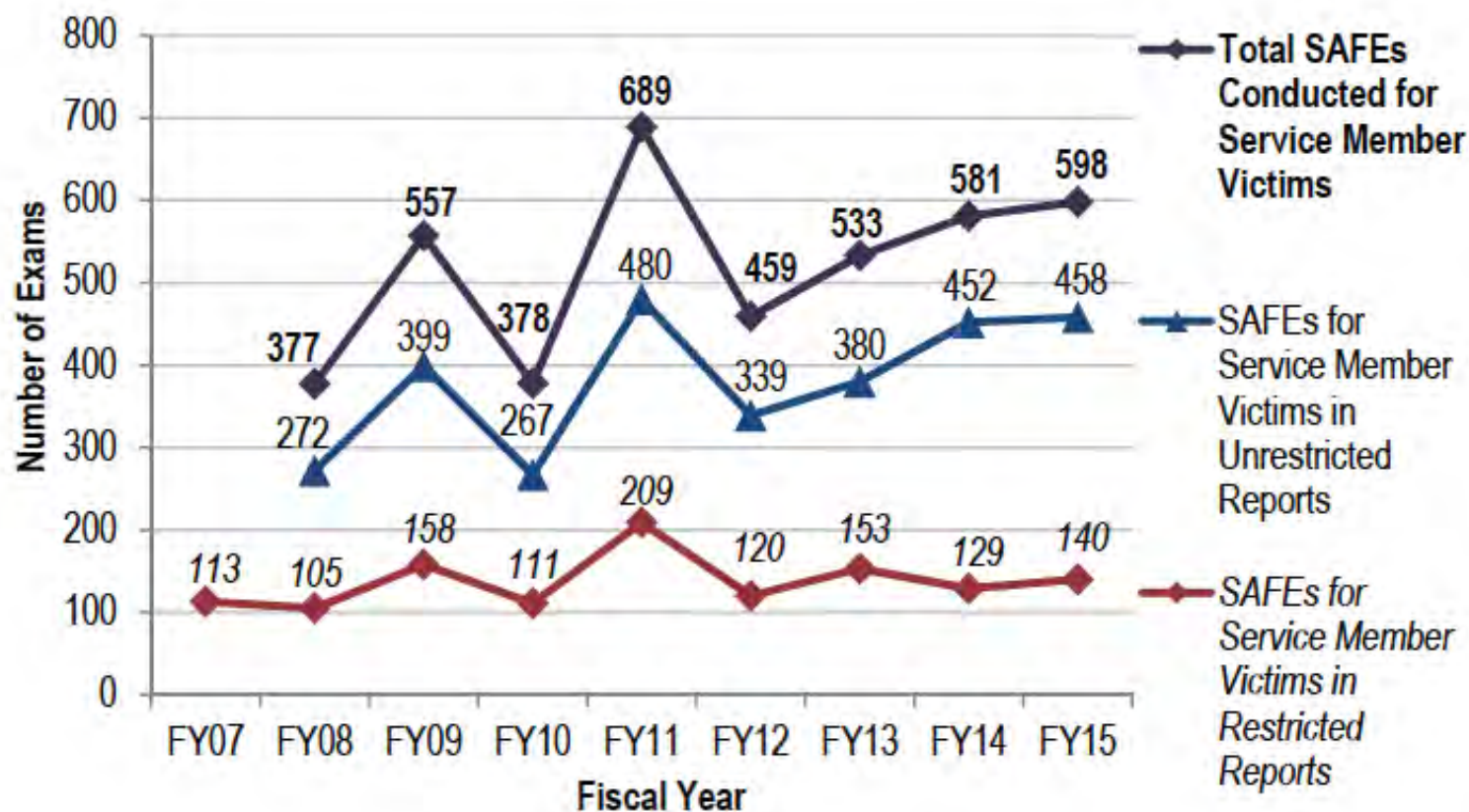


DoD provides more comprehensive access to dedicated medical, psychological, and legal assistance for victims of sexual assault than any other institution



** Applies to those eligible to receive legal assistance, plus certain members of the reserve components*

Sexual Assault Forensic Exams



Expedited Transfers



Table 10: Expedited Transfers and Denials, FY12 – FY15

Transfer Type	FY12	FY13	FY14	FY15
Number of victims requesting a change in Unit/ Duty Assignment (Cross-Installation Transfers)	57	99	44	71
<i>Number Denied</i>	2	3	0	2
Number of victims requesting a change in Installation (Permanent Change of Station)	161	480	615	663
<i>Number Denied</i>	0	11	15	12
Total Approved	216	565	644	720



How We Measure Progress

SAPRO employs a research-focused, data-driven approach to assess the nature of problem and measure progress

Major Research Methods (Inputs)

Measuring Prevalence – Workplace and Gender Relations Survey

Tracking Reports – Defense Sexual Assault Incident Database

Assessing the Climate – Defense Equal Opportunity Climate Survey

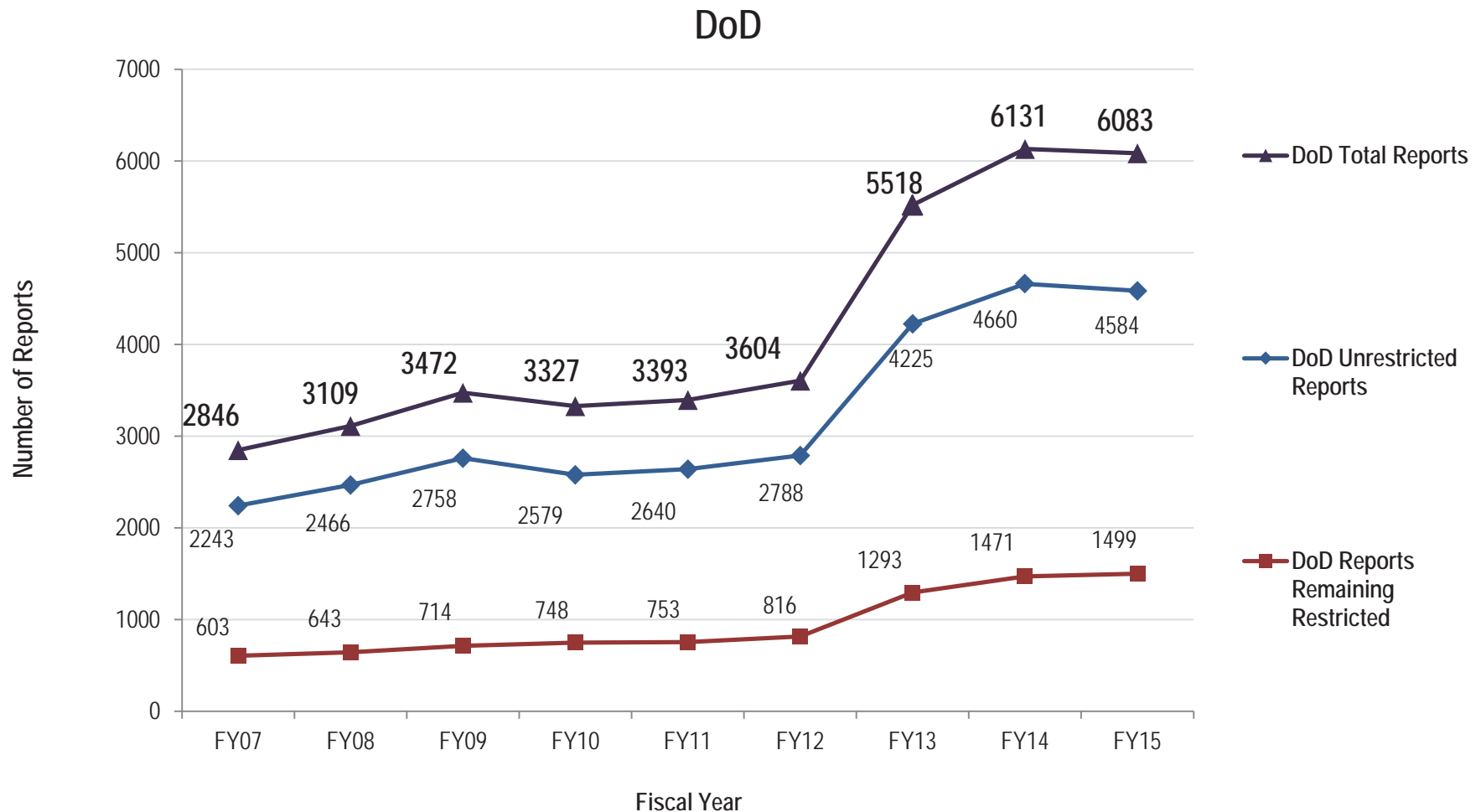
Evaluating Survivor Experience – Military Justice and Investigation Survey

Major Reports (Outputs)

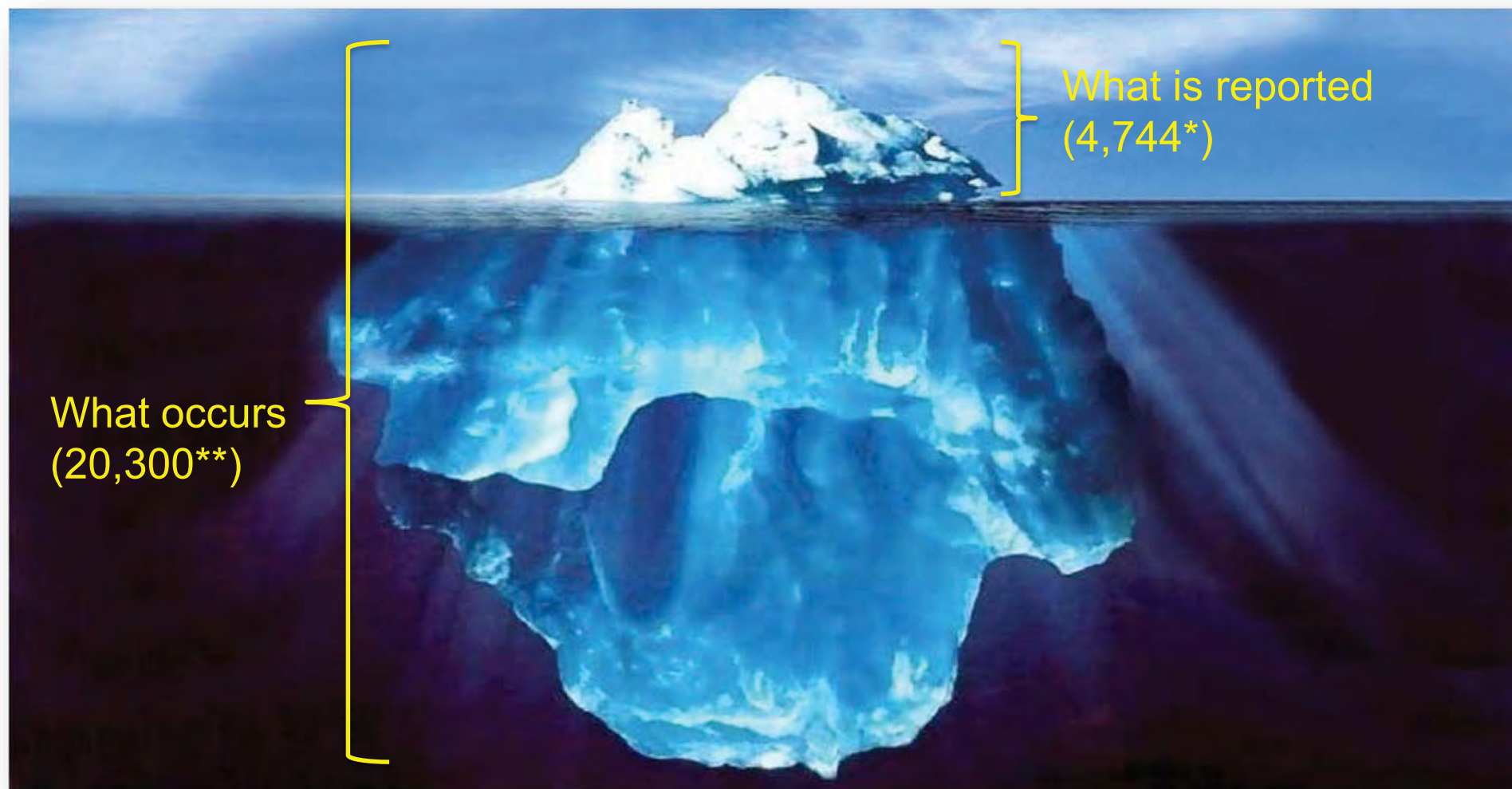




Reports of Sexual Assault over Time, FY07-FY15



Sexual Assault is an Underreported Crime



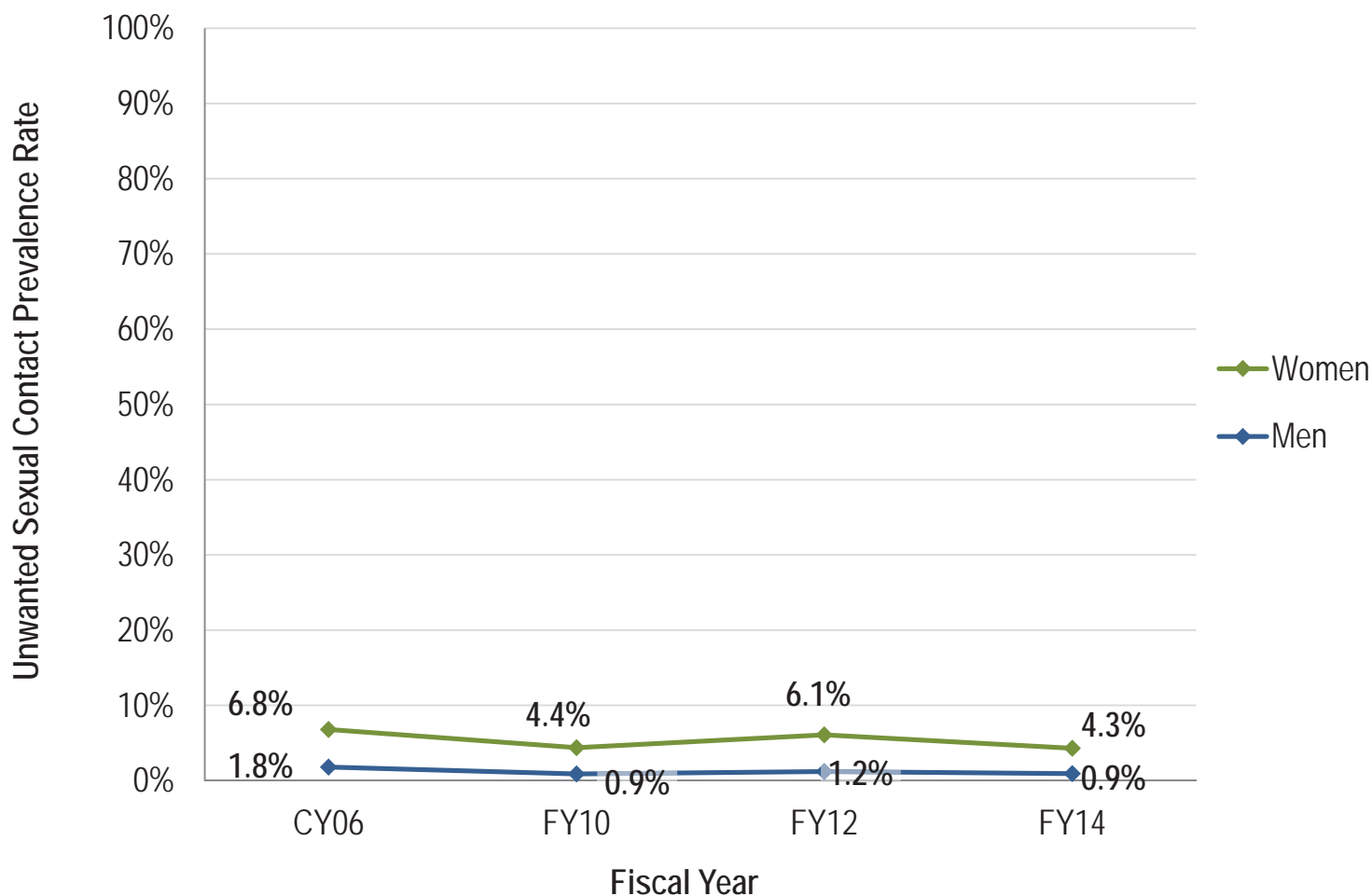
***Service member victims reporting sexual assault for 2014**

****Estimated Service member prevalence statistics for 2014**

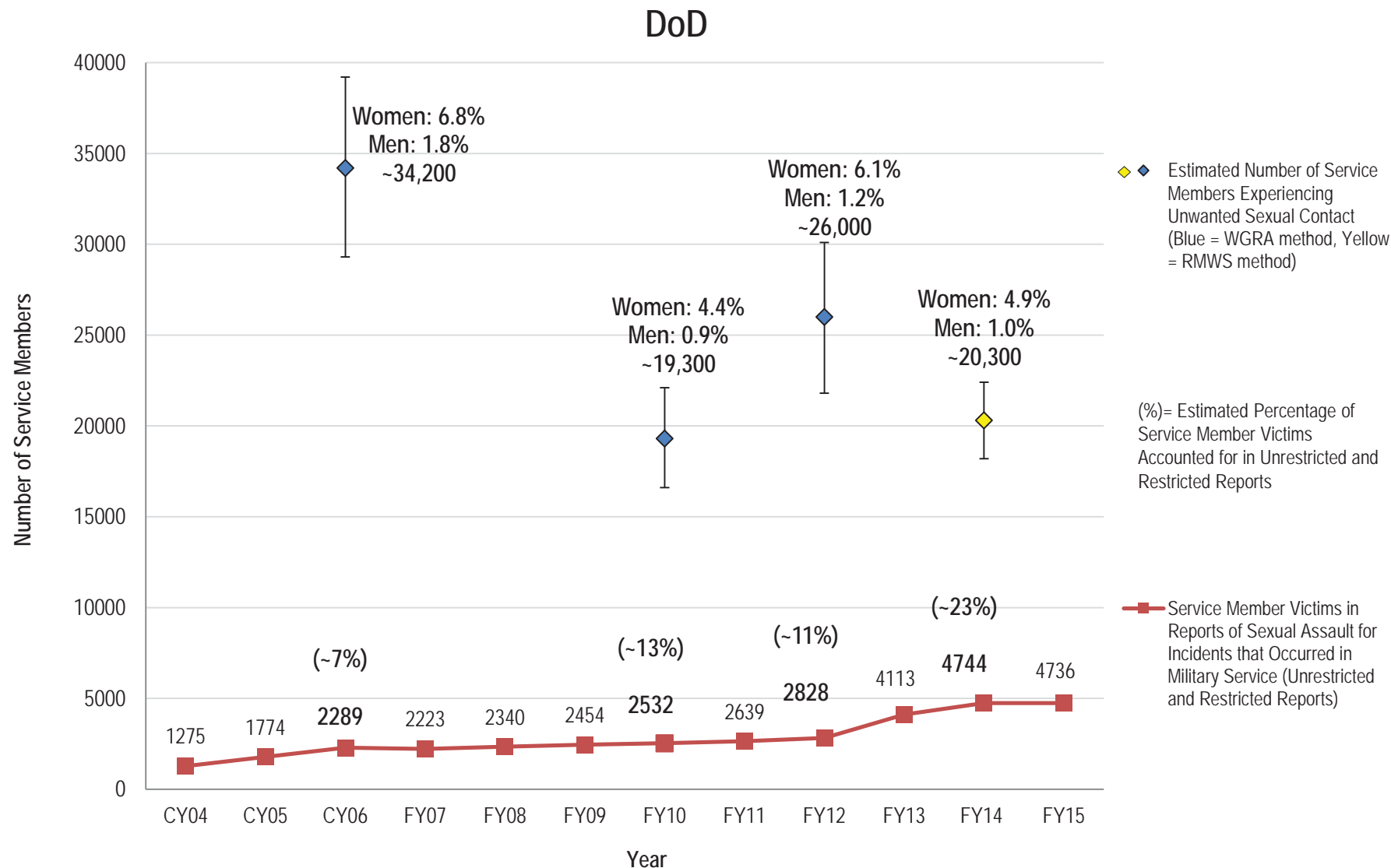
Past Year Prevalence of Sexual Assault



Workplace and Gender Relations Survey of Active Duty Members



Sexual Assault Reports versus Prevalence CY04-FY15



Not Just a Women's Issue



Men

10,600

Estimated to have
experienced sexual assault

10%

Accounted for in Unrestricted
and Restricted reports to DoD

Women

9,600

Estimated to have
experienced sexual assault

38%

Accounted for in Unrestricted
and Restricted reports to DoD

Source: 2014 RAND Military Workplace Study (RMWS) and DSAID

FY 2012

Estimated Number of Service Member Victims:

~26,000



** 2012 WGRA*

FY 2014

Estimated Number of Service Member Victims:

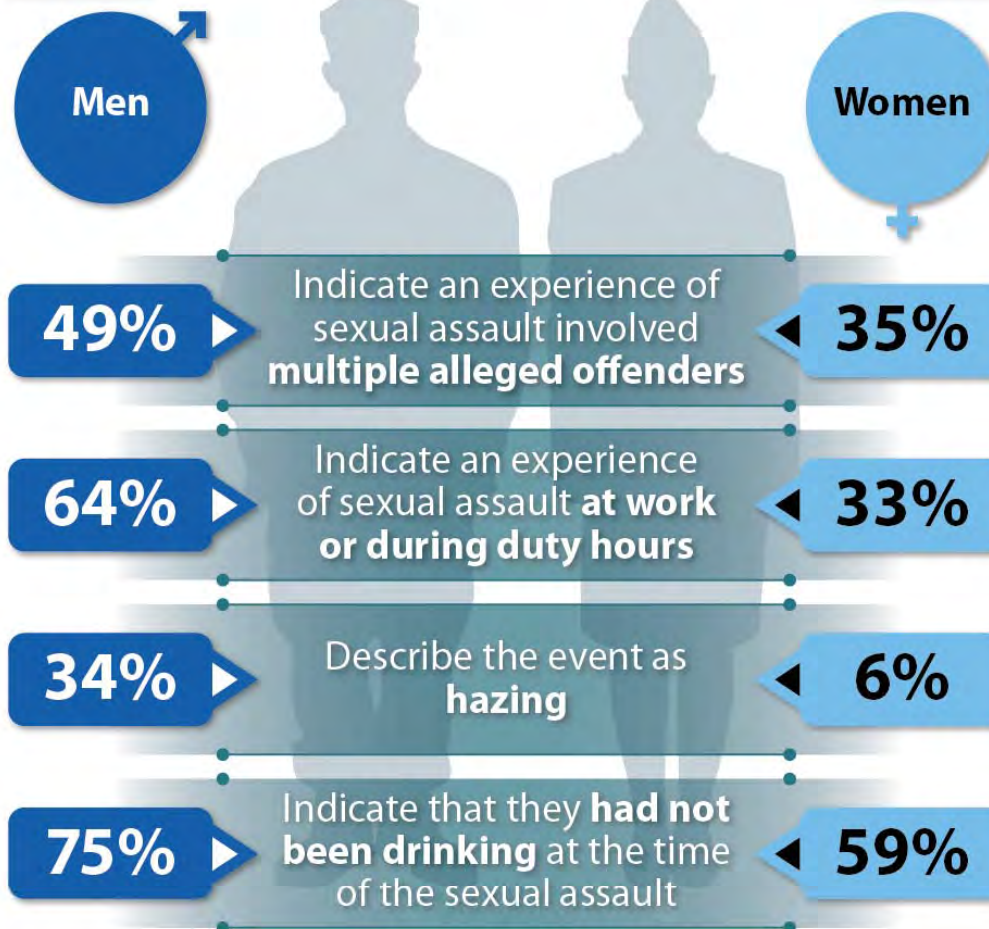
~20,300



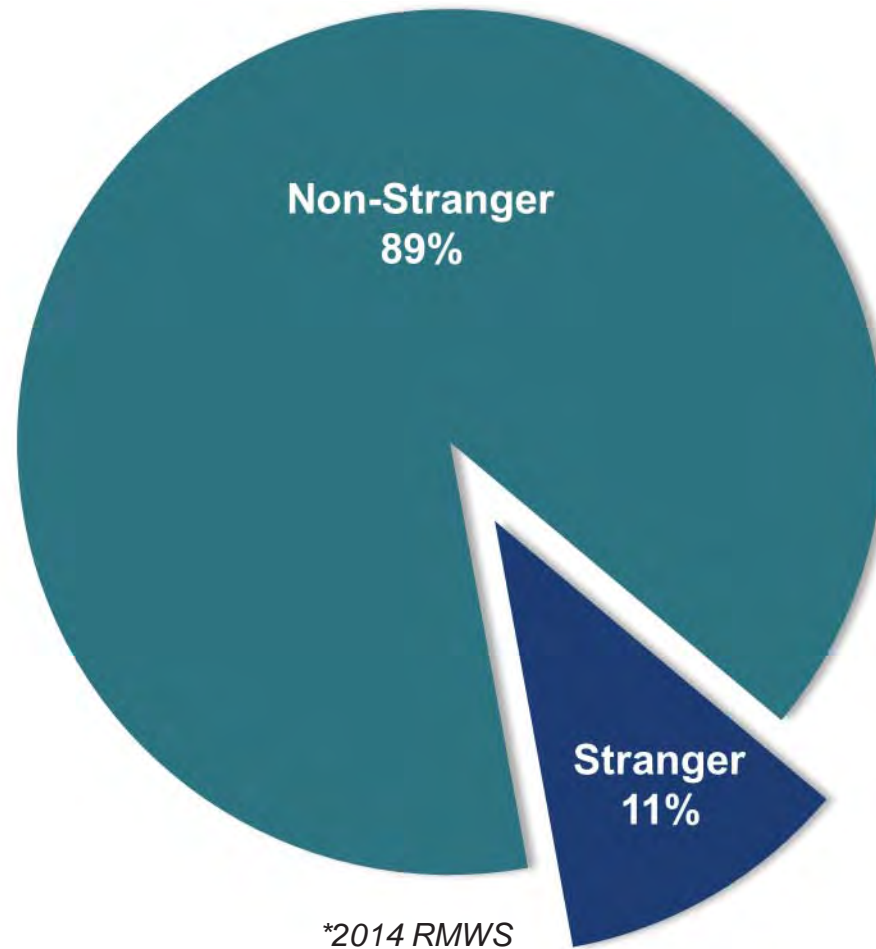
** 2014 RMWS*

**Prevalence is Down and Reporting is Up
DoD Now Receives a Report from nearly 1 in 4 Victims**

Relative to women, **men** who reported being sexually assaulted are **more likely** to:



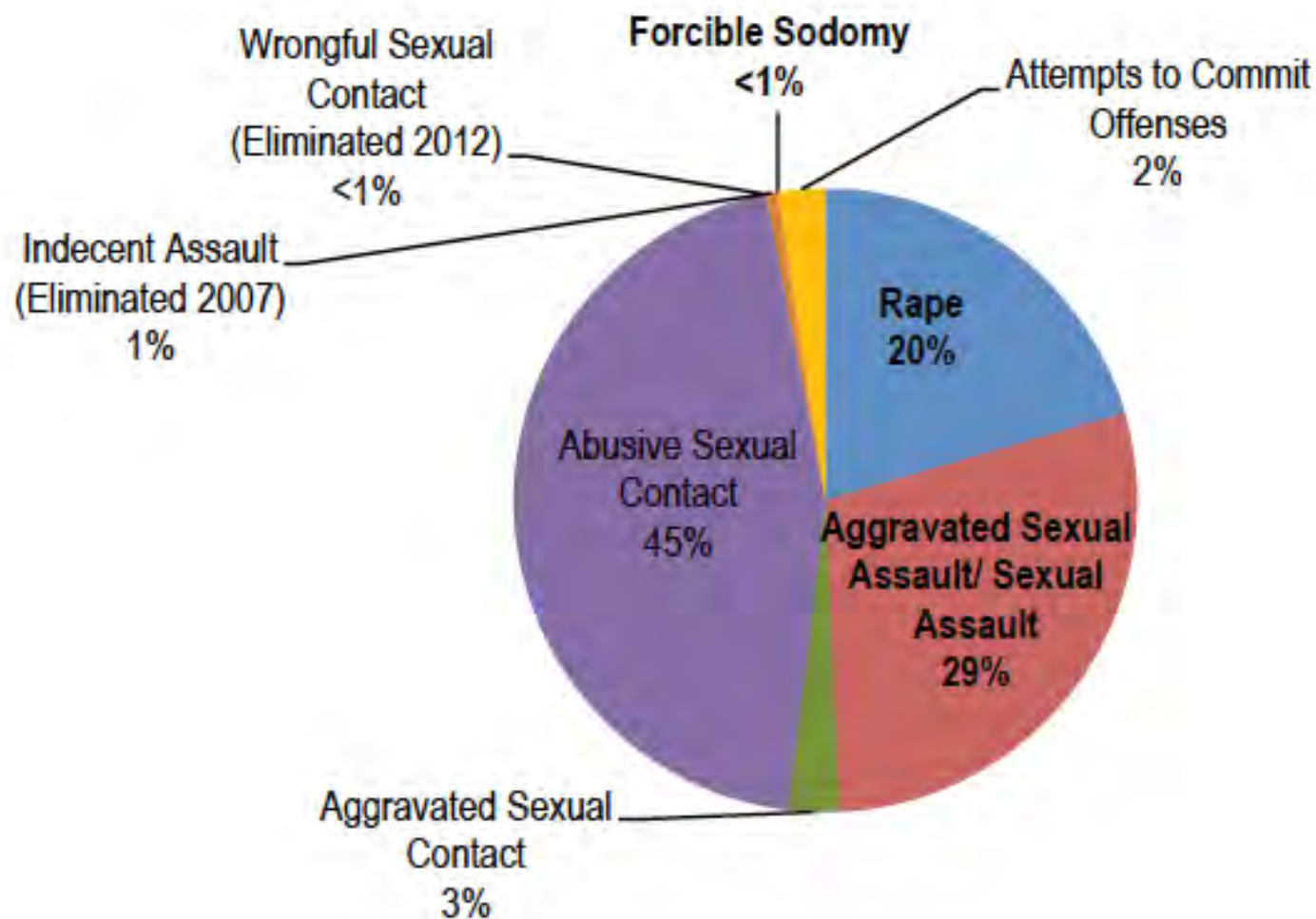
* 2014 RMWS



In 2014, 89% of Service members knew their offender

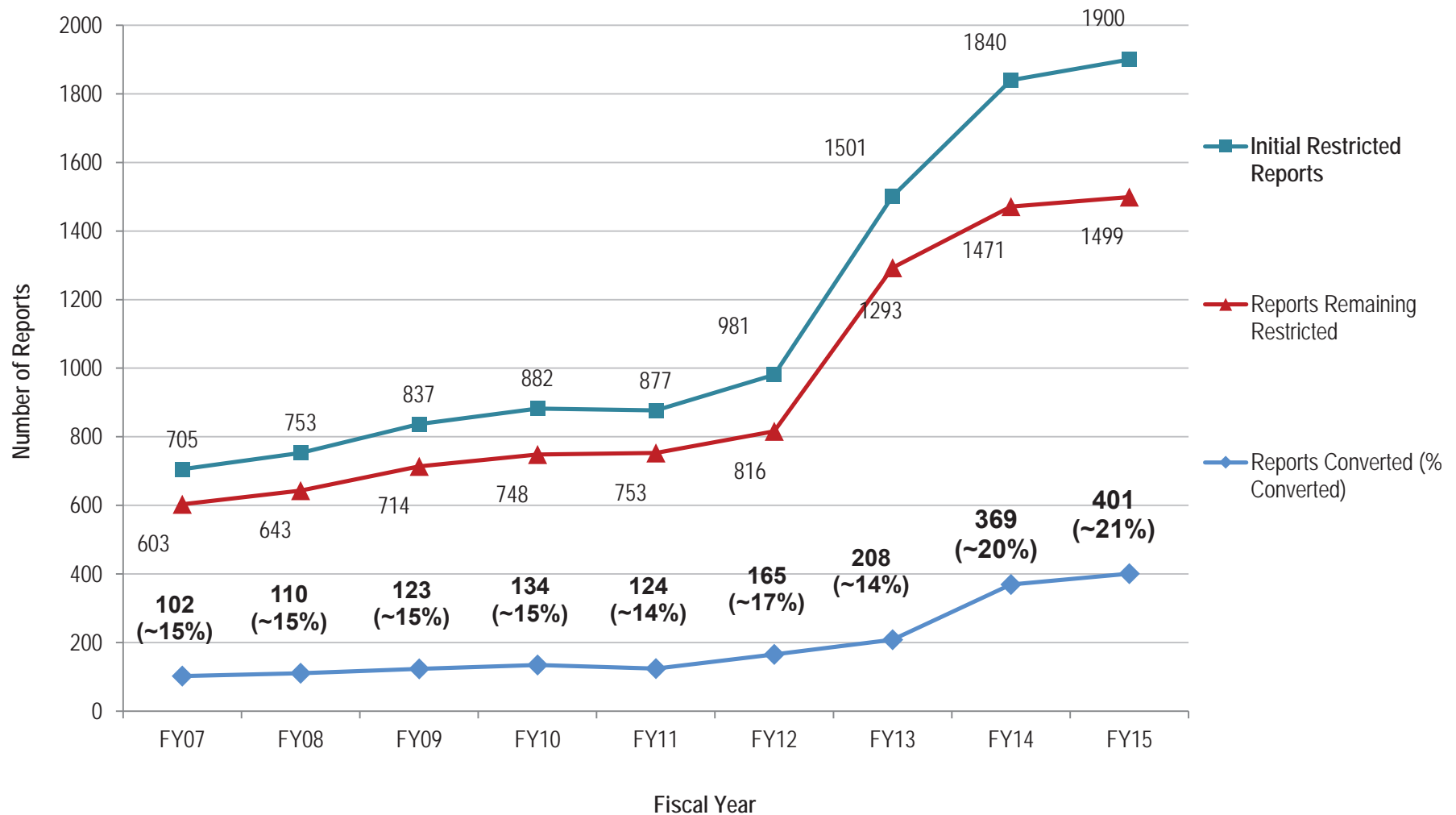


Crimes Alleged in Unrestricted Reports



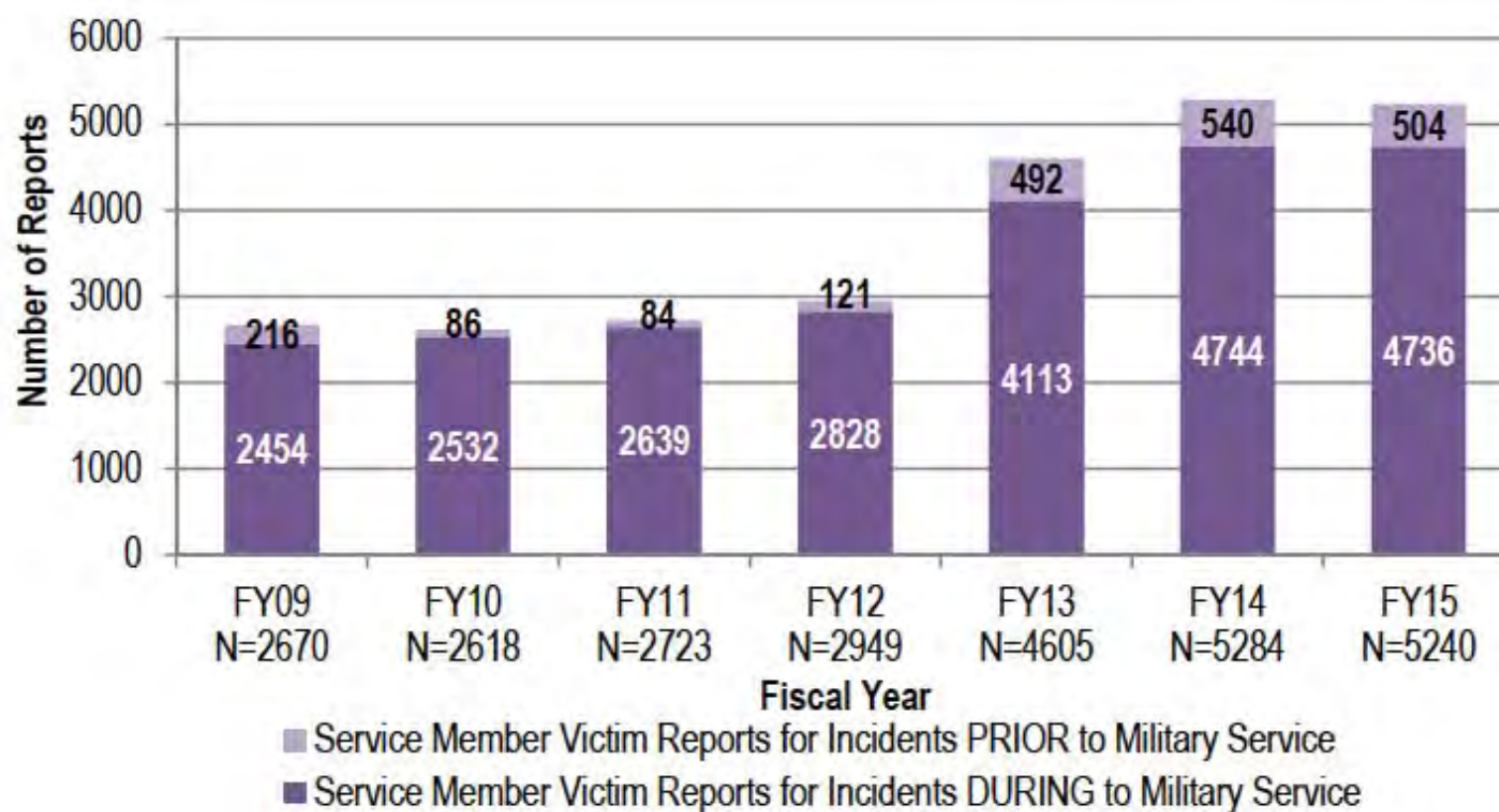


Restricted Report Conversions, FY07-FY15





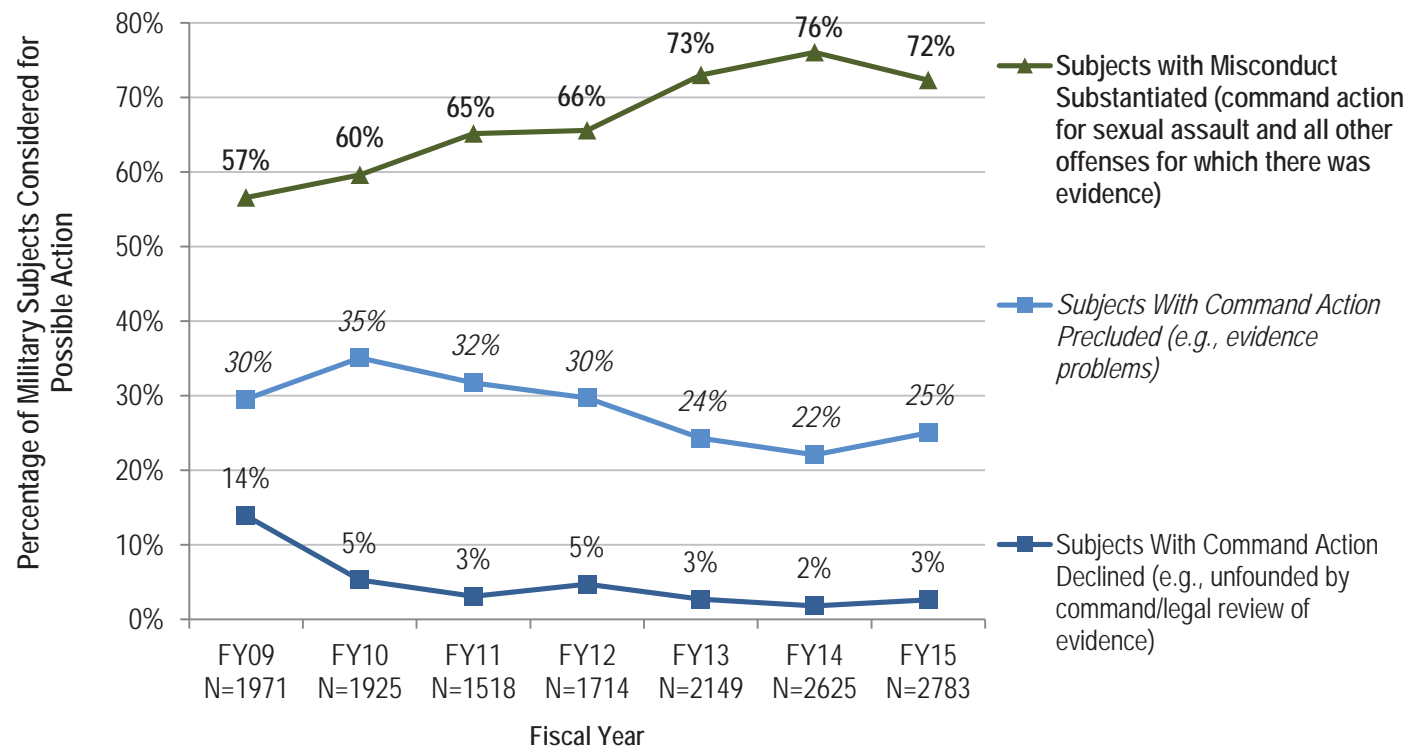
Reports for Incidents Prior to Service





Sexual Assault Accountability

- 3,386 subject case dispositions reported in FY15, of these, 2,783 military subjects could be considered for possible action by DoD commanders
 - DoD authorities had sufficient evidence to take some kind of disciplinary action against 72% of military subjects.
 - Down from 76% in FY14



Top Line Results - Disciplinary Action Summary



5,621 Subjects Receiving or Awaiting Disposition in FY15

-2,235 Subject Disposition yet to be Determined (rolled to future FYs)

3,386 Subject Dispositions Reported in FY15

- 603 Civilian, Foreign, Unknown, Deceased or Deserter Subjects, or Civilian/Foreign authority exercised jurisdiction over Service member Subjects

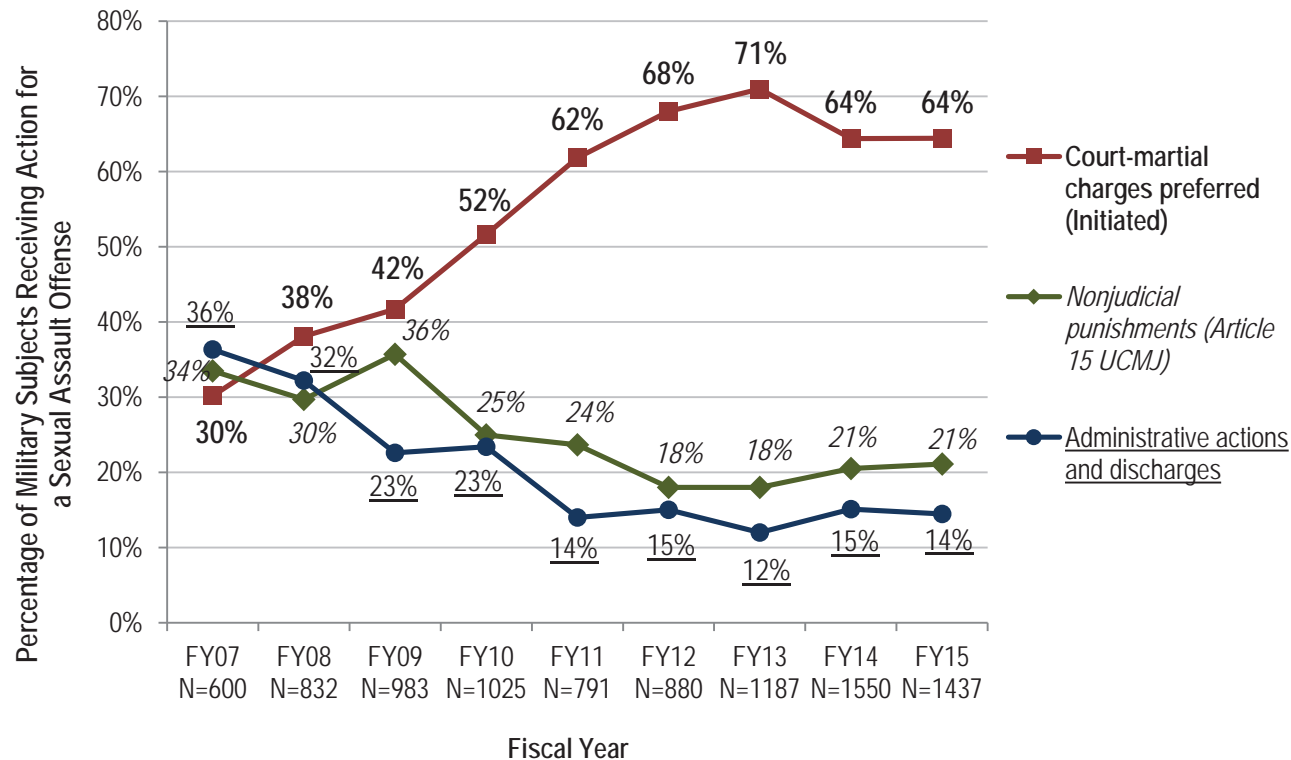
2,783 Subjects That Could Be Considered for Possible Action by DoD Commanders

- 1,437 Evidence Supported Commander Action on Sexual Assault Offenses (72%)
 - 926 Court-Martial Charge Preferred
 - 303 Nonjudicial Punishments
 - 208 Adverse Administrative Actions or Discharges
- 576 Evidence Supported Action on Non-Sexual Assault Offenses
- 697 Subjects - Command Action Precluded (25%):
 - 257 Subjects - Victims declined to participate in justice system
 - 420 Subjects – Insufficient evidence of any offense to prosecute
 - 19 Subjects - Statute of limitations expired
 - 1 Subject – Victim Died Before Completion of Justice Action
- 73 Subjects - Allegation Unfounded by Command/Legal Review (3%)

Source: Defense Sexual Assault Incident Database



Top Line Results – Disciplinary Action

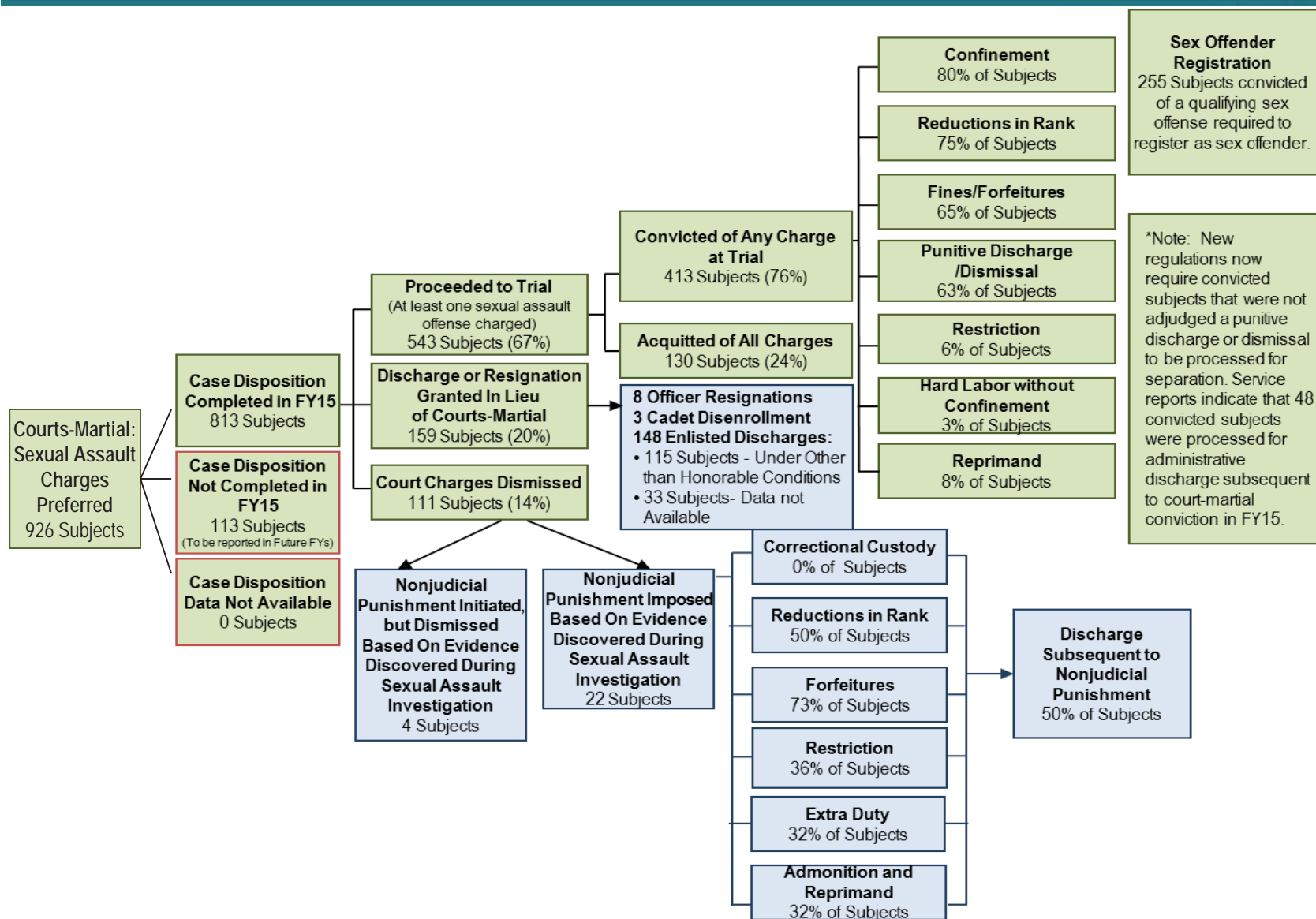


When the subject is under the legal authority of the Department and there is sufficient evidence to take action, commanders address the vast majority of sexual assault allegations using the court-martial process.

Source: Defense Sexual Assault Incident Database and Prior Annual Reports



Sexual Assault Court-Martial Outcomes



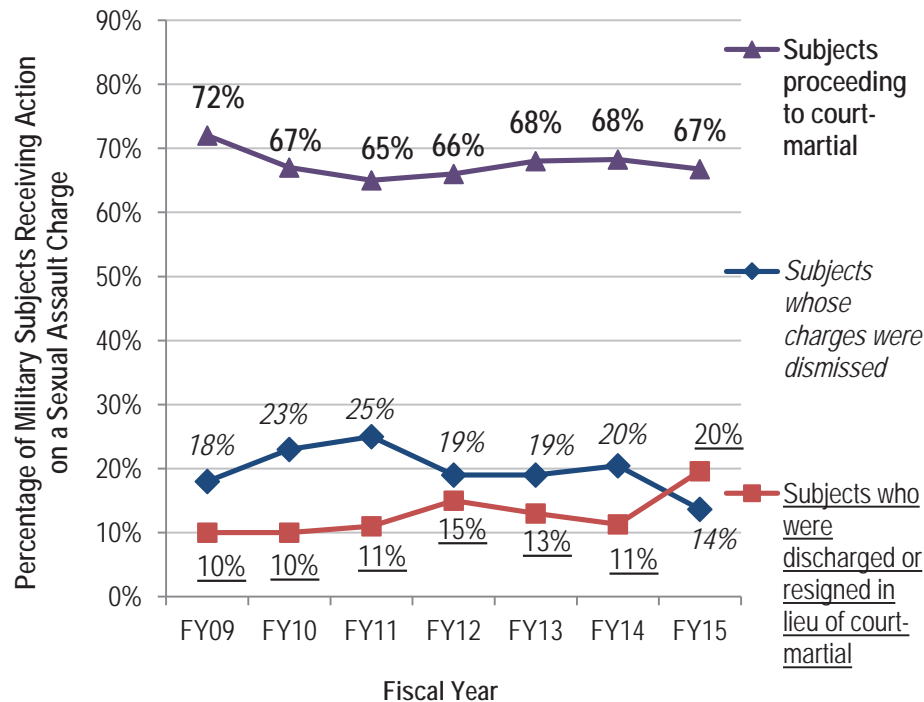
Sex Offender Registration
255 Subjects convicted of a qualifying sex offense required to register as sex offender.

*Note: New regulations now require convicted subjects that were not adjudged a punitive discharge or dismissal to be processed for separation. Service reports indicate that 48 convicted subjects were processed for administrative discharge subsequent to court-martial conviction in FY15.



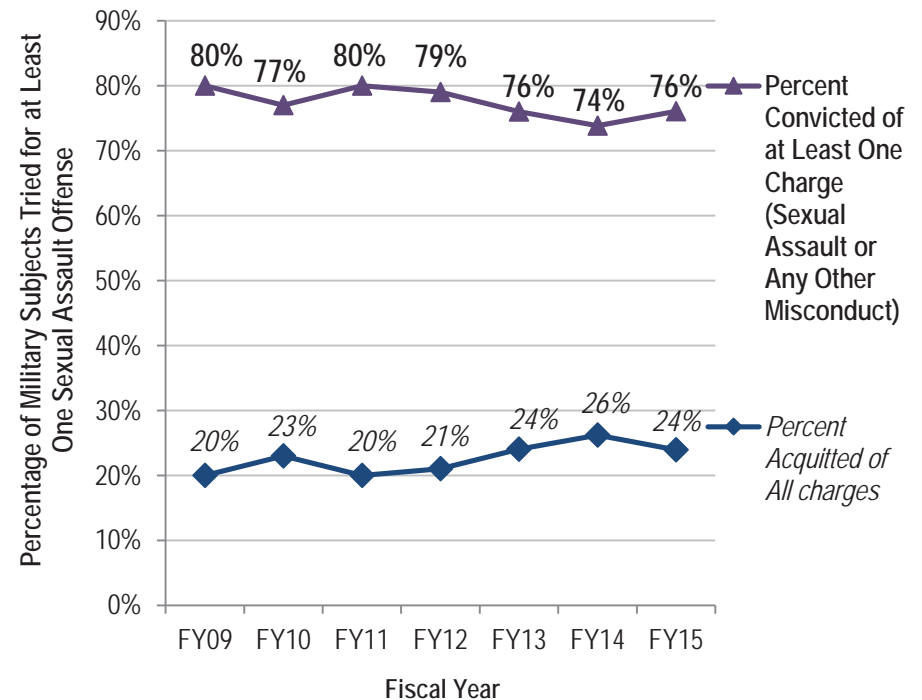
Sexual Assault Court-Martial Outcomes

Pre-Trial Sexual Assault Case Dispositions (813 of 926 Completed in FY15)



In FY15, two-thirds of subjects with Court-martial charges preferred for a sexual assault offense proceeded to trial.

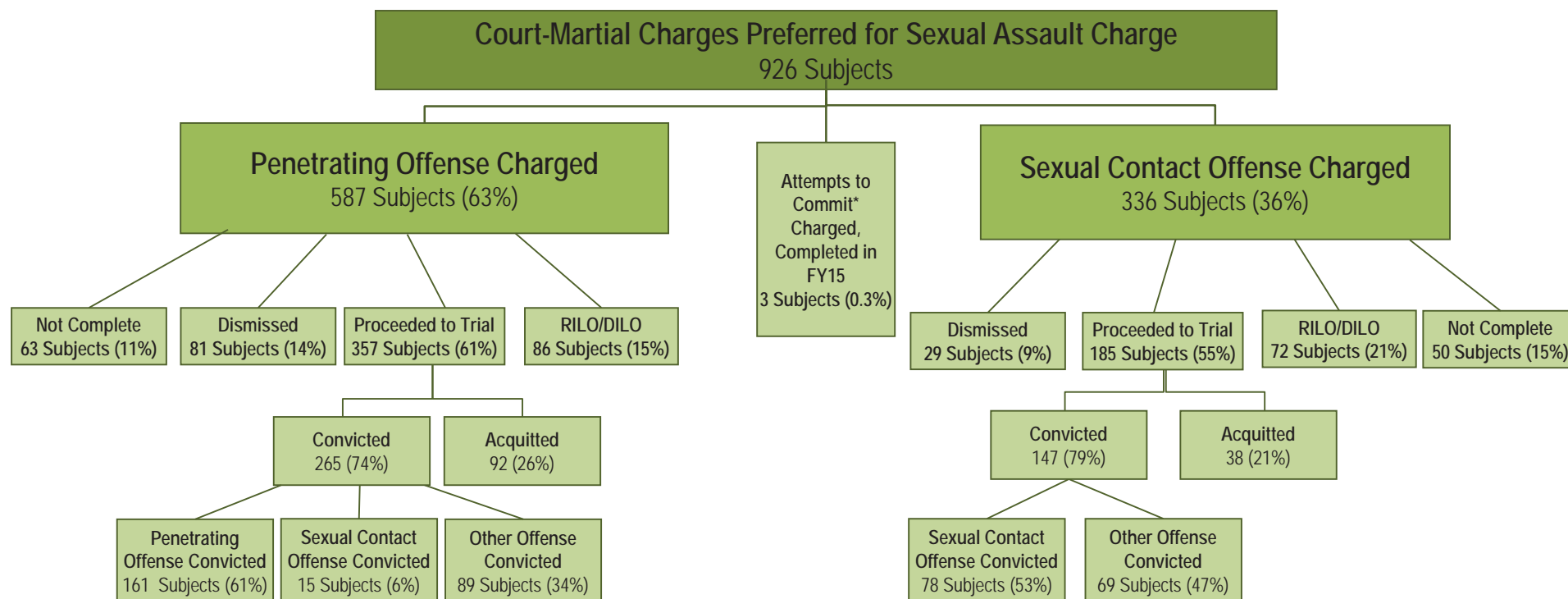
Sexual Assault Court-Martial Trial Results



In FY15, 76% of subjects who went to trial were convicted of at least one count of either sexual assault or any other charged misconduct.

Sexual Assault Court-Martial Outcomes

Penetrating and Sexual Contact Offenses



Note: In some lines, percentages do not total to 100% due to rounding.

**The outcomes for the attempts to commit cases were: 1 charges dismissed; 1 convicted of a non-sexual assault offense; 1 RILO/DILO*

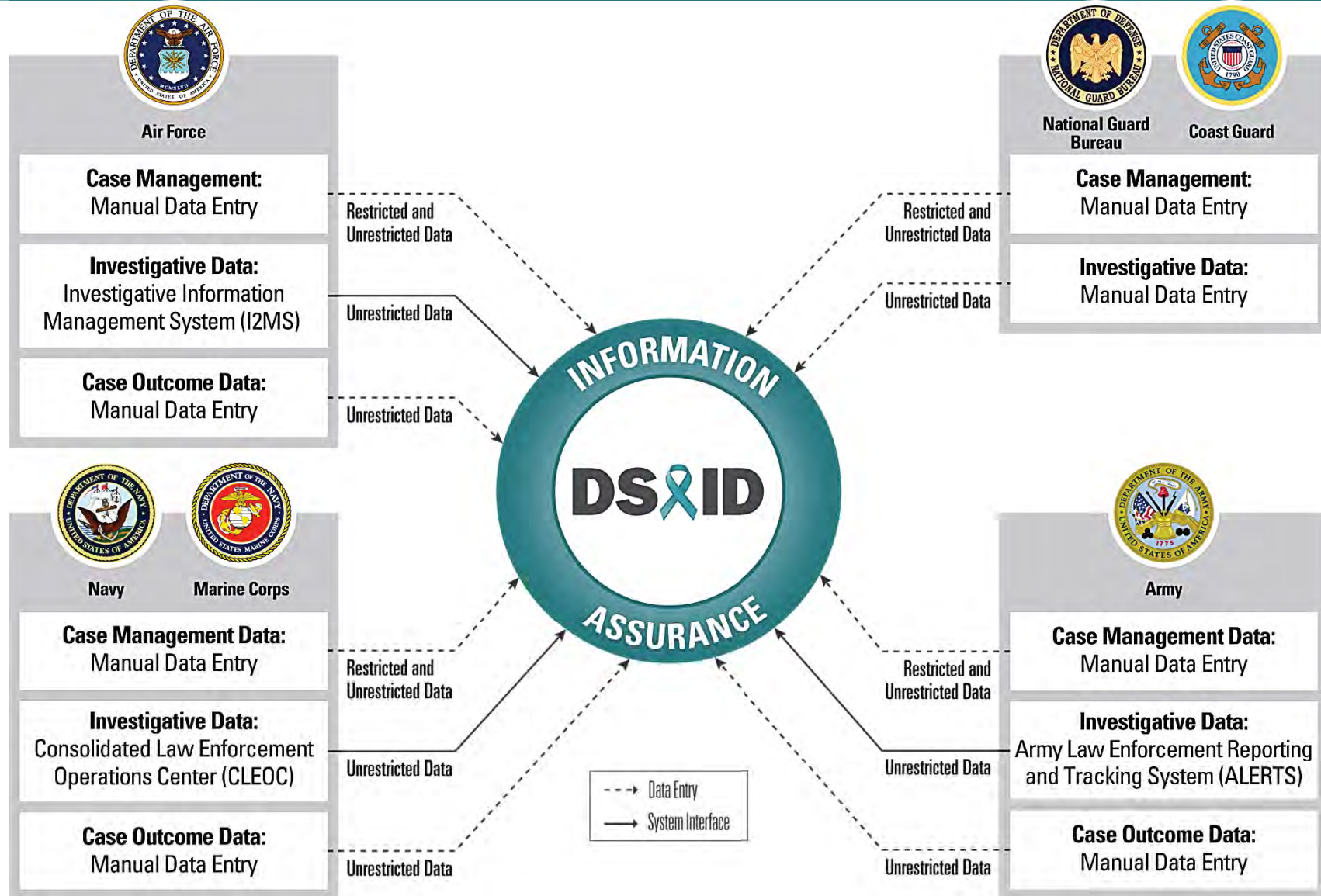
- In FY15, while most subjects charged with a sexual assault offense were convicted of some offense at court-martial, the most serious charge upon which they were convicted varied
- Overall:
 - For 161 subjects, the most serious charge convicted was a penetrating offense
 - For 93 subjects, the most serious charge convicted was a sexual contact offense
 - For 158 subjects, the most serious charge convicted was some other charge

Defense Sexual Assault Incident Database



CAPABILITY ►	Case Management	Business Management	Ad-Hoc Query & Reporting
USE ►	<ul style="list-style-type: none"> ► Input and maintain data pertaining to a sexual assault case ► Track support to victims throughout the lifecycle of a DSAID case ► Track cases for review 	<ul style="list-style-type: none"> ► Document case management review to facilitate SARC and Service SAPR program manager administration and management ► Capture meeting minutes and create meeting agendas 	<ul style="list-style-type: none"> ► Develop congressionally-mandated reports electronically <ul style="list-style-type: none"> ► Includes Case Synopsis ► Produce ad-hoc queries ► Facilitate trend analysis ► Support program planning analysis and management
USERS/ACCESS ►	Service Sexual Assault Response Coordinators (SARCs)	Service SARCs	DoD SAPRO
	Service SAPR Program Management	Service SAPR Program Management	Service SAPR Program Management
	<ul style="list-style-type: none"> ► All SARCs must meet certification requirements to use DSAID ► All users must meet background check and Privacy Act/PII training requirement, as well as complete user role-specific system training 		
			Legal Officers

Data – How is it Entered?



Combatting Retaliation Associated with Sexual Assault



- What is Retaliation?

**Reprisal
Maltreatment**

**Ostracism
Restriction**

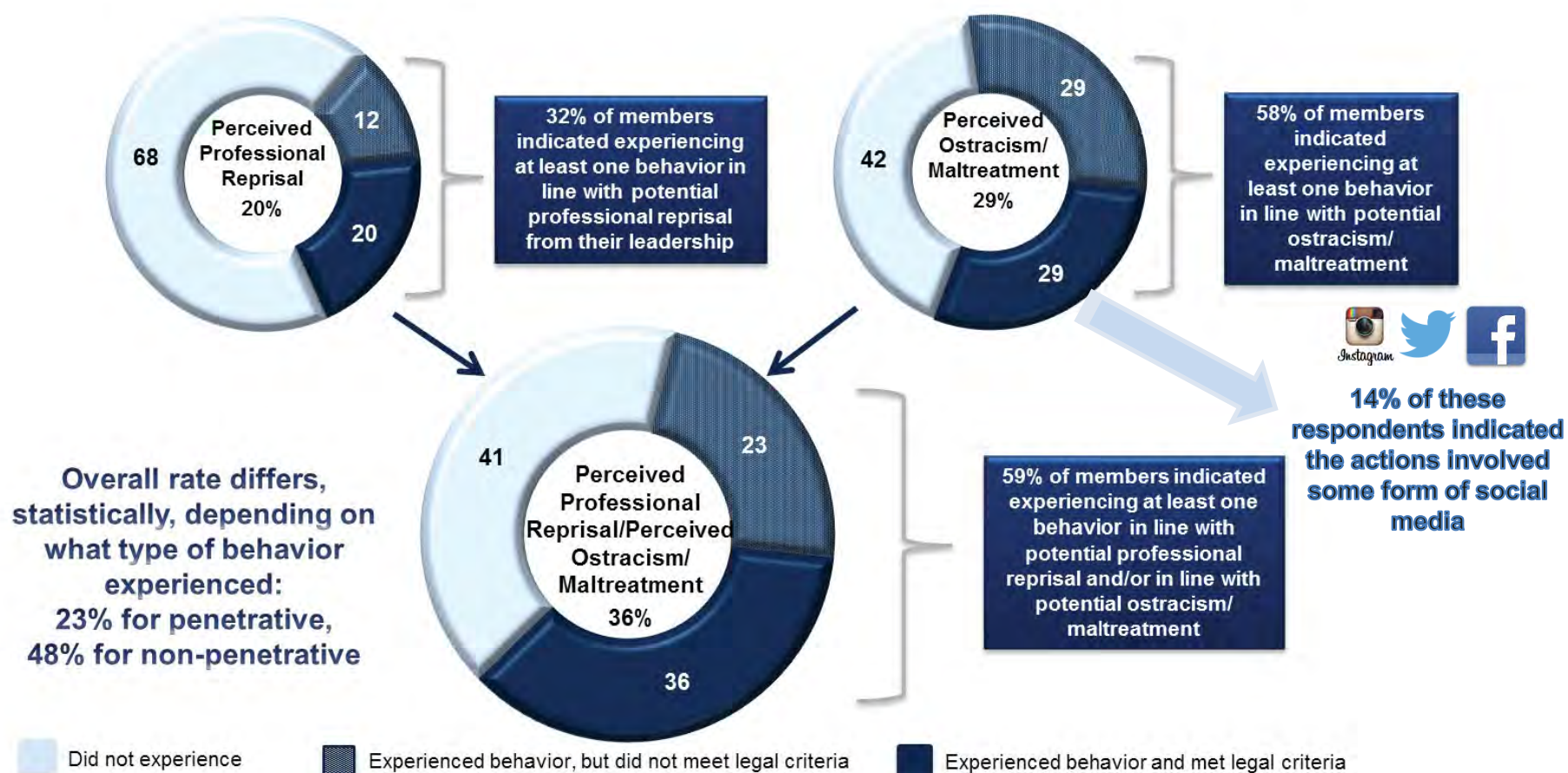
- Why is this an issue?
 - Unintended Consequence of Misconduct Reporting
 - FY14 survey data indicated that nearly two-thirds of women who experienced a sexual assault and reported it, perceived a negative behavior associated with their report
- DoD Retaliation Prevention and Response Strategy
 - Standardize definitions
 - Improve survey items and research
 - Enhance response process
 - Improve support to reporters
 - Create culture intolerant of retaliation

2015 Workplace and Gender Relations Survey of Reserve Component Members

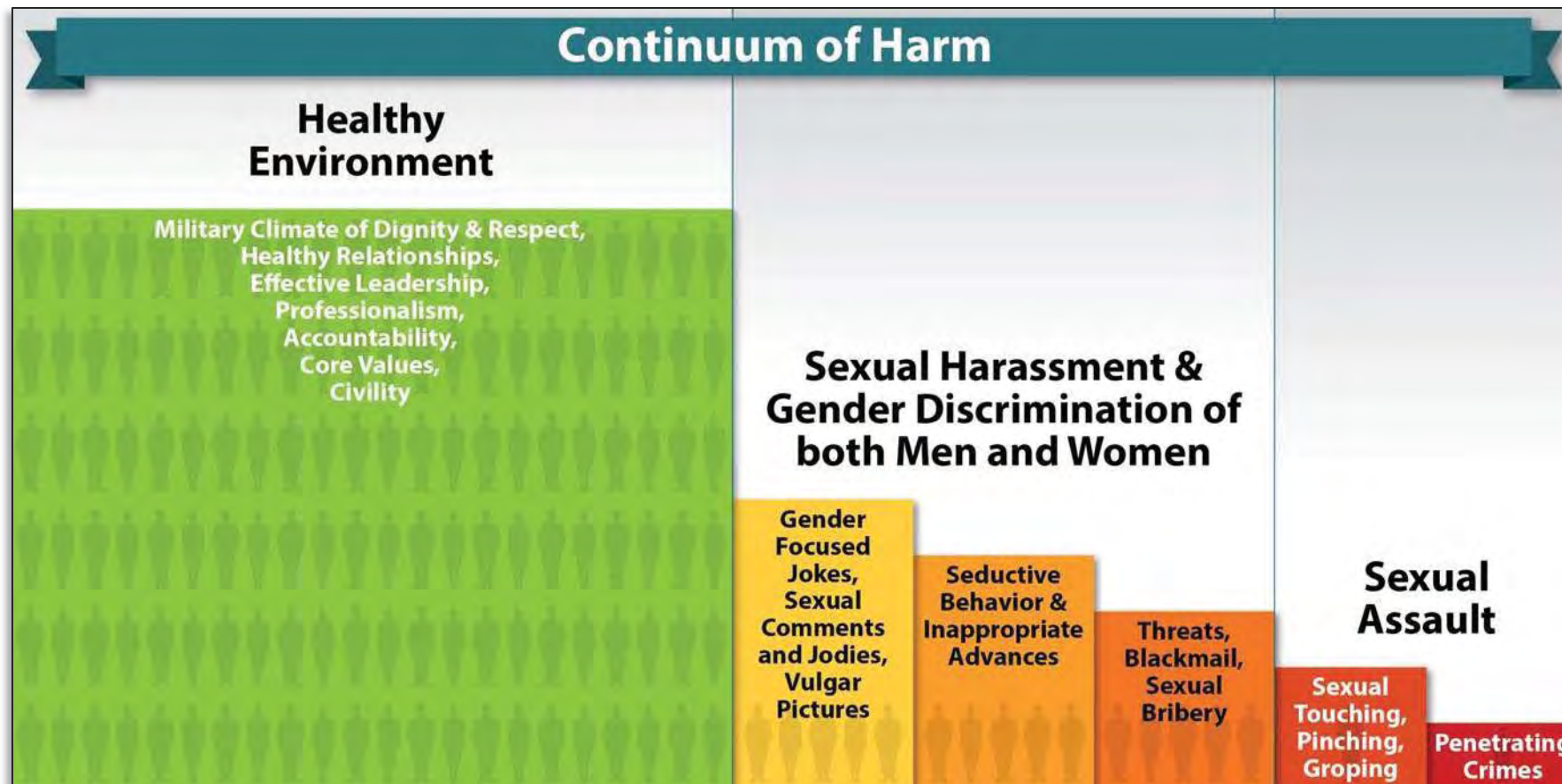


- Perceived Professional Reprisal, Ostracism, and/or Maltreatment

Of the 3.2% of women and 0.6% of men who experienced a sexual assault and...
 → Of the 22% of women and 16% of men who reported their experience to a military authority:



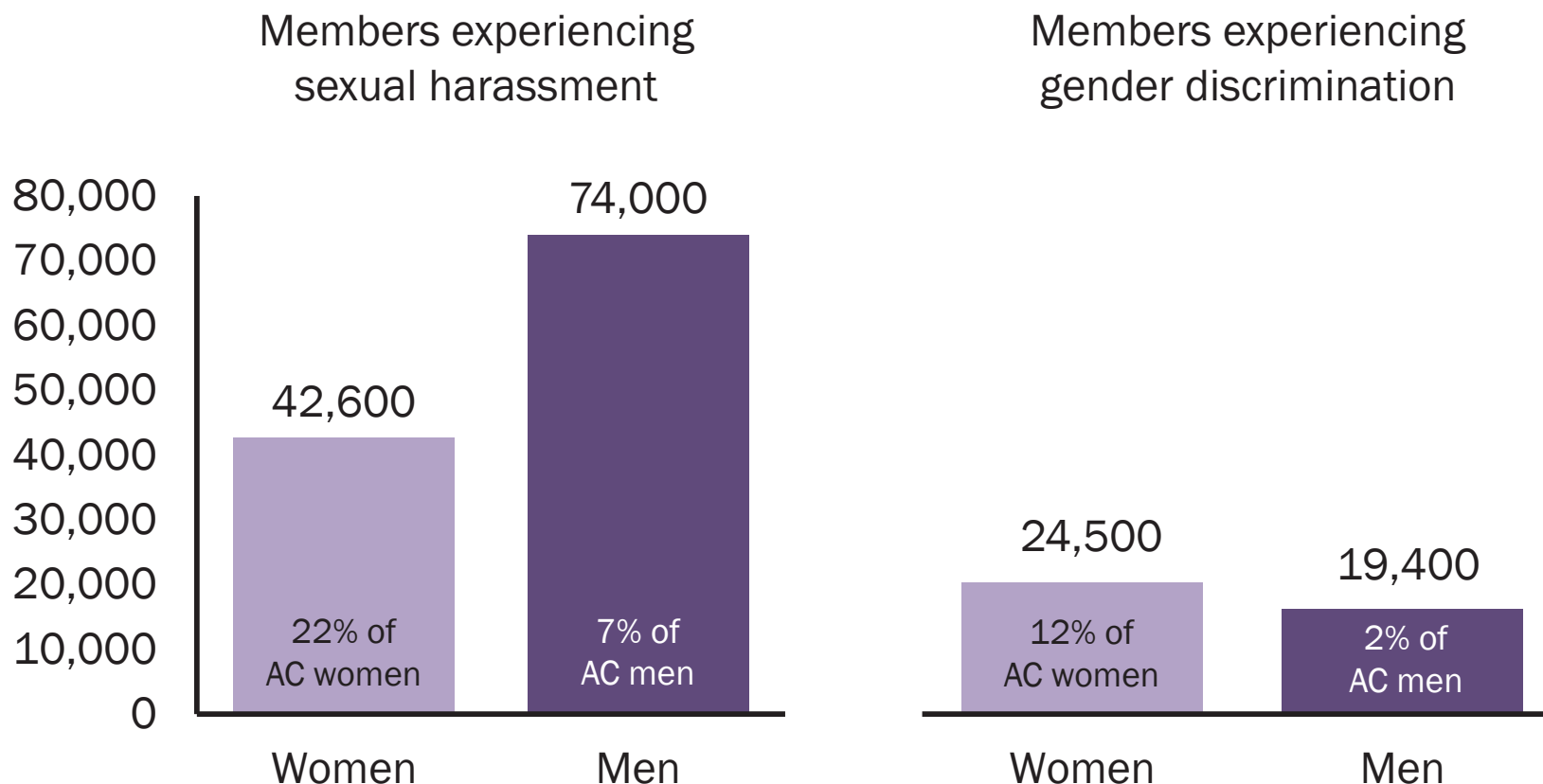
Sexual Assault and Other Readiness Impacting Behaviors



Sexual Harassment and Gender Discrimination



An estimated 116,600 members were sexually harassed, and 43,900 experienced gender discrimination in FY14



Source: 2104 RAND Military Workplace Survey

Sexual Harassment and Gender Discrimination



- Sexual harassment and gender discrimination are associated with
 - Risk of past year sexual assault
 - Lower perceived workplace cohesion and productivity, lower retention intention
- Episodes of harassment and discrimination typically persist for months
- In almost 60% of cases, offenders include the service member's "supervisor" or "unit leader"
- Large gender differences among service members in perceptions of how common these problems are in the military
 - Women: 76% say sexual harassment is common or very common, 69% say discrimination against women is common or very common
 - Men: 45% say sexual harassment is common or very common, 34% say discrimination against women is common or very common

Our Prevention Approach



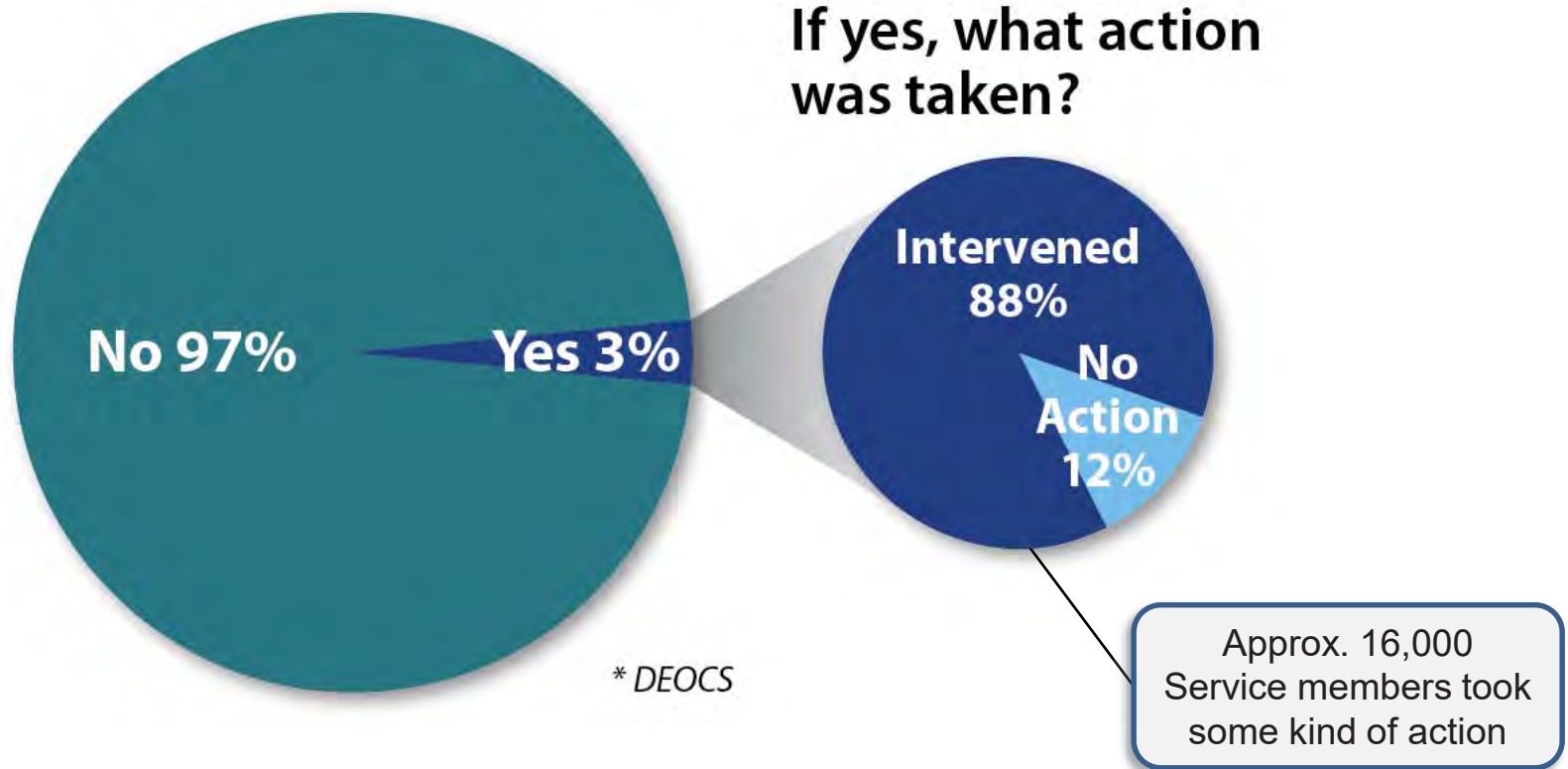
The Department's approach to prevention emphasizes prevention practices throughout the "social environment"



- Units with healthy climates have less sexual harassment, gender discrimination, and sexual assault
- Healthy command climates are more likely to exist when leadership holds unit commanders accountable for promoting such climates
- DoD and Service policies support and encourage prevention at every level of military society
- New Service members learn best from examples set by Senior Enlisted Personnel and other leaders
- Our approach teaches Service members how to identify situations at risk for sexual assault and instills the social responsibility to act

2015 Bystander Intervention

Observed a high risk situation?



We must sensitize the force to greater awareness of risk!

- Most Service members did not see a situation at risk for sexual assault in FY15
- However, the vast majority of Service members who did see a high-risk situation chose to intervene



Contact SAPRO:
sapro@wso.whs.mil

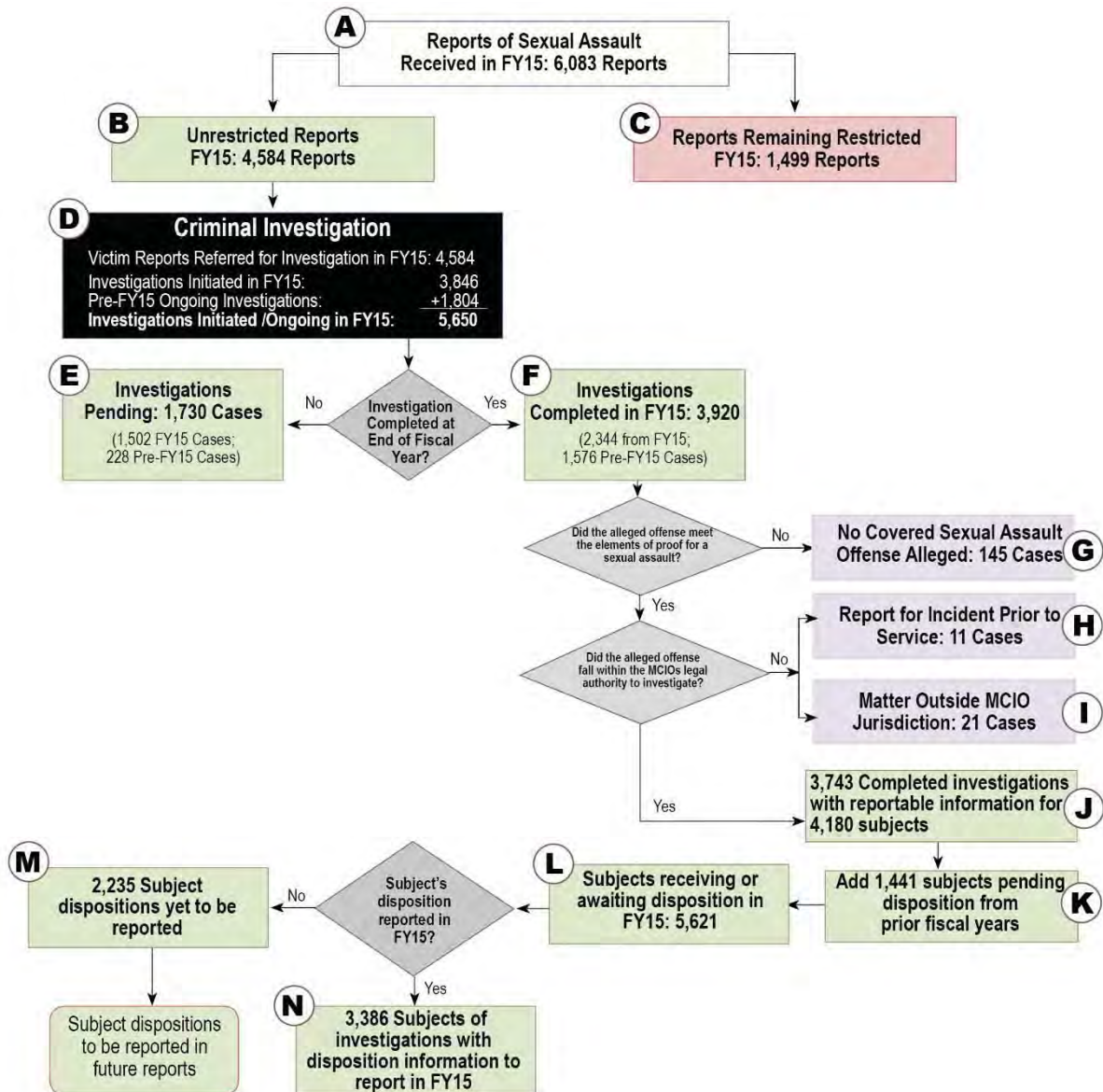
Learn More:
www.sapr.mil

Get Help:
877-995-5247
www.safehelpline.org



**DoD Sexual Assault
Prevention and Response Office**

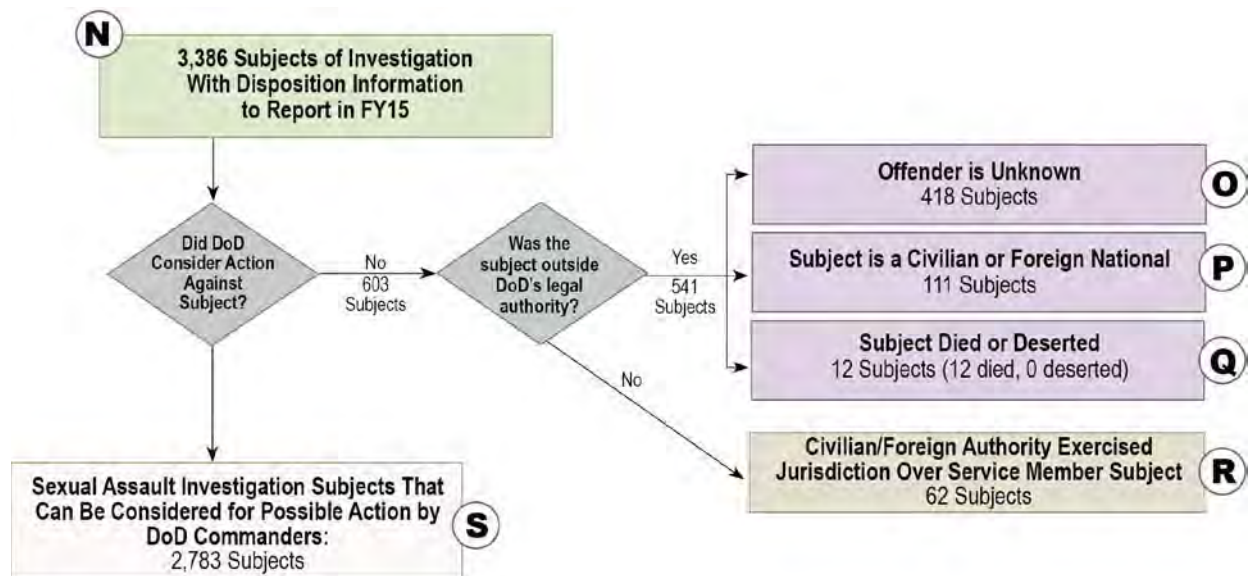
**Fiscal Year 2015
Reports of Sexual Assault, Completed Investigations, and
Subject Dispositions**



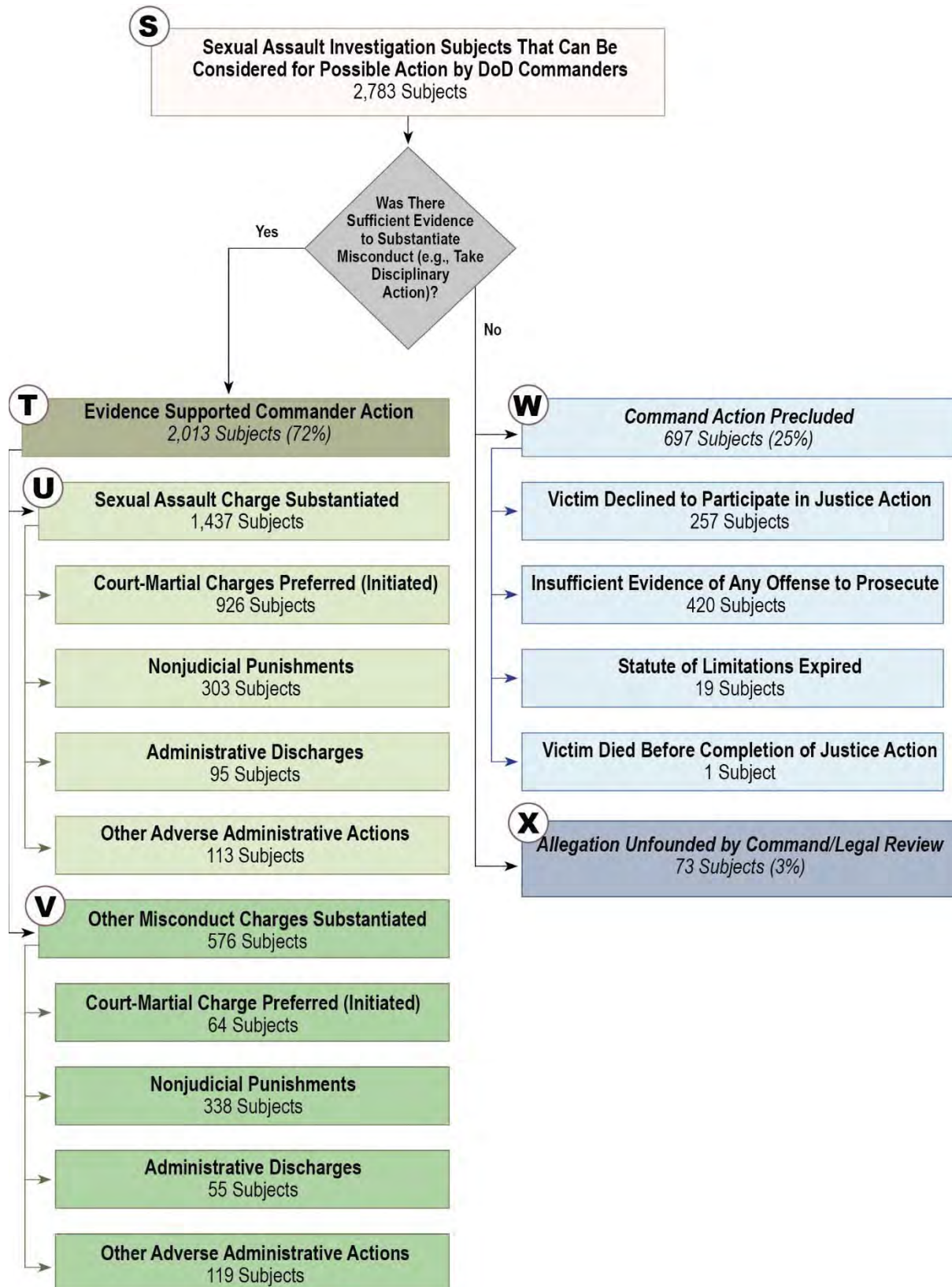
Reports of Sexual Assault, Completed Investigations, and Subject Dispositions, FY15

Notes:

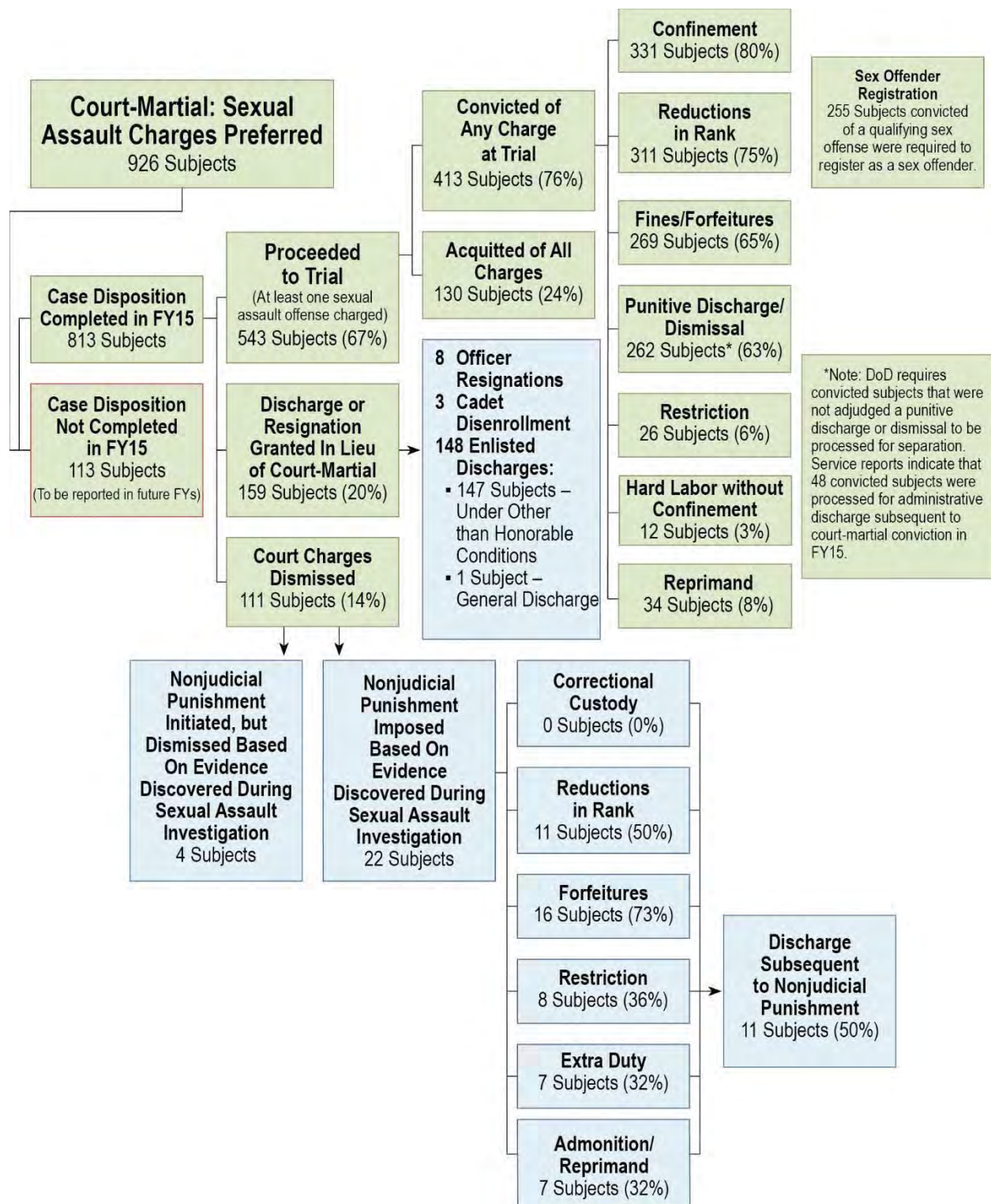
1. For incidents that occur on or after June 28, 2012, the term “sexual assault” refers to the crimes of rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy, and attempts to commit these offenses.
2. The number of investigations initiated in FY15 is lower than the number of victim reports referred for investigation because: there can be multiple victims in a single investigation, some investigations referred in FY15 did not begin until FY16, and some allegations could not be investigated by DoD or civilian law enforcement.
3. The analysis of G, H, and I is a new process and subject to review. Accordingly, these numbers may be adjusted in the future.



Subjects outside DoD Legal Authority, FY15



Dispositions of Subjects under DoD Legal Authority, FY15

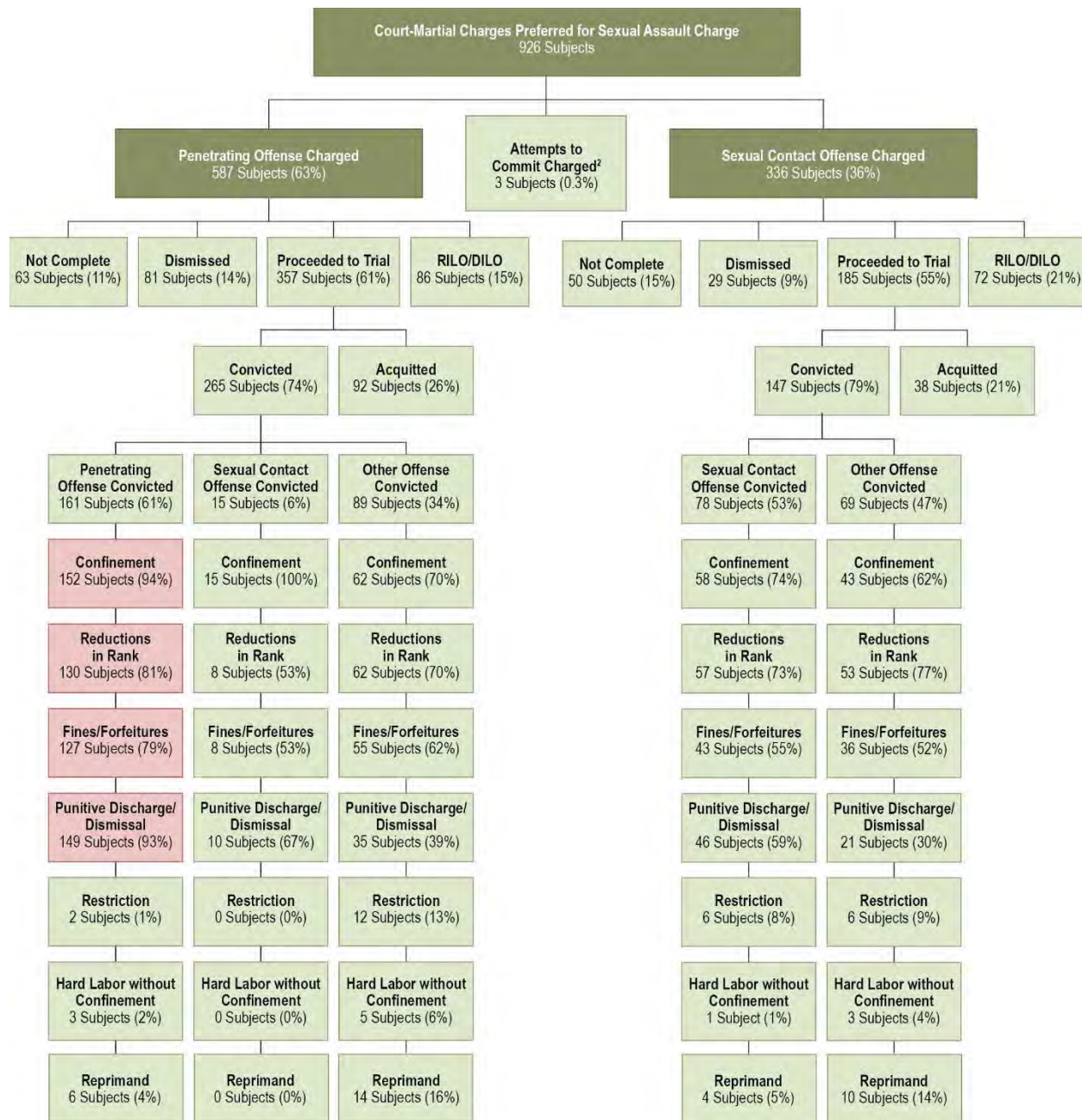


Dispositions of Subjects against Whom Sexual Assault Court-Martial Charges were Preferred, FY15

Notes:

1. Percentages for some categories do not sum to 100% due to rounding. Punishments do not sum to 100%, because subjects can receive multiple punishments.

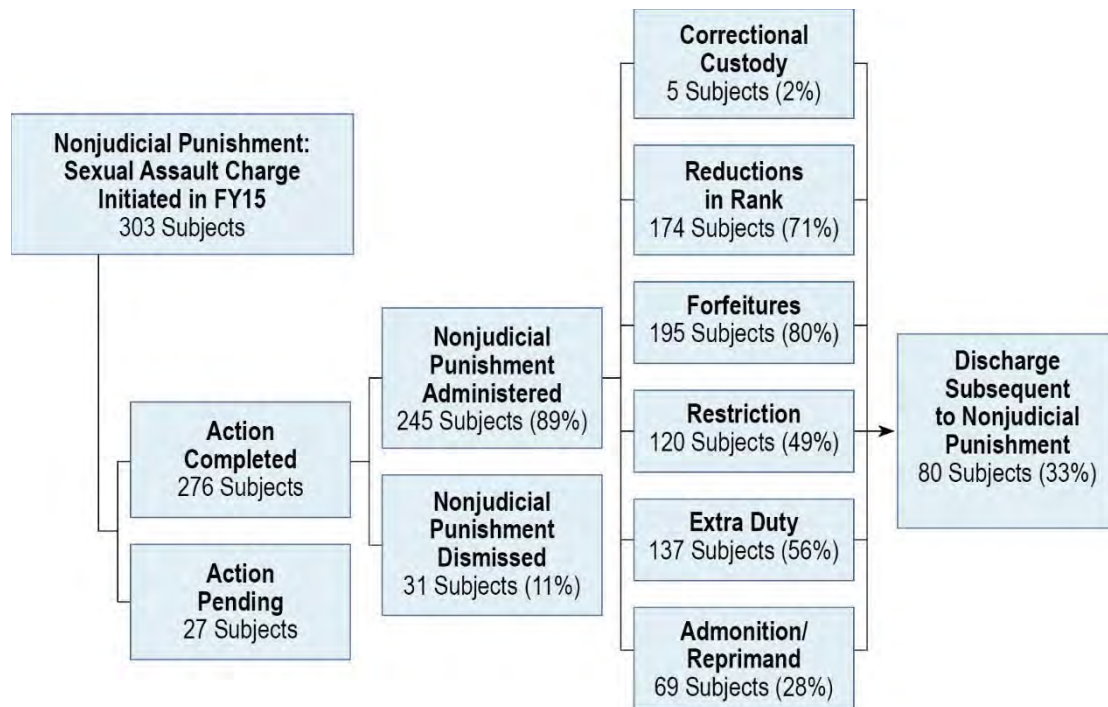
2. The Services reported that 926 subjects of sexual assault investigations had court-martial charges preferred against them for a sexual assault offense.
3. Of the 926 subjects who had court-martial charges preferred against them, 113 subjects were still pending court action at the end of FY15.
4. Of the 813 subjects whose courts-martial were completed and reported in FY15, 543 subjects proceeded to trial, 159 subjects were granted a discharge or resignation in lieu of court-martial, and 111 subjects had court-martial charges dismissed.
5. In cases in which a discharge in lieu of court-martial is requested and approved, the characterization of the discharge is UOTHC, unless a higher characterization is justified.
6. Of the 111 subjects with dismissed charges, commanders imposed nonjudicial punishment on 22 subjects. An additional four subjects had a nonjudicial punishment initiated, but were subsequently dismissed. Most of these 22 subjects received two kinds of punishment: a reduction in rank and a forfeiture of pay.
7. Of the 543 subjects whose cases proceeded to trial, 413 were convicted of at least one charge. Conviction by court-martial may result in a combination of punishments. Consequently, convicted Service members could be adjudged one or more of the punishments listed. In most cases, they received at least four kinds of punishment: confinement, a reduction in rank, a fine or forfeiture of pay, and a punitive discharge (i.e., bad conduct discharge, dishonorable discharge, or dismissal (officers)). The National Defense Authorization Act (NDAA) for FY13 now requires mandatory administrative separation processing for all Service members convicted of a sexual assault offense.



Dispositions of Subjects against Whom Sexual Assault Court-Martial Charges were Preferred by Crime Charged, FY15

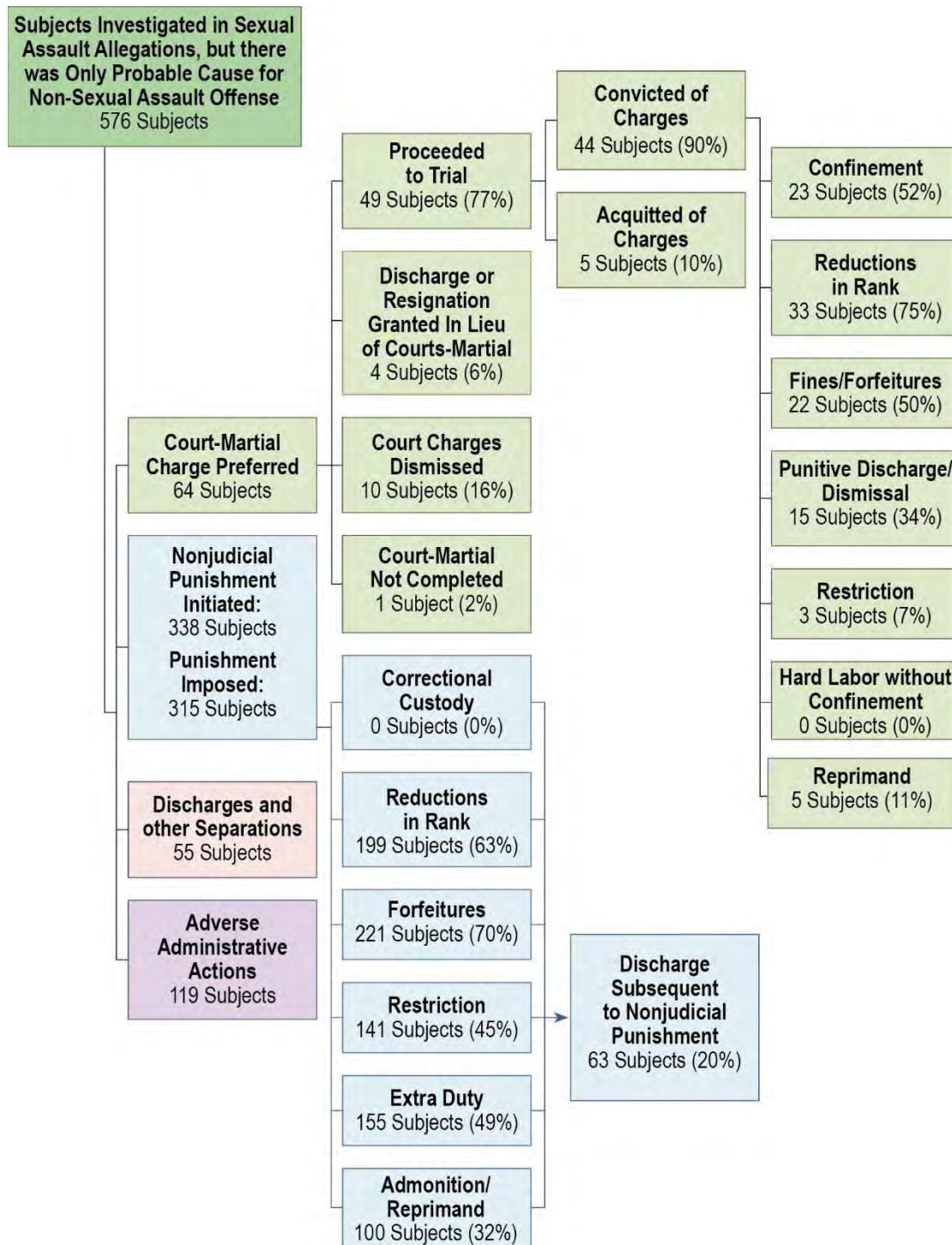
Notes:

1. Percentages for some categories do not sum to 100% due to rounding. Punishments do not sum to 100%, because subjects can receive multiple punishments.
2. The outcomes for the attempts to commit cases were: one charges dismissed, one RILO/DILO, one convicted of a non-sexual assault offense (punishments received: confinement, reductions in rank, and punitive discharge/dismissal).



Dispositions of Subjects Receiving Nonjudicial Punishment, FY15

Note: Punishments do not sum to 100% because subjects can receive multiple punishments.

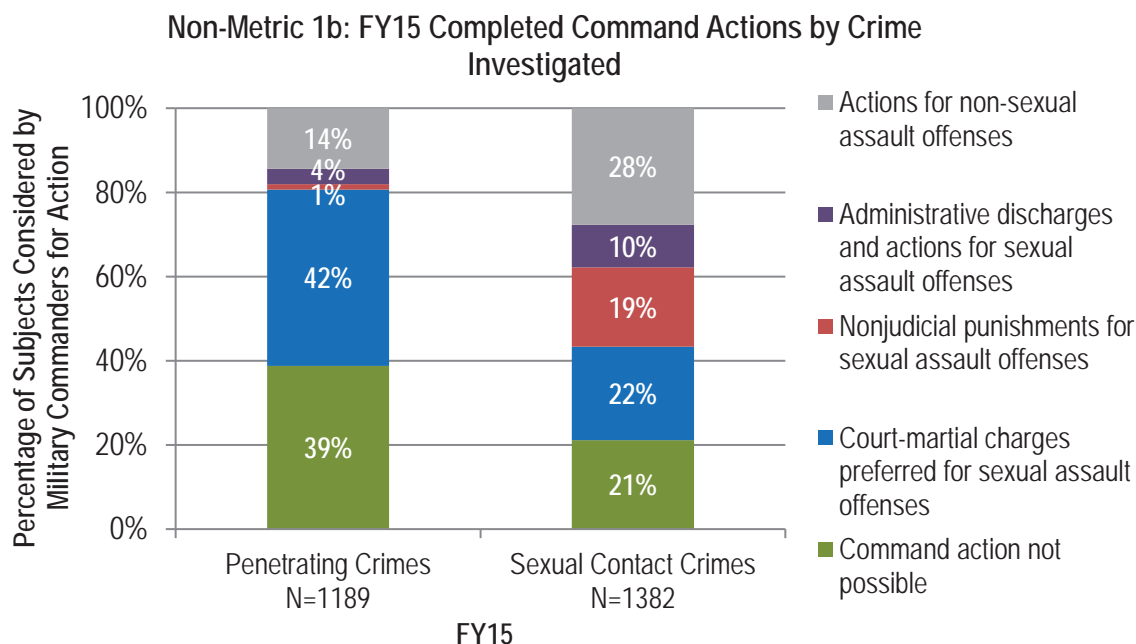


Dispositions of Subjects for Whom There was Only Probable Cause for Non-Sexual Assault Offenses, FY15

Notes:

1. Some percentages do not sum to 100% due to rounding. Punishments do not sum to 100% because subjects can receive multiple punishments.

2. The Military Services reported that investigations of 576 subjects only revealed evidence of misconduct not considered a sexual assault offense under the UCMJ.
3. Of the 576 subjects, 64 subjects had court-martial charges preferred against them, 338 subjects were entered into nonjudicial punishment proceedings, 55 subjects received a discharge or separation, and 119 subjects received adverse administrative action.
4. Of the 64 subjects with court-martial charges preferred, 49 subject cases proceeded to court-martial and 44 subjects were convicted of the charges against them.
5. Of the 338 subjects considered for nonjudicial punishment, 11 cases were still pending completion and commanders ultimately found 315 guilty.



Note: This figure only includes command actions in which the action was completed in FY15. Command actions pending completion (e.g., court-martial preferred but pending trial) are not included in this graph. Additionally, 31 completed command actions could not be classified as penetrating or sexual contact crimes because the crime charged was attempted sexual assault.

KATHLEEN B. CANNON
ATTORNEY AT LAW

Sole Practitioner

MELROSE LAW CENTER
380 S. Melrose Drive, Suite 300
Vista, CA 92081
760-845-2520
cannon.kathleen@ymail.com

April 26, 2017

Dear DAC-IPAD Committee Members and Staff,

Regretfully, I am unable to attend the April 28, 2017 meeting of our Committee. I have reviewed some of the materials provided to us, including the recommendations of the Judicial Proceedings Panel in its April 2017 report.

Though I have not had the opportunity to review all the materials as thoroughly as needed, it is clear that the Secretary of Defense and the committees working in the area of sexual assaults in the military have made great strides in providing legal rights and protections to the victims of sexual assault in the military. Continued efforts in this direction are important and vital to a fair system of justice.

One of my concerns, as a criminal defense attorney, is in this effort to correct inequities and injustice to victims of sexual assault, we do not sacrifice the fundamental rights and liberties of those accused. The JPP's Subcommittee's site visits and the subsequent recommendations and findings were of particular interest to me as they raise some of the issues relating to the disparity and potential unfairness to the accused in these cases.

During the Strategic Planning Session of our Committee Meeting, I would recommend we create a subcommittee to further the work of the JPP and its efforts toward addressing the disparities in the investigation, prosecution, and defense of sexual assault cases. I would like to be involved if such a subcommittee is created. Also, I will serve in any other manner the Committee needs or requires of me.

I look forward to seeing you at our next meeting in July.

Sincerely,

A handwritten signature in purple ink, appearing to read 'Kathleen B. Cannon', with a long horizontal flourish extending to the right.

Kathleen B. Cannon

Materials for the Presentation on Department of Defense Annual Sexual Assault Reporting Data

Tab 10 Military Sexual Assault Case Adjudication Data Analysis

- *PowerPoint presentation of Dr. Cassia Spohn, Foundation Professor and Director, Arizona State University School of Criminology and Criminal Justice and Ms. Meghan Peters, Attorney-Advisor. Judicial Proceedings Panel and DAC-IPAD*

Tab 11 National Defense Authorization Act (NDAA) Provisions Regarding the Department of Defense Annual Report on Sexual Assault, Fiscal Year 2011 – Fiscal Year 2017

- *Document prepared by DAC-IPAD staff providing the statutory reporting requirements for DoD annual reporting to Congress on sexual assault incidents occurring each year.*

Materials for DAC-IPAD Strategic Planning Session

Tab 12 Some Initial General Thoughts for Consideration in Developing a Structure for a 4+ Year Work Plan for DAC-IPAD

- *Document prepared by Judge Leo Brisbois, Committee member, outlining proposed areas of inquiry for the DAC-IPAD.*

Tab 13 Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-PAD) Committee Planning Session Outline

- *Overview of key issues and questions for the Committee members to discuss during the planning session. This document was prepared by the DAC-IPAD staff.*

Adjudication of Sexual Offenses: 2015 Data

Cassia Spohn, PhD
School of Criminology and Criminal Justice
Arizona State University



Data for the Analysis of 2015 Cases

- All cases involving a preferred charge of sexual assault that were completed in FY 2015 (N = 738)
- At least one count of a penetrative offense (N = 530) or a contact offense (N = 208)
- Two thirds were from the Army (43.6%) or Air Force (23%)
 - Navy 16.4%
 - Marine Corps 12.7%
 - Coast Guard 4.2%

Descriptive Portrait of Accused

- Typical accused was
 - Enlisted service member (92.7%)
 - Male (99.3%)
 - Assigned to units in the US or its territories when charges were preferred (81.3%)



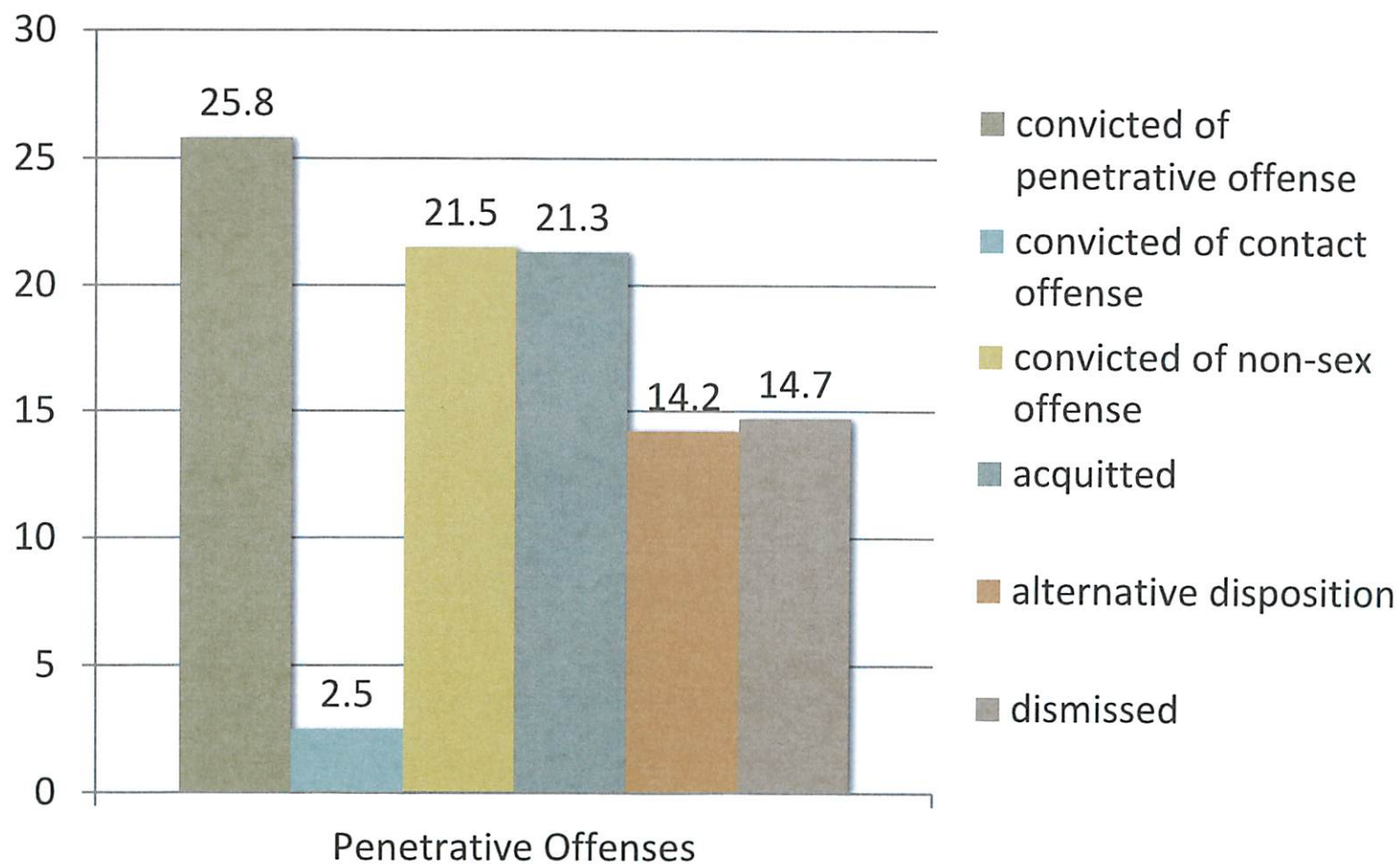
Descriptive Portrait of Victim(s)

- Number of victims ranged from 1 to 15
 - Most cases involved one (83.2%) or two (11.9%) victims
- Typical victim was
 - Female (90.9%)
 - Member of the military services (67.6%)
 - **Not** the spouse or intimate partner of the accused (82.4%)
 - 82 of the 130 victims who were spouses or intimate partners were civilians

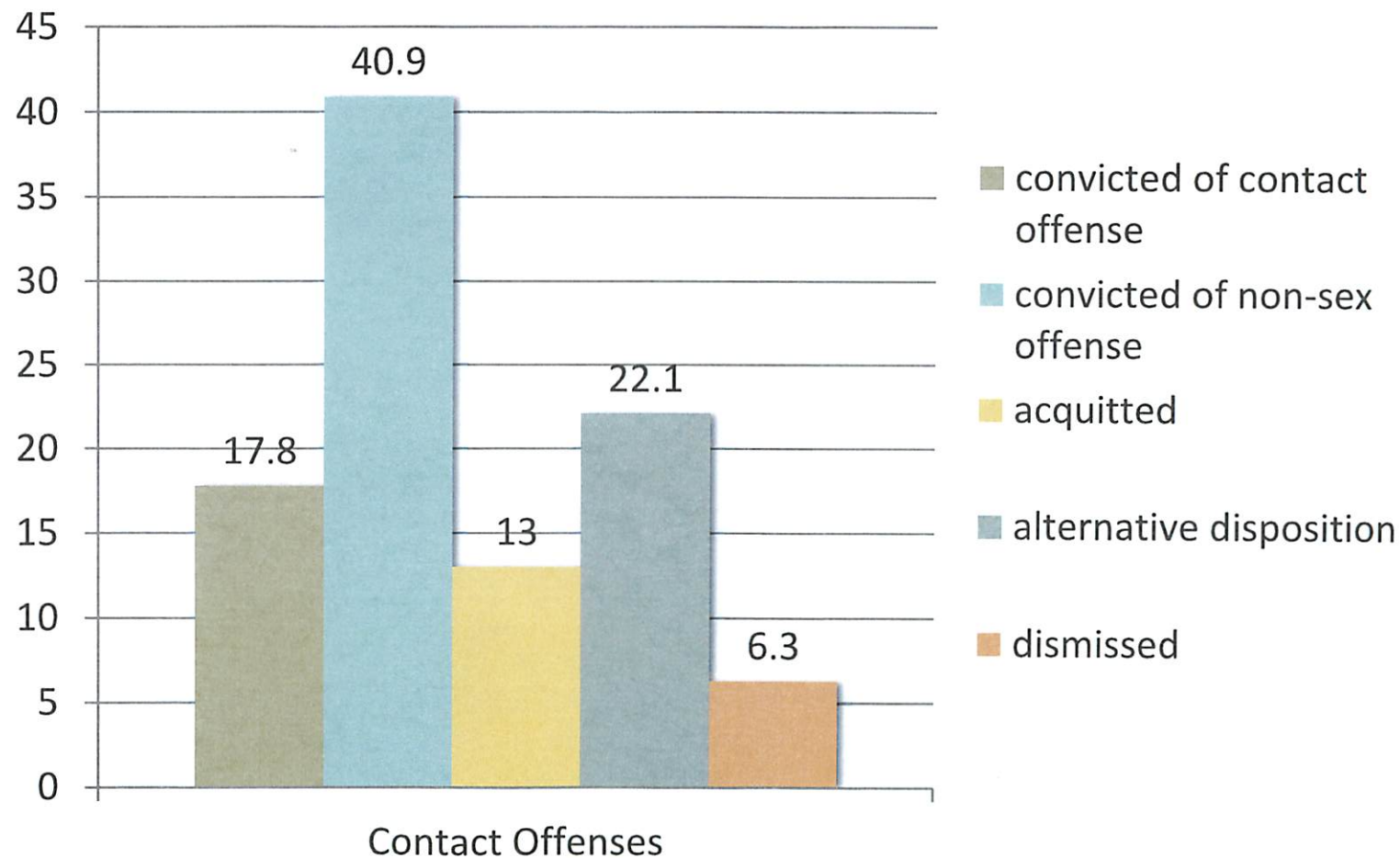
Case Dispositions

- 526 (71.3%) cases were referred to court martial
 - 121 (16.4%) received an alternative disposition
 - 91 (12.3%) were dismissed without further action
- Of 526 cases referred to court martial
 - 416 (79.1%) went to general court martial
 - 71 (13.5%) went to special court martial
 - 39 (7.4%) went to summary court martial
- Of 526 cases referred to court martial
 - 276 (52.5%) decided by a military judge
 - 211 (40.1%) decided by a panel of military members
 - 39 (7.4%) decided by a summary court martial officer

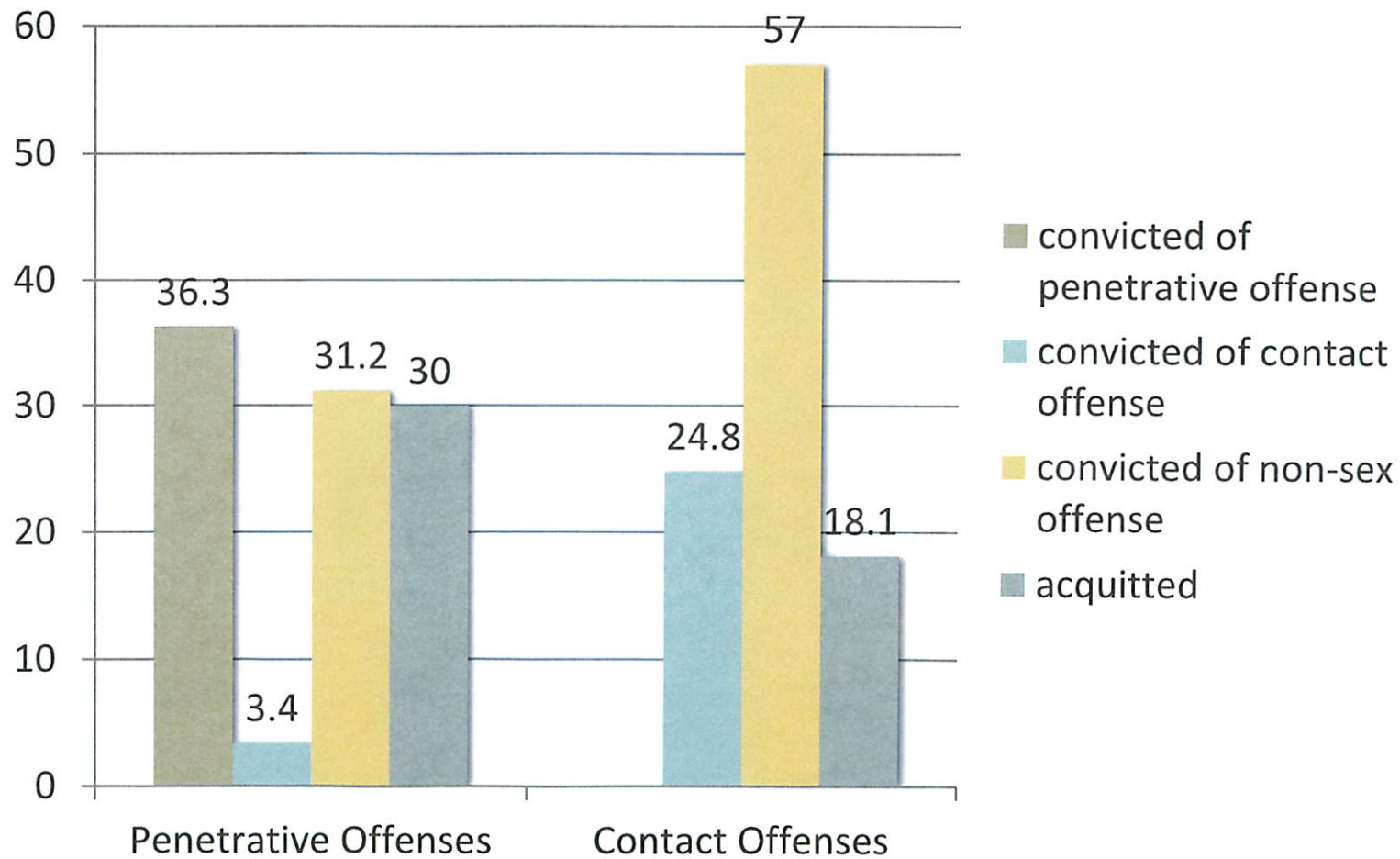
Case Outcomes: All Preferred Penetrative Offenses (N = 530)



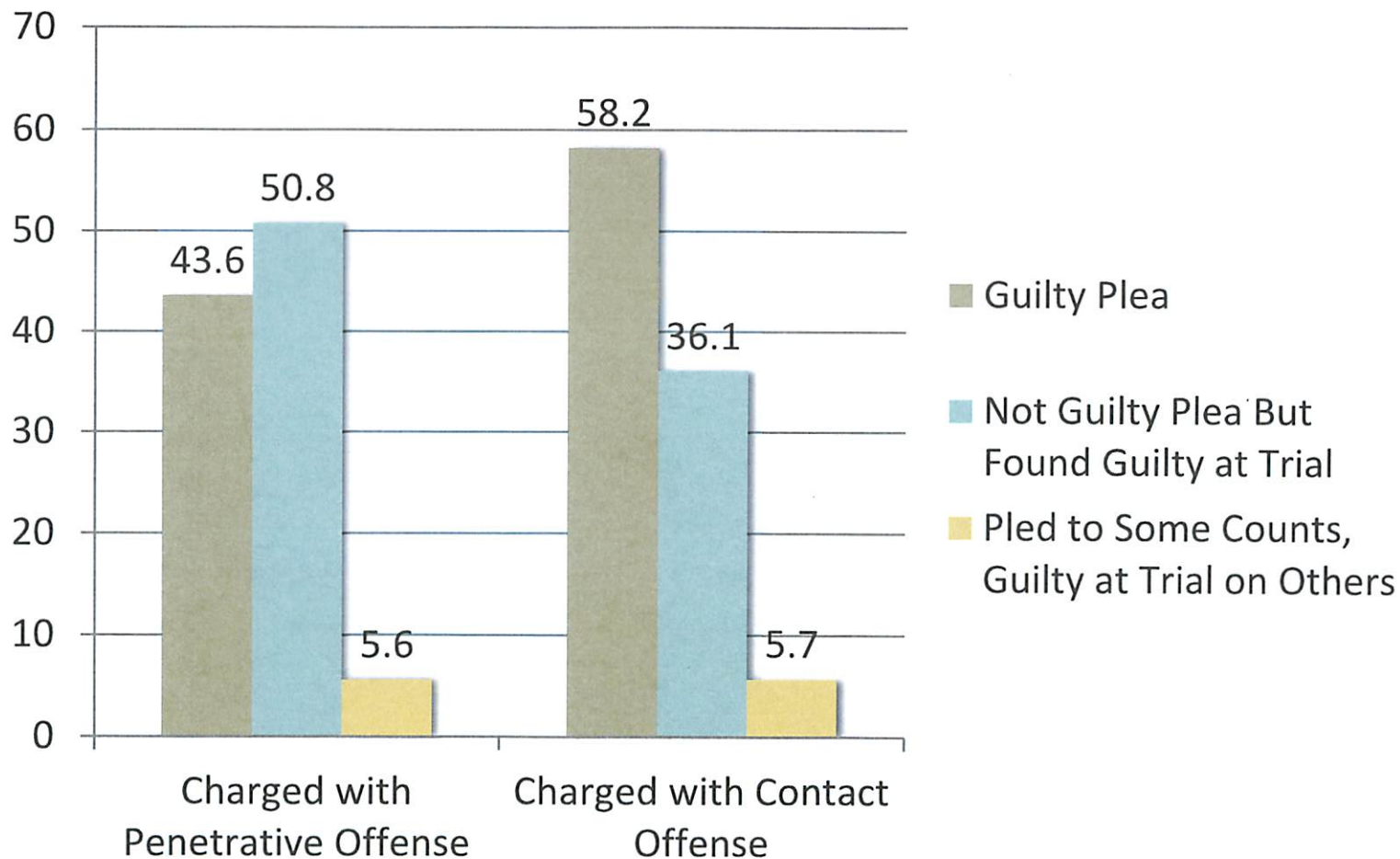
Case Outcomes: All Preferred Contact Offenses (N = 208)



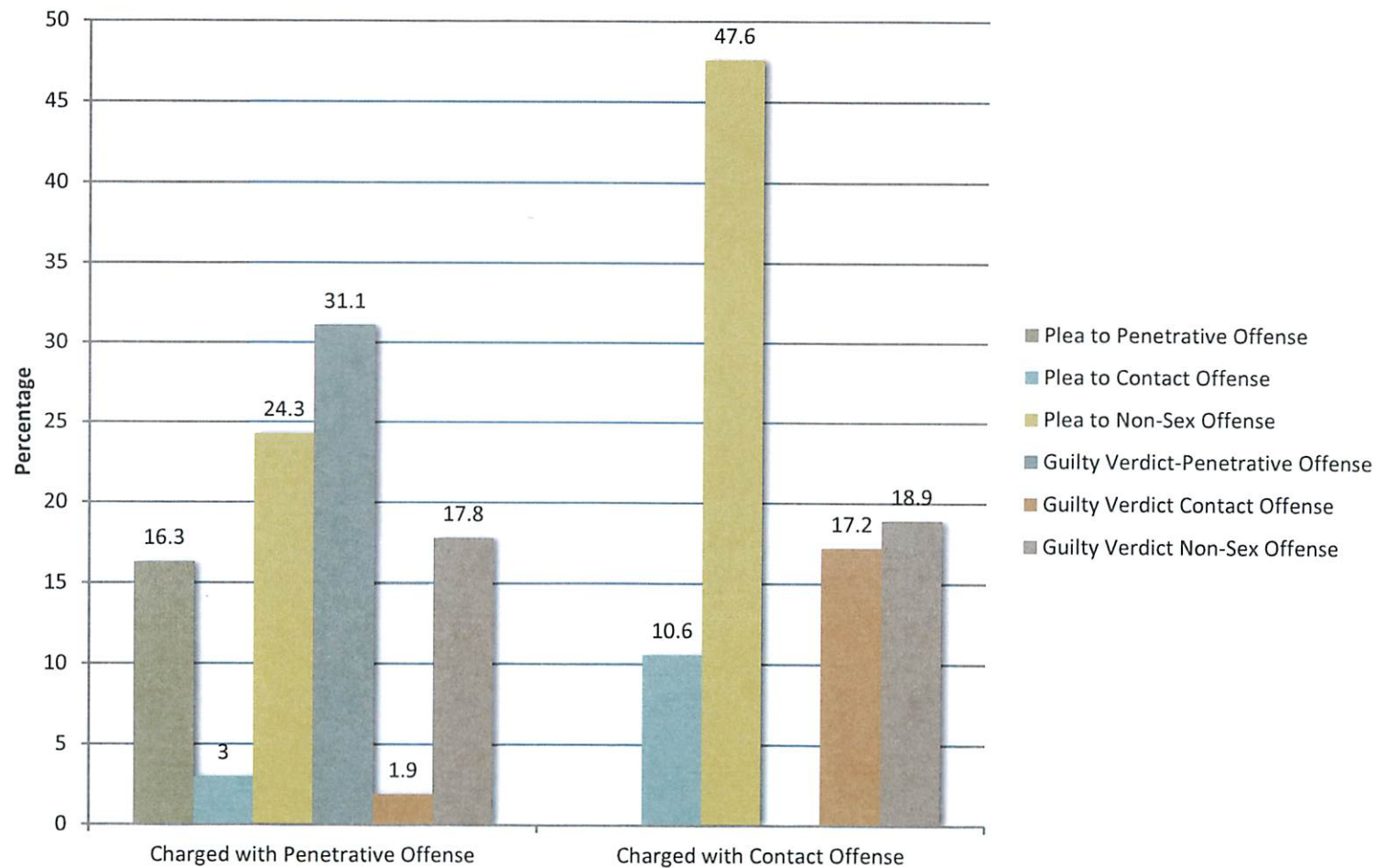
Case Outcomes: Cases Referred to Trial



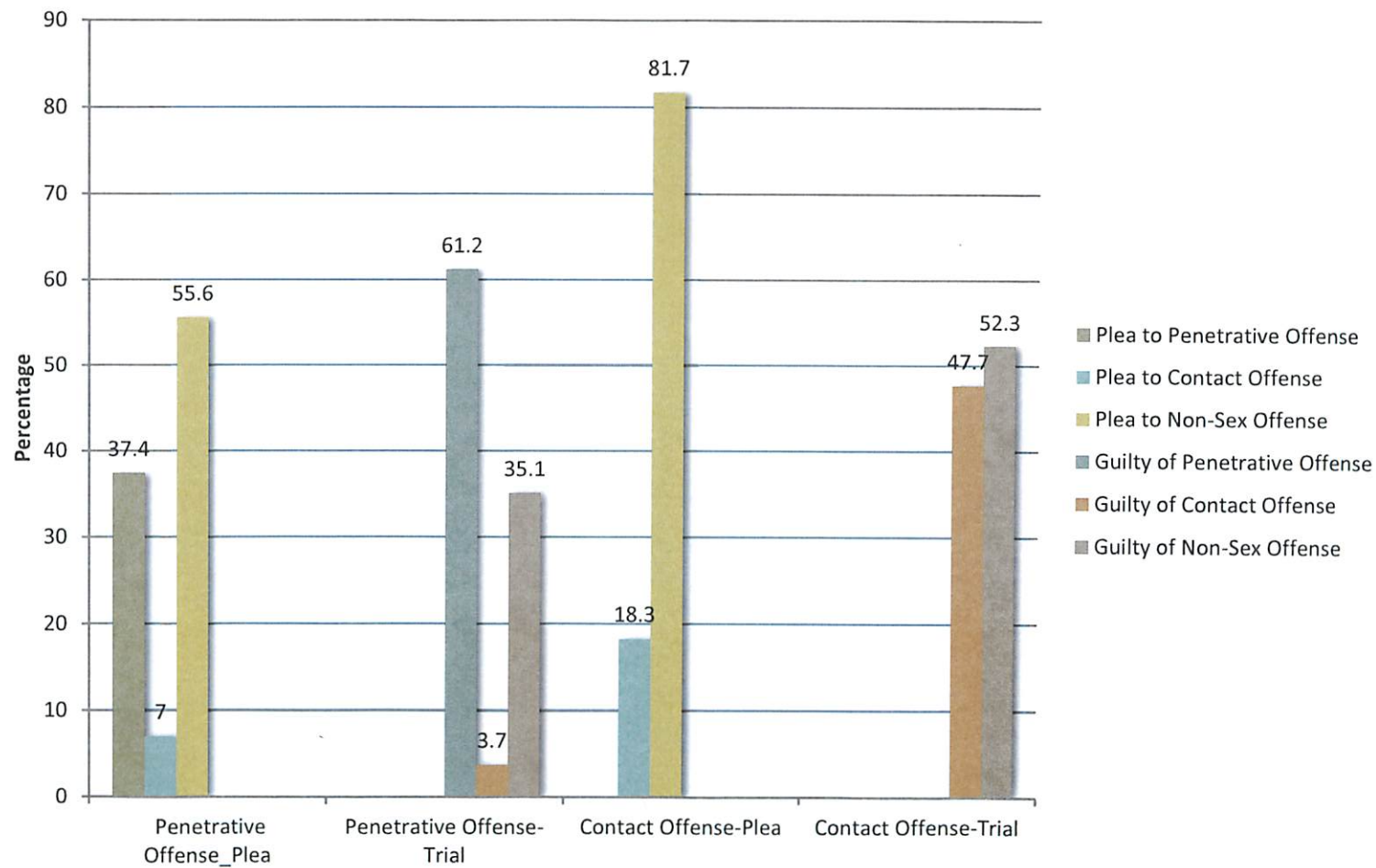
Case Dispositions— Individuals Referred to Trial and Convicted



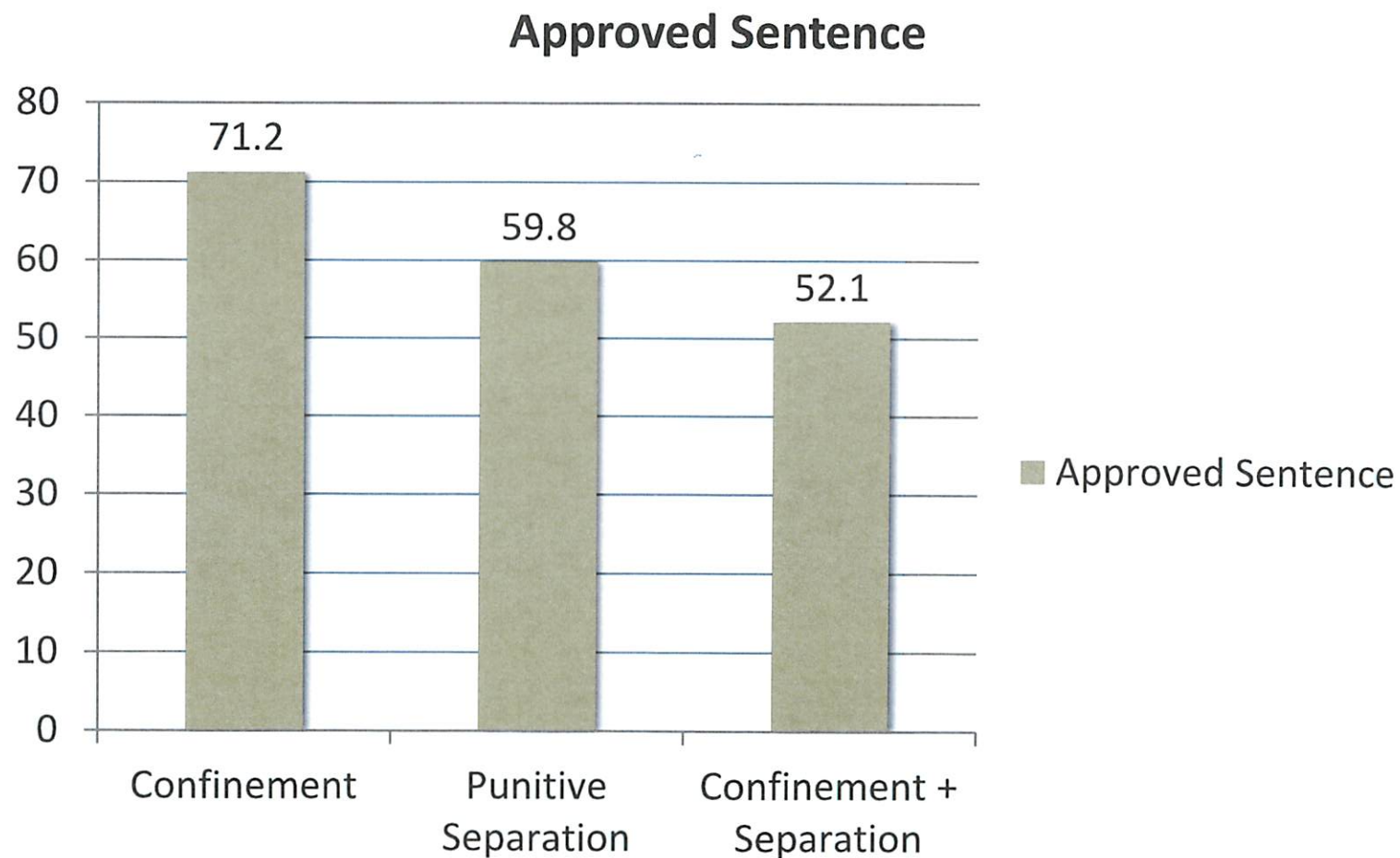
Type of Disposition and Conviction Charge



Type of Conviction Charge for Guilty Pleas and Contested Trials



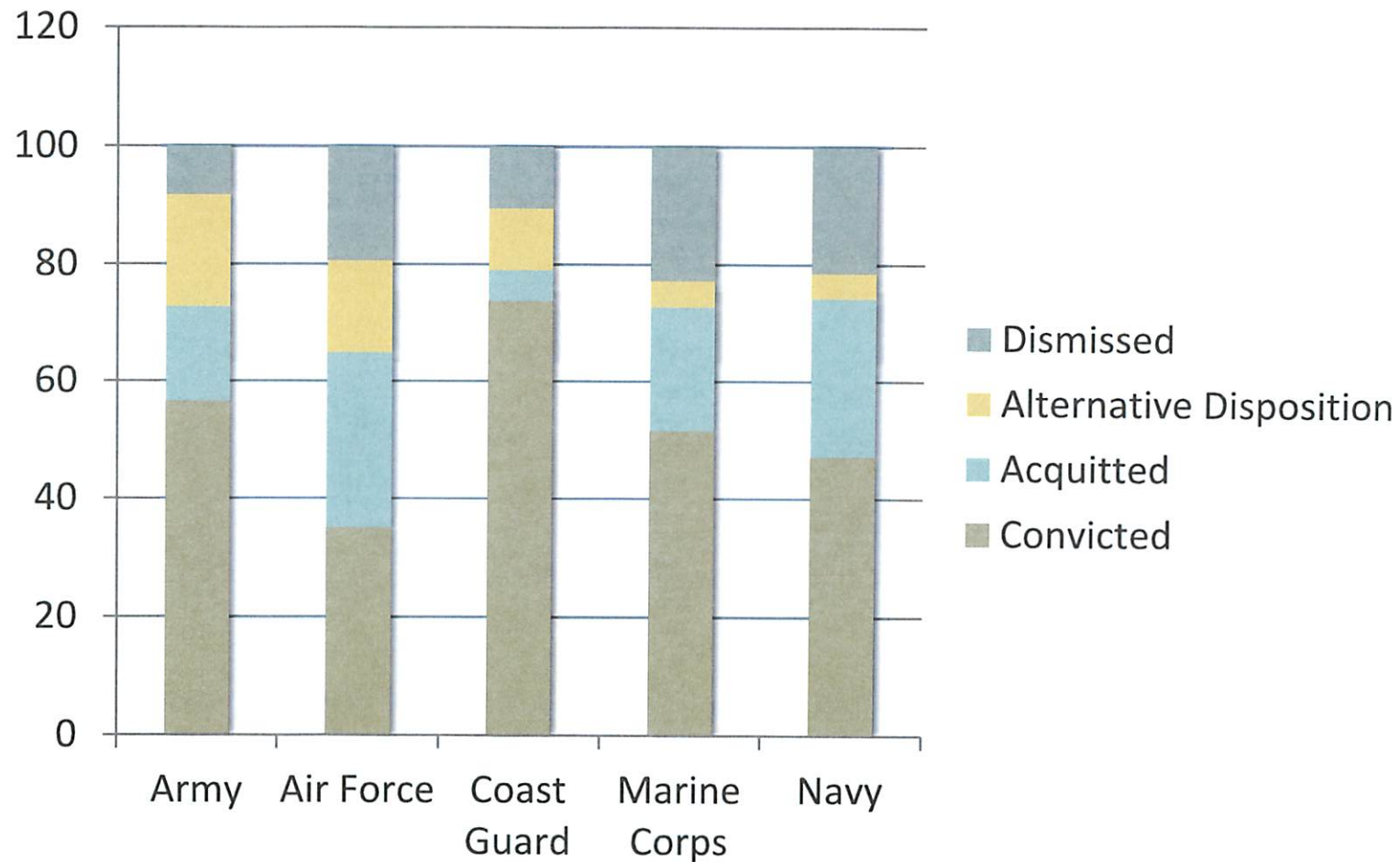
Approved Sentence Type



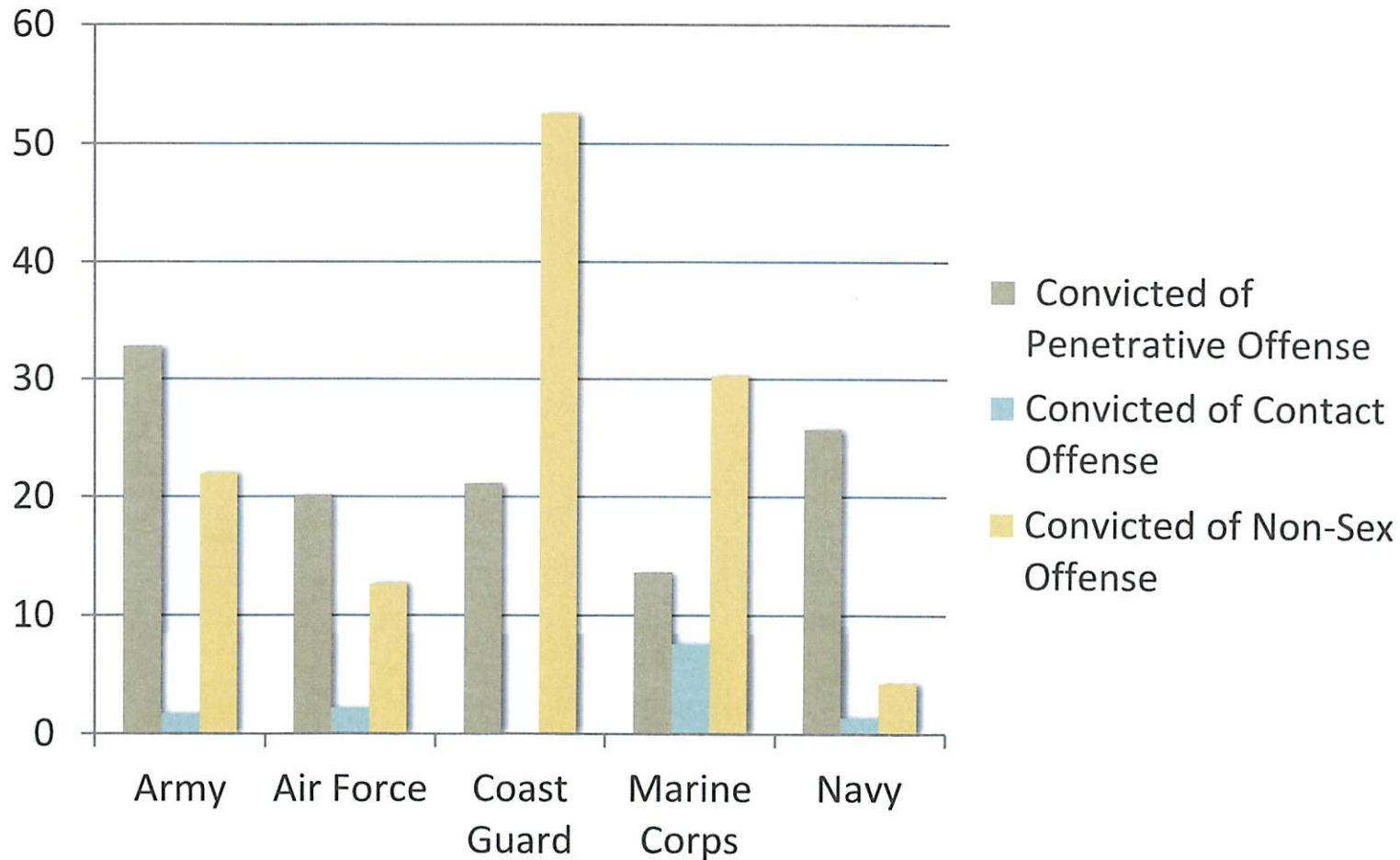
Length of Sentence

- Adjudged Sentence
 - Range = 0.57 months to life in prison
 - Mean = 43.04
- Approved Sentence
 - Range = 0.57 months to life in prison
 - Mean = 36.08

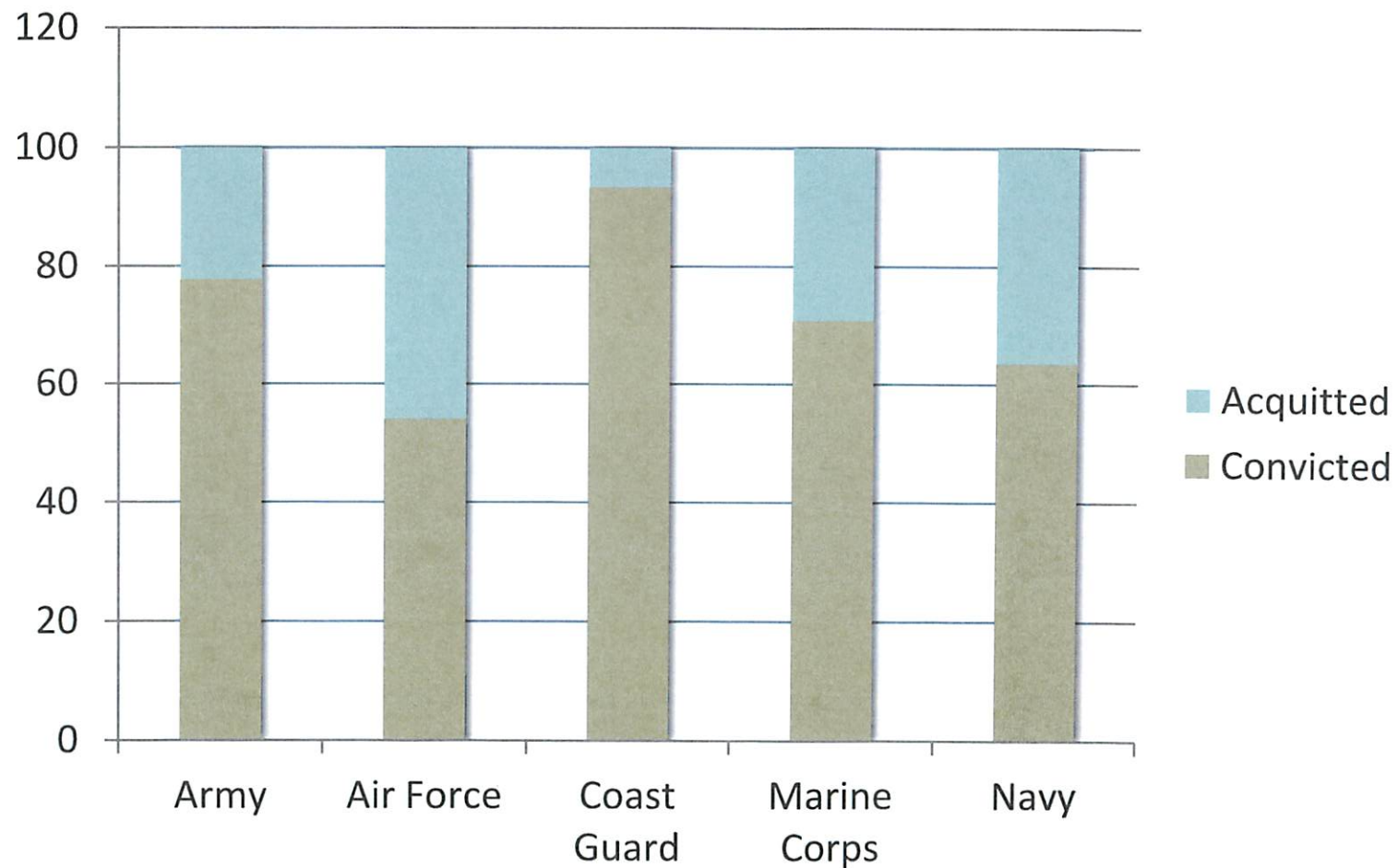
Case Outcomes by Military Service of Accused: Penetrative Offenses



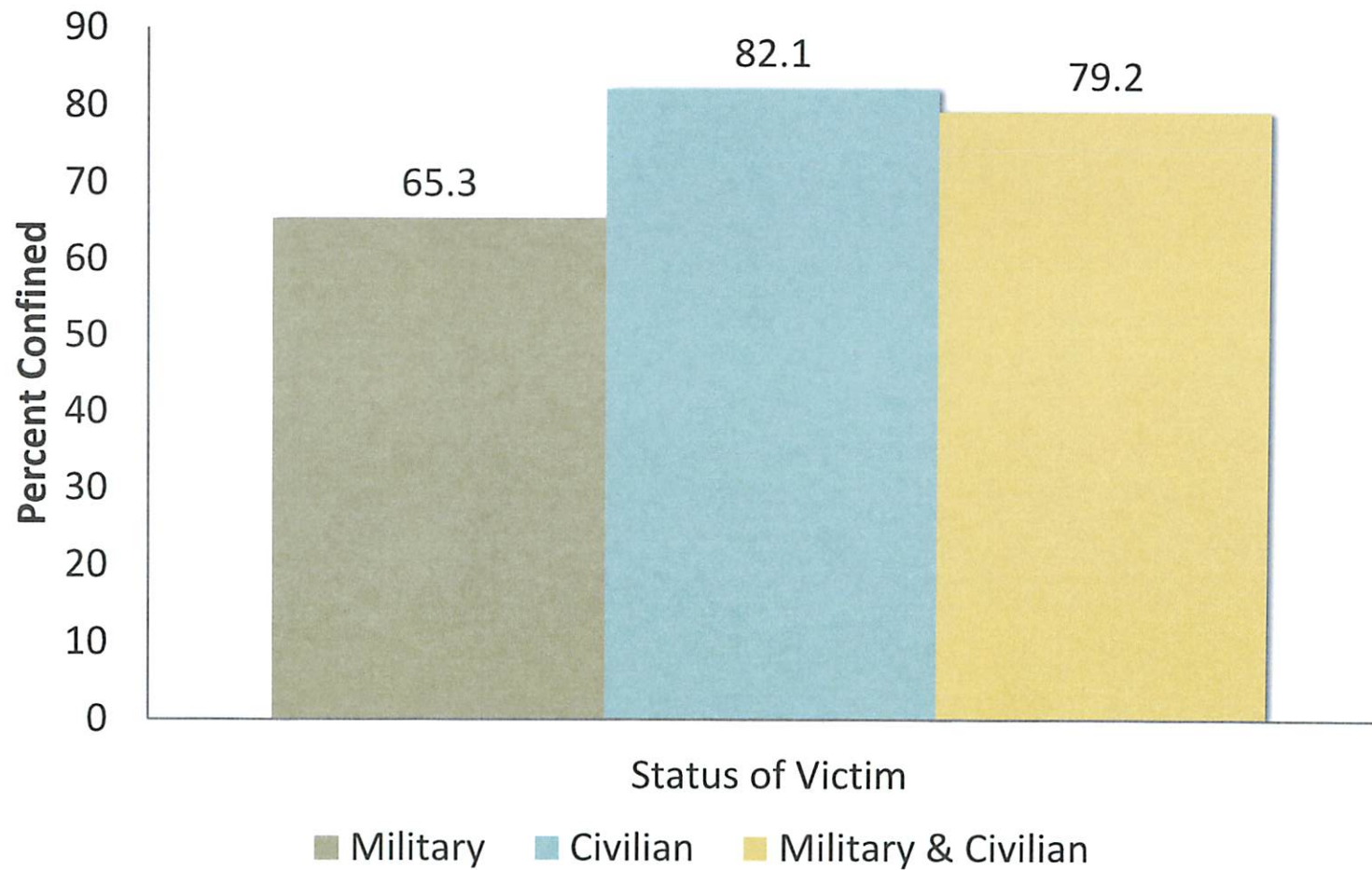
Conviction Charge by Military Service of Accused: Penetrative Offenses



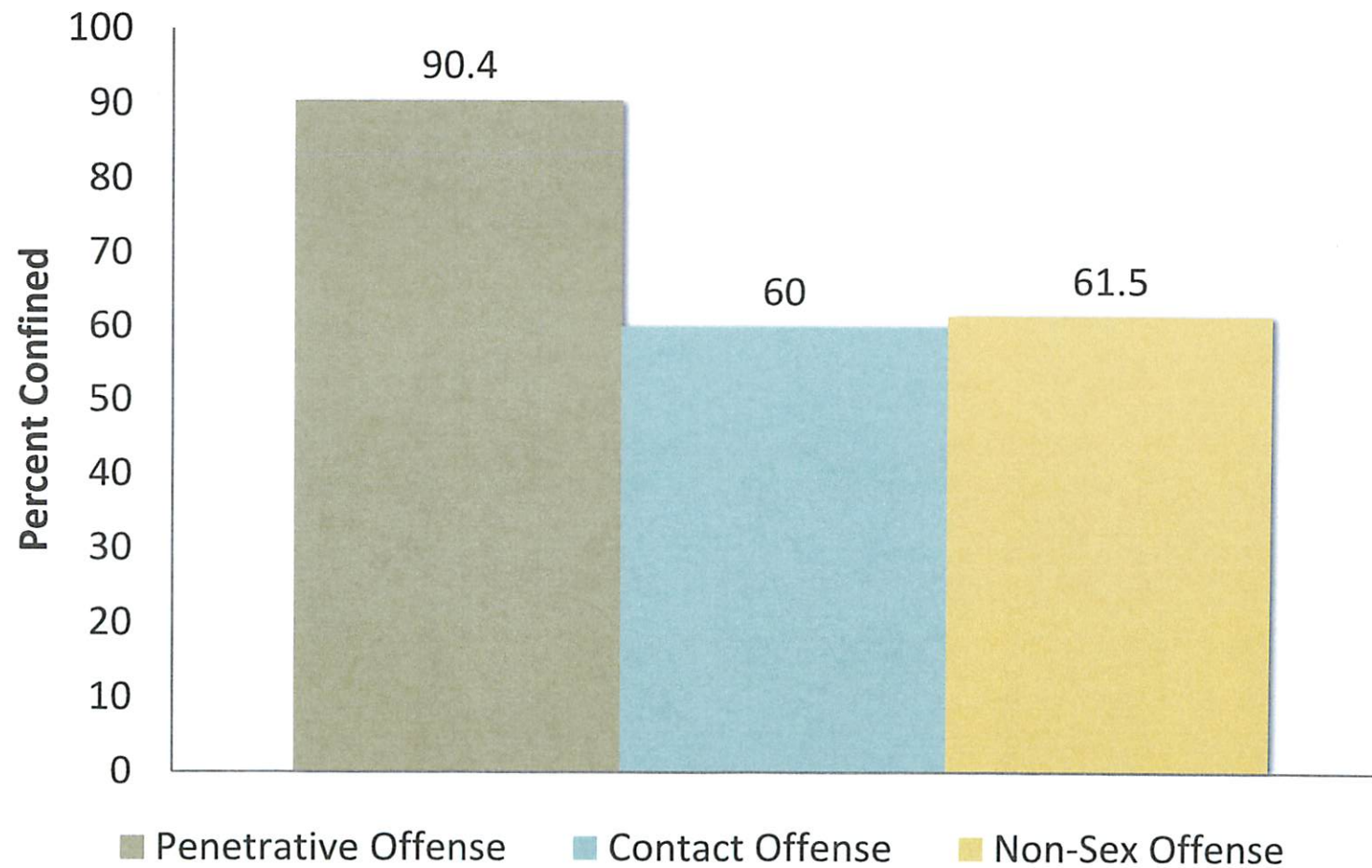
Case Outcomes by Military Service of Accused: Penetrative Offenses Referred to Trial



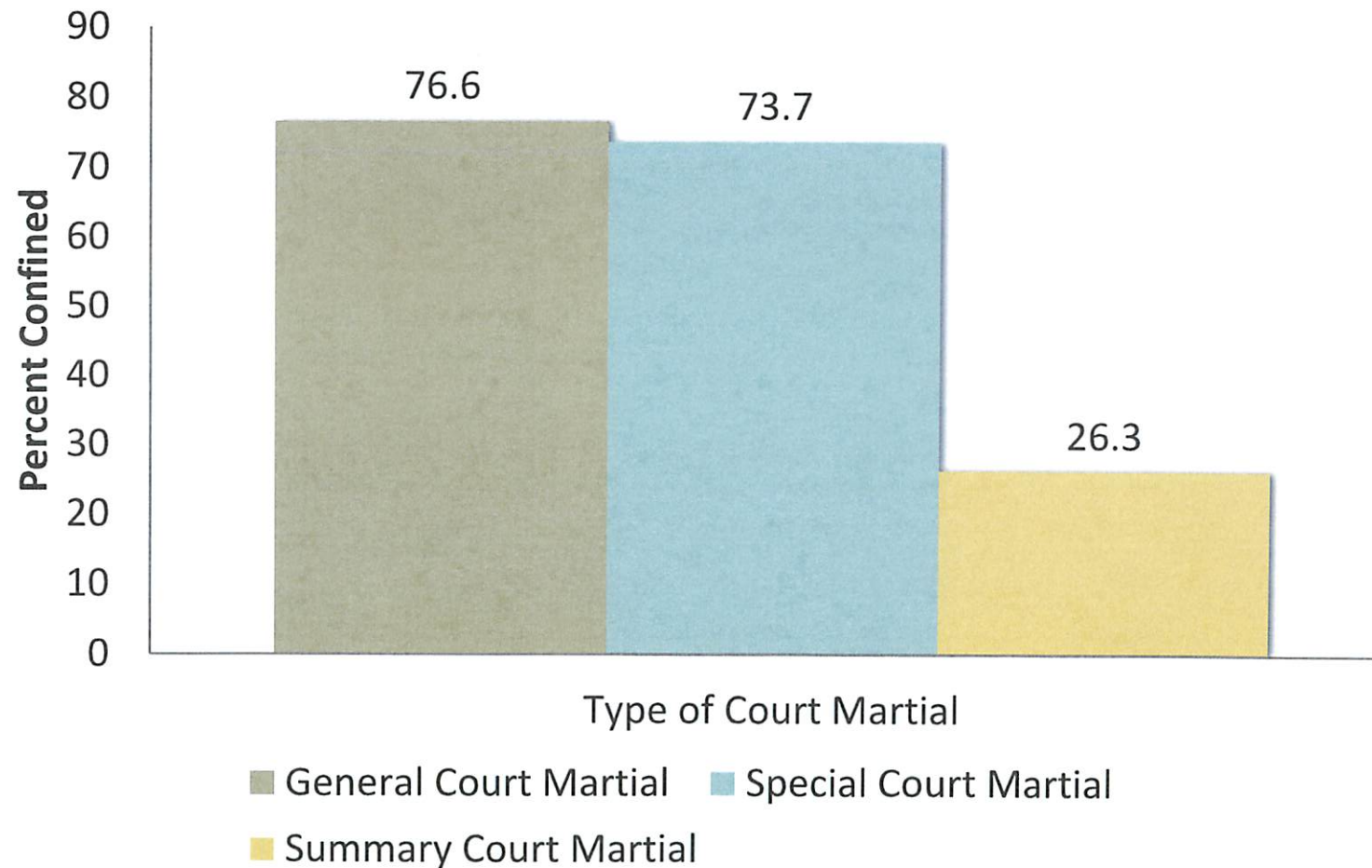
Confinement & Status of Victim



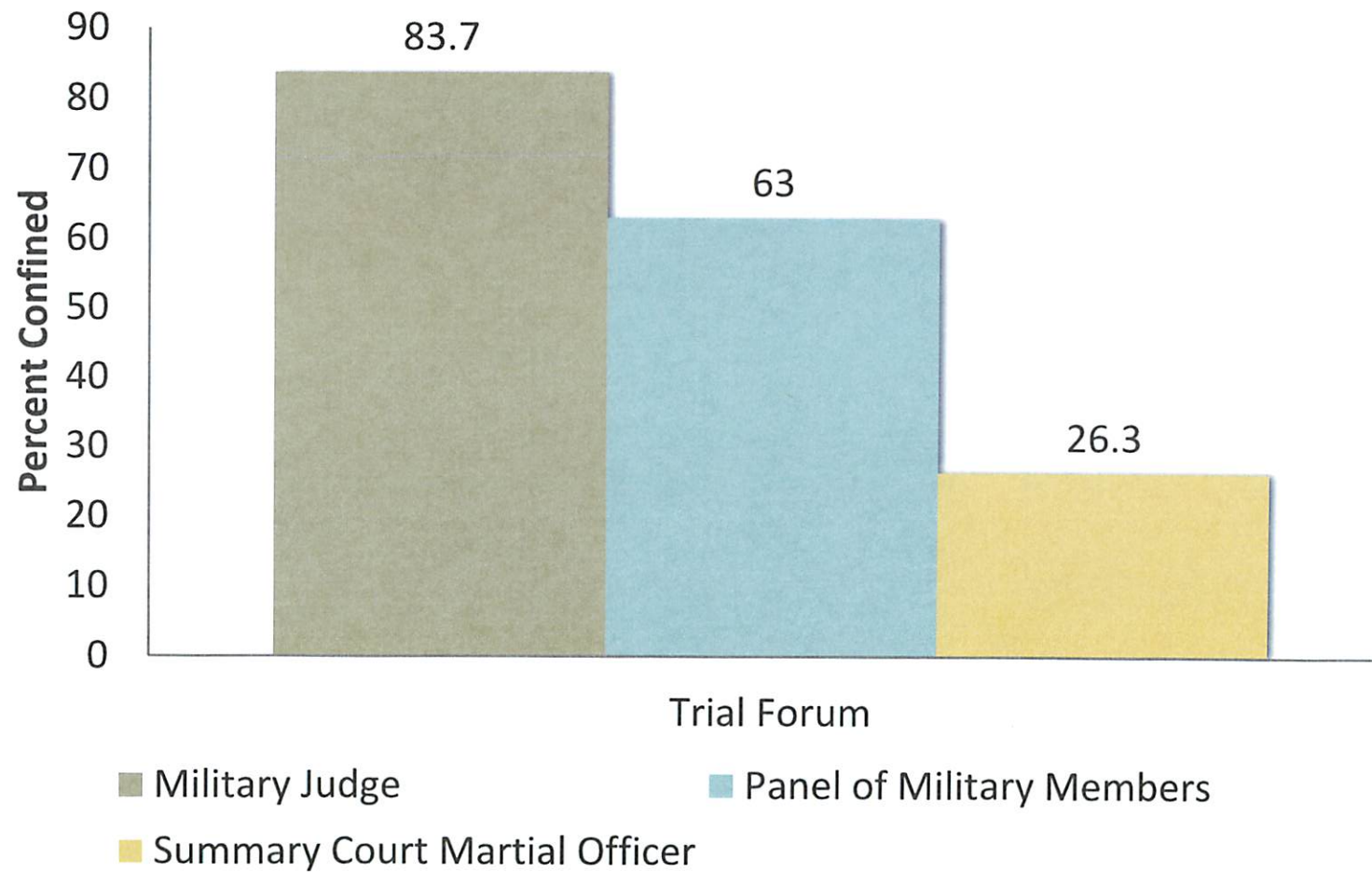
Confinement & Conviction Charge



Confinement & Type of Court Martial



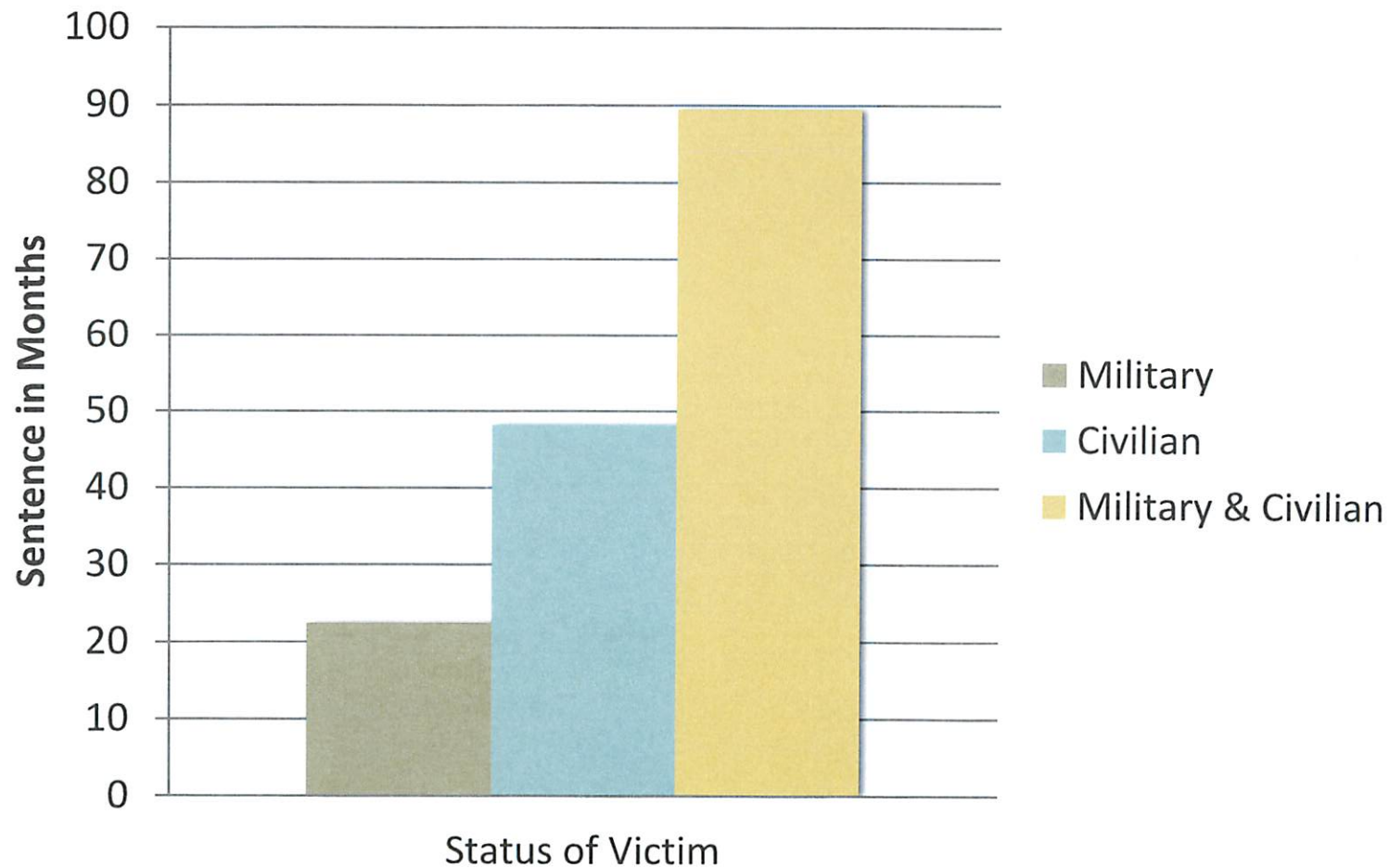
Confinement & Trial Forum



Length of Confinement Sentence—Bivariate Analysis

- *Significant predictors* were
 - Status of victim
 - Relationship between accused and victim
 - Type of conviction charge
 - Type of court martial
 - Type of trial forum
- Length of confinement sentence not affected by
 - Military status of accused
 - Rank of accused
 - Gender of victim

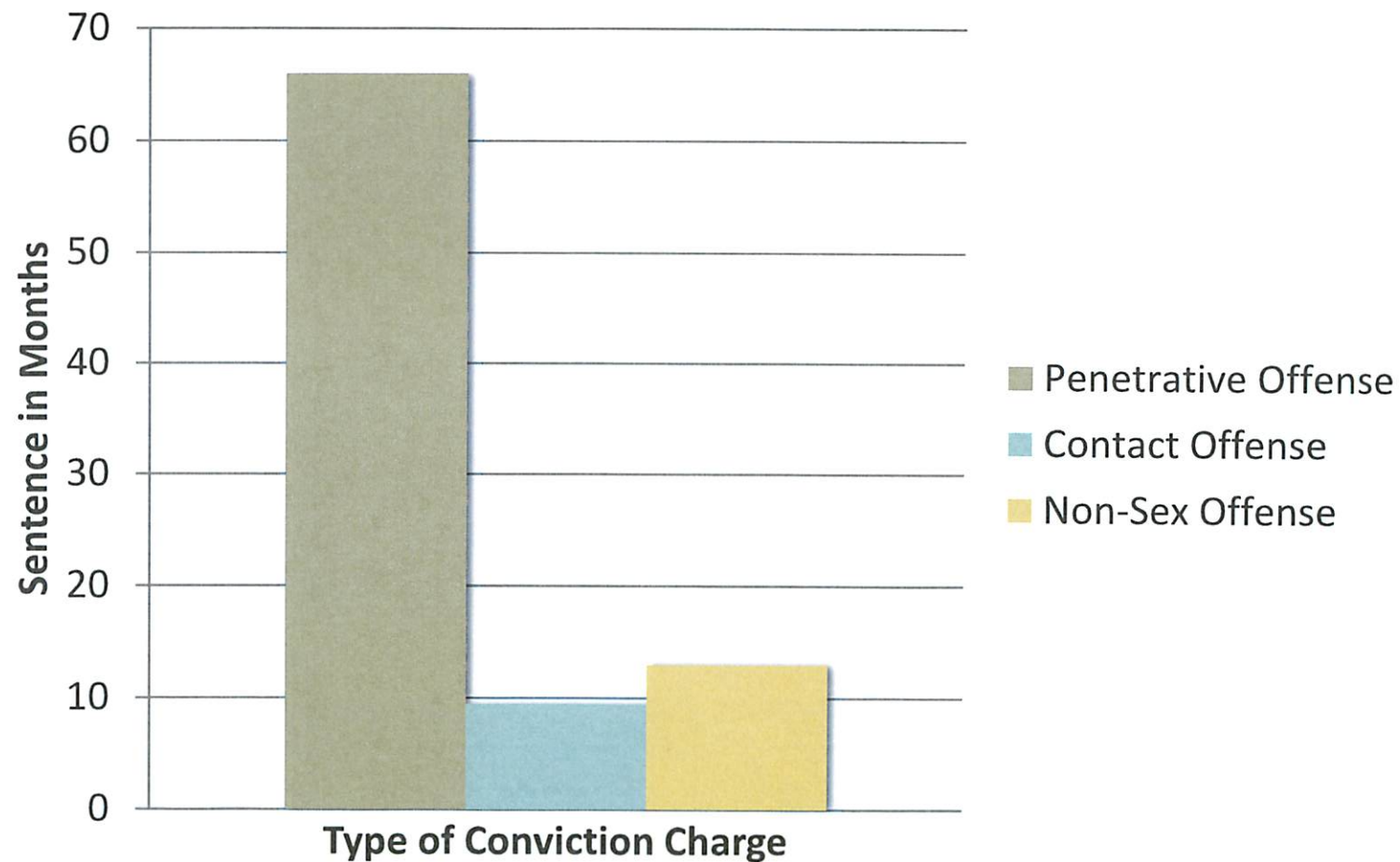
Sentence Length & Status of Victim



Sentence Length & Relationship Between Accused and Victim



Sentence Length & Type of Conviction Charge



Conclusions: Multivariate Analysis

- **Strongest predictor of outcomes: whether accused charged with/convicted of penetrative offense**
 - Compared to those charged with contact offense, those charged with penetrative offenses were
 - Less likely to be convicted of at least one charge
 - More likely to be acquitted
 - More likely to have all charges dismissed
 - Compared to those convicted of non-sex offenses, those convicted of penetrative offenses
 - Were more likely to be sentenced to confinement
 - Were more likely to receive a punitive separation
 - Faced longer confinement sentences
- **By contrast, neither the rank of the accused nor the gender of the victim affected any outcomes**

Conclusions: Multivariate Analysis

- **Other variables had less consistent effects**
 - Military service of accused—compared to those in Marine Corps
 - Conviction for a penetrative offense more likely for those in Army than if accused in Air Force or Marine Corps
 - Conviction for any charge more likely for those in Coast Guard than for those in the other four services
 - Cases less likely to result in acquittal at trial if the accused was in Army or Coast Guard than if the accused was in Air Force or Navy
 - Dismissal less likely for those in Air Force rather than in Marine Corps and for those in the Army rather than Marine Corps or Navy
 - Number of charges—cases with more charges preferred had
 - Higher likelihood of conviction
 - Lower likelihood of acquittal or dismissal
 - Longer confinement sentences
 - Number of victims—cases with more victims had
 - Higher likelihood of conviction
 - Higher likelihood of confinement sentence

Conclusions: Multivariate Analysis

- **Other variables had less consistent effects**
 - Status of the victim—if the victim was military rather than civilian
 - Likelihood of conviction was lower
 - Likelihood of acquittal was higher
 - Likelihood of confinement sentence was lower
 - Likelihood of punitive separation was lower
 - Relationship between accused and victim—if the victim was spouse or intimate partner of accused
 - Likelihood of conviction was lower
 - Likelihood of case dismissal was higher
 - The confinement sentence was 31 months longer

Overall Conclusions

- Cases involving penetrative offenses have **higher rates of case attrition**, but conviction for penetrative offense results in **harsher punishment**
- Significant differences based on military service of accused
 - Most consistent differences between those in Army and those in other military services
- Status of the victim (military versus civilian)
 - Cases with military victims had higher rates of case attrition and resulted in more lenient sentences than cases with civilian victims
- Relationship of victim and accused (intimate partner/spouse)
 - Cases in which victim was intimate partner/spouse of accused more likely to result in dismissal of charges, less likely to result in conviction; but, intimate partner/spouse cases resulted in substantially longer terms of confinement

**National Defense Authorization Act (NDAA) Provisions
Regarding the Department of Defense
Annual Report on Sexual Assault
Fiscal Years 2011 - 2017**

Section of the NDAA	Brief Description	Detailed Description of the NDAA Provisions	Effective Date
<p><u>FY 2011</u></p> <p>§ 1631(a) and (b)</p>	<p><u>DoD ANNUAL REPORT</u></p> <p>Annual Reporting Requirements on Sexual Assault Prevention and Response for DoD and the Military Services</p> <p>(hereinafter “DoD Reporting Requirements”)</p>	<p>Service Secretaries must submit an annual report to SecDef. The report must now contain:</p> <p>(1) the number of reported sexual assaults against Service members and the number of substantiated reports during the preceding year;</p> <p>(2) the number of sexual assaults committed by Service members and the number of substantiated reports;</p> <p>(3) a synopsis of each substantiated case, organized by offense, including the type of disciplinary or administrative sanction imposed, including courts-martial sentences, non-judicial punishment, and administrative separations;</p> <p>(4) the policies, procedures and processes implemented during the previous fiscal year in response to incidents of sexual assault;</p> <p>(5) the number of substantiated sexual assault cases in which the victim is a deployed Service member and the assailant is a foreign national, and the policies and procedures implemented to monitor the investigative processes and disposition of such cases.</p>	<p>First report due to SecDef March 1, 2012 and each March 1 thereafter</p>
<p><u>FY 2011</u></p> <p>§ 1631(d)</p>	<p><u>DoD ANNUAL REPORT</u></p> <p>Additional Annual DoD Reporting Requirements</p>	<p>SecDef must forward the annual SAPR reports from the Services to the Committees on Armed Services of the Senate and House of Representatives, together with:</p> <p>(1) the results of DoD’s assessment of its comprehensive policy on sexual assault prevention and response;</p> <p>(2) such assessments on the Services’ reports as the SecDef considers appropriate.</p>	<p>First DoD report to Congress due April 30, 2012, and each April 30 thereafter</p>

**National Defense Authorization Act (NDAA) Provisions
Regarding the Department of Defense
Annual Report on Sexual Assault
Fiscal Years 2011 - 2017**

Section of the NDAA	Brief Description	Detailed Description of the NDAA Provisions	Effective Date
FY 2013 § 575	<u>DoD ANNUAL REPORT</u> Additional Annual DoD Reporting Requirements Regarding Sexual Assault Case Synopses	<p>(a) GREATER DETAIL IN CASE SYNOPSES PORTION OF REPORT.—</p> <p>The Secretary of each military department shall include the following additional information in each case synopsis:</p> <p>(1) If charges are dismissed following an investigation conducted under section 832 of title 10, United States Code (article 32 of the Uniform Code of Military Justice), the case synopsis shall include the reason for the dismissal of the charges;</p> <p>(2) If the case synopsis states that a member of the Armed Forces accused of committing a sexual assault was administratively separated or, in the case of an officer, allowed to resign in lieu of facing a court-martial, the case synopsis shall include the characterization (honorable, general, or other than honorable) given the service of the member upon separation;</p> <p>(3) The case synopsis shall indicate whether a member of the Armed Forces accused of committing a sexual assault was ever previously accused of a substantiated sexual assault or was admitted to the Armed Forces under a moral waiver granted with respect to prior sexual misconduct;</p> <p>(4) The case synopsis shall indicate the branch of the Armed Forces of each member accused of committing a sexual assault and the branch of the Armed Forces of each member who is a victim of a sexual assault;</p> <p>(5) If the case disposition includes non-judicial punishment, the case synopsis shall explicitly state the nature of the punishment;</p> <p>(6) The case synopsis shall indicate whether alcohol was involved in any way in a substantiated sexual assault incident.</p>	Must be included in the SAPRO Report for 2014

**National Defense Authorization Act (NDAA) Provisions
Regarding the Department of Defense
Annual Report on Sexual Assault
Fiscal Years 2011 - 2017**

Section of the NDAA	Brief Description	Detailed Description of the NDAA Provisions	Effective Date
		<p>(b) ADDITIONAL ELEMENTS OF EACH REPORT.—</p> <p>(7) The number of applications submitted [for an expedited transfer] for members of the Armed Forces on active duty who are the victim of a sexual assault or related offense, the number of applications denied, and, for each application denied, a description of the reasons why the application was denied;</p> <p>(8) An analysis and assessment of trends in the incidence, disposition, and prosecution of sexual assaults by units, commands, and installations during the year covered by the report, including trends relating to prevalence of incidents, prosecution of incidents, and avoidance of incidents;</p> <p>(9) An assessment of the adequacy of sexual assault prevention and response activities carried out by training commands during the year covered by the report;</p> <p>(10) An analysis of the specific factors that may have contributed to sexual assault during the year covered by the report, an assessment of the role of such factors in contributing to sexual assaults during that year, and recommendations for mechanisms to eliminate or reduce the incidence of such factors or their contributions to sexual assaults.</p>	

**National Defense Authorization Act (NDAA) Provisions
Regarding the Department of Defense
Annual Report on Sexual Assault
Fiscal Years 2011 - 2017**

Section of the NDAA	Brief Description	Detailed Description of the NDAA Provisions	Effective Date
<u>FY 2015</u> § 542	<u>DoD ANNUAL REPORT</u> Additional Annual DoD Reporting Requirements Regarding Analysis of Sexual Assault Case Dispositions	ANALYSIS AND ASSESSMENT OF THE DISPOSITION OF THE MOST SERIOUS SEXUAL ASSAULT OR RELATED OFFENSE COMMITTED BY MEMBERS OF THE ARMED FORCES, INCLUDING: (1) Conviction by court-martial, including a separate statement of the most serious charge preferred and the most serious charge for which convicted; (2) Acquittal of all charges at court-martial; (3) Non-judicial punishment under Article 15, UCMJ; (4) Administrative Action, including by each type of administrative action imposed; (5) Dismissal of all charges, including by reason for dismissal and by stage of the proceedings in which dismissal occurred.	Must be included in the SAPRO Report for 2015

**National Defense Authorization Act (NDAA) Provisions
Regarding the Department of Defense
Annual Report on Sexual Assault
Fiscal Years 2011 - 2017**

Section of the NDAA	Brief Description	Detailed Description of the NDAA Provisions	Effective Date
<u>FY 2017</u> § 543	<u>DoD ANNUAL REPORT</u> Additional Annual DoD Reporting Requirements Regarding Retaliation Complaints	<p>Information on each claim of retaliation in connection with a report of sexual assault in the Armed Force made by or against a member of such Armed Force as follows:</p> <ol style="list-style-type: none"> (1) A narrative description of each complaint; (2) The nature of such complaint, including whether the complainant claims professional or social retaliation; (3) The gender of the complainant; (4) The gender of the individual claimed to have committed the retaliation; (5) The nature of the relationship between the complainant and the individual claimed to have committed the retaliation; (6) The nature of the relationship, if any, between the individual alleged to have committed the sexual assault concerned and the individual claimed to have committed the retaliation; (7) The official or office that received the complaint; (8) The organization that investigated or is investigating the complaint; (9) The current status of the investigation; (10) If the investigation is complete, a description of the results of the investigation, including whether the results of the investigation were provided to the complainant; (11) If the investigation determined that retaliation occurred, whether the retaliation was an offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice). 	Effective Immediately Upon Passage

**National Defense Authorization Act (NDAA) Provisions
Regarding the Department of Defense
Annual Report on Sexual Assault
Fiscal Years 2011 - 2017**

Section of the NDAA	Brief Description	Detailed Description of the NDAA Provisions	Effective Date
<u>FY 2017</u> § 544	Extension of the Requirement for Annual DoD Reports to Congress; Coordination with Release of the Family Advocacy Program Report	(1) ANNUAL REPORT REQUIREMENT EXTENDED THROUGH 2021 (2) COORDINATION OF RELEASE DATE BETWEEN ANNUAL REPORTS REGARDING SEXUAL ASSAULTS AND FAMILY ADVOCACY REPORT.—The Secretary of Defense shall ensure that the reports...are delivered to the Committees on Armed Services of the Senate and House of Representatives simultaneously....	Effective Immediately Upon Passage

Some Initial General Thoughts for Consideration in Developing a Structure for a 4+ Year Work Plan for DACI-PAD:

- I. The enabling legislation for the DACI-PAD, and the very limited legislative history relative thereto, provide little to no guidance for the work of the DACI-PAD other than (a) to “review cases” and (b) issue an annual report on its activities during the preceding year.

What the enabling legislation meant by “review cases” is not clearly specified nor even addressed therein.

- A. It is reasonable to assume, however, that to “review cases” could not have meant a complete review of all DoD wide cases on a micro, individual case by case basis. Such an undertaking could not be supported by the limited time and resources available to the DACI-PAD membership and staff. Moreover, reviewing individual cases, even on a greatly limited and randomized basis, as the sole underpinning for the work of the DACI-PAD going forward, will not provide any meaningful insight that could be extrapolated across all of DoD because of the procedural, factual/evidentiary, and legal variations that exist between each individual case. ***It seems more logical for the DACI-PAD to define “review cases” as an effort to collect consistent, annual data from across DoD in order to conduct statistical analysis and look for any material trend lines (positive or negative) year over year in light of the recent, relevant amendments to the UCMJ and MCM with applicability to the investigation, prosecution, and defense of sexual assault in the armed forces.***
 1. All statistical data collected relative to the investigation, prosecution, and defense of sexual assault in the armed forces since 2011 through the formation of the DACI-PAD should be maintained and archived for use by the DACI-PAD to serve as a potential base line or source of comparison to the proposed data to be collected annually across DoD going forward.
 2. Outside statistical and data analytic experts could be retained as vendors to aid the DACI-PAD membership and support staff in developing, collecting, and analyzing the new, annual data sets collected going forward.
 3. Going forward, it is proposed that the following data points be considered for tracking or collection across DoD broken down by each respective service branch, as well as, by combat arms vs combat support convening authorities within each respective service branch:
 - a. ##s of Cases investigated for possible violation of UCMJ articles applicable to sexual assault offenses;
 - b. ##s of Cases investigated for possible violation of UCMJ articles applicable to sexual assault offenses where probable cause of offense was determined to exist;
 - c. ##s of Cases investigated for possible violation of UCMJ articles applicable to sexual assault offenses which were referred to Administrative separation proceedings, and the rates of retention resulting therefrom;

- d. ##s of Cases investigated for possible violation of UMCJ articles applicable to sexual assault offenses which were referred to Non-Judicial Punishment or Summary Courts-Martial, and the rates of dismissal or acquittal resulting therefrom;
 - e. ##s of Cases investigated for possible violation of UMCJ articles applicable to sexual assault offenses which were referred to Courts-Martial (and whether Special, Special BCD, or General), and the rates of Art. 32 dismissal or acquittal after trial resulting therefrom;
 - f. Defendant data:
 - i. ##s of Junior Enlisted Defendants, grade, race/ethnicity, and whether M/F/LGBTQ;
 - ii. ##s of Senior Enlisted Defendants, grade, race/ethnicity, and whether M/F/LGBTQ;
 - iii. ##s of Officer Defendants, grade, race/ethnicity, and whether M/F/LGBTQ;
 - g. Victim data:
 - i. ##s of Service members, grade, race/ethnicity, and whether M/F/LGBTQ;
 - ii. ##s of non-Service members, race/ethnicity, and whether M/F/LGBTQ.
 - B. Anecdotal, anonymous surveys of DoD wide personnel (and force accompanying dependents) regarding rates of “report” vs “non-report” of sexual crime or sexual harassment victimization (as self-identified by survey respondents) conducted prior to the formation of the DACI-PAD should be maintained and archived to serve as a potential base line or source of comparison to the continued, future performance of such surveys in order to conduct statistical analysis and look for any material trend lines (positive or negative) year over year.
- II. Additional possible areas of independent inquiry that the DACI-PAD may also wish to consider undertaking might include some of the following:
- A. Review and assess across DoD the sufficiency or insufficiency of resources and professional development, policy, and trial skills training provided to TDS counsel for each service branch which are specifically directed to aiding in the undertaking of the defense of sexual assault cases in the armed forces;
 - B. Review and assess across DoD the sufficiency or insufficiency of resources and professional development, policy, and trial skills training provided to Trial Counsel for each service branch which are specifically directed to aiding in the undertaking of the charging and prosecution of sexual assault cases in the armed forces;
 - C. Review and assess across DoD the sufficiency or insufficiency of resources and professional development, policy, and skills training provided to victim assistance programs and victims’ counsel for each service branch which are specifically directed to victim participation in the

reporting, investigation, prosecution and defense of sexual assault cases in the armed forces;

- D. Review and assess across DoD the career outcomes of service member victims for each service branch who “reported” sexual assault cases in the armed forces;
- E. Review and assess across DoD the sufficiency or insufficiency of resources and professional development, policy, and investigative skills training provided to military police and military investigative agencies for each service branch which are specifically directed to aiding in the performance of investigations of sexual assault cases in the armed forces;
- F. Review and assess across DoD policies regarding, as well as, the sufficiency, insufficiency, and regularity of training provided to service members on gender/orientation harassment, proper and improper use and publication of materials through social media, and criminal sexual misconduct **in light of** the (1) increased cyber-bullying and non-consensual publication of sexually intimate pictures, videos, and other information through social media that is occurring in the broader society even as early as at the secondary school level; and considering (2) that this is the evolving social environment out of which the vast majority of new military recruits (i.e., 18 – 20 year olds) are coming into military service; and considering (3) that a great deal of recent neurological studies (particularly with regard to risk/benefit assessment judgment skills) suggests that the development and formation of the adolescent brain is not fully complete until individuals reach their mid-20s;
- G. Review and assess the environment across DoD involving the apparent prevalence of - - and sufficiency or insufficiency of service branch policy regarding and response(s) to - - the improper use of social media in general by service members directed to or about other service members in order to bully, harass, intimidate, shame, etc., through the non-consensual dissemination or publication of sexually explicit or related information on the world-wide web; and
- H. Review and assess how the command environment across DoD might be a possible contributing factor to the broader occurrence of or diminished perception as to the seriousness of sexual offenses in the armed forces where there may be apparent mixed messages or signals being sent to the enlisted and lower officer ranks when sexual offense based misconduct by Flag level personnel appears to be handled in ways that result in less severe consequences for the offender (e.g., the recent media reports of expungement of certain IG report findings by a Flag level reviewing authority in order to permit the individual who was the subject of the IG investigation to retire without a reduction in his Flag grade).

- III. The suggestions set forth in sections I (A) – (B), and II (A) – (H) above are meant to be neither exhaustive nor exclusive. They are proffered merely as a potential base of work and inquiry for the DACI-PAD (and any appropriate sub-committees that may be necessary) to undertake over the next 4+ years. And, it is contemplated that the resulting base of work

will serve as a foundation which will permit the DACI-PAD to possibly make meaningful recommendations in its annual reports over the course of its chartered life concerning possible future amendments or additions to, or further development of, the relevant articles of the UMCJ applicable to sexual assault offenses; judicial procedures and practices in Courts-Martial; sufficient and regular training provided to service members concerning the various issues revolving around sexual assault; and sufficient and regular training provided to defense counsel, trial counsel, victims' counsel, and criminal investigators to aid in and improve the investigation, prosecution, and defense of sexual assault cases in the armed forces with the ultimate goal of any such DACI-PAD recommendations being that they might ideally reduce overall the prevalence of the occurrence of sexual assault cases in the armed forces.

Respectfully submitted,

Hon. Leo I. Brisbois
DACI-PAD Committee Member
4/20/17

Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD)

Committee Planning Session Outline

I. Statutory Tasking

The Committee was established by the Secretary of Defense in February 2016 as required by section 546 of the National Defense Authorization Act for Fiscal Year 2015 and section 537 of the National Defense Authorization Act for Fiscal Year 2016. There are three statutory requirements for the Committee:

- A. To advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces;
- B. To review, on an ongoing basis, cases involving allegations of sexual misconduct (as described above), for purposes of advising the Secretary of Defense; and
- C. To submit to the Secretary of Defense and the Committees on Armed Services of the Senate and the House of Representatives an annual report of the activities of the Committee during the preceding year. The annual reports are due by March 30th of each year.

II. Proposed Foundational Questions for the DAC-IPAD to Address Through Case Reviews by Committee Members

- A. Are military sexual assault allegations being fairly and adequately investigated?
- B. Are appropriate and consistent charging decisions being made?
- C. Are military sexual assault cases being fairly and adequately tried?
- D. Are case outcomes reasonable and just based on the available evidence?

III. Proposed Demographic Questions for the DAC-IPAD to Address Through Case Reviews by Committee Members

- A. Are there disparities in case charging decisions or case outcomes associated with any of the following demographic factors:
 - 1. Branch of Service of the accused
 - 2. Rank of the accused and victim
 - 3. Race of the accused and victim
 - 4. Sexual orientation of the accused and victim
 - 5. Relationship between the accused and victim
 - 6. Career field of the accused and victim
 - 7. Geographic location of the alleged offense

8. Military or civilian status of the accused and victim
- B. Can insights be gleaned from the review of cases about why any identified disparities may be occurring?

IV. Proposed Methodology for Case Review

A. Types of Cases to be Reviewed

1. Acquittals - Calendar year 2016 cases where an accused has been **acquitted** of all sexual assault charges [Article 120 (Rape and sexual assault generally), sections (a) - (d); Article 125 (Forcible sodomy), section (c); and Article 80 (Attempts)]
2. Dismissals - Calendar year 2016 cases where all sexual assault charges were **dismissed**

B. Number of Cases to be Reviewed

1. Option A - Review a statistically significant random sampling of cases across all of the Services with final action on sexual assault charges that resulted in acquittals or dismissals in calendar year 2016.
2. Option B - Review all or a sampling of cases from each Service separately to review issues and disparities within the Service. Services vary in the forms used and the composition of case files.

C. Types of Case Records to be Reviewed

1. Investigative files
2. Prosecution files
3. Records of trial

D. Case Review Process

1. Establish 2 to 3 subcommittees or working groups composed of DAC-IPAD members that will each review case files.
2. Each subcommittee will review individual case files from investigation through adjudication for purposes of its analysis.
3. A uniform standard for how to review a case file, what information to collect from it, and where the information is located in the file will need to be developed and Committee members instructed on the review protocol.
4. DAC-IPAD staff members will accompany Committee members when reviewing cases and document necessary case information.

5. DAC-IPAD staff members will prepare anonymized case summaries and input data collected from case files in a database for analysis and review by Committee members.
6. Investigation files for the Army, Navy, Air Force, and Marine Corps are located in Quantico, Virginia. Coast Guard investigation files are located in Washington, D.C.
7. Certain portions of a court-martial record are located at the Service's headquarters in Washington, D.C., while other portions are maintained locally at the installation where the court-martial occurred.