

**JPP DELIBERATION GUIDE FOR ISSUES OF RETALIATION (10/9/2015)**

**ISSUE # 1: PREVIOUSLY DISCUSSED BY THE JPP**

<b>Issue 1</b>	<p><b>REPORTING/COMPLAINT PROCESS</b></p> <p><i>Whether the retaliation <u>reporting</u> process for victims of all types of retaliation” should be:</i></p> <p>(a) <i>standardized and centralized functionally within one organization (e.g., designate SARCs, SVCs, or other function as the official reporting channel for all retaliation reports), or</i></p> <p>(b) <i>standardized across multiple organizations by establishing one universal form or database used by each organization designated to receive reports (e.g., retaliation may be reported to the command, law enforcement, IG, SVCs, SARCs, chaplains, etc. who all collect the same information and aggregate and maintain it the same way) to facilitate monitoring performance.</i></p>
<b>Background Information</b>	<ul style="list-style-type: none"> <li>• When assisting a victim in filing a sexual assault report, the SARC or VA advises the victim about retaliation as part of completing the DD Form 2910, <i>Victim Reporting Preference Statement</i>. The provision reads: “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.”</li> <li>• DoD has substantially revised and reissued the DoD SAPR Instruction (DoDI 6495.02) which now includes specific provisions related to retaliation. The Instruction requires the SARC or VA to inform victims of the resources available to report instances of retaliation, reprisal, ostracism, maltreatment, sexual harassment, or to request a transfer, military or civilian protective order (MPO/CPO). By requiring SARCs and VAs to advise victims about all of the forms of retaliation at the time they report a sexual assault, DoD policy has established the SAPR channel as the central resource for sexual victim assistance with retaliation issues related to reports of sexual assault (but not necessarily for bystanders or witnesses).</li> <li>• Only the Air Force provided a written policy to the JPP outlining the role of its SARCs and VAs with respect to retaliation. The Air Force policy reinforces the central role of the SARC and VA in reporting and tracking victim retaliation in sexual assault cases. Air Force SAPR personnel are responsible for discussing the definition of retaliation and reprisal; whether the victim has experienced any forms of retaliation; and that a victim has a choice to decide whether or not to make a retaliation report, with “all victims who make an unrestricted report of sexual assault,” during initial intake and at least monthly thereafter.</li> <li>• Further, the Air Force assigns SARCs responsibility for tracking retaliation reports throughout the investigative process. For cases referred to the IG, AF SAPR personnel are required to document only the initial retaliation report, that the case was referred to the IG and, when possible, the resolution. The Air Force has developed a “Victim Experience Interview” form that SARCs are to complete with willing retaliation victims who have a case open with the CMG. This is a voluntary victim interview and for those who consent to the interview, SARCs are required to enter the data collected into a Microsoft Access database provided by the AF SAPR office and e-mail the database back to the AF SAPR office by the first of each month. This is the only such form or process reported to the JPP by the Services for retaliation reports.</li> <li>• An Air Force SARC told the JPP that “during our initial intake and at least on a monthly basis we ask the victims if they have suffered retaliation since making a report of sexual assault. The victims choose whether they want to make a retaliation report. If they choose to make a report, their responses are annotated on a victim experience interview form and discussed at the monthly case management group meetings. This information is being submitted monthly to Air Force CVS.</li> </ul>

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JPP Analysis	<p>Chair Holtzman – “the reason this is such an important issue for us to take up is because this is the largest single reason that victims give for not reporting. Even though enormous progress has been made by DoD in terms of encouraging reporting, retaliation stands out as a major factor here. And despite that, there are real problems in terms of dealing with retaliation . . . .” (P. 99)</p> <p>The consensus is that there should be a uniform form to capture the information. (110, 117, 128-9).</p> <p>Who is responsible then for tracking and monitoring the report? And I think we’ve basically decided it’s the SARC, pending hearing from the Services. (129)</p> <p>It makes sense still to have this located with the SARC because these do relate to sexual assault whether they’re reported or not. (120-21) SAPRO relies on all those reports to issue their full set of statistics. And we certainly want retaliation statistics...as many as accurate as possible and included with everything else they already report on. (121) The Air Force assigns SARCs responsibility for tracking retaliation reports throughout the investigative process. (122) If we’re going to have a system where there’s a central report so we can track it, then we have to be able to give them [SARCs] the ability to find out what’s happening throughout the process. (125) <b>It would be a real good idea to find out from the Air Force how their system is working, and maybe touch base with the other Services to see what kind of reaction they have to that.</b> (125-26)</p> <p>Mr. Taylor – There needs to be some requirement for all three of these organizations to track that information back to the SARC, so you don’t have four independent parallel silos of potential reporting, as opposed to a one-stop shop to collect all the information. (111) Because there are multiple people to whom the reports may be made, there needs to be a policy that requires all those individuals who receive reports of retaliation to touch base with the SARC. (123) My point being that everyone who has a responsibility for retaliation ought to coordinate all their information with the SARC. That ought to be the one-stop shop for collecting and following the information. (124)</p> <p>Mr. Stone – I like the idea of tying the retaliation to the original sexual assault report – whether it is restricted or unrestricted. (115) Mr. Stone suggesting maintaining a lot of points of contact that a sexual assault victim could report retaliation to, but they all “funnel in with the same [standard] report.” (127). He expressed concern about what to do with sexual harassment retaliation cases, (P 115-116) however, Ms. Holtzman recommended they stay within the JPP’s charter of sexual assault and others can copy what the JPP’s done and later apply it to sexual harassment. (117).</p> <p>Chair Holtzman - I think we’ve basically decided it’s the SARC [to collect the retaliation forms], pending hearing from the Services. (129) But she expressed concern as to who has responsibility for not only tracking the report, but to follow up. (122, 129). “But if that turns out to be a good system, then we have to have some way of insuring that the SARC can get follow-up if this goes to the police investigation or if this is going to the IG. They have to be able to follow up to know where it’s going, that it’s not just in limbo.” (129) Ms. Carson noted the CMGs discuss the status of cases, but there is no current requirement to provide information back to the SARC. She also noted the IG may feel restricted as to what information about the investigation can be shared. Mr. Stone and Ms. Holtzman suggested the IG be able to at least report the status as in process, active, closed, etc. (130)</p>
JPP Recommendations	<ul style="list-style-type: none"> <li>• DoD develop a standardized form to report retaliation after making or assisting with a sexual assault report</li> <li>• <b>Need more information about Air Force policy, Services’ input, and CMGs before deciding who would be responsible for tracking the standardized form.</b></li> </ul>

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**ISSUE # 2: PREVIOUSLY DISCUSSED BY THE JPP**

<b>Issue 2</b>	<p><b>STANDARDIZED INVESTIGATION PROCESS</b></p> <ul style="list-style-type: none"> <li>• <i>Whether current procedures and resources for investigating reports of professional and social retaliation, including military whistleblower claims, are effective.</i></li> <li>• <i>Whether investigation of all reports of social and professional retaliation should be handled by the same investigative authority.</i></li> <li>• <i>If reports continue to be investigated by multiple investigative authorities, whether they should use standardized or otherwise coordinated processes, procedures, and timelines for substantiating/founding complaints.</i></li> </ul>
<b>Background Information</b>	<p>Once a report of retaliation is made to one of the various reporting channels, retaliation complaints may be investigated by either the command, an IG, or an MCIO, depending on the type of retaliation alleged. The command will investigate allegations of social retaliation including ostracism and some forms of maltreatment, while the IG investigates all instances of alleged professional reprisal. If the retaliation rises to the level of a UCMJ violation, such as stalking, threatening witnesses, maltreatment by superiors, or maltreatment by peers if it is done with the intent to interfere with justice or prevent reporting, it is then investigated by an MCIO for possible criminal prosecution.</p> <p>In its 2012 review, the Government Accountability Office found that DoD IG’s oversight of the military whistleblower reprisal program was not consistently or accurately recording key dates to track the length of investigations and was not meeting timeliness requirements for reporting on whistleblower investigations. In its follow-up review in 2015, the GAO found that the average length of an investigation during fiscal years 2013 and 2014 was 526 days, almost three times the 180 day DoD requirement.</p> <p>(From Commanders Panel, May 2015) When asked by a JPP member whether it would strengthen the position of the IG in the eyes of victims if they thought the IG who they were reporting to was a Defense Department IG who did not have to report back to the Service, an Air Force commander stated that “There’s an IG at every level above the Wing. I have an IG office, the Numbered Air Force or center above me; the MAJCOM, Major Command, has an IG; big Air Force in the Pentagon has an IG; and OSD has an IG above that. All of these ports of entry into the system are available to any victim at any level and if they’re not happy with that, they can go directly to a member of Congress and they are not shy about doing that. And that is protected communication, they cannot be reprisal against.” The Navy commander told the JPP that, “It’s really what the victim feels is their best means to report whether it’s to the Navy IG, to OSD IG, but we also have different levels of IGs as well up and down the chain.” The Army commander described the Army IG as “...the commander’s tool. If an external investigation is needed into...any aspect of command or organization, then the commander can direct the IG to go in and do an external evaluation of that particular unit or organization at whatever level.” He added that “...the appropriate level of IG command is dependent upon the level of the issue” and that “...there is nothing stopping a Soldier from...filing a report directly to the DoD Inspector General if that Soldier chooses to do so.”</p>

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### JPP Analysis & Recommendations

Chair Holtzman – Who does the investigation for the command? Is it somebody with any training in investigation? (133-34) Does the IG generally have the same results in corruption cases as it has with regard to sexual assault cases? What’s the timeline in those cases? What’s the unfounding rate? It may just be that they don’t take these cases seriously because it’s not in their bailiwick. They have never dealt with them before. (136) Asked JPP staff to find out how command directed investigations are conducted (137) What are the statistics on the IG – what’s the average period of time to handle these cases? – 526 days (141-42) There are two options with regards to IG. One is that you create a special bureau within the IGs operation to handle sexual assault cases and then that could very easily be tracked. The other is a larger overhaul, and suggest that the whole process be taken away from the IG and put someplace else. (148) Chair Holtzman’s sentiment seemed to be to have a subgroup in IG, but to hear from the IG first about it. (150-51) Our solution isn’t going to work unless we get all the reports, before being winnowed out by the Services. (157) We have to have a better sense of how exactly jurisdiction between DoD and Service IGs works and determining jurisdiction to take a case. (161) I believe there’s nothing in the statute that precludes the Service IGs from investigating to determine whether they have jurisdiction. We need to ask them if this is the case. (165) You have to give the response to retaliation the same visibility and the same legitimacy that you’ve given to sexual assault complaints to begin with. (172) We also need to have a better understanding of the case management groups. (181) What is the standard for opening a case and are the people trained to do the investigation? (173)

Mr. Taylor – I think this is a problem in general, at least in the Army – the uneven quality of these administrative investigations, because quite often, an officer was appointed who really had no understanding of the problem before being appointed. (138) I don’t know whether the other Services do a better job of this or not. For some very sensitive investigations, that’s sometimes the reason a lawyer is appointed, but there’s no requirement to appoint a lawyer. (138) I think the Services should weigh in on the subgroup idea. To be effective you may have to withdraw from the Services any authority to investigate these claims themselves. (151) This would be the DoD IG investigating all of these types of claims rather than referring back to the Services. (152) Referred to the Goldwater Nichols Act that requires the Service IG to report to the Service Secretaries (161) I’m very disturbed by the fact that we don’t have that link, of the information of what gets passed up (by the IG) what gets passed back, what kind of conversations take place about why that happens. (173)

Judge Jones – Asked who is actually responsible for the Whistleblower statute – DoD IG and/or the Service IGs? Wants to know what number of the whistleblower complaints go to the Service IGs versus DoD IG (168) Regarding jurisdiction – how do they know it’s a “communication,” who has jurisdiction – do the Services and DOD IG both have jurisdiction, and what is the capacity of that group to deal with it. If they are not investigating cases, maybe they have too high a standard initially (172)

Mr. Stone – We do want to hear a panel of IGs. (176) What do they need to open a case? Do they think it’s reasonable to have a specialized unit to follow sexual assaults, or do they find these outside their expertise and what have they done in response to the DoD IG report. (177)

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**ISSUE 3-7: PROPOSED ISSUES FOR THE JPP DELIBERATIONS ON RETALIATION**

*(NOT PREVIOUSLY DISCUSSED)*

<b>Issue 3</b>	<p><b>CASE MANAGEMENT GROUP (CMG) PROCESS</b></p> <ul style="list-style-type: none"> <li>• Whether all reports of social and professional retaliation should be monitored and tracked by the installation commanders who chair monthly Case Management Groups.</li> <li>• Whether CMGs should utilize standardized forms or databases such as DSAID to track retaliation.</li> </ul>
<b>Background Information</b>	<p>“CMG: A multi-disciplinary group that meets monthly to review individual cases of Unrestricted Reports of sexual assault. The group facilitates monthly victim updates and directs system coordination, accountability, and victim access to quality services. At a minimum, each group shall consist of the following additional military or civilian professionals who are involved and working on a specific case: SARC, SAPR VA, military criminal investigator, DoD law enforcement, healthcare provider and mental health and counseling services, chaplain, command legal representative or SJA, and victim’s [immediate] commander.” DoDI 6495.02, Sexual Assault Prevention and Response (SAPR) Program Procedures, Change 2, Effective July 7, 2015, Glossary at 121.</p> <p>The installation commander or deputy will chair the CMGs on a monthly basis to review individual cases. The installation SARC serves as the co-chair of the CMG. Commanders must update victims within 72 hours of the CMG as to updates regarding the current status of any ongoing investigative, medical, legal or status up an expedited transfer request.</p> <p>DoD policy, as issued first by SecDef Memorandum in December 2014, and subsequently added to the DoD SAPR Instruction, directs that at every CMG meeting, the Installation or other commander who serves as the CMG chair is required to ask the CMG members whether each victim, victim’s family members, witnesses, any bystanders who intervened, SARCs, SAPR VAs, responders, or other parties to the incident have experienced any incidents of retaliation, reprisal, ostracism, or maltreatment. If any allegations are reported, the CMG Chair must forward the information to the proper authority such as an MCIO, IG or MEO. Retaliation, reprisal, ostracism, or maltreatment allegations involving the victim, SARCs, and SAPR VAs will remain on the CMG agenda for status updates until the victim’s case is closed or until the allegation has been appropriately addressed. <i>See also</i> DoDI 6495.02, effective July 7, 2015 at 82.</p> <p>The Army and Air Force have issued policy guidance in accordance with the December 2014 SecDef Memorandum requiring installation commanders to regularly assess, and refer for appropriate corrective action, all reports from a victim, witness, or first responder of retaliation, ostracism, maltreatment or reprisal in conjunction with a report of sexual assault. The Navy, Marine Corps and Coast Guard did not provide the JPP with procedures for CMGs. In the Army, if any incidents of retaliation are reported at the SARB, the lieutenant colonel (O-5)-level or higher commander of the victim of retaliation will develop a plan to immediately address the issue and forward the plan to the SARB chair.</p> <p>In the Air Force, the CMG chair and members will discuss any retaliation reports made by a victim during monthly CMG meetings. However, the Air Force further states that only retaliation reports of ostracism and maltreatment will be “briefed” at the CMG, and that incidents meeting the statutory definition of reprisal will not be briefed at the CMG. The victim’s commander will brief the plan to address the retaliation report unless the victim’s commander is the subject of the retaliation report, in which case the CMG chair will address the issue. The Air Force policy also states that “[a]llegations of reprisal are required by statute to be investigated by the Inspector General (IG),” though the JPP was unable to identify a statute with such an express requirement. The Military Whistleblower Act, for example, provides specific actions required of the IG only if a member of the Armed Forces submits an allegation of reprisal.</p> <p>Service leaders who appeared before the JPP all reported that the DoD requirement that retaliation complaints be reviewed by installation level commanders at monthly case management groups was a helpful method for understanding the issue of retaliation and successfully resolving issues. The Marine Corps SAPR Chief stated,</p> <p style="padding-left: 40px;">We find in many cases we just aren’t making known where these issues are. So by asking in the CMGs we are able to start getting stories that we can hand the leaders and say, “When you talk to your victims, are you aware of how it is being communicated?” And we are trying to standardize that in all of our training to get that word out to all of those different elements of leaders, from the very senior ones down to our sergeants and our corporals, our NCOs.</p>

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<b>Issue 4</b>	<p><b>SANCTIONS FOR OFFENDERS</b></p> <ul style="list-style-type: none"> <li>• <i>Whether current options available to commanders for sanctioning offenders in substantiated social retaliation complaints are adequate.</i></li> <li>• <i>Whether there should be a separate UCMJ Article specifically criminalizing professional retaliation.</i></li> </ul>
<b>Background Information</b>	<p>Currently, retaliation against a Service member for reporting a criminal offense may be punished, in certain instances, under the following punitive articles of the UCMJ: Article 92, "Failure to obey order or regulation;" Article 93, "Cruelty and maltreatment;" Article 133, "Conduct unbecoming an officer and gentleman;" and Article 134, "General article." Additionally, if the retaliatory action itself is a crime under the UCMJ, such as threatening a witness, destruction of property, or stalking, that crime is prosecutable, regardless of whether or not it was in retaliation for reporting a sexual assault.</p> <p>Commanders also have at their disposal for dealing with individuals found to have engaged in retaliation, Article 15, UCMJ, non-judicial punishment options such as restrictions to certain specified areas and limits, suspension from duty, reduction in pay grade, extra duty, confinement, and forfeiture of pay, as well as administrative actions such as counseling, admonition, reprimand, or withholding of privileges.</p> <p>Dr. Galbreath expressed concern to the JPP that "sometimes in our efforts to make sure that people are held appropriately accountable, we rely on the justice process and that is a high bar." He advised the JPP to "keep... in mind that we have to not only address the things that are actionable under the law, but also those things that may not rise to criminal proof."</p> <p>DoD is considering recommending a legislative proposal to OMB that the UCMJ be amended by adding a punitive article for retaliation. See DOD SAPRO Retaliation Overview, Judicial Proceedings Panel Public Meeting, dated April 10, 2015.</p>
<b>JPP Analysis &amp; Recommendations</b>	

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<b>Issue 5</b>	<p><b>REMEDIES FOR VICTIMS</b></p> <ul style="list-style-type: none"> <li>• <i>Whether there are appropriate remedies for sexual assault victims who experience retaliation?</i></li> <li>• <i>Whether victims should have a right to know the specific actions taken against their offender(s) when a report of retaliation is substantiated?</i></li> <li>• <i>Whether the BCMRs are providing sufficient remedies for victims of retaliation.</i></li> </ul>
<b>Background Information</b>	<ul style="list-style-type: none"> <li>• The JPP heard testimony from victims that the remedy they seek is simply to have the retaliatory behavior stop. A Marine Corps SARC explained to the JPP that “there have been instances where comments were being made, things were being said, and all it did take was for me to make a call [to the command] to say you have got an issue. Let’s address this and talk about it. And she said everything stopped. Everything was fine. And that was all she was wanting was for it to stop. She wasn’t looking for anybody to be strung up.”</li> <li>• Professional Retaliation             <ul style="list-style-type: none"> <li>○ For professional retaliation, the exclusive remedy for Service members is redress under the Military Whistleblower Protection Act (MWPA). MWPA claims are referred to the IG.</li> <li>○ HRW found that between 2004 and 2013, DoD IG only received 38 MWPA complaints. They investigated five, none of which led to relief for the victim.</li> </ul> </li> <li>• Relief from Boards for Correction of Military Records             <ul style="list-style-type: none"> <li>○ BCMR representatives reported to the JPP that the most common type of issue they see with sexual assault survivors occurs after they have been discharged and are subsequently found by the Veterans Administration to have PTSD, or a major depressive disorder related to the sexual assault. The remedy they seek is to have their administrative discharge changed to a disability discharge, or if they did receive a disability discharge they request that their rating be increased. The sentiment universally expressed by the BCMR representatives who appeared before the JPP was that they “get so few it’s very hard to generalize.”</li> <li>○ HRW requisitioned a general search of all the Boards of Correction of Military Records decisions which found zero cases in which any whistleblower case related to a sexual assault had been granted even partial relief.</li> <li>○ Overall, HRW found 51 cases in which someone who reported a sexual assault got relief from the BCMRs, and oftentimes the cases were not brought under the Whistleblower Protection Act at all, but instead requested to modify the characterization of the service members’ discharges.</li> <li>○ <b>UPDATE:</b> Sept. 30, 2015, Conference Report indicated the proposed FY16 NDAA would include a change to the statute that governs the BCMRs so that a Secretary “may file a request for correction of a military record only if the request is made on behalf of a group of members or former members of the armed forces who were similarly harmed by the same error or injustice.” Currently, a BCMR can only review an application if an individual, a claimant’s heir or legal representative requests relief.</li> </ul> </li> <li>• Expedited Transfer:             <ul style="list-style-type: none"> <li>○ Another remedy for victims of retaliation often referenced during testimony was the option of expedited transfer. Major General Snow, the former Director of DoD SAPRO, told the Panel that “over the years and through the voices of military survivors of sexual assault, we heard that many felt retaliated against for reporting.” He added that in response to this issue, Secretary of Defense Leon Panetta, in December of 2011, directed the implementation of an expedited transfer option “for victims who felt uncomfortable in their surroundings with the goal of helping them in their recovery.” General Snow added that, “anecdotal evidence indicates that retaliation concerns are often voiced as part of the reason for requesting a unit transfer” and that “we wanted victims to have an effective avenue to leave a negative environment.” Additionally, the requirement that Service members who report a sexual assault be offered the option of an expedited transfer was codified by Congress in the FY 2012 NDAA.</li> <li>○ Army and Air Force SARCs both reported helping victims who were retaliated against by their peers to request and obtain expedited transfers, even after the sexual assault case closed. The Air Force SAPR head noted that expedited transfer has “proven to be an effective tool for this complex problem, and it has been utilized across the Services.” Although, the JPP heard from one victim that “when my investigation was finalized and it did come through that [retaliation is] what I had experienced, my expedited transfer got denied.” That survivor reflected that the expedited transfer is a “great process, but it’s also a process that’s not being used.”</li> </ul> </li> </ul>
<b>Analysis &amp; Recomm.</b>	

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<b>Issue 6</b>	<p><b>TERMS ASSOCIATED WITH RETALIATION</b></p> <ul style="list-style-type: none"> <li>Should the DoD and military leaders use a term other than “perceived retaliation” for instances when a victim felt the actions were retaliatory in nature?</li> </ul>
<b>Information for JPP Analysis</b>	<p>A sexual assault response coordinator suggested that use of the terminology “perceived” retaliation may have an alienating effect on sexual assault victims, telling the JPP, “And I don’t even want to use the word perceive. Because if they perceive that it is happening, it is happening for them.” See Transcript of JPP Public Meeting at 280 (May 19, 2015)(testimony of Ms. Marie A. Brodie, U.S. Marine Corps SARC, Marine Corps Base Camp Lejeune, North Carolina)</p> <p>“Following the President’s request in 2013 for a report on sexual assault, the Department selected a number of metrics to measure progress in sexual assault prevention and response, including a metric to assess “<u>perceived retaliation</u>.” DEPARTMENT OF DEFENSE ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY: FISCAL YEAR 2014 at 9 (Apr. 22, 2015)(emphasis added). Footnote 18 of the report explains, “[i]t should be noted that the survey data collected provides broad perceptions of retaliation that do not necessarily align with actionable offenses that meet the elements of proof required for a charge of retaliation under military law.” DEPARTMENT OF DEFENSE ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY: FISCAL YEAR 2014 at 9 (Apr. 22, 2015)(emphasis added).</p> <p>Some of the Military leaders and service SAPRO heads used the term “<u>perceived retaliation</u>” when testifying before the JPP in the April and May 2015 JPP public meetings.</p> <ul style="list-style-type: none"> <li>“Given the broad range of behaviors that could be perceived as social retaliation, it is fairly safe to assume that such reactions by others by someone who reports a sexual assault will not always rise to the level of a criminal act. However, these reactions can add to a victim’s feelings of alienation. They can complicate their recovery. And they can influence their decision for continued participation in the military justice process. As indicated in our report to the President, our most recent data showed that a significant percentage of victims indicated they perceived some kind of professional and social retaliation. And this percentage showed no appreciable change between 2012 and 2014, either in the overall percentage of female respondents indicating they perceived retaliation or the types of retaliation they perceived.” <i>Transcript of JPP Public Meeting</i> at 60 (Apr. 10, 2015)(testimony of Major General Jeffrey Snow, Director DoD SAPRO).</li> <li>“We recognize that continuing to eliminate retaliation – real or perceived – against victims, witnesses, bystanders, and first responders, is key to building upon other successes, and ultimately achieving the change in the culture we seek.” <i>Id.</i> at 235 (testimony of Ms. Ferrell, Director U.S. Army SHARP).</li> <li>“With the victim’s permission, the [SARC] shares any perceived retaliation the victim may be experiencing at monthly case management group meetings ... ” See also <i>Transcript of JPP Public Meeting</i> at 350 (May 19, 2015)(testimony of Brigadier General David Harris, U.S. Air Force, Commander, 96th Test Wing, Eglin Air Force Base, Florida).</li> <li>An NCO presenter gave an illustrative example of what “perceived retaliation” or necessary command action not related to retaliation, might look like from a command perspective. He told the JPP, “In many cases, the duty section can manage the impact of mild symptoms such as short term absences, a lack of focus, minor lapses in judgment, lack of attention to detail, et cetera, that come from this period of healing, but long term or more significant symptoms are very difficult to manage, especially considering the many times that commanders and supervisors have limited information, sometimes because it’s a restricted report, sometimes because of HIPAA rules, and sometimes because there’s an ongoing investigation, and sometimes there are manpower constraints to consider, especially in this day and age. When you combine all those factors with a grieving, struggling victim, commanders and supervisors have to make very, very difficult decisions in order to document long term substandard performance and/or to protect mission impact. Mark downs on performance reports, reassignments to different duty sections, or other personnel actions are sometimes necessary. When these extremely difficult decisions are made, they can be and many times are perceived as retaliation.” See Transcript of JPP Public Meeting, 299-301 (testimony of Command Chief Master Sergeant Craig A. Neri, U.S. Air Force, 45th Space Wing, Patrick Air Force Base, Florida).</li> </ul>
<b>Analysis Recommend</b>	

**JPP DELIBERATION GUIDE FOR ISSUES OF RETALIATION (10/9/2015)**

<b>Issue 7a</b>	<p><b>TRACKING LEGISLATIVE AND POLICY REQUIREMENTS RELATED TO RETALIATION</b></p> <p><i>Whether the JPP wishes to comment on S.1130, The Legal Justice for Service Members Act, one of two pending legislative proposals addressing issues of retaliation in the Armed Forces.</i></p>
<b>Background Information</b>	<p><b>S.1130 The Legal Justice for Service Members Act</b> was introduced in congress on April 29, 2015 by U.S. Senators Barbara Boxer (D-CA), Ron Wyden (D-OR) and Edward J. Markey (D-MA), and Congresswoman Jackie Speier (D-CA). Senator Boxer authored the original Military Whistleblower Protection Act in 1988 as a member of the House of Representatives. The bill’s sponsors noted that “[a]lthough the law has been updated periodically over the years, changes have not kept pace with protections afforded to civilian whistleblowers.”</p> <p>Latest action: 4/29/2015 Read twice and referred to the Committee on Armed Services.</p> <p>The following summary is from <a href="http://www.congress.gov">www.congress.gov</a> (last visited on Oct. 2, 2015)</p> <ul style="list-style-type: none"> <li>• This bill revises whistle blower protections for members of the Armed Forces.</li> <li>• Prohibited personnel actions shall include:             <ul style="list-style-type: none"> <li>○ a superior's failure to respond to retaliatory action or harassment taken against a subordinate; and</li> <li>○ action that could be understood as an attempt to dissuade a service member from making or preparing a communication, or participating in any other activity.</li> </ul> </li> <li>• A service member may opt out of a military branch investigation in favor of an investigation by the Department of Defense Office of the Inspector General (DODIG).</li> <li>• An investigating Inspector General (IG) may impose a 90-day stay of a personnel action, which may be extended by the military department concerned to complete an investigation, in order to prevent undue hardship to a service member if reasonable grounds exist to believe that a prohibited personnel action has occurred.</li> <li>• Periodic notice must be given to service members on the progress of IG investigations.</li> <li>• IG recommendations for disposition of complaints must include recommendations for disciplinary actions against the person who committed the prohibited personnel action, against a superior who knew or should have known but failed to address the action, or both.</li> <li>• An investigating IG shall submit a substantiated investigation to the appropriate military corrections board unless the service member requests otherwise.</li> <li>• Service members may request a corrections board hearing under specified circumstances.</li> <li>• DODIG shall prescribe uniform standards for: (1) investigation of allegations of prohibited personnel actions, and (2) staff training.</li> <li>• The investigative evidentiary burden of proof shall be "clear and convincing evidence."</li> <li>• Provisions are revised for improvements to authorities and procedures for correction of military records, including permitting a claimant to seek judicial review of a board's determination in an appropriate U.S. court.</li> <li>• The Inspector General Act of 1978 is amended to include the Inspectors General of the Army, the Navy, the Air Force, the Marine Corps, the National Guard Bureau, and the Coast Guard in the Council of Inspectors General on Integrity and Efficiency.</li> </ul>
<b>JPP Analysis &amp; Recommend.</b>	

**JPP DELIBERATION GUIDE FOR ISSUES OF RETALIATION (10/9/2015)**

<b>Issue 7b</b>	<p><b>TRACKING LEGISLATIVE AND POLICY REQUIREMENTS RELATED TO RETALIATION</b></p> <p><i>Whether the JPP wishes to comment on H.R.2026, the SUPPORT Act, one of two pending legislative proposals addressing issues of retaliation in the Armed Forces, in light of the proposed FY16 NDAA language.</i></p>
<b>Background Information</b>	<p><b>The Support Uniformed Patriots; Prevent Offenses and Restore Trust Act (SUPPORT Act)</b> was introduced in the House on April 22, 2015 by Congresswoman Niki Tsongas (D-MA) and Congressman Mike Turner (R-OH), co-chairs of the Military Sexual Assault Prevention Caucus.</p> <p>Latest action: 4/23/2015 Referred to the House Committee on Armed Services</p> <p>The following summary is from <a href="http://www.congress.gov">www.congress.gov</a> (last visited on Oct. 2, 2015): The Secretary of DOD (Secretary) shall establish a strategy to prevent retaliation by members of the Armed Forces against other members who report or otherwise intervene on behalf of sexual assault victims.</p> <p><b>UPDATE:</b> On Sept. 30, 2015, the Joint explanation of the proposed FY16 NDAA noted that a briefing will be required on the strategy to prevent retaliation be provided to the Committees on Armed Services not later than 180 days from the enactment of the NDAA. The Conference report to accompany H.R. for the FY16 NDAA included section 539, Preventing Retaliation Against Members of the Armed Forces Who Report or Intervene on Behalf of the Victim of an Alleged Sex-related Offence, detailed the proposed requirements:</p> <ul style="list-style-type: none"> <li>(a) Strategy Required – The Secretary of Defense shall develop a comprehensive strategy to prevent retaliation carried out by members of the Armed Forces against other members who report or otherwise intervene on behalf of the victim of an alleged sex-related offence.</li> <li>(b) Elements – the comprehensive strategy required by subsection (a) shall include, at a minimum, the following: (1) Bystander intervention programs emphasizing the importance of guarding against retaliation. (2) DoD and military department policies and requirements to ensure protection for victims of alleged sex-related offences and members who intervene on behalf of victims from retaliation. (3) Additional training for commanders on methods and procedure to combat attitudes and beliefs that result in retaliation.</li> <li>(c) Definitions – for the purposes of this section: (1) the term “alleged sex-related offence” has the meaning given that term in section 1044e(g) of title 10, United States Code. (2) The term “retaliation” has such meaning as may be given that term by the Secretary of Defense in the development of the strategy required by subsection</li> </ul>
<b>JPP Analysis &amp; Recommend.</b>	

**JPP DELIBERATION GUIDE FOR ISSUES OF RETALIATION (10/9/2015)**

**ISSUES PREVIOUSLY DISCUSSED BY THE JPP CONCERNING RETALIATION**

<b>Issue 7c</b>	<p><b>TRACKING LEGISLATIVE AND POLICY REQUIREMENTS RELATED TO RETALIATION</b></p> <p><i>Whether DoD should track and report on the requirement imposed by section 578 of the FY13 NDAA for general officer/flag officer to review the proposed involuntary separations of members who have reported sexual assaults within the preceding 12 months.</i></p>
<b>Background Information</b>	<ul style="list-style-type: none"> <li>• DODI 6495.02, Sexual Assault Prevention and Response Program Procedures (March 28, 2013, was updated to comply with the FY13 statutory requirement, however, implementation of that requirement is not being tracked by DoD. (See Transcript from April 10, 2015 Transcript, P. 76-77; DODI 6495.02, Sexual Assault Prevention and Response Program Procedures (March 28, 2013, Incorporating Ch 2, Effective July 7, 2015), available at <a href="http://www.dtic.mil/whs/directives/corres/pdf/649502p.pdf">http://www.dtic.mil/whs/directives/corres/pdf/649502p.pdf</a>.)             <ul style="list-style-type: none"> <li>○ Dr. Galbreath mentioned that DOD updated instructions for a general officer or a flag officer to review the circumstances and grounds for the involuntary separations of sexual assault victims.</li> <li>○ Mr. Taylor: Asked Dr. Galbreath what type of information he has about whether that is actually being implemented and how it is working.</li> <li>○ Dr. Galbreath responded “that information has not been fed back up into our particular organization” to track that.</li> <li>○ Mr. Taylor suggested that would be a good thing to know and Dr. Galbreath agreed.</li> </ul> </li> <li>• On June 24, 2015, DoD IG published a memorandum stating that it will be evaluating the separations of service members who made a report of sexual assault. DoD IG will:             <ul style="list-style-type: none"> <li>○ Identify service members who made unrestricted sexual assault reports from January 1, 2009 to June 30, 2015.</li> <li>○ Identify the type of separation following unrestricted reports of sexual assault from January 1, 2009 to June 30, 2015.</li> <li>○ Evaluate whether service members separations for non-disability mental conditions, including personality and adjustment disorder, from January 1, 2009 to June 30, 2015, were completed as required by DoD Instruction 1332.14, "Enlisted Administrative Separations," and other guiding regulations, directives, and policies.</li> </ul> </li> </ul> <p>See Deputy Inspector General for Policy and Oversight, Memorandum re Evaluation of the Separation of Service Members Who Made a Report of Sexual Assault (Project No. 2015C012) (Jun. 24, 2015), available at <a href="http://www.dodig.mil/ELetter/Documents/announcementProjects/Evaluation%20of%20the%20Separation%20of%20Service%20Members%20Who%20Made%20a%20Report%20of%20Sexual%20Assault.pdf">http://www.dodig.mil/ELetter/Documents/announcementProjects/Evaluation%20of%20the%20Separation%20of%20Service%20Members%20Who%20Made%20a%20Report%20of%20Sexual%20Assault.pdf</a></p>
<b>JPP Analysis &amp; Recommendations</b>	<ul style="list-style-type: none"> <li>• DoD establish a method to track and report compliance with the requirement imposed by section 578 of the FY13 NDAA, and the DoD Instruction, for general officer/flag officer to review the proposed involuntary separations of members who have reported sexual assaults within the preceding 12 months.</li> </ul>

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**ISSUES # 8-12: PREVIOUSLY DISCUSSED BY THE JPP**

<p align="center"><b>Issue 8</b></p>	<p><b>DEFINITION OF RETALIATION</b></p> <p><i>Whether the DoD policy should uniformly define key retaliation terms, including “retaliation,” “ostracism,” and “maltreatment,” which are used by the Services in regulations prohibiting retaliation, as required by section 1709 of the FY14 NDAA 1709.</i></p>
<p align="center"><b>Background Information &amp; JPP Analysis</b></p>	<ul style="list-style-type: none"> <li>• FY14 NDAA section 1709: “the SecDef shall define retaliation to include, at a minimum, a) taking or threatening to take an adverse personnel action...because member reported a criminal offense and b) ostracism and such acts of maltreatment as designated by the SecDef, committed by peers, by a member of...” Transcript of JPP Public Meeting at 237 (Aug. 6, 2015).</li> <li>• Mr. Taylor commented that the Army definitions differed from the Air Force and Navy and asked the staff why the Army differed. Transcript of JPP Public Meeting at 225 (Aug. 6, 2015).             <ul style="list-style-type: none"> <li>• He suggested that the Panel make a recommendation to the Secretary of Defense to take responsibility for making the Service retaliation definitions consistent as was required by the NDAA. (<i>Id.</i> at 232-233)</li> <li>• <i>Response from Janet Mansfield, Army OTJAG, Army definition was a drafting error and is going to be amended to match the other Services (9.1.2015) via e-mail.</i></li> </ul> </li> <li>• Chair Holtzman suggested issuing a letter to SecDef now, or a report indicating that this requirement was “adopted by law and it hasn’t been implemented. Period. And should be. And so, like, one paragraph. Judge Jones added that it should emphasize that it is very important in order to get good statistics to have uniform definitions. Ms. Fried noted that it must be sent to the Secretary and to Congress. Transcript of JPP Public Meeting at 238 (Aug. 6, 2015).</li> </ul> <p><b>Continuum of Harm:</b></p> <ul style="list-style-type: none"> <li>• VADM Tracey noted that it was a useful visual for a commander to get his or her mid-level leadership focused on the fact that all of the things in the left-hand side are a precursor to the things on the right-hand side. And if you don’t do something to address the left-hand side as it emerges, you will march up the chain... She added that “it’s less about how we are going to court-martial people than it is about how you do things so you don’t have to court-martial people.” (<i>Id.</i> at 240-141)</li> <li>• Chair Holtzman wants to be sure it is noted that even the less severe retaliation can be criminal with the “intent” element. (<i>Id.</i> at 245-246) She indicated that the arrows at the bottom of the chart are not clear. (<i>Id.</i> at 247) (<i>References to investigating agency was removed from continuum for clarity</i>) She requested that we elaborate on what is a threat – the term is too vague. (<i>Id.</i> at 247) Chair Holtzman noted and the Panel agreed that the command arrow should go all the way to the left because the command is always expected to take action both against offenders and to remedy the situation, (<i>Id.</i> at 249-250).</li> </ul>
<p align="center"><b>Possible Recommendations</b></p>	<ul style="list-style-type: none"> <li>• That DoD should issue a standard definition of retaliation as required in FY14 NDAA section 1709 including designating acts of ostracism and maltreatment that are considered retaliation.</li> <li>• That a Continuum of Harm be included in the JPP report as an illustrative tool to identify the types of retaliation.</li> </ul>

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<b>Issue 9</b>	<p><b>DATA COLLECTING AND REPORTING REQUIREMENTS</b></p> <ol style="list-style-type: none"> <li>1. Whether reports <b>and</b> associated outcomes of all retaliation complaints, regardless of type of retaliation, investigative authority, or punishment involved, should be collectively tracked and publicly reported.</li> <li>2. Whether outcome data for both the victim and offender should be included in retaliation data reports.</li> <li>3. Whether retaliation data reports should include the underlying misconduct complaint and its outcome data.</li> <li>4. Whether retaliation data should be included in annual SAPR reports.</li> <li>5. Whether, as a deterrent against misconduct, data on sexual assault and retaliation reports and their outcomes should be regularly and publicly reported by each installation, forward operating base, or equivalent geographic unit and made readily available to Service members.</li> </ol>
<b>JPP Analysis</b>	<ul style="list-style-type: none"> <li>• Chair Holtzman: unlike with sexual assault reports, “there’s no formal complaint form, and there is no formal, therefore, requirement of retention of the information that a complaint has been filed.” Transcript of JPP Public Meeting at 253-254 (Aug. 6, 2015). And also for how it has been followed up. (<i>Id.</i> at 254) She added that “if they don’t have a form, and they don’t have a regularized system for making complaints, how will they ever be able to track them, much less respond to them?” (<i>Id.</i> at 258.)</li> <li>• Chair Holtzman: “the Air Force model seems like not a bad approach. I mean, this seems like a very logical person, the SARC, to be asking this question.” (<i>Id.</i> at 260.) She suggested that “maybe we need to know more about how that’s working and what the Air Force thinks about it, and maybe why the other agencies haven’t adopted it. But that seems to me a pretty useful system.”(<i>Id.</i> at 260-261.)</li> <li>• Mr. Stone commented on the importance for data collection of using the same scale of what each victim is reporting. (<i>Id.</i> at 267.) Judge Jones noted that the chart could be very helpful to the SARC who is doing the questioning. (<i>Id.</i> at 267-268.) She noted that “I would think victims’ counsels would be also reporting this...maybe they get this form too.” (<i>Id.</i> at 268.) “But there needs to be a form that goes into a centralized location, that, yes, there was a report, and this is the category it fell in.” (<i>Id.</i> at 268.) Judge Jones also asked what kind of record keeping the IG office does, since this is a “third area where we would definitely want to capture how many... what types... what were the outcomes.” (<i>Id.</i> at 269.) Col Green added that the IG does reports of reprisal cases but has limited tracking capability for sexual assault related reprisal reports. (<i>Id.</i> at 269.) Chair Holtzman questions whether the JPP wants “in any way, shape, or form to harness them [IG] into a solution, because they have been, in my judgment, part of the problem.” (<i>Id.</i> at 269.)</li> <li>• VADM Tracey: “So what is the outcome we are trying to get to here? To sort out the current activity that we attribute to publishing UCMJ results? That’s a positive thing to do.” (<i>Id.</i> at 271.) She noted that to measure whether it is getting better or getting worse, you don’t have to have everything (all types of reports). (<i>Id.</i> at 271-272.) Judge Jones stated, “I think what we’re...looking for here is...are they increasing? Are there more reports? You know, the same kind of data we are looking for with sexual assaults. Period.” (<i>Id.</i> at 277.) Chair Holtzman added, “yes, and is this system working?” Meaning the CMGs (<i>Id.</i> at 277.)</li> <li>• Mr. Taylor expressed support for the idea that retaliation data should be included in annual SAPRO reports. (<i>Id.</i> at 279-280.) Chair Holtzman added that “it needs to be not just a general report to the public. That information needs to be given on a regular basis to whoever is over the various commanders and can say, ‘They’re not doing enough on this base. They’re doing a great job on that base.’” (<i>Id.</i> at 280.) Mr. Stone suggested a JPP data call for retaliation statistics which wasn’t supported by Chair Holtzman. (<i>Id.</i> at 280-282.)</li> </ul>
<b>Possible Recommendations</b>	<ul style="list-style-type: none"> <li>• That there should be a standardized formal complaint form for retaliation complaints. (Further discussion needed: All complaints? Just command investigated complaints?)</li> <li>• That the Air Force Policy for SARCs and Case Management Group procedures is recommended to the other Services as a model for the role SARCs.</li> <li>• That information from the formal complaint forms should be collected and tracked by the Services and DoD to assess whether retaliation complaints are increasing or decreasing and whether the CMG system is working.</li> <li>• That data on retaliation should be included in the annual SAPRO reports (Further discussion needed: All reports? Outcomes included? Professional vs. social vs. criminal?)</li> </ul>

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<p align="center"><b>Issue 10</b></p>	<p><b>WHAT PRACTICES IDENTIFIED BY SUBJECT MATTER EXPERTS SHOULD BE RECOMMENDED FOR THE MILITARY WORKPLACE?</b></p> <p><i>Are Ethics Hotlines needed? Is better publicity for the Safe Helpline a solution? Is a clearer reporting process needed?</i></p>
<p align="center"><b>JPP Analysis</b></p>	<ul style="list-style-type: none"> <li>• Mr. Taylor drew a parallel between the commanders the JPP heard from and the civilian workplace experts in the importance of a climate of trust. (Transcript of JPP Public Meeting at 299 (Aug. 6, 2015)). He noted that “if they believe that they can file a report and then something will be done, and people will know about it, that will then build trust so that others will feel more comfortable bringing forth retaliation.” (<i>Id.</i>)</li> <li>• VADM Tracey agreed and noted that “one of the things that I thought was eye-opening for me was the extent to which retaliation manifests itself to people just not showing up, sort of a thing, and that’s sort of a recalibration of how people think about victim isolation and that it may not be active behavior.” (<i>Id.</i> at 299-300.)</li> <li>• Mr. Stone and VADM Tracey discussed that this is an ongoing issue with corporations and universities as well and that no one has yet solved the problem of retaliation. (<i>Id.</i> at 301-303.)</li> <li>• Chair Holtzman raised the issue of corporations utilizing hotlines to monitor ethics issues and improprieties and asked whether something like this exists for retaliation. (<i>Id.</i> at 304.) Ms. Fried responded that the DoD Safe Helpline captures retaliation. (304-305) and that the IG has a website for reprisal and a hotline for other complaints. (305) VADM Tracey commented that a problem is that “people don’t know that’s where you would go. Maybe you don’t want to go to the IG because they are part of the problem half of the time.” (<i>Id.</i> at 305.)</li> <li>• Chair Holtzman commented that “because this is such a serious problem...it is almost as serious as the sexual assault because it’s a way of stopping people from reporting and dealing with the problems because they’re so afraid of retaliation or reprisal.” (<i>Id.</i> at 306) She suggested that “the issue of how you report it, whether you are the victim or just a bystander, ought to be clarified, made easy and simple, and maybe it’s the SARC who gets that kind of complaint.” (<i>Id.</i>) She concluded that “if you can put the same sort of emphasis on reporting retaliation, for example, as you put on reporting sexual assault, maybe people would start taking it more seriously.” (<i>Id.</i>)</li> <li>• Judge Jones suggested a sexual assault and retaliation hotline. (<i>Id.</i> at 307.) She asked, “Do we need a designated hotline that permits people who don’t even what to talk to a SARC or a chaplain or their best friend, but who will get on it and say, ‘this is what’s going on. You need to know this. So-and-so is being retaliated against. She was sexually assaulted.’” (<i>Id.</i> at 309). Ms. Fried pointed out that there is a link on the DoD Safe Helpline that says, “If you believe you experienced or witnessed retaliation, filed a report of sexual assault, please let the DoD Sexual Assault Prevention and Response Office know. And you click here to learn more.” (<i>Id.</i> at 310-311.)</li> <li>• Chair Holtzman suggested that she would like to find out more about the Services’ ideas about how to improve the publicity around the DoD Safe Helpline. (<i>Id.</i> at 314.) “Do they think the hotline’s being adequately used? Accessed? ...How long has it been in existence?” (<i>Id.</i>)</li> </ul>
<p align="center"><b>Possible Recommendations</b></p>	<ul style="list-style-type: none"> <li>• DoD assess whether the DoD Safe Helpline is an effective tool for sexual assault victims, i.e., whether victims are aware it is available, if it is being adequately used and accessed.</li> <li>• Staff – follow up to <b>DOD SAPRO Retaliation Overview, for the JPP Public Meeting,</b> dated April 10, 2015, which indicated a <b>SAFE helpline reporting option would be provided for service members who experienced retaliation so they could safely and securely report their experience to either SAPRO or the DOD IG via “Military Feedback Form,” link to the DoD IG page</b></li> </ul>

**JPP DELIBERATION GUIDE FOR ISSUES OF RETALIATION (10/9/2015)**

<b>Issue 11</b>	<p><b><i>TRAINING PROGRAMS ON RETALIATION PREVENTION AND RESPONSE</i></b></p> <p><i>Whether adequate training programs are in place to educate Service members, Spouses, and children of Service members about retaliation and the resources available to understand, deter, and respond to it.</i></p>
<b>Background Information</b>	<ul style="list-style-type: none"> <li>• In a memorandum issued on December 3, 2014, the SecDef directed that the Chiefs of the Military Services and the National Guard Bureau “augment all supervisor training to address the role of the supervisor in the unit sexual assault prevention and response programs.” Specifically, the training is to be geared for all junior officers, junior enlisted supervisors, and civilian employees who supervise military members. Furthermore, the memorandum required that the Services each provide a “curriculum development plan” for this training to the Under Secretary of Defense for Personnel and Readiness (USD(P&amp;R)) by January 30, 2015. In turn, USD(P&amp;R) had a deadline of September 1, 2015, to provide a plan to the SecDef.</li> <li>• The Services responded to the JPP’s requests for information about which organizations are responsible for training leaders and Service members about retaliation and descriptions of the training in May 2015. However, no reference was made by the Services to the curriculums submitted to DoD or to efforts to ensure uniformity across the Services’ training materials.</li> <li>• The Services’ provided the following descriptions of the retaliation training:             <ul style="list-style-type: none"> <li>• Responsibility for Training: All of the Services indicated that their SAPR organizations are involved in retaliation training provided to Service members and that judge advocates provide training to incoming military leaders as part of legal orientation and new command courses. Only the Army and Marine Corps identified their respective IG organizations as having a training responsibility for retaliation.</li> <li>• Focus on First line leaders: The AF referenced newly developed retaliation training for first-line supervisors in its written response to the JPP. Several presenters from the Army placed particular emphasis on the Sergeant Major of the Army’s “Not in My Squad” initiative which is a new training program specifically geared towards junior non-commissioned officers. This program was developed to address “...the gap the Army has identified in the knowledge, experience, and actions in first-line leaders in regards to the Army profession.” The head of the Navy’s SAPR program also reported to the JPP that for the Navy “[a]ll first-line supervisor training and command training are being enhanced with modules on how to prevent, recognize and respond to retaliation when it occurs.”</li> <li>• Other Outreach Efforts: The Marine Corps expressed that the most immediate impact can come from “communications outreach, with the goal of meeting all ranks and ages of Marines wherever they may be – on duty, on liberty, or online.” The Marine Corps is also placing an emphasis on preventing online retaliation and cyberbullying “which creates hostile command climates and presents a barrier to reporting,” by developing more effective tools for leadership to identify and address “what is going on online within their units.”</li> </ul> </li> </ul>

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JPP Analysis	<ul style="list-style-type: none"> <li>○ Mr. Taylor commented that based on the testimony, there is a “pretty wide variety of approaches in who conducts the training and the materials used.” (Transcript of JPP Public Meeting at 315-16 (Aug. 6, 2015). He added that “it seems to me that there was a general leadership and command acceptance of responsibility for doing this training.” (<i>Id.</i> at 316). “...the problem at some point becomes whether or not the people who are receiving the training are tuning it out.” (<i>Id.</i>) “...the Services need to continue to think of innovative and fresh ways to present this training.” (<i>Id.</i>) “...some of the examples we saw with the slides and the videos we were asked to review were really good examples of people talking about what had happened to them and also outcomes.” (<i>Id.</i>)</li> <li>○ Mr. Stone suggested that a poster may be more effective than repeated digital and live trainings. (<i>Id.</i> at 317.) “If you ask them what they were trained two months ago, they can’t remember it. But if there’s a poster, they find it, and especially if there’s a phone number on it.” (<i>Id.</i> at 317.) He finds that “people know enough to go there [common bulletin boards].” (<i>Id.</i> at 318.) He compared it to what is posted for EEOC violations and also noted the added benefit that “they also don’t have to go confide in someone else.” (<i>Id.</i>) He suggested for reaching dependents, that information be posted “either on the bulletin board in the PX or the post office or someplace where the dependents also go.” (<i>Id.</i> at 319.) Chair Holtzman suggested that a handout “might be something very useful to give,” with telephone numbers, medical care, what your rights are. (<i>Id.</i> at 320-321.)</li> </ul>
Possible Recommendations	<div style="text-align: center; font-size: 48px; opacity: 0.2; transform: rotate(-30deg); pointer-events: none;">             DRAFT         </div>

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<b>Issue 12</b>	<p><b>VICTIM SUPPORT RESOURCES</b></p> <p><i>Whether adequate victim support resources are in place to assist Service members, civilians, and/or dependents who experience retaliation after making a report of sexual assault.</i></p>
<b>Background Information</b>	<p><b>Services' SVC Policies concerning support for sexual assault victims with claims of retaliation:</b></p> <ul style="list-style-type: none"> <li>• Army SVCs assist victims in identifying and reporting allegations of retaliation and advocate on behalf of victims who have experienced retaliation with the chain of command to ensure an appropriate response.</li> <li>• Navy and Marine Corps VLCs play a direct role in advising and assisting victims in understanding and exercising retaliation complaint options when a victim has retained a VLC and a complaint is desired. As of May 2015, VLC have assisted victims in making Article 138, UCMJ complaints; utilizing Navy General Regulation 1150, "Redress of wrong committed by a superior;" requesting mast or non-judicial punishment; filing EO complaints; seeking BCNR assistance; making IG complaints; and providing congressional inquiry assistance.</li> <li>• Air Force SVCs can discuss reporting options with the client, advise them regarding the retaliation, and assist in making a retaliation report if desired as well as advocating on victims' behalf directly to commanders, first sergeants, legal offices or other relevant entities as necessary in order to ensure their client's rights have been safeguarded and instances of retaliation are addressed. However, the HRW report on military retaliation published in May 2015, noted that the Air Force explicitly prohibits its SVC from assisting with filing IG or congressional complaints, but HRW received some indication from the Air Force that this policy was being reconsidered. Additionally, the Air Force Special Victims' Counsel Charter specifically provides that an SVC should not assist a member in preparing IG complaints, MEO complaints, congressional complaints, or similar matters. The JPP has not received further information from the Air Force on this issue.</li> </ul> <p><b>UPDATE:</b> On Sept. 30, 2015, the Conference report to accompany H.R. for the FY16 NDAA included section 533, Authority of Special Victims' Counsel to provide legal consultation and assistance in connection with various government proceedings: the proposed section would amend section 1044e(b) of title 10, United States Code, to authorize Special Victims' Counsel to represent and assist clients in actions or proceedings involving any complaint against the Government, including an allegation under review by an inspector general and a complaint regarding equal employment opportunities, as well as any request for information, to include a FOIA request, and any correspondence or other communication with Congress. <i>[Note: According to the Joint explanation, this proposal stems from the House and Senate bills to permit SVCs to represent and assist clients in actions or proceedings that may have been undertaken in retaliation for the victim's report of an alleged sex-related offense or for the victim's involvement in related military justice proceedings.]</i></p>

## JPP DELIBERATION GUIDE FOR ISSUES OF RETALIATION (10/9/2015)

<b>JPP Analysis</b>	<ul style="list-style-type: none"> <li>• Chair Holtzman asked to have the Air Force send whatever updated policy indicates that AF SVCs may assist victims with retaliation issues. (Transcript of JPP Public Meeting at 315-16 (Aug. 6, 2015).) Col Green explained that the issue with the Air Force was that IG assistance falls within the legal assistance purview and so SVCs were not permitted to do this, but there was an update a couple of months ago. (<i>Id.</i> at 325.)</li> <li>• Chair Holtzman asked how victims are informed of their right to an SVC and if it is just an oral communication or is there a brochure that provides information. (<i>Id.</i> at 325-326.) Chair Holtzman also advocated for something that says “you’re entitled to an SVC. You’re entitled to be free from retaliation. Here’s what retaliation is. Here’s a number to call. You want an SVC? Here’s a number to call.” (<i>Id.</i> at 328.)</li> <li>• Mr. Stone pointed out that it is the 2701 form which is provided after the event, but that nothing is provided before anything has ever happened. (<i>Id.</i> at 327.) He commented that 2701 form “roughly parallels the form that assistant U.S. Attorneys give out in every district or their investigators.” (<i>Id.</i> at 329.) Ms. Tokash noted that the 2701 form was updated in 2013 and states that “if you have problems at work because of the crime or the investigation, we can contact your employer or commanding officer.” But it does not list anything about victims’ counsel. (<i>Id.</i> at 331.)</li> <li>• Mr. Taylor raised a question about the adequacy of support resources for civilians and/or dependents. He referenced the testimony of the civilian spouse of an Airman and stated that “I’m not sure that we have quite got a good handle on how we can help people like her.” (<i>Id.</i> at 332.) Further he raised concerns about civilian contractors, “If you’re a civilian contractor and happen to be a victim of one of these crimes, then it seems to me that the support safety net falls apart at some point unless you have the backing of your employer.” (<i>Id.</i> at 333.) Mr. Stone pointed out the difference that a civilian would be able to sue in a way not permitted of military members. (<i>Id.</i> at 333-334.) Mr. Taylor concluded that “I just don’t think we’ve talked about it and maybe it’s something we should at least acknowledge that we need to think about just a little bit more before we just assume that we’ve answered the question by dealing with the gaps issue.” (<i>Id.</i> at 334.)</li> </ul>
<b>Possible Recommendation</b>	