

UNITED STATES DEPARTMENT OF DEFENSE

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JUDICIAL PROCEEDINGS PANEL

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PUBLIC MEETING

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FRIDAY,
APRIL 8, 2016

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The Panel met in the Holiday Inn
Arlington At Ballston, Clarendon Room, 4610
Fairfax Drive, Arlington, Virginia, at 9:05 a.m.,
Hon. Elizabeth Holtzman, Chair, presiding.

PRESENT:

Hon. Elizabeth Holtzman
Hon. Barbara Jones
Victor Stone
Thomas Taylor
VADM(R) Patricia Tracey

WITNESSES:

Lieutenant Colonel Bret Batdorff, U.S. Army,
Chief, Trial Counsel Assistance Program
John Buchanan, Deputy Director, U.S. Coast Guard
Investigative Service
Christa Cothrel, U.S. Coast Guard, Special
Victims' Counsel Program Manager
Colonel Andrea deCamara, U.S. Air Force, Chief,
Special Victims' Counsel Division

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Captain Karen Fischer-Anderson, US Navy, Chief of Staff, Navy Victims' Legal Counsel Program
Jeremy Gauthier, U.S. Navy, Deputy Assistant Director, Criminal Investigations & Operations Directorate, NCIS Headquarters
John Hartsell, U.S. Air Force, Associate Chief, Military Justice Division
Colonel Elizabeth Marotta, U.S. Army, Special Victims' Counsel Program Manager
Colonel Katherine McDonald, U.S. Marine Corps, Officer-in-Charge, Victims' Legal Counsel Organization
Captain Bradley Palmer, U.S. Air Force, Special Victims Unit Senior Trial Counsel
Kevin Poorman, U.S. Air Force, Associate Director, Criminal Headquarters, Air Force Office of Special Investigations
Major Jesse Schweig, U.S. Marine Corps, Officer-in-Charge, Trial Counsel Assistance Program
Lieutenant Commander Ryan Stormer, U.S. Navy, Deputy Chief, Trial Counsel Assistance Program
Guy Surian, U.S. Army, Deputy Chief of Investigative Operations, Investigative Policy and Criminal Intelligence
Christa Thompson, U.S. Army, Special Victim Witness Liaison Program Manager
William Yables Jr., U.S. Marine Corps, Paralegal Specialist, Installation Victim Witness Liaison Officer

STAFF:

Colonel Kyle W. Green, U.S. Air Force - Staff Director
Julie K. Carson - Legislative Analyst/Attorney Advisor
Terri Saunders - Attorney Advisor
Stayce Rozell - Senior Paralegal

OTHER PARTICIPANTS:

Maria Fried - Designated Federal Official

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

2 9:06 a.m.

3 MS. FRIED: Good morning everyone.
4 Thank you for being here today.

5 Welcome to the Judicial Proceedings
6 since Fiscal Year 2012 Amendments Panel.

7 My name's Maria Fried and I'm the
8 Designated Federal Official for the JPP.

9 Colonel Kyle Green is the Staff
10 Director to the JPP.

11 This Panel was established by Congress
12 in Section 541 of the National Defense
13 Authorization Act for Fiscal Year 2013 as
14 Amended.

15 The Department has appointed the
16 following distinguished Members to the Panel, the
17 Honorable Elizabeth Holtzman who serves as Chair
18 of the JPP, the Honorable Barbara S. Jones, Vice
19 Admiral Retired Patricia Tracey, Professor Tom
20 Taylor, Mr. Victor Stone.

21 Members' biographies are available at
22 the JPP website at <http://www.jpp.whs.mil>.

1 This Panel is a Federal Advisory
2 Committee and must comply with the Federal
3 Advisory Committee Act and the Sunshine Act.

4 Publicly available information
5 provided to the JPP is posted on the website to
6 include transcripts of the meetings. Any
7 information provided by the public to Panel
8 Members is also made available to the public.

9 Madam Chair?

10 CHAIR HOLTZMAN: Thank you. Thank you
11 very much, Ms. Fried.

12 And, good morning everyone. I'd like
13 to welcome everyone here to this meeting of the
14 Judicial Proceedings Panel. All five Panel
15 Members are here today.

16 Today's meeting is being transcribed
17 and the meeting transcript will be posted on the
18 JPP's website.

19 The Judicial Proceedings Panel was
20 created by the National Defense Authorization Act
21 for Fiscal Year 2013 as Amended by the National
22 Defense Authorization Acts for Fiscal Years 2014

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1 and 2015.

2 Our mandate is to conduct an
3 independent review and assessment of judicial
4 proceedings conducted under the Uniform Code of
5 Military Justice involving adult sexual assault
6 and related offenses since the most recent
7 amendment to Article 120 of the UCMJ in 2012.

8 The first session of today's meeting
9 is devoted to deliberation on our upcoming report
10 to Congress and the Secretary of Defense on
11 statistical data regarding the military's
12 adjudication of sexual assault crimes.

13 We will review an updated draft report
14 that summarizes the Panel's deliberations from
15 last month's meeting including our findings,
16 conclusions and recommendations on this topic.

17 Next, we will hear from Ms. Julie
18 Carson, a member of our Staff who will provide
19 the Panel with an overview of recent sexual
20 assault legislation that affects issues and
21 topics being reviewed by the Panel.

22 Ms. Carson will also suggest -- I'm

1 sorry, will also share information from a January
2 2016 Special Victims Counsel training course she
3 attended at the Army JAG School.

4 The remainder of today's meeting is
5 devoted to updates on the SVC Programs in the
6 military Services and an overview of the Services
7 Special Victims Investigation and Prosecution
8 capabilities.

9 We will first hear from the Program
10 Managers for the Services SVC and Victims Legal
11 Counsel Programs.

12 Next, we will consider each aspect of
13 the SVIP capability, first hearing from Military
14 Criminal Investigation organizations then from
15 those responsible for prosecutions and
16 paralegals.

17 And, finally, from those responsible
18 for the policies and practices for the Services
19 Victim Witness Liaisons.

20 We very much appreciate everyone's
21 attendance today and we look forward to hearing
22 from and speaking with each of you.

1 Finally, each public meeting of the
2 Judicial Proceedings Panel includes time to
3 receive input from the public. We received no
4 requests for public comment at today's meeting.

5 We received two public submissions in
6 the form of letters from Mr. Paul Koffsky of the
7 Office of General Counsel at the Department of
8 Defense related to the Panel's deliberation on
9 its statistical data report.

10 All written materials received by
11 Panel Members for today's meeting, including
12 those letters from Mr. Koffsky, are available on
13 the JPP's website at jpp.whs.mil.

14 Thanks very much for joining us today.
15 We are ready to begin our deliberations.

16 Before we begin, I'd just like to make
17 one comment with respect to the letters from Mr.
18 Paul Koffsky.

19 Those letters pointed out issues of
20 potential factual inaccuracy in presentations
21 made to the Panel, JPP, and to potential
22 inaccuracies in our report.

1 I want to say that we very much
2 welcome the attention that's being paid to our
3 work. And, we very much welcome any effort to
4 point out any inaccuracies. It's vital because
5 of this very important subject of sexual assault
6 in the military that our reports reflect only
7 accurate information.

8 And so, we thank the General Counsel's
9 Office and we thank the Services for pointing out
10 any issues and we welcome any further suggestions
11 from you and from the public.

12 Okay, we're ready to begin.

13 And, our first item is deliberation on
14 military justice Case Data for Sexual Assault
15 Offenses.

16 Colonel Kyle Green, please?

17 COLONEL GREEN: Ma'am, as you
18 mentioned, last month, the Panel held a
19 deliberation session on this topic reviewing
20 materials that you had received from the course
21 of months and statistical information as well as
22 inputs from speakers that you heard.

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1 Last month, the Staff provided you an
2 initial draft report summarizing information that
3 the Panel had received and you deliberated on
4 this topic and we concluded regarding
5 recommendations.

6 Since then, the Staff went back and
7 tried to sum up the findings and the analysis of
8 the Panel.

9 And so, last week, I provided you an
10 updated draft report that incorporates what you
11 decided during your deliberation session. And,
12 also takes into the account the issues noted in
13 the letters received by the Panel.

14 And so, there are some additions
15 specifically related to those letters,
16 specifically related to conviction rates and the
17 information received from the Bureau of Justice
18 Statistics study in 2009 as well as a complete
19 review of the appellate data that we had provided
20 to you previously. And so, those portions of the
21 report have been updated based on the continued
22 Staff analysis.

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1 So, unless there are questions from
2 the Panel regarding those issues, the way we've
3 proceeded in the past is to review the
4 recommendations of the Panel.

5 In this case, the Panel has made or
6 has identified two potential recommendations and
7 those are in your new draft report as
8 Recommendation 37 and 38 on pages 5 and 6 of your
9 draft report.

10 And so, I would propose the Panel
11 consider those and determine whether these are
12 the recommendations of the Panel.

13 CHAIR HOLTZMAN: And those are on the
14 right side of the black folder that you provided
15 to us?

16 COLONEL GREEN: Yes, ma'am. In your
17 folder from this morning, there's a hard copy of
18 the draft report.

19 CHAIR HOLTZMAN: Okay. Before we get
20 to the recommendations, could we just -- are
21 there areas where there have been actual factual
22 changes or other changes that you want to bring

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1 to our attention?

2 I know you referred to them in
3 general, but could you --

4 JUDGE JONES: Could I -- excuse me,
5 Madam Chair. Could I ask one preliminary
6 question?

7 CHAIR HOLTZMAN: Sure.

8 JUDGE JONES: I'm just not certain.
9 I noticed on that -- in Mr. Koffsky's letter, he
10 talks about the Military Justice Act of 2016,
11 Section 1104 which appears to be, to me, a great
12 step forward where they talk about requiring the
13 prescription of uniform standards across the
14 Services for collecting and analyzing data
15 concerning substantive offenses and procedural
16 matters.

17 And, I gather that then they have two
18 years and four year implementation times with
19 respect to that.

20 Is that also a case management system?
21 How does it interact with what we're suggesting?
22 Or is it simply an effort to standardize across

1 the Services so that we'll all be looking at the
2 same event called by the same name?

3 I don't know if -- I just wasn't sure
4 of exactly what was -- what that proposal is in
5 that legislation. And, you may not know either.

6 COLONEL GREEN: No --

7 JUDGE JONES: It's not one of our
8 proposals.

9 COLONEL GREEN: Right. I think that's
10 correct, Judge Jones. The Panel did not receive
11 -- the Panel requested information on the
12 Military Justice Review Group study and its
13 proposals, but, being an internal analysis within
14 the Executive Branch, the DoD determined that the
15 Panel could not receive that information prior
16 to.

17 And so, the Panel didn't receive any
18 additional information on this.

19 Again, the proposal from DoD was
20 submitted in January.

21 JUDGE JONES: Of this year?

22 COLONEL GREEN: And so, it's a

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1 legislative proposal and I would have to say that
2 the -- Mr. Koffsky's description of it here
3 really stands as the only information.

4 JUDGE JONES: Is about all we know?

5 COLONEL GREEN: Yes, ma'am.

6 JUDGE JONES: Okay.

7 CHAIR HOLTZMAN: Are there any other
8 further questions?

9 I wanted to have Colonel Green just
10 identify the areas in the report that have
11 changed as a result of the letters we received
12 from the Pentagon so everybody is comfortable
13 making the recommendations or supporting or
14 discussing the recommendations that we have.

15 If you wouldn't mind doing that, just
16 take briefly.

17 MR. STONE: Excuse me, but I was just
18 a little bit confused by the very last response
19 that we got.

20 If this proposal was transmitted to
21 Congress, shouldn't we be able to get a copy to
22 put -- to distribute to the Panel?

1 COLONEL GREEN: You received a copy of
2 the proposed -- it's Article 140A. It's in the
3 January materials. We have a copy of it here,
4 Mr. Stone, and I'm happy to share that with you.

5 We provided the excerpts relative to
6 this topic to you in previous materials. So, the
7 proposal is in JPP materials.

8 MR. STONE: So, we should be able then
9 now to respond to it in some way and say this is
10 what we're suggesting on a faster time line or a
11 slower time line or we want a little more or a
12 little less, shouldn't we?

13 I mean, I don't know if that's what
14 we'll hear in the later presentation today. But,
15 I just --

16 COLONEL GREEN: I think the --
17 relative to other proposals that came out of the
18 Military Justice Review Group, the Panel's
19 determination as it related to Article 120
20 matters was that the Panel didn't receive
21 additional information regarding anything other
22 than the documents itself.

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1 And so, you know, the Panel's other
2 reports have indicated that you didn't study or
3 analyze and you made no comments regarding the
4 MJRG's proposal and you made yours independently.

5 So, whether -- I mean, obviously, it's
6 up to the Panel whether or not you want to
7 comment on the Military Justice Review Group's --
8 or the Military Justice Act proposal, legislative
9 proposal. Again, it's not locked --

10 CHAIR HOLTZMAN: Excuse me, but that
11 has not been enacted, am I correct?

12 COLONEL GREEN: That's correct.

13 CHAIR HOLTZMAN: That's just a
14 proposal out there? Okay.

15 Are we required to comment on various
16 proposals?

17 COLONEL GREEN: No, ma'am. And, that
18 was my point regarding Article 120 matters.

19 CHAIR HOLTZMAN: Well, regarding --
20 but I'm not talking Article 120 in general, I'm
21 talking about the Section 1104, the proposed
22 Military Justice Act. Okay.

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1 So, going back to the point I want to
2 make, would you mind just highlighting the areas
3 of the report that have changed, that you're
4 recommending that be changed --

5 COLONEL GREEN: Yes, ma'am.

6 CHAIR HOLTZMAN: -- in response to the
7 letters, so that everybody feels comfortable with
8 that?

9 COLONEL GREEN: Yes, ma'am.

10 At last month's meeting there was some
11 discussion regarding conviction rates. And, the
12 convictions rates of -- identified in the data
13 gathered by the JPP as well as discussion about
14 the conviction rates in other studies indicated
15 by the Bureau of Justice Statistics, which is
16 from a study of different jurisdictions in 2009.

17 And, the Panel Members had questions
18 about what the overall conviction rate was. And,
19 in the course of that discussion, it's confusing
20 because the BJS study includes information
21 regarding cases where the original arrest charge
22 is a rape charge and then it provides information

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1 about what the overall conviction rate is,
2 meaning an overall -- that person -- the person
3 where an initial arrest charge was rape is
4 ultimately convicted of any offense. And, it
5 also includes a conviction rate for the
6 underlying rape charge.

7 And so, the discussion was a little
8 vague on that and may have led to some confusion.
9 And, just to be absolutely clear, we've added
10 some information in the report that the --

11 CHAIR HOLTZMAN: Do you want to go to
12 the page? Would you mind giving us the page
13 citation so everybody can look at it?

14 COLONEL GREEN: Fifty-one of the draft
15 report.

16 CHAIR HOLTZMAN: Okay. So, you
17 clarified it on page 51?

18 COLONEL GREEN: Yes.

19 And so, the two numbers involved here
20 are that the overall conviction rate for any
21 offense is 68 percent and the conviction rate for
22 a rape offense is 35 percent. And, just so that

1 that's absolutely clear.

2 And, again, the Panel, your
3 determination last month was that it's
4 inappropriate to make a comparison of conviction
5 rates from one jurisdiction to another, from the
6 BJS study to another.

7 And so, the underlying report
8 emphasizes that there is no comparison to be
9 made. But, just to make sure that the statistics
10 in the report are completely clear, we added
11 that.

12 CHAIR HOLTZMAN: Excellent. Is there
13 any other change that you want to refer us to?

14 COLONEL GREEN: The other area that
15 the Staff went back and looked at, it was some
16 questions about appellate data in cases that had
17 been resolved by the Military's Appellate Courts
18 involving adult sexual assault offenses.

19 And, it was pointed out that our --
20 the cases that we had identified that had been
21 resolved by the Court of Appeals for the Armed
22 Forces may have included cases that where the

1 underlying reason for appellate action on the
2 case did not involve and adult sexual assault
3 offense.

4 So, we looked at that and validated,
5 in fact, that's true. We'd been over inclusive
6 with our numbers. And so, the Staff went back
7 and looked at all of the appellate data to
8 validate whether the cases that we had pulled
9 from the website.

10 And again, the way we gathered
11 information for appellate data was to go to the
12 sources, get case opinions and determine when an
13 adult sexual assault offense was involved and
14 then determined if the underlying reason for
15 appellate action on that case was related to the
16 adult sexual assault offense.

17 That can get very confusing. And so,
18 Terri Saunders did a complete review of all of
19 our data. And so, I'll let Terri explain that.

20 CHAIR HOLTZMAN: Can you give us a
21 page reference?

22 MS. SAUNDERS: If you -- the data

1 itself begins on page 48 of your draft.

2 And, just to give you an overview of
3 how the numbers changed and how we went about
4 gathering the data, as Colonel Green mentioned,
5 we went to the websites of all the Service Courts
6 of Criminal Appeals and we -- actually, Stayce
7 Rozell pulled every opinion from those websites.

8 We reviewed them. What we were
9 looking for is for our universe of cases was
10 cases where there was an underlying conviction on
11 an adult sexual assault offense.

12 Of those -- so, we identified 256
13 cases where that was the case. And, again, we
14 really can't use this as a denominator for all
15 cases looked at because, of course, these are
16 only cases where the courts wrote an opinion.

17 There are other summary affirmances
18 where we were not able to determine what the
19 underlying charges were, so those were not
20 included.

21 But, of the cases where they actually
22 wrote opinions, there were 256 cases that

1 involved an adult sexual assault offense.

2 Then, we looked at the cases where
3 relief was granted. And, this is, again, Fiscal
4 Years 2012 through 2014.

5 And, we looked at any case, where an
6 adult sexual assault charge was set aside by the
7 court, was included as being relief granted by
8 the court.

9 Also, if there was relief granted on
10 the sentence as a whole, then that was also
11 considered as relief being granted.

12 Where we would -- what we would parse
13 out of that would be if relief was granted on the
14 sentence based on the court setting aside a non-
15 adult sexual assault offense, we did not include
16 that.

17 So, some examples of sentence relief
18 cases that we counted would be there were several
19 cases in the Army, actually in 2014, where the
20 Court of Appeals found unreasonable post-trial
21 processing delay.

22 So, they actually granted some relief

1 on the sentence based on that. So, we did
2 include some of those cases because relief was
3 granted on the sentence as a whole.

4 So, what we came up with in doing this
5 analysis was a total of 34 cases in which the
6 Service Courts of Criminal Appeals granted relief
7 on a sexual assault case.

8 CHAIR HOLTZMAN: Whether or not the
9 relief had anything to do with the sexual assault
10 charge?

11 MS. SAUNDERS: We generally -- it did
12 not always have to do -- for example --

13 CHAIR HOLTZMAN: The one you just
14 cited?

15 MS. SAUNDERS: Right.

16 CHAIR HOLTZMAN: Okay. So, where is
17 the language accompanying that? Do you have any
18 language that we need to look at?

19 MS. SAUNDERS: We do. If you look
20 under Section B which is at the top of page 48,
21 it goes through a little about how the method --

22 CHAIR HOLTZMAN: Right.

1 MS. SAUNDERS: -- the methodology for
2 arriving at that.

3 And then, just below that chart on
4 page 48, there's some language that discusses
5 some of the reasons why relief was granted.

6 It could be for factual insufficiency,
7 for unreasonable multiplication of charges, those
8 were a couple of the big reasons.

9 There was one jurisdictional --

10 CHAIR HOLTZMAN: So, the changes that
11 were made in the text appear on page 48?

12 MS. SAUNDERS: Correct.

13 The text is largely the same.

14 CHAIR HOLTZMAN: Oh, okay.

15 MS. SAUNDERS: But, we gave a
16 description of how we came to the numbers that we
17 came to.

18 CHAIR HOLTZMAN: Okay.

19 MS. SAUNDERS: And then, providing
20 some of the reasons for why relief was granted.

21 CHAIR HOLTZMAN: Good, thank you.

22 Anything else?

1 MS. SAUNDERS: And then, additionally,
2 on page 49, we have relief granted where there
3 was a pretrial agreement in the case. And,
4 again, the numbers did change here somewhat as
5 well.

6 There were -- we identified six cases,
7 and, again, some of those were where post-trial -
8 - where there was unreasonable post-trial delay
9 and relief was granted based on that.

10 So, not necessarily relating to the
11 sexual assault offense.

12 And then, one other change on the
13 table below that. Initially, we had reported
14 nine cases in which the Court of Appeals for the
15 Armed Forces granted some form of relief based on
16 an adult sexual assault offense.

17 And, when taking a closer look and
18 being -- making sure that we're only dealing with
19 adult sexual assault offenses, we then identified
20 only five.

21 CHAIR HOLTZMAN: Okay. Thank you.

22 Any other items?

1 COLONEL GREEN: No, ma'am, those are
2 the two updates to the report that we made based
3 on the inputs.

4 VADM(R) TRACEY: I have a question
5 about --

6 CHAIR HOLTZMAN: Sure, please.

7 VADM(R) TRACEY: So, is it our
8 hypothesis that if the changes that have been
9 made are working, that the frequency with which
10 the Appellate Courts would set aside decisions
11 would go down? But that's with all the data
12 problems we had.

13 But, that's our hypothesis, right?
14 So, that if the changes that have been made are
15 effective, then decisions made at court would
16 stand up in the Appeals Court with higher
17 frequency?

18 COLONEL GREEN: The Panel didn't make
19 any analysis on any of the data that it
20 presented. And, I think the one -- what you
21 bring up is an important point.

22 The information that we could gather

1 on this involves cases that were heard by the
2 Appellate Courts in FY12 through FY14.

3 VADM(R) TRACEY: Which means there are
4 cases that were prosecuted under different
5 versions of Article 120?

6 COLONEL GREEN: Yes, ma'am.

7 VADM(R) TRACEY: Does that appear? I
8 don't remember, does that appear anywhere in our
9 document here?

10 Because, a, you know, casual reader
11 who just looks at charts is going to see an
12 increasing trend here and make assumptions
13 without any basis. So, should we caveat this
14 data at all with respect to exactly that, that
15 it's a lagging indicator?

16 MR. STONE: And, it involves different
17 versions of the Statute, like you said.

18 VADM(R) TRACEY: Correct.

19 MS. SAUNDERS: I think we kind of
20 generally say that, and perhaps we could be more
21 clear about it, I think we generally say that
22 these are -- that we could not use the same pool

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1 of cases for which we took our court-martial data
2 because of those cases have not yet reached the
3 appellate stage.

4 So, that's more by implication, but
5 perhaps we could add a sentence to that effect.

6 VADM(R) TRACEY: And, just recommend
7 that we be a bit more explicit about that.

8 CHAIR HOLTZMAN: Should that go into
9 the -- both the Executive --

10 VADM(R) TRACEY: I'm not sure where it
11 would go. But, probably in the Executive
12 Summary.

13 CHAIR HOLTZMAN: -- Executive Summary,
14 a paragraph.

15 COLONEL GREEN: And, there is a
16 conclusion -- a summary of information in this
17 section of the report. We can certainly add a
18 sentence clarifying that this involved cases
19 across all different versions of Article 120.

20 VADM(R) TRACEY: And, importantly,
21 cases that may actually have been tried well
22 before the years that are being captured here,

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1 right? Some cases take a long time to get --

2 MS. SAUNDERS: Absolutely.

3 COLONEL GREEN: Yes, ma'am.

4 CHAIR HOLTZMAN: Perhaps we could,
5 before we conclude our meeting today, maybe the
6 Staff could generate some draft language for our
7 review.

8 COLONEL GREEN: Sure.

9 CHAIR HOLTZMAN: That would be really
10 great.

11 COLONEL GREEN: Okay.

12 CHAIR HOLTZMAN: Does that satisfy
13 you?

14 VADM(R) TRACEY: Great.

15 CHAIR HOLTZMAN: Okay.

16 Anybody else have any other issues?

17 I want to go to the recommendations
18 themselves then.

19 Colonel Green, do you want to raise
20 them in this?

21 COLONEL GREEN: Yes, ma'am.

22 The Panel, through the course of its

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1 deliberations, noted two recommendations.

2 Recommendation 37 reads, if Congress
3 --

4 CHAIR HOLTZMAN: What page are you on,
5 please?

6 COLONEL GREEN: I'm sorry, on page 5
7 of the draft report, ma'am.

8 And, the recommendation reads, "If
9 Congress or the Department of Defense decides to
10 collect and analyze case adjudication data,
11 develop a standardized document-based collection
12 model similar to systems used by the Judicial
13 Proceedings Panel or U.S. Sentencing Commission."

14 And, again, this just goes to the
15 Panel's review of information available through
16 existing systems regarding the judicial
17 processing of cases and the methodology used by
18 the U.S. Sentencing Commission and the
19 effectiveness of what the Judicial Proceedings
20 Panel model following the Sentencing Commission's
21 lead on that has provided in terms of being able
22 to analyze the procedural course of cases and

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1 more statistical information regarding judicial
2 processing.

3 CHAIR HOLTZMAN: Is there any
4 objection or discussion -- objection to or
5 discussion of this proposal, Recommendation 37?

6 JUDGE JONES: I just -- if I could go
7 back for a minute and forget about the fact that
8 there's some legislation out there on bringing in
9 the data in a uniform standardized, you know,
10 correctly defined way.

11 We would be relying on, as we did, as
12 you all had to do for the data you collected for
13 us, on all of the different types of definitions
14 that come in from the different Services.

15 So, I mean, I'm just trying to figure
16 out, is if this suggestion or proposed
17 legislation about standardizing reporting among
18 the Services is going to be something that would
19 be helpful to the system.

20 I'm trying to distinguish between
21 these two proposals, the system that we're
22 recommending.

1 Or, maybe you don't find as big a
2 problem as I think there is in terms of how each
3 of the Services labels different events.

4 So, I'm just looking for some guidance
5 in terms -- I like our recommendation. I think
6 it's great. I'm just wondering whether it will
7 be helped by the other proposal potentially.

8 COLONEL GREEN: Again, without more
9 detail about what the --

10 JUDGE JONES: What the other proposal
11 is? Right.

12 COLONEL GREEN: -- it's hard to
13 analyze that.

14 I think what I would say is that what
15 we developed was a standardized list of case
16 documents from records of trial and our Staff,
17 where the Services provided those documents, and
18 then we developed standardized information from
19 those documents that we then entered into a
20 system for analysis.

21 JUDGE JONES: So, you did your own
22 standardization?

1 COLONEL GREEN: Correct. And, I
2 think, in terms of going to a record of trial and
3 looking for where that information resides within
4 a record of trial, there were some differences,
5 but, by and large, Stayce did the bulk of this
6 work.

7 MS. ROZELL: Some of the forms were
8 DoD forms. So, there were -- they could be used
9 standardized throughout all the Services.
10 However, some Services do use their own Air Force
11 form or Army form.

12 But, it's still the same type of form.
13 So, it's still the charge sheet. It may not be
14 on the same format, but it's still -- the
15 information is still the same.

16 JUDGE JONES: And, maybe they're --
17 excuse me.

18 MS. ROZELL: The process is still the
19 same, it's just called differently throughout the
20 different Services.

21 JUDGE JONES: And, you looking at it
22 figured that out and put these in the right

1 category?

2 MS. ROZELL: Yes, ma'am.

3 JUDGE JONES: All right.

4 CHAIR HOLTZMAN: And, could that be
5 done without a human intervention? I mean,
6 couldn't you program a system to take this
7 various -- the various labels and then translate
8 them to something uniform?

9 MS. ROZELL: I think that if all
10 Services all over use this same form, then
11 they're all still collecting the same data.

12 For an example, in 2012, there were
13 some forms that were used that didn't have one
14 specific information that we were collecting.
15 So, therefore, maybe we didn't know the forum of
16 that trial because it wasn't on the charge sheet
17 or the result of report of trial.

18 So, in a few cases, we weren't able to
19 collect that data, specifically that data. But,
20 once -- if they are using the same form, then
21 they're always reporting the same data so,
22 therefore, the case data can all be collected

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1 throughout all the Services.

2 CHAIR HOLTZMAN: Right. I guess what
3 my point is, let's assume, in the future, that
4 either the form is blank for that subject or for
5 that category of forum.

6 I mean, you could program a system so
7 that if that information isn't there, the report
8 could say, you know, in five percent of the
9 cases, we don't have information about the forum.

10 COLONEL GREEN: What you heard from
11 the U.S. Sentencing Commission is the U.S.
12 Sentencing Commission does it by hand and it does
13 so -- and, again, I'm not, you know -- but their
14 reasoning for that --

15 CHAIR HOLTZMAN: Yes, but they have a
16 lot of resources.

17 COLONEL GREEN: Yes, ma'am.

18 JUDGE JONES: And many fewer cases.

19 COLONEL GREEN: What they told you,
20 though, was that the accuracy of that information
21 when it's entered in by the Circuits or different
22 courts, suddenly, the consistency in terms of

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1 accuracy of that information, you sacrifice that.

2 And so, their dedication to those
3 resources is to ensure consistency of the
4 information that they enter into their system.

5 JUDGE JONES: Well, I guess the other
6 thing is, we're really talking about a system
7 that gives us data for adjudication.

8 And, the problems I'm remembering from
9 the RSP were trying to collect the same data from
10 the beginning when there was a complaint to how
11 it was processed throughout until the end.

12 So, this, to me, is a great
13 recommendation. And, I guess, you know, we can -
14 - the other proposal may not have much effect on
15 how to gather adjudication material.

16 Because, I think the other -- there
17 are many other areas pre-adjudication where I
18 think the definitional problems are greater.

19 CHAIR HOLTZMAN: Any further
20 discussion? So, are we ready to --

21 MR. TAYLOR: Well, I would just like
22 to ask a question that maybe everyone else

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1 understands and I'm just a little fuzzy about.

2 And, that is, given the case that we
3 make in this report based on all the evidence
4 we've received about the good public policy that
5 will be supported by this standardized document-
6 based collection system, I wonder if we should
7 think about strengthening our recommendation.

8 Instead of saying, if Congress or the
9 Defense Department decides, rather phrase it, the
10 Department of Defense should collect and analyze
11 case adjudication systems.

12 So, we're not sort of kicking the ball
13 down the road to someone else to say, if they
14 decide to do it, then this is the way you might
15 do it. But, instead, be more forthcoming and
16 say, we think this is a good idea, we should do
17 it.

18 MR. STONE: And, sort of -- I not only
19 agree with that recommendation, I agree with the
20 last comment that was made by Judge Jones.

21 And, I would like, in the
22 recommendation, just to add a few words to

1 clarify that because I think it's not uncommon
2 that people, when they're faced with a lot of
3 recommendations, don't spend a lot of time on the
4 bullet points underneath because when you have a
5 lot of recommendations.

6 So, I would kind of like to
7 incorporate what I think Judge Jones was saying
8 into the language of the recommendation and on
9 the second line of it after it says develop a
10 standardized document-based collection model, I
11 would add, utilizing the uniform definitions and
12 categories applying across all the Services and
13 then go back to this language and similar to
14 systems used by the blah, blah, blah.

15 Just so that in the recommendation we
16 have it and we don't have to count them and
17 following the bullet points.

18 CHAIR HOLTZMAN: Any disagreement with
19 the suggestions that have been made? Okay.

20 Are we with those Staff have a record
21 of the suggestions? Yes.

22 So, including those suggestions, do we

1 have a -- how do we feel about this
2 Recommendation 37? Should we -- anyone -- if
3 we're in favor of it, should we say -- anybody
4 opposed to it? No? Okay.

5 So, the recommendation is agreed to.
6 Thank you.

7 Now, we're up to the Recommendation
8 Number 38. Colonel Green?

9 COLONEL GREEN: Yes, ma'am.

10 This recommendation has to do with
11 cases that are handled within the Department of
12 Defense through the Family Advocacy Program.

13 And, the recommendation is, "that DoD
14 change its policy that excludes spouse and
15 intimate partner cases handled by the FAP Program
16 from the Sexual Assault Prevention and Response
17 Office reports and include legal disposition
18 information related to all sexual assault
19 complaints in one annual DoD report."

20 Again, this goes back to an issue that
21 was identified by the RSP and you heard testimony
22 about how these cases are resolved through the

1 FAP Program and both through SAPRO and are not
2 included within SAPRO's purview and, therefore,
3 are not uniformly included in the annual reports.

4 CHAIR HOLTZMAN: Any disagreement with
5 this or any comment?

6 MR. STONE: Just to the first comment
7 I have is, and this is purely technical, after
8 the Department of Defense, should it say should
9 change its policy? I was looking for a verb
10 there.

11 CHAIR HOLTZMAN: This has been our
12 standard form.

13 MR. STONE: Okay, all right.

14 And then, at the end of that line
15 where it says that excludes spouse and intimate
16 partner, should it say spouse, family and then --
17 the reason I say that is, if a military officer
18 is committing sexual assaults on either his or
19 another child on base who's 16 or 17, isn't that
20 relevant data when we're collecting the data?

21 I mean, I would think we'd want to
22 know that. I'm familiar with a case that

1 involved exactly that kind of thing. A military
2 officer who ultimately pled guilty to sexual
3 assaults against teenagers of the opposite sex on
4 base.

5 And, I mean, it was handled, but those
6 statistics would wind up not getting counted in
7 here and it was definitely a sexual assault
8 proceeding and gave you a picture of what was or
9 wasn't, you know, necessary on that base to keep
10 track of it.

11 So, I just wondered if there's --
12 after spouse, I don't know if you want to say
13 spouse, child or spouse, family and intimate
14 partner. But, somehow, I'd like to be able to
15 capture those assaults against 16 and 17 year
16 olds.

17 VADM(R) TRACEY: Is it perhaps adult
18 family members and intimate partners? It says
19 our charter was about adult sexual assault and
20 whatever the definition is of adult children
21 would be --

22 COLONEL GREEN: The other part of

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1 that, ma'am, in terms of the JPP's charter, but
2 the other issue is the SAPRO reports do not
3 include child-related offenses. And so, that's
4 the other issue.

5 MR. STONE: Yes, and I guess what I'm
6 bringing up is while a lot of our recommendations
7 to change things may not appropriate -- it may
8 not be appropriate within our charter to change
9 them as to the children when we're collecting the
10 statistics.

11 It's a little different. It seems to
12 me if we're going to recommend they change the
13 statistics, just like we don't want to leave out
14 the spouse and intimate partner, I feel like we
15 won't have -- we're asking them to change things
16 in a way that's going to leave out a chunk that's
17 relevant.

18 I just -- I don't know if anybody else
19 on the Panel feels that way.

20 CHAIR HOLTZMAN: Well, I think there's
21 a jurisdiction issue that Admiral Tracey pointed
22 out. But, is there anything that's excluded from

1 adult sexual assault matters from this
2 Recommendation 38? Who would be excluded? Who
3 would be excluded now?

4 If we included spouses and intimate
5 partners, is there a category of adults -- is
6 there a category that would be missing that we
7 would --

8 COLONEL GREEN: On cases that are
9 resolved through FAP, we can go back through and
10 look at the Statutory or the regulatory
11 definition for FAP cases to make sure that there
12 are not other adult categories of victims that
13 are not incorporated within the description here
14 of cases to be added and make sure that that
15 reflects all FAP cases involving adult victims.

16 JUDGE JONES: So, in other words, it
17 could be that if it's not a spouse or an intimate
18 partner, we're getting the statistic? Is that --
19 it's not in FAP? So, we have to figure that out.

20 CHAIR HOLTZMAN: But, there might be
21 some cases where it is in FAP.

22 Okay, let's say you have an adult

1 child, for example, I don't know.

2 Anyway, is it satisfactory to have the
3 Staff review that and then --

4 JUDGE JONES: It is with me, yes.

5 CHAIR HOLTZMAN: -- make a
6 recommendation to us as to how to deal with that
7 issue. Okay.

8 So, how can we -- should we proceed
9 to, as would be my suggestions, why don't we
10 proceed to determining whether we accept
11 Recommendation 38 with the caveat that we're
12 waiting for a Staff recommendation about this
13 additional language?

14 Is that okay with everyone?

15 MR. TAYLOR: It is.

16 JUDGE JONES: Fine with me.

17 CHAIR HOLTZMAN: You look unhappy, Mr.
18 Stone.

19 MR. STONE: I am, I'm still concerned
20 about us, at the least, I would like a sentence
21 that says, even if you want a footnote along the
22 lines you pointed out, that even though our

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1 charter may suggest that we're, you know, may
2 focus us on adult sexual assaults when designing
3 a statistical collection method, the military
4 should not ignore the related category of sexual
5 assaults on minors by adults.

6 I mean, these are not juvenile
7 proceedings, they're adult proceedings. It's
8 just that the victim is 17. I'm aware of quite a
9 few cases like that.

10 So, I hate to suggest to them to
11 create a mechanism that then leaves that --
12 ignores that related group. And, I have a
13 feeling that the Family Advocacy Program does
14 look at some of those 17 and 16 year old
15 situations.

16 So, I, at least, I'd like a footnote
17 that makes it clear we're not suggesting they
18 should ignore the category or oppose to it, I
19 just don't feel like it's a complete report
20 without acknowledging that that's a related
21 category.

22 CHAIR HOLTZMAN: Any other comment

1 from any of the Members?

2 My own view is we don't have
3 jurisdiction period over this subject and we
4 shouldn't be addressing it because then people
5 will say, well, why haven't you addressed the
6 issue of child sexual assault when you've talked
7 about other sections of the law or other
8 procedures of the law. I mean, we haven't dealt
9 with it.

10 So, I think that that's -- I don't
11 think anybody's going to fault us for not dealing
12 with something that's not within our
13 jurisdiction. We don't have power to make such a
14 recommendation.

15 Even if it's, you know, very desirable
16 and obvious, that's my view.

17 JUDGE JONES: Well, I think at this
18 stage of the game, we certainly have to be
19 uniform. And, you're right, we don't have the
20 jurisdiction.

21 MR. STONE: Do you oppose a footnote
22 that says we don't comment upon sexual assaults

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1 upon -- similar sexual assaults upon children
2 because they're not within the jurisdiction of
3 the Panel? Just a sentence like that?

4 We're saying in here, but it won't
5 appear clearly in the -- I mean, you could even
6 make a bullet point to add it if you want. But,
7 I'd like it to be clear just exactly what you
8 just said, that it's not that we think it's not
9 relevant, it's that it seems to be beyond our
10 charter.

11 CHAIR HOLTZMAN: Then I think we're
12 compelled to refer to that all the time when
13 we've never referred to that. That's my problem
14 with it, in any of the work that we've done.

15 MR. STONE: But, the other work
16 related to substantive changes, this is a global
17 record keeping thing which is different. This is
18 sort of like the procedural stuff saying before
19 we make substantive changes and we look at
20 numbers, we need you to fix the way you're
21 collecting numbers.

22 I just see it as different. We're not

1 -- there's no substantive recommendation here,
2 it's a procedural one about the record keeping.
3 I would like to see something that explains what
4 you've just said on the record, however short it
5 is.

6 CHAIR HOLTZMAN: Well, maybe we should
7 just take a vote on that because I don't --

8 MR. STONE: Okay.

9 CHAIR HOLTZMAN: -- agree with it. I
10 don't know if Judge Jones agrees it. I don't
11 know how anybody else agrees with it.

12 MR. STONE: Okay, that's my proposal.

13 JUDGE JONES: And, honestly, the only
14 comment I have is that there were lots of other
15 areas that both RSP and now this Panel has
16 studied where you could have included non-adult
17 victims and we have never done it.

18 It's not just record keeping, although
19 I take your point.

20 So, I would not go for a footnote at
21 this stage of the game about this. We don't have
22 the jurisdiction. We're here to look at adult

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1 sexual assaults.

2 MR. TAYLOR: I agree.

3 VADM(R) TRACEY: So do I.

4 CHAIR HOLTZMAN: Okay. That's the
5 view of the Panel and I agree with that, too,
6 with what Judge Jones has said.

7 Okay. Going back to Recommendation
8 38, can somebody make a motion with respect to
9 that?

10 MR. TAYLOR: I move we adopt it.

11 CHAIR HOLTZMAN: But, with the caveat
12 that we're waiting for the Staff recommendation
13 on language with regard to the Family Advocacy
14 Program to make sure there are no other
15 categories of adults who would be excluded. Is
16 that an amendment you accept?

17 MR. TAYLOR: So moved.

18 CHAIR HOLTZMAN: Okay.

19 JUDGE JONES: Second. Are we
20 seconding?

21 CHAIR HOLTZMAN: Sure.

22 JUDGE JONES: Okay.

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1 CHAIR HOLTZMAN: And really --
2 Robert's Rules will govern.

3 Okay, all in favor?

4 (CHORUS OF AYES)

5 CHAIR HOLTZMAN: Anyone opposed?
6 Okay, thank you.

7 MR. STONE: I'll abstain.

8 CHAIR HOLTZMAN: Okay, that's noted.

9 So, are we --

10 COLONEL GREEN: Ma'am, those are the
11 two recommendations we captured just to make sure
12 if there was anything else that the Panel wished
13 to comment on or provide recommendations on or
14 other issues regarding the report.

15 The other note that I would make is we
16 incorporated the Panel's analysis in the text
17 throughout where the Panel did make some analysis
18 or summary as to why the Panel was not analyzing
19 things. That's also incorporated and so, that's
20 throughout the text of the updated draft.

21 CHAIR HOLTZMAN: So, how are we going
22 to proceed with regard to the two changes that

1 have to be made in terms of this report? Are you
2 going to circulate the proposed language and
3 we'll approve this telephonically or by email or
4 how -- maybe you can even give us language before
5 the end of the day?

6 COLONEL GREEN: Yes, ma'am.

7 The Staff can update that --

8 CHAIR HOLTZMAN: Okay.

9 COLONEL GREEN: -- and provide it
10 today or, if not, we can certainly circulate the
11 proposed final draft to you quickly and get your
12 approval, concurrence, whatever you wish to do.

13 CHAIR HOLTZMAN: Is that okay, Ms.
14 Fried?

15 MS. FRIED: That would be fine if we
16 just had some lines open. If we did it by phone.

17 CHAIR HOLTZMAN: Yes.

18 MS. FRIED: We would just have to have
19 some lines open for the public if --

20 CHAIR HOLTZMAN: Okay. But, if we
21 didn't do it by phone but did it by email, it
22 would be satisfactory?

1 MS. FRIED: That would not work.

2 CHAIR HOLTZMAN: That would not work?
3 Okay, so we need to have -- good, that's why I
4 look to you because you're our expert.

5 JUDGE JONES: So, we'll hopefully do
6 it by the end of the day, right? Here in open --

7 COLONEL GREEN: Yes, ma'am.

8 JUDGE JONES: -- Panel session.

9 CHAIR HOLTZMAN: Okay, great.

10 So, now that we've finished this
11 actually ten minutes early.

12 VADM(R) TRACEY: And, it will need to
13 filter through the document, right, so it's not
14 just the Executive Summary that will have to be
15 modified today? You'll have to go through the
16 document and make appropriate adjustments, right?

17 COLONEL GREEN: Yes, the changes in
18 the recommendations, we'll make sure that the
19 text of the document reflects that, yes, ma'am.

20 CHAIR HOLTZMAN: So, are we finished
21 with Item 1 on the agenda?

22 COLONEL GREEN: Unless the Panel has

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1 other issues regarding the report.

2 CHAIR HOLTZMAN: Okay. So, should we
3 take a five minute break before the informational
4 brief?

5 COLONEL GREEN: Yes, ma'am.

6 CHAIR HOLTZMAN: Okay, let's do that.

7 Thank you. Thank you, Members of the
8 Staff for your help on this. We really
9 appreciate it.

10 (Whereupon, the above-entitled matter
11 went off the record at 9:50 a.m. and resumed at
12 10:04 a.m.)

13 CHAIR HOLTZMAN: We're ready to
14 convene now for our information brief.

15 Ms. Carson, the Staff Attorney and
16 Legislative Liaison will give us a legislative
17 update and as well as a report on her visit to
18 the Army's SVC course that was held in January.

19 Ms. Carson?

20 MS. CARSON: Good morning.

21 CHAIR HOLTZMAN: Good morning,
22 welcome.

1 MS. CARSON: Thank you very much.

2 I'm going to start just to summarize
3 the last time that you heard a legislative update
4 was the first meeting of the JPP back in August
5 of 2014. Mr. Dwight Sullivan from DoD OGC went
6 over the FY14 NDAA with you and the major changes
7 that had happened in FY2014.

8 There were 36 sexual assault related
9 provisions and 16 military justice reforms at
10 that time.

11 Since we're starting on the next
12 topics now, the SVC Program and the SVIP, the
13 time is -- it's a good time here to start and
14 look at what happened in 2015 and in 2016.

15 In 2015, the NDAA was passed December
16 19th, just a month before the release of the JPP
17 report.

18 CHAIR HOLTZMAN: Excuse me. Are you
19 -- are there any pages that we could follow you
20 along with? It's Tab 5? Tab 5, does that have -
21 - I'm sorry, Tab 6. Okay, great. Just want to
22 catch up to you, Ms. Carson.

1 MS. CARSON: Thanks. Sorry, I'm --

2 CHAIR HOLTZMAN: Just hold on one
3 second.

4 MS. CARSON: -- a little bit rushed.

5 CHAIR HOLTZMAN: No, no, no, no, don't
6 be rushed, we've got plenty of time.

7 Okay, so everybody's got this report?
8 It's entitled Legislative Briefing --

9 MS. CARSON: Yes.

10 CHAIR HOLTZMAN: -- to the Judicial
11 Proceedings Panel.

12 MS. CARSON: Yes.

13 CHAIR HOLTZMAN: Excellent. Okay.

14 MS. CARSON: Okay, and if you see the
15 big slide that says 2015 NDAA, I'm there.

16 CHAIR HOLTZMAN: Right.

17 MS. CARSON: The next slide, okay.

18 December 19th is when the 2015 NDAA
19 passed. It was just a month before the JPP
20 report was released. So, technically, that NDAA
21 didn't follow anything that was recommended by
22 the JPP.

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1 But, there are two provisions in that
2 NDAA that did follow the JPP recommendations from
3 the 2015 report and I'll get to those in just a
4 minute.

5 The first one was the enforcement of
6 the Article 6(b), Special Victim Rights with the
7 Writ of Mandamus.

8 The JPP recommended that there be an
9 immediate interlocutory appeal and that actually
10 did come out in the 2015 NDAA. It was just for
11 412 and 513, however.

12 The second was related to mental
13 health records and, it was a clarification of the
14 burden to make it more difficult to be able to
15 obtain the mental health records.

16 Interestingly, the JPP recommendation
17 was to make it more difficult to obtain the
18 records from the MTFs medical providers.

19 There were other key provision in
20 place --

21 CHAIR HOLTZMAN: So, that was
22 recommended by the --

1 MS. CARSON: That was recommended by
2 the JPP. And so --

3 CHAIR HOLTZMAN: Right. And, it was
4 contained in the 2015 NDAA?

5 MS. CARSON: The 2015 NDAA didn't make
6 the recommendation about the MTFs, it took it
7 from the other angle. It said the Judges can't
8 get the information --

9 CHAIR HOLTZMAN: Oh, I see.

10 MS. CARSON: -- without having the
11 hearings first.

12 CHAIR HOLTZMAN: Okay.

13 MS. CARSON: The other provisions in
14 the NDAA were depositions being allowed only in
15 exceptional circumstances.

16 As you'll recall, in the 2014 NDAA
17 with the new Article 32, it doesn't require
18 victims to testify. There was concern that
19 depositions would be the way around that.

20 Also, the victim preference for
21 civilian versus military court was required,
22 clarified the victim's right be heard, meaning

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1 through counsel as well as the victim.

2 CHAIR HOLTZMAN: But, that just -- to
3 interrupt for a second -- that was a
4 recommendation of the Response Systems Panel?

5 MS. CARSON: Yes, it was.

6 Victims' right to notice of all
7 proceedings, it's also Response Systems, and a
8 general military character was not admissible
9 unless relevant to an element of the --

10 CHAIR HOLTZMAN: And, that was also an
11 RSP -- wasn't that an RSP recommendation?

12 MS. CARSON: Yes.

13 CHAIR HOLTZMAN: Right, great.

14 MS. CARSON: It also provided for --
15 it expanded -- in 2014, there was a requirement
16 for the Secretaries to review cases where the SJA
17 recommended going forward and a commander did
18 not.

19 They added another provision in 2015
20 that, in cases where the senior trial counsel
21 requested it through the chief of the trial
22 counsel program, is another case where the

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1 Secretary would review.

2 JUDGE JONES: We did not recommend
3 that.

4 MS. CARSON: Recommended against that,
5 right.

6 The plan -- a plan was required for
7 looking into the limited use by MCIOs of
8 information from restricted reports to identify
9 serial offenders. So, DoD did provide to
10 Congress, a report to Congress, a report on a
11 plan for doing that.

12 CHAIR HOLTZMAN: Did we recommend --

13 MS. CARSON: That wasn't -- the
14 recommendation was to be able -- yes, that was --

15 CHAIR HOLTZMAN: And RSP?

16 MS. CARSON: -- recommendation of the
17 RSP.

18 CHAIR HOLTZMAN: RSP, great.

19 MS. CARSON: The confidential review
20 of terms of discharge for sexual assault victims
21 by BCMRs which would now require some of the
22 records and the hearings to be confidential

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1 where, currently, you can get them in the reading
2 rooms before this provision. Now they're
3 required to be confidential.

4 And, it directs the SecDef to
5 establish the new Panel, the Defense Advisory
6 Committee for the Investigation, Prosecution and
7 Defense of the Armed Forces or recommend it just
8 be the Defense Advisory Committee of Sexual
9 Assault in the Armed Forces, DACSAAF, might be a
10 shortcut for it.

11 CHAIR HOLTZMAN: Do you mind if I just
12 interrupt.

13 What's the difference between that and
14 what we're doing or the RSP?

15 MS. CARSON: Not a lot.

16 CHAIR HOLTZMAN: Okay.

17 MS. CARSON: The requirements for the
18 new Panel are much less detailed. It's a little
19 more reviewing cases and making recommendations
20 to the Secretary of Defense based on those cases
21 rather than being an independent Panel.

22 CHAIR HOLTZMAN: I see. And, it's

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1 just reviewing cases as opposed to subject
2 matter?

3 MS. CARSON: And, making
4 recommendations for policy to the Secretary of
5 Defense because it's looked at as more of an
6 ongoing Panel. It lasts for five years and can
7 be renewed similar to the way DACOWITS operates.

8 CHAIR HOLTZMAN: Okay.

9 MS. CARSON: Which is the Defense
10 Advisory Committee on Women in the Services.

11 The 2016 NDAA was passed November 25,
12 2015. There were 17 sexual assault related
13 provisions, 10 of them involving Military Justice
14 issues and 4 of the JPP recommendations are
15 nearly identical in the Statute.

16 They're all dealing with -- well,
17 three of them are dealing with the SVC Program,
18 as you'll see on the next slide. One of them is
19 the recommendation to improve the implementation
20 of changes to the UCMJ.

21 It was discussed how the lengthy
22 process, particularly around the Article 120

1 changes in 2012 that still, to this day, don't
2 have an Executive Order implementing and
3 providing elements and specifications.

4 Then the next three are relating to
5 the SVC Program standardizing the time frame for
6 training, establishing guiding principles,
7 standards and performance measures for the SVC
8 Program and maximizing the opportunity for in
9 person face-to-face contact with clients.

10 Other provisions from that NDAA are
11 expanding the enforcement of crime victim rights.
12 It took what was done in 2015 and added more
13 Rules of Evidence that are applicable to that.

14 It was just 513 and 412, now they've
15 added 514 -- they've added several more. But,
16 it's still limited to the Rule of Evidence that
17 are listed there. It's not any issue that can be
18 appealed.

19 It provides civilian access to SVCs
20 and I think you'll hear from the SVC Program
21 Managers about that and some complications that
22 that may be causing for them.

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1 The SVC authority was expanded to
2 include IG, EO, congressional complaints and FOIA
3 requests.

4 Notice that the availability of SVC
5 must now be provided before a victim provides an
6 initial statement to a trial counsel or to an
7 investigator.

8 There is a prohibition on giving a
9 less favorable rating to SVC because of their
10 zeal of representation and a retaliation strategy
11 is now required from DoD but has not yet been
12 released.

13 CHAIR HOLTZMAN: But, didn't we
14 recommend that?

15 MS. CARSON: That wasn't a
16 recommendation before the 2016 NDAA.

17 CHAIR HOLTZMAN: Oh, okay.

18 MS. CARSON: When the report of the
19 Judicial Proceedings Panel came out, it was along
20 the time that the retaliation strategy was
21 expected, but it hasn't been released yet.

22 All right, so the 2014 -- actually,

1 that should be the 2015, right, yes, report
2 recommendations.

3 As we've covered, there were 11
4 recommendations focusing on the SVC Program and
5 victim privacy. And then, there were 17 issues
6 directed to the Article 120 Subcommittee which
7 we've now received the report on.

8 Unlike other reports that have been
9 released by these previous Panels, we haven't
10 received a response from DoD on these
11 recommendations.

12 But, six of the 11, as we've already
13 discussed, have already been included in the
14 NDAA, so they're now codified as requirements
15 under the law.

16 One of them is in the Military Justice
17 Act of 2016, which you've already discussed
18 briefly and I'll get to a little bit more in just
19 a second.

20 And, there were four that have not
21 been addressed yet at all.

22 And, the first one is Recommendation

1 Number 2 which is that the Services implement
2 additional selection criteria for SVCs to have
3 adequate criminal justice experience.

4 It's also Recommendation 7, Services
5 establish uniform SVC practices and procedures
6 for participation in judicial proceedings. I
7 think that relates to their ability to object or
8 understand or how the proceedings work in court.

9 The SecDef proposed revisions to
10 extend the eligibility for SVC representation so
11 long as right of the victim exists.

12 Those are the three related to the SVC
13 Program directly. And, I think the program
14 managers, even though we haven't heard from DoD,
15 will be able to give us an update on how those
16 issues are working.

17 The last one is to remove the
18 constitutionally required exception to MRE 412 in
19 Article 13 -- at Article 32 hearings. And, that
20 constitutionally required exception was removed
21 from 513, the mental health records but it has
22 not been removed from 412.

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1 Then, the Military Justice Review
2 Group, this was -- recommendation was based on
3 the JPP and RSP difficulties in obtaining data
4 that the two Panels had been looking for.

5 And, what they have proposed is a new
6 Article 140A that would require the SecDef to
7 develop uniform case management standards and
8 criteria that would allow public access to court
9 martial dockets, pleadings and records similar to
10 that available in Federal civilian courts.

11 So, they kind of combine two things,
12 the case management and the public access. But,
13 they require the standards and criteria for
14 those, not necessarily the same system for those.

15 So, I don't know if that's what will
16 ultimately be contemplated or not. But, having
17 those two be the same system is something that's
18 not done anywhere else and will be extremely
19 complicated.

20 But, having both of those things
21 happening would make much easier work for Panels
22 like the JPP and the RSP are trying to do.

1 CHAIR HOLTZMAN: Great. Well, before
2 we turn to the training course, do Members have
3 any questions or issues they want to raise with
4 Ms. Carson about this report?

5 MR. STONE: Yes, I do.

6 CHAIR HOLTZMAN: Yes, Mr. Stone?

7 MR. STONE: Regarding the last thing
8 that you just covered about having the same
9 management standards and criteria, I guess my
10 question is, doesn't the Secretary of Defense or
11 does the Secretary of Defense have to have his
12 own system so that, in the future, people can
13 look to a single set of numbers rather than -- I
14 mean, even if the -- some of the Services want
15 their own systems, does the Secretary have a
16 separate one where he collates the data so he has
17 a system that rides on top of the others?

18 MS. CARSON: There is not currently
19 any system that DoD operates. This is handled
20 exclusively by the Services.

21 MR. STONE: I see. So, that unless
22 our recommendation for a uniform system, I guess

1 I should say not unless, but so our
2 recommendation is not outdated even despite this
3 because we're asking for something that does make
4 it easy to understand all the numbers without
5 having a kind of cross tabulate?

6 MS. CARSON: These are -- they're
7 recommending the same thing essentially. They're
8 recommending that the systems be uniform.

9 To do that, a single system is really
10 the only way to make these uniform. I think
11 that's what the recommendation here is, but with
12 the Services.

13 Or, at least, the SecDef is
14 recommending the standards and criteria to be
15 uniform. Having one system would be one way to
16 do that. That isn't necessarily what the
17 Services -- it's not what they do now. And, it's
18 not necessarily what they would do in
19 implementing this.

20 It would require the SecDef to require
21 a single system, but that could be done.

22 MR. STONE: So, our recommendation

1 adds a little bit to what's here, would you say?
2 Or, do you think it's completely duplicative?

3 MS. CARSON: Well, I think they're
4 both supporting the recommendation, which is a
5 helpful thing.

6 CHAIR HOLTZMAN: Can I ask you a
7 question about that? I'm sorry, are you
8 finished?

9 MR. STONE: Go ahead, no, no, go
10 ahead. I'm not, but go ahead.

11 CHAIR HOLTZMAN: Do you have any sense
12 as to whether Congress is going to enact, if the
13 Secretary of Defense does not implement a system,
14 a case management system, do you have any sense
15 as to whether Congress is going to require this
16 in the next NDAA?

17 MS. CARSON: Well, this has all been
18 delivered to Congress in time to be in the next
19 NDAA, but that's the big question is how much of
20 the Military Justice Act will actually be in it?
21 If they'll approve it in its entirety, if they'll
22 take pieces of it, I'm not aware of --

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1 CHAIR HOLTZMAN: What's their time
2 table? What's the Congressional time table on
3 the next NDAA?

4 MS. CARSON: I think April. They have
5 to have everything done very soon. I think
6 they'll be starting to do their markups on the
7 bill. So, this is the make or break time right
8 now.

9 CHAIR HOLTZMAN: Mr. Stone, you had --
10 you said you had additional questions?

11 MR. STONE: Yes, I had an additional
12 question on going back to the PowerPoint on page
13 5, paragraph 1 that relates to our Recommendation
14 Number 8.

15 I personally have some concerns based
16 on the publically -- recently publically released
17 Air Force Court of Appeals redraft of some of its
18 rules that the Services have read our
19 Recommendation 8 in a way that I think is
20 inappropriately narrow in that the new Air Force
21 rules appear, anyway, to recognize this
22 particular language allowing for mandamus if a

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1 court ruling violates the rights of a victim
2 under these two provisions.

3 But, they apparently do not address,
4 and specifically, exclude a victim's
5 participation if the lower court ruling upholds
6 the rights of a victim under those two
7 provisions, even though they're then being
8 challenged on appeal.

9 And, even in a situation where the
10 military prosecution group might choose not to
11 defend those rights and it leaves the victim with
12 no right of participation and no one to defend
13 exactly what this provision requires at the trial
14 court level.

15 And so, I guess what I'd ask is if
16 you, on behalf of the Staff, haven't thought
17 about it, whether or not we need to amend our
18 Recommendation Number 8 to make it clear that,
19 when a victim's rights involving MRE 412 or 513
20 are involved, that the special victims' counsel
21 may participate regardless of which level of
22 court it's at?

1 CHAIR HOLTZMAN: Where's the
2 Recommendation Number 8? Where are you -- where
3 is that?

4 MR. STONE: I'm looking at the
5 PowerPoint page 5.

6 CHAIR HOLTZMAN: You mean Number 1?

7 MR. STONE: Yes, it's paragraph number
8 -- right, it's number 1 on page 5.

9 MS. CARSON: I could read you
10 Recommendation Number 8 specifically. This is
11 taking the section from the NDAA.

12 The recommendation was that the
13 Secretary of Defense consider establishing
14 expedited procedures for victims to seek
15 mandatory interlocutory review in the Service
16 Court of Criminal Appeals of any alleged
17 violation of victims' rights.

18 CHAIR HOLTZMAN: And, that was adopted
19 in the NDAA?

20 MS. CARSON: Well, what the NDAA
21 adopted is the ability to file writ of mandamus
22 for 412 and 513 in the 2015 NDAA and then they

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1 expanded it in the 2016 NDAA.

2 MR. STONE: And, I guess what I'm
3 putting on the table is that everybody was so
4 focused on the trial court ruling that might
5 violate the victims' rights, that they didn't pay
6 attention to the fact that those exact same
7 issues occur upon the appeal.

8 JUDGE JONES: So, you want to give a
9 victim standing to appear during the appellate
10 process?

11 MR. STONE: Yes, that essentially is
12 what I'm asking because, what happens is, when a
13 trial court rules in favor of the victim at the
14 trial court level, it's obvious and likely that
15 the defense attorney is going to appeal that
16 issue along with, let's say, a suppression issue.

17 For any number of reasons, the
18 prosecution might decide, well, they don't want
19 the case reversed on that issue and might agree
20 that, first of all, everybody including defense
21 counsel can look at that sealed exhibit which has
22 come to the appellate level.

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1 And, that they don't -- if it's going
2 to be reversed anyway, they might not wish to
3 defend it, but even if they do and it's reversed
4 on a different ground, defense counsel, everybody
5 will perhaps have violated that person's
6 psychological privilege by that.

7 It's just I don't think people
8 addressed it and now that we see the way it's
9 being implemented or at least proposed to be
10 implemented in the Air Force Court of Appeals
11 Rules, it sort of stands out like an obvious
12 thing that we didn't address.

13 And, it leads me to believe that we
14 need to slightly reframe what we said in our
15 Recommendation 8 and I guess, unless you have
16 some thoughts -- anybody has thoughts about it,
17 since it was covered here this morning, I'd like
18 to suggest that that be something that the Staff
19 think about and perhaps come back to us with a
20 recommendation.

21 Otherwise, I guess we could do it,
22 too.

1 JUDGE JONES: I would just say that,
2 on one quick issue, and you may know more about
3 this than I do, but I would think that the
4 records themselves would be filed under seal.

5 Yes, the litigants and the court would
6 be able to have to review them. But, there would
7 -- they would remain under seal and they would be
8 discussed in an opinion but in a very, you know,
9 sort of cursory manner.

10 I don't think there'd be a lot of
11 disclosure in an opinion. You're still allowed
12 to have sealed documents at the appellate level,
13 I believe.

14 MR. STONE: Well, you see --

15 JUDGE JONES: And, I just -- look, I
16 don't know, I'd have to think about this longer.
17 I'm pretty conservative about these things. So,
18 I'm not sure I want to have a third-party on it.

19 CHAIR HOLTZMAN: That's why you're
20 sitting to my right.

21 JUDGE JONES: That's exactly right.

22 At the appellate level. I mean, the

1 prosecution won on these arguments below. They
2 did their job in terms of protecting the victims'
3 rights.

4 I don't have any problem at all with
5 the victim being kept in the loop and her SVC,
6 you know, being consulted. But, I can't -- I
7 don't really think -- my gut reaction is, I don't
8 think I want a third-party at the appeal.

9 MR. STONE: I don't think, first of
10 all, that the victim is a third-party. I think
11 that's the whole point of having an SVC Program.
12 If the victim won in the trial court, the defense
13 counsel never got to see these records. There's
14 absolutely no reason, in my view, that the
15 defense counsel or the court needs to see the
16 records which presumably might be privileged
17 psychological records on the appeal.

18 If the defense counsel did see the
19 records, it would breach their privilege. It
20 also means that there's a reason to disqualify
21 that defense counsel in the event that there's a
22 remand for a new trial.

1 In fact, I would think the whole
2 defense service had to be disqualified.

3 I think it raises serious
4 complications that were not thought through and
5 that's why I think that is something, since they
6 appear to be trying to use the language of our
7 recommendation and its narrowest form.

8 Again, there's room to disagree, but
9 I think we have to reconsider that.

10 JUDGE JONES: Well, I'm not even sure
11 the appellate court would give them to the
12 defense. I think they would review the record
13 that was made by the trial judge below and review
14 the records.

15 I don't know that there would be
16 disclosure, thinking about that.

17 MR. STONE: Well, that's my point. If
18 the new appellate rules of the Air Force say that
19 the sealed records come up and that the court
20 decides, in its discretion, who gets to view the
21 records, and there's no participation or pleading
22 that the victim gets to say you shouldn't see

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1 them for this reason or that reason, which they
2 got to see below, it's purely between the parties
3 and the court and the victim doesn't even get to
4 say anything about why the victim might think
5 their records should not be reviewed.

6 And, it's entirely likely, in a unique
7 fact situation, that the prosecution would say,
8 well, it's not our records, we don't care. We
9 think we would still get the conviction, so let
10 them see the records.

11 And, it's only the victim whose
12 psychological records are at issue who might have
13 the only objection.

14 All I'm saying is, there's a big hole
15 in the rules and I think they're trying to --
16 well, I don't know if they're trying to, I think
17 that it could possibly -- well, it reflects that
18 there's a hole in our recommendation.

19 JUDGE JONES: Well, I don't think the
20 victim is a party. So, there's a defendant and
21 there's a prosecution.

22 But, anyway, I just need to think

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1 about that. I'm not sure it's wise. And, I
2 think we should see how it works now with respect
3 to, you know, what we have achieved which is
4 mandamus at the lower court level where the
5 appellate judges would make a decision quickly if
6 the prosecution and -- well, or even if not the
7 prosecution, if the victim was unhappy with the
8 ruling.

9 Just my gut reaction.

10 CHAIR HOLTZMAN: Right. I think
11 there's a real problem in terms of being able to
12 deal with the substance of this point that you've
13 made, Mr. Stone. Because I think you may be
14 correct. I'm not saying you are or you're not,
15 you may be correct here that there's a hole or a
16 gap.

17 But, none of us has read the rules.
18 The Staff hasn't analyzed it. And, I don't see
19 how we can make a recommendation on it, until
20 that's happened.

21 And, I don't know whether we can do
22 this in a fast enough time frame to address the

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1 NDAA that's coming out now.

2 I mean, Colonel Green, maybe you could
3 respond to that. I mean, if we can't, then this
4 may be something that we will have to review in
5 an upcoming matter.

6 I'm not saying that this isn't an
7 issue that shouldn't be addressed. I'm just
8 thinking about the time frame here would seem to
9 me to be quite difficult for us to meet.

10 COLONEL GREEN: Julie's done a lot of
11 work to gather the current status on all of these
12 -- on all the legislation and the recommendations
13 within the Department.

14 This is one in particular we've not
15 received a response from the Secretary of Defense
16 regarding the DoD's position on this.

17 But, we can certainly ask for that
18 again. And, also, we can gather what information
19 exists from the Service courts to at least
20 understand the Service court policies and provide
21 that to the Panel for future discussions.

22 CHAIR HOLTZMAN: Well, my question is,

1 is there any way that we can accomplish this
2 before the time frame for the NDAA? That's my
3 question here. Or, do we just postpone this
4 until the next meeting that we have or the
5 meeting after that? But, that this should be an
6 item that's on the agenda when you've had a
7 chance to review it thoroughly.

8 COLONEL GREEN: Yes, ma'am. The Staff
9 can certainly gather information and bring it to
10 you at your next meeting. And, if you wish to
11 make some written recommendation at that point
12 for your consideration.

13 CHAIR HOLTZMAN: Mr. Stone, is that
14 satisfactory whether it's the next meeting or the
15 meeting after that, but in the near future?

16 MR. STONE: Yes, just, yes. And, it
17 sounds like --

18 CHAIR HOLTZMAN: Is that okay with
19 you, Judge Jones?

20 JUDGE JONES: Oh, sure.

21 MR. STONE: It sounds like I would
22 also just ask the Staff, and if they have any

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1 questions, I'm sure we can -- I, for one, can
2 help them.

3 There's case law in the U.S. Supreme
4 Court and the U.S. Courts of Appeals that a
5 victim is definitely a party in the Courts of
6 Appeals on various issues in the very same
7 criminal case where they have a stake in the item
8 that's before the court, such as the privacy of
9 their records.

10 CHAIR HOLTZMAN: Does anybody else
11 have any other comments to make? Yes, Mr.
12 Taylor?

13 MR. TAYLOR: If I may, Madam Chair.

14 CHAIR HOLTZMAN: Sure.

15 MR. TAYLOR: Referring to slide 15,
16 four unaddressed February 15, 2015 JPP
17 recommendations, when you use the word
18 unaddressed, do you mean unaddressed by either
19 Congress or the Secretary of Defense?

20 MS. CARSON: Correct.

21 MR. TAYLOR: So, what process do we
22 have in place, Staff to Staff, to track how they

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1 are doing or the progress they're making on any
2 of these recommendations so that recommendations,
3 for example, don't end up in the dust bin during
4 transitions?

5 MS. CARSON: We ask in RFIs, that's
6 how we've done -- this effort is, we asked in an
7 RFI for an update on the JPP recommendations.

8 MR. TAYLOR: Is that on a monthly or
9 --

10 MS. CARSON: It was done in November.

11 MR. TAYLOR: Quarterly? Annual basis?

12 MS. CARSON: It's not been done for
13 the RSP. Like, that would be an RFI that could
14 be made again, it would be a follow up.

15 There was a DoD response to the RSP
16 report that gave their approval, disapproval,
17 partial approval, working group response. But,
18 we don't have a follow up. That would be
19 something to ask for in an RFI.

20 CHAIR HOLTZMAN: Right. I was going
21 to ask about that, too. I mean, just to --

22 MR. TAYLOR: Please?

1 CHAIR HOLTZMAN: -- interrupt on this
2 point.

3 I do think having seen some of the
4 materials that it would be really interesting to
5 see where the DoD is on the RSP recommendations.
6 Don't you agree, Judge Jones?

7 JUDGE JONES: Yes, I do.

8 CHAIR HOLTZMAN: I think that would be
9 really important. And, I don't know whether we
10 can ask, particularly on matters where they've
11 agreed. If they haven't been implemented, why
12 they haven't been implemented.

13 So, it's not just, you know, we agree
14 with it and we still agree with it. I mean,
15 that's great, but why hasn't action been taken on
16 that I think would be helpful.

17 I don't know, Admiral, do you have
18 something?

19 VADM(R) TRACEY: That's absolutely
20 valid on RSP. On the JPP report which is what
21 Mr. Taylor was talking about.

22 CHAIR HOLTZMAN: Correct.

1 VADM(R) TRACEY: Have we been through
2 the normal process that we submitted a report,
3 the SecDef has commented on it back to the Panel?

4 MS. CARSON: That's what we haven't
5 received is any comment from the SecDef.

6 VADM(R) TRACEY: Okay. So, there's
7 normally a time frame that that's all supposed to
8 occur in? I realize the Secretary's all but, is
9 there a normal time frame for that?

10 MS. CARSON: I'm not sure what the
11 time frame --

12 MS. FRIED: Admiral Tracey, it is
13 pending SecDef action.

14 MR. TAYLOR: What does that mean?

15 MS. FRIED: It's been staffed and
16 we're just waiting for him to act on the
17 recommendations.

18 CHAIR HOLTZMAN: You mean the ones
19 that -- you mean the JPP recommendations?

20 MS. FRIED: Correct.

21 CHAIR HOLTZMAN: So, they're in the
22 process of being addressed?

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1 MS. FRIED: Correct, correct.

2 CHAIR HOLTZMAN: Okay. So, what you're
3 basically, I think, Mr. Taylor, if I can read
4 between the lines, that by the next meeting or
5 the meeting thereafter, we should have some kind
6 of response?

7 MR. TAYLOR: Well, that's what I
8 think. It seems to me that in order for the
9 Panel, which now is over half way through its
10 three year mandate, to be sure that we are
11 faithful in following up on the recommendations
12 we made.

13 It's helpful to have a little more
14 frequent feedback on how they're doing.

15 CHAIR HOLTZMAN: Correct.

16 MS. CARSON: I'd just note that the
17 report -- the JPP recommendations were made in
18 February of 2015.

19 VADM(R) TRACEY: I think that's what
20 the point is.

21 MS. CARSON: Yes, it's been a while.

22 CHAIR HOLTZMAN: It's been a while.

1 Well, I think why don't we wait until
2 the next meeting or the meeting thereafter and
3 then figure out what we want to do beyond that.

4 And, it may well be that this is
5 something -- well, is the Congress aware of our
6 recommendations that haven't been acted on?

7 MS. CARSON: Not specifically. That's
8 not something we transmitted to Congress. But,
9 we certainly can.

10 CHAIR HOLTZMAN: Well, that might be
11 a good idea as a way of sort of triggering a
12 response. Anybody?

13 MR. TAYLOR: I would be in favor of
14 that because, in some of these instances, it may
15 well be that the Secretary of Defense's office
16 has good reasons for doing or not doing something
17 about some of our recommendations.

18 Or, it could be that they're taking
19 the position, let's wait and see if Congress
20 tells us to do it.

21 CHAIR HOLTZMAN: Right.

22 MR. TAYLOR: So, that's my concern.

1 CHAIR HOLTZMAN: Okay. So, I think
2 that would be another way of ensuring that full
3 attention is paid to this and if they disagree,
4 they can. But, those reasons ought to be out in
5 the public.

6 And, particularly, if they agree,
7 there's no reason for substantial delay in the
8 implementation.

9 And, that's why I think it's also
10 important to see what's happening on the RSP
11 recommendations as well.

12 MS. CARSON: And, there were 132
13 recommendations of the RSP. So, we've started on
14 the Staff trying to make a list of the
15 recommendations and follow up to the extent we
16 know things that have been implemented but it's a
17 process we're still working on.

18 CHAIR HOLTZMAN: Okay. Well, I think
19 DoD could help us if you send a --

20 MS. CARSON: Yes, they definitely
21 could.

22 CHAIR HOLTZMAN: -- a Request for

1 Information.

2 And then, we should think also about
3 responding to Congress about what's happened on
4 that.

5 MS. CARSON: Got it.

6 JUDGE JONES: Yes, and I thought we
7 got some feedback that they were approved -- they
8 approved almost all except for five or ten or a
9 dozen or something like that.

10 CHAIR HOLTZMAN: Right, but the
11 question is, how --

12 JUDGE JONES: Where to go from there?

13 CHAIR HOLTZMAN: Yes, have they
14 implemented them and to what extent? And, if
15 not, you know, what's been the, you know, the
16 delay?

17 COLONEL GREEN: Judge Jones, regarding
18 the RSP recommendations, we did receive a letter
19 from the Secretary that provided a DoD response
20 to each one of those recommendations.

21 And, the ones where they were -- that
22 concurred or approved by DoD, they were staffed

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1 to either the Services or the appropriate agency
2 to take action.

3 And so, it's my understanding is it's
4 with that agency now to provide follow up.

5 In our November 2015 RFI, we did
6 request an updated status from DoD and the
7 Services regarding the status on all those RSP
8 recommendations. And, we received that. So, we
9 do have the material as of the status in November
10 of 2015.

11 And, those are -- we have those and we
12 can provide them.

13 CHAIR HOLTZMAN: Well, I think you
14 should share them with us. That's an important -
15 -

16 JUDGE JONES: That would be great.
17 That would be great, thank you, Kyle.

18 CHAIR HOLTZMAN: Excellent.

19 Okay, are we ready to go to -- any
20 other comments with regard to this?

21 Okay, Ms. Carson, would you address
22 your experience at the training course?

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1 MS. CARSON: Sure.

2 Since we're running so short on time

3 --

4 CHAIR HOLTZMAN: Great, thank you.

5 MS. CARSON: -- let me just very
6 briefly say that we went to -- in August of 2014,
7 Mr. Stone and I both attended the SVC training
8 program for the Army. It was the third face-to-
9 face program that they had put on a five-day
10 course.

11 And then, I, myself, attended the
12 January 2016 Army SVC training course which was
13 still a five-day course, just due to
14 circumstances, the course was compressed because
15 of the holiday and because of the snow storm.

16 Bottom line, the courses were
17 extremely comprehensive. I list -- the courses
18 both brought in subject matter experts on all of
19 the different topics that you would expect to be
20 covered in a program.

21 And, I list on each of the slide who
22 they brought in to teach each of the courses on

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1 victim behavior, on the substantive matters of
2 law, victim perspectives. They brought in a
3 forensic examiner. They brought in an
4 investigator.

5 The SVC Program Managers themselves
6 speak. So, the Services -- the Army has put on a
7 very comprehensive SVC Program that was
8 consistent from both 2014 and 2016.

9 And, if Mr. Stone has any further
10 comment, but I believe the program managers will
11 be able to tell you more about what their program
12 is like. So, it might be best to let them go.

13 CHAIR HOLTZMAN: Okay. Thank you for
14 that.

15 And so, I guess that's the next thing
16 on the agenda.

17 I'm sorry?

18 VADM(R) TRACEY: Do we have any sense
19 -- I'm sorry -- do we have any sense of why you
20 would schedule a five-day course in a week that
21 you know only has four days in it? That's not
22 like the holiday's coming as a surprise.

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1 MS. CARSON: Well, my sense is, there
2 were -- these courses are 80 people flying in
3 from all over the world. So, the circumstances,
4 I don't know, but I think they have a lot of
5 variables to take into account when they set the
6 timing on these courses.

7 But, the program managers can address
8 that for you.

9 MR. STONE: I might add, when I
10 attended the five-day course, I think that was
11 the curriculum was five days, but, in fact, they
12 had condensed all the lectures into four days and
13 the fifth day was small group discussions to
14 discuss and hash out some scenarios.

15 And, they even said, actually, after
16 three and a half days, on the afternoon of the
17 fourth day, they started doing the scenarios.

18 And, they told me there was really not
19 only no need, but the scenarios, some of them
20 might be more candid if we didn't participate in
21 the fifth -- parts of the fifth day and we didn't
22 really participate in the fifth day.

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1 So, I think five-day course is its
2 nominal name, but I think they can actually do it
3 and they have done it in three days here we
4 heard.

5 MS. CARSON: The extent of the time as
6 well. They started earlier and went a little
7 later. They did it -- they made great efforts to
8 try to get all of the curriculum in in those
9 three days. It was a bit of a --

10 VADM(R) TRACEY: Yes, the snow storm
11 is an anomaly, I'm just focused on the fact that
12 you build schedules a year in advance. And so,
13 it's --

14 CHAIR HOLTZMAN: Well, Admiral, you
15 can ask that question of the program managers who
16 are going to talk next.

17 Ms. Carson, thank you very, very much
18 for your very excellent brief.

19 MS. CARSON: Thank you.

20 CHAIR HOLTZMAN: And, I guess our next
21 Panel will be Updates on the Special Victims
22 Counsel, Victims Legal Counsel Program.

1 And, we have a number of very
2 important presenters. Would you please come
3 forward?

4 Thank you very much for your
5 attendance. I'm going to go in order of the
6 agenda that I've received. I don't know the
7 basis on which the order was established, so
8 please don't take this personally any members of
9 the panel as to why you're first or not first.

10 We'll begin with Colonel Elizabeth
11 Marotta, U.S. Army Special Victims Counsel
12 Program Manager.

13 Colonel Marotta?

14 COLONEL MAROTTA: Good morning, ladies
15 and gentlemen.

16 Thank you for allowing me to address
17 you about the Army Special Victim Counsel
18 Program. I've been honored to serve as the
19 Program Manager for the past eight months.

20 The Army currently has 75 SVCs, 50
21 full-time and 25 part-time SVCs serving at 43
22 installations.

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1 SVC positions are primarily Captain
2 positions, but beginning in Fiscal Year 2017, the
3 Army will have three additional Major positions,
4 one at each of our Corps, Fort Bragg, Fort Hood
5 and Joint Base Lewis-McChord.

6 These positions will be filled this
7 summer and they will serve as the Chief of Client
8 Services and Supervisory SVC for the
9 installations.

10 The Army just completed a substantial
11 update to our SVC Handbook and we incorporated
12 several new policies to address management
13 challenges that have arisen over the last year.
14 I'll highlight a few of these changes.

15 We've identified the need to track
16 when an SVC is taking a client with them to a new
17 duty station. Ideally, when an SVC transitions
18 to a new job, clients are transitioned to the new
19 SVC at that installation.

20 However, in some cases, it makes sense
21 for the original SVC to continue representation,
22 particularly if there's an upcoming trial.

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1 Therefore, we developed a policy that
2 informs the gaining SJA about the judge advocates
3 continued representation and they would just find
4 out the number of cases and the location so that
5 they have oversight and can avoid conflicts of
6 interest.

7 We updated our nomination policy
8 procedures to address personnel being assigned by
9 our personnel office. In the first two years of
10 the program, all SVC were selected by SJAs from
11 judge advocates in their office.

12 This is the first year our personnel
13 office is actually assigning SVC, so we now
14 require that the current supervisor nominate the
15 SVC and route the packet through the gaining SJA
16 to TJAG.

17 CHAIR HOLTZMAN: Excuse me, may I just
18 ask a question?

19 COLONEL MAROTTA: Yes, ma'am.

20 CHAIR HOLTZMAN: The current
21 supervisor? Current supervisor of whom?

22 COLONEL MAROTTA: Of the judge

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1 advocate being nominated --

2 CHAIR HOLTZMAN: I see, okay.

3 COLONEL MAROTTA: -- to the SVC. So,
4 that way, somebody who knows that officer, knows
5 their character, knows their temperament and can
6 make an informed decision about whether or not
7 this person is a good fit for this role nominates
8 the SVC.

9 Then they forward that nomination to
10 the gaining SJA so that person has visibility
11 over who's coming in to be their SVC, so we can
12 ensure that the right people are in this vital
13 role.

14 An overwhelming majority of victims
15 are extremely satisfied with the services of
16 their SVC.

17 The Army's model maximizes face to
18 face interaction with clients and fosters
19 professional relationships in the OSJA and
20 Command.

21 Feedback received from victims has
22 been extremely positive. Victims indicate they

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1 feel empowered and are better able to participate
2 in the military justice process because of their
3 SVC.

4 Special victims' counsel have proven
5 to be zealous, independent advocates for their
6 clients as evidenced by the seven writs of
7 mandamus filed, including the latest writ that
8 gave us the opinion in U.S. v. Ducksworth which
9 proved to be -- give us very helpful guidance in
10 MRE 513 and recognizes the SVC's authority to
11 file writs.

12 I believe our military justice system
13 is better because of the victims that they have
14 better access to information. Their records are
15 better protected and they have voice when they
16 disagree with the Government.

17 One of our biggest challenges for SVC
18 is simply the lack of legal precedent to guide
19 them in the military justice practice. Of
20 course, this will develop over time.

21 What we have noticed, though, is a
22 significant change in the attitude of the parties

1 towards the SVC. Their role is now better
2 understood and appreciated.

3 The underlying objective for the SVC
4 Program is to ensure that victims are empowered
5 and know that, regardless of the outcome of the
6 judicial and administrative process, the Military
7 Justice and administrative systems, support them
8 and give them the opportunity to be heard.

9 The Army evaluates its SVC Program as
10 part of its existing legal assistance program.
11 Victim feedback is captured in MFRs, memorandums
12 for record that special victim counsel are
13 required to file with the SVC Program Manager's
14 Office at the conclusion of courts-martial or
15 other significant events.

16 And, lessons learned are shared with
17 the JAG School to incorporate into future
18 training.

19 Victims also provide feedback by
20 regularly participating in panel discussions at
21 the twice annual SVC Certification Course and
22 speaking opportunities at outside agencies.

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1 We also conduct regular staff visits
2 to installations Army-wide and meet with SVC
3 Program stakeholders, including SHARP and VA
4 personnel.

5 The Service Secretaries recently --
6 TJAGs recently provided input into a draft
7 Secretary of Defense Memorandum that implements
8 guiding principles to enhance oversight of SVC
9 and VLC Programs and ensures the continued
10 effectiveness of the various programs in
11 compliance with Section 535 of the FY16 NDAA.

12 An overwhelming majority of victims
13 are extremely satisfied with the services of
14 their SVC. Army SVC are evaluated by the Chief
15 of Legal Assistance using the similar criteria as
16 legal assistant attorneys.

17 SJAs by and large are extremely proud
18 of their SVC and report that they are selecting
19 their best and their brightest.

20 Promotion rates are on par with the
21 rest of the JAG Corps. There are no reported
22 adverse actions against SVC by their supervisors

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1 or the OSJA.

2 The overall performance of SVC is also
3 evaluated by the program manager and the JAG
4 Corps leadership. The program manager's office
5 conducts quarterly Defense Connect Online
6 discussions with all SVC in the field to
7 disseminate information and receive feedback.

8 We utilize the Army's platform
9 milSuite to collaborate.

10 TJAG and the four other general
11 officers also perform onsite visits to OSJAs and
12 evaluate the program as part of TJAG's Article 6
13 UCMJ responsibilities.

14 In addition, TJAG personally hosts
15 roundtable discussions several times a year with
16 SVC in conjunction with our training forces or
17 congressional engagements to hear the issues
18 firsthand such as a retaliation roundtable they
19 held this past January.

20 In closing, each client is different
21 and they often want very different things for
22 SVC. Some want to be heard. Some do not.

1 Success is measured by whether the SVC
2 zealously represents that client's interests,
3 whatever they may be.

4 The most important thing is that the
5 victim is educated on the process, understands
6 their rights and receives the help and support
7 they need so that, hopefully, they will
8 participate in the military justice process.

9 The SVC Program strives to ensure that
10 victims are empowered and know that regardless of
11 the outcome, they have the opportunity to be
12 heard.

13 I'm happy to answer your questions.

14 CHAIR HOLTZMAN: Thank you very much,
15 Colonel.

16 We'll next hear from Captain Karen
17 Fischer-Anderson, U.S. Navy Chief of Staff, Navy
18 Victims Legal Counsel Program.

19 Captain, we appreciate your presence
20 and you may proceed.

21 CAPTAIN FISCHER-ANDERSON: Thank you
22 and good morning Members.

1 Thank you for the opportunity to re-
2 appear before this Panel.

3 The Navy --

4 CHAIR HOLTZMAN: Glutton for
5 punishment.

6 CAPTAIN FISCHER-ANDERSON: Yes, ma'am.

7 The Navy Victims' Legal Counsel
8 Program has made some significant changes since
9 November of 2014 when the JPP last assessed us.
10 And, since time is limited, I've chosen to just
11 briefly touch on four of those changes starting
12 with manning.

13 Since 2014, we added two additional
14 VLC billets to our inventory, bringing the total
15 field VLC billets to 31.

16 One billet was added to the Mid-
17 Atlantic Region, which is our busiest area and
18 the other was added to San Diego.

19 We're also working to add a second VLC
20 billet in Yokosuka, Japan and we expect that plan
21 will be approved shortly and the additional body
22 will be in place this summer.

1 Looking forward, we POMed for and will
2 be placing another VLC, or excuse me, a VLC
3 billet in Sigonella, Italy in FY17.

4 The original Navy VLCP Deputy Chief of
5 Staff, a commander now, Captain Select Andy
6 House, detached from our program last July.

7 As planned, we hired a civilian deputy
8 behind him. I'm going to ask Ms. Culveris to
9 please stand.

10 Ms. Culveris has been with us almost
11 nine months and is a tremendous addition to our
12 program. She brings a wealth of experience as a
13 legal assistance practitioner for victims of
14 crime and is also a commander in the Navy
15 Reserves.

16 So, she has firsthand knowledge of the
17 Navy JAG Corps.

18 Ms. Culveris will be the program's
19 corporate memory and mainstay as active duty
20 leadership comes and goes.

21 As to the second change, since
22 November of 2014, a Navy Victims Legal Counsel

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1 Program Manual was created which promulgates
2 policy, prescribes procedures and assigns
3 responsibility for execution of the program.

4 Anyone with a question as to the
5 mechanics of our program should be able to find
6 the answer in that manual.

7 The third change, on 1 March 2015,
8 uniform rules of practice in the Navy-Marine
9 Corps Trial Judiciary were issued.

10 These three rules specifically pertain
11 to our practice.

12 Rule 36 addresses victims' legal
13 counsel and other non-party counsel. Rule 37
14 lays out the victims' rights to be heard. And,
15 Rule 38 deals with appointment of a
16 representative for certain victims.

17 All parties to the court-martial must
18 comply with these uniform rules. In the case of
19 noncompliance, the military judge has enforcement
20 mechanisms. He or she may issue an admonishment
21 on the record, issue appropriate court orders,
22 issue a report to the military counsel's

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1 commanding officer or officer-in-charge, or
2 forward information about the matter to a
3 civilian or military counsel's bar.

4 Additionally, a court may proceed with
5 an action for contempt under Rule for Court
6 Martial 809 and Article 48 of the UCMJ or fashion
7 any other appropriate remedy.

8 Regarding the fourth change, we
9 instituted an appellate practice team within the
10 Navy Victims Legal Counsel Program.

11 Four of our 31 VLC were chosen from
12 different regions, two from the San Diego Region,
13 one from Europe and one from Norfolk as appellate
14 specialists to assist other VLC with appellate
15 issues, the thought being that the appellate
16 program should remain within the larger VLC
17 practice and individual VLCs should remain
18 responsible for their appellate filings.

19 Additionally, we believe it's easier
20 to teach VLC to be appellate practitioners than
21 it is to teach appellate counsel how to be VLC.

22 Summaries of procedural rules for each

1 appellate court were created to provide easy
2 access for VLC to negotiate the logistical
3 hurdles associated with filing a brief with the
4 court.

5 The appellate team recently completed
6 training in Washington, D.C. where they observed
7 an appellate argument. They met with the Clerk
8 of Appellate Court and they received training
9 from Navy-Marine Court appellate practitioners
10 who will be available to provide assistance on
11 appellate issues as needed.

12 As to the second question we were
13 asked to address on how beneficial the program
14 has been for victims and for the military justice
15 process overall, the Navy Victims Legal Counsel
16 Program has been extremely beneficial to both
17 victims and the military justice process.

18 And, I'd like to provide some
19 statistics as to why we believe this to be the
20 case.

21 In 2015, Navy VLC assisted 826 new
22 clients. Of those victims, 679 or 82 percent

1 were Navy, 735 or 89 percent were unrestricted
2 reporters, 82 or 10 percent were adult dependents
3 and 29 or 3.5 percent were minor dependents.

4 During 2015, Navy VLC participated in
5 a total 441 military justice proceedings,
6 including filing more than 55 Motions and
7 appearing at 82 Article 32 hearings, 109 general
8 courts-martial and 26 special courts-martial.

9 Throughout the year, VLC traveled 459
10 days to represent their clients.

11 Based in large part by the support of
12 the program by our JAG Corps leadership, we send
13 the message that the Victims Legal Counsel
14 Program is here to stay and everyone needs to get
15 on board.

16 We've seen a cultural shift and we've
17 made some big inroads with the VLC being
18 integrated into administrative and judicial
19 processes.

20 Additionally, our military judges are
21 ensuring protection and enforcement of Victim 60
22 rights.

1 From the victims point of view, well,
2 we asked them to complete a voluntary anonymous
3 survey when they terminate services. Of the
4 clients who responded, 100 percent of them felt
5 their VLC was working exclusively and
6 specifically for them and their interests,
7 including protection of their privacy.

8 One hundred percent responded that if
9 they had a friend who had been sexually
10 assaulted, they would refer that person to VLC
11 services.

12 And, of those cases that proceeded to
13 an Article 32 and/or a court-martial, 100 percent
14 indicated they were very satisfied with VLC
15 representation throughout those proceedings.

16 The biggest challenge facing the
17 victims --

18 CHAIR HOLTZMAN: You couldn't do
19 better?

20 CAPTAIN FISCHER-ANDERSON: We always
21 try, ma'am.

22 The biggest challenge facing the

1 Victims Legal Counsel Program today is Congress's
2 desire to expand eligibility. It's both good and
3 bad news.

4 It's good news because the program is
5 working. It's bad news because the more we
6 expand eligibility, the more it affects manning.

7 The optimal maximum case to counsel
8 ratio in the Navy VLC Program is 30 cases to
9 every one VLC. That assumes a balanced case load
10 of both short and long-term clients.

11 Short-term clients are those seen only
12 two or three times with issues such as reporting
13 options or expedited transfer requests.

14 Long-term clients begin at the
15 reporting phase and last until post-trial action
16 is taken.

17 Currently, the average open case load
18 is 27 cases per attorney and 86 percent of those
19 are of the long-term variety.

20 As the chief of staff, I worry about
21 empathy or compassion fatigue of my counsel. The
22 number of clients and 36-month tour lengths can

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1 be a bad combination.

2 VLC only deal with sexual offense
3 victims and are extremely committed to their
4 clients.

5 I've spoken to leadership about my
6 concern and they're willing to consider shorter
7 tours on a case by case basis.

8 In the meantime, both the Deputy and
9 I stress self-care to include working out during
10 the day, leaving work at the office, taking leave
11 and being unafraid to ask for a timeout if the
12 workload or the subject matter becomes
13 overwhelming.

14 As you know, the FY2015 NDAA expanded
15 VLC services to all DoD civilians, even those not
16 previously entitled to legal assistance under 10
17 U.S. Code Section 1044.

18 There appears to have been a lack of
19 thoughtful planning for the responsible
20 limitation of services from uniformed attorneys.

21 For example, with regard to
22 representation to administrative processes such

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1 as the Merit System Protection Board and EEO and
2 in preparation for litigation against the
3 employer's employer, the United States, these
4 services have not traditionally been provided by
5 uniformed attorneys due to conflict and
6 competency issues.

7 We hope that future expansion of
8 eligibility is carefully thought out prior to
9 expansion of services and the class of victims.

10 As you know, the underlying objective
11 of the Victims Legal Counsel Program is to give
12 victims a voice and the ability to make educated
13 choices about their participation and
14 representation should they elect to participate.

15 Victims receive information and advice
16 about reporting options, the investigative
17 process to include collateral misconduct and
18 judicial and administrative proceedings that
19 could result. They are given a voice through
20 their victims' legal counsel.

21 Program performance is being measured
22 and we believe meeting the objective of the

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1 program. Weekly reports are submitted by each of
2 our VLC to the Deputy Chief of Staff and then
3 forwarded to me as the Chief of Staff and then on
4 to Command of the Naval Legal Service Command for
5 review.

6 Reports include not only the number of
7 cases each VLC has opened, but detailed
8 information about particular cases, challenges
9 and lessons learned.

10 All clients, upon termination of
11 representation are encouraged to participate in
12 our voluntary anonymous survey. The data from
13 which is reviewed by Victims Legal Counsel
14 Program leadership.

15 And then, beginning in January of this
16 year, the Navy VLC Program is being inspected as
17 part of the Article 6 process.

18 By the end of 2016, a total of 13 VLC
19 and five of our support personnel will have met
20 with and been inspected by the JAG Corps Article
21 6 team.

22 Navy victims' legal counsel are

1 performing beyond expectation. And, we believe
2 part of the reason for the program success is
3 because we're very selective in who gets to be a
4 VLC.

5 Attorneys are selected based on their
6 experience, which, at a minimum, includes one
7 previous tour with litigation experience,
8 professional maturity, people skills and perhaps,
9 most importantly, a desire to serve as a victims'
10 legal counsel.

11 I review the Service record of every
12 individual nominated to be a victims' legal
13 counsel. I speak to their prior Commanding
14 Officers and I interview each applicant.

15 If they're a good fit for the program,
16 they are interviewed by Admiral Hannink,
17 Commander Navel Legal Service Command. And, if
18 he approves of their selection, they are then
19 forwarded to be interviewed by Admiral Crawford,
20 the Navy Judge Advocate General.

21 As Chief of Staff, I am responsible
22 for oversight and informal evaluation of each

1 Navy victims' legal counsel. I am their
2 reporting senior.

3 Navy VLC are separate and distinct
4 from trial and defense counsel and are not
5 evaluated by convening authorities.

6 Under this model, VLC are not only
7 expected to, but will never be penalized or
8 retaliated against by their chain of command for
9 zealously representing their clients.

10 They are evaluated on their client
11 numbers, leadership, mission accomplishment, team
12 work, programmatic contributions, continued
13 military education and community volunteer
14 activity.

15 Prior to making a recommendation on
16 their promotion, a formal ranking board is
17 chaired by the deputy chief of staff and includes
18 all five of our Officers in Charge. And, their
19 promotion recommendations are forwarded to me for
20 consideration.

21 Finally, no Navy VLC has reported
22 being retaliated against professionally for doing

1 their job. In fact, I'm pleased to tell you it's
2 been quite the opposite.

3 Last year, we had eight officers in
4 pay grades O3 to O5, so lieutenants who the
5 commanders ranked, were in front of promotion
6 boards for their first time.

7 Without any special precept language,
8 seven of eight VLC were selected for promotion to
9 the next pay grade.

10 Again, Members, I thank you for the
11 opportunity to be here today and I look forward
12 to taking your questions.

13 CHAIR HOLTZMAN: Thank very much,
14 Captain. We very much appreciate your
15 presentation.

16 We'll next hear from Colonel Andrea
17 deCamara, U.S. Air Force Chief, Special Victims
18 Counsel Division.

19 Colonel, welcome and thank you for
20 being here.

21 COLONEL DECAMARA: Good morning, Madam
22 Chairwoman, Panel Members, thank you for giving

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1 me the opportunity to once again talk to you
2 about the great strides the Air Force Special
3 Victims Counsel --

4 CHAIR HOLTZMAN: Another glutton.

5 COLONEL DECAMARA: Another glutton.

6 -- over the past 18 months.

7 CHAIR HOLTZMAN: Welcome.

8 COLONEL DECAMARA: I'm tremendously
9 proud of our counsel for their courageous,
10 innovative and comprehensive presentation they
11 have provided and continue to provide their
12 clients.

13 As you all know, the Air Force program
14 began as the pilot program for the Department of
15 Defense. And, I believe that the Air Force
16 continues to lead the way in the development and
17 the enhancement of victims' rights.

18 Since last speaking with you, the Air
19 Force program has grown in organizational size
20 and structure as well as in scope and nature of
21 representation.

22 I am proud to say that as of this

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1 coming summer, 2016, due to the recognition of
2 our Air Force leadership of the value of this
3 program, specifically, the victims and to the Air
4 Force in general, we will have six senior SVCs in
5 the grade of O4 or O5, 45 SVCs, 26 special
6 victims' paralegals and a four-member leadership
7 team at Headquarters.

8 Through the emphatic and unwavering
9 support of the Judge Advocate General, Lieutenant
10 General Christopher Burne, the size and
11 capabilities of the SVC Program has more than
12 doubled to support the demand signal from our
13 clients.

14 We are working our way up to 51 total
15 SVCs and the same number of SVPs, paralegals, as
16 we were POMed to now have a model that mirrors
17 the Area Defense Counsel model of one SVC and one
18 SVP in each office.

19 Additionally, the creation of the
20 Senior Special Victims Counsel position, in my
21 opinion, is the biggest and most significant
22 improvement to the Air Force's special victims'

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1 organization structure.

2 During the summer of 2015, the Air
3 Force reorganized its military justice
4 capabilities to a circuit structure with five
5 geographic circuits.

6 The Special Victims Counsel Program
7 participated in this reorganization and have
8 placed each of our senior special victims'
9 counsel at circuit offices in order to better
10 integrate our counsel with the military justice
11 professionals.

12 The immediate feedback from the senior
13 SVCs is that the move had enhanced communication
14 and collaboration, assisted in the crossfeed of
15 best practices and lessons learned and
16 contributed to the overall better administration
17 of justice.

18 Personal relationships matter, period.
19 And, this reorganization has ensured the
20 integration of senior special victims' counsel
21 into the military justice leadership teams.

22 Further, Senior Special Victims

1 Counsel play a critical role in the professional
2 development, mentoring and continuous realtime
3 evaluation and assessment of the SVCs within
4 their circuit.

5 They are my eyes and ears on the
6 ground with our SVCs. They monitor not only
7 their professionalism, judgment and
8 representational skills, but also the mental
9 health and well-being of those counsel who are in
10 such critical and demanding positions.

11 With the growing size of our SVC
12 Program, there would be no way that I could
13 ensure performance and the care and feeding of
14 each SVC in a manner in which is required and
15 that they deserve.

16 Each of these handpicked O4 and O5
17 senior SVCs have performed exceptionally well and
18 have enhanced the supervision and assessment of
19 our program over the past year.

20 They fairly evaluate the counsel and
21 report directly to me several times per week
22 informally and through a formal biweekly case

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1 report.

2 Senior SVCs provide their counsel
3 formal and informal feedback and are their
4 evaluators in accordance with the requirements of
5 Air Force Instruction 36-2406.

6 As the Services and OSD work to
7 implement the requirements of Fiscal Year '16
8 NDAA Section 535 to evaluate SVC performance, I
9 believe the post-representation surveys continue
10 to be the best indication of the effectiveness
11 and impact the SVC has had on a client's
12 experience in the military justice reporting and
13 prosecution processes.

14 Through our surveys, we continue to
15 see a high level of satisfaction of our victims
16 of the representation they receive from counsel.
17 Clients still report a 99 percent overall
18 satisfaction rate.

19 Additionally, 99 percent say they
20 would recommend other victims request an SVC.

21 The narrative comments also
22 demonstrate profound and heartfelt gratitude of

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1 our clients from the services they received.

2 One client stated, quote, this was one
3 of the worst things that ever happened to me in
4 my life. I don't think I would have gotten as
5 far in this process if I didn't have my SVC by my
6 side. He explained everything to me in a way I
7 could understand.

8 Another client stated, quote, my SVC
9 fought for me fiercely. He provided me with all
10 of my options as far as writ of mandamus and
11 appeals go and then allowed me to make my own
12 decisions, end quote.

13 I believe both these comments
14 perfectly reflect the purpose and benefit of our
15 SVC Program, advise, advocate and empower our
16 clients.

17 These clients clearly articulated
18 their gratefulness of being able to understand
19 what was happening, being able to make their own
20 informed decision and having someone
21 independently fight for them.

22 Are these comments based on statistics

1 or hard data? No, but much of what our SVCs are
2 expected to provide our clients are not easily
3 measured through statistics like participation
4 and conversion rates.

5 As all the SVC and VLC Programs
6 successes have become more well known, so have
7 the requirements placed on SVCs and the programs.

8 Our programs have been expanded in
9 eligibility since our last meeting, adding DoD
10 civilians and reservists as well as us really
11 understanding the impact of the representation of
12 minors.

13 As we have worked through the complex
14 issues of minor representation, we are now
15 tackling what it really means to represent DoD
16 civilians.

17 The expanse and limitation of what is
18 expected and the professional responsibility
19 implementations for our attorneys.

20 How extensively are SVCs supposed to
21 engage with Unions if the member is a Union
22 member?

1 Or, what does advise mean with regards
2 to DoD civilians filing an EEO complaint? Some
3 EEO complaints can end up in Federal Court. What
4 is the line where the SVC has to tell the client
5 they are no longer authorized to assist?

6 These are just a few examples of the
7 unresolved questions and concerns we have with
8 just one of the expansions of our program.

9 While I understand the changes are
10 well meaning and intended to assist the SVC
11 Programs, we need the opportunity to digest and
12 affect the changes already levied on us in order
13 to make a determination what, if anything, needs
14 further change.

15 The scope of our representation has
16 also expanded to post-trial appellate advocacy.
17 I believe that the inception of the SVC Program,
18 post-conviction advocacy wasn't even
19 contemplated.

20 But, now, we have clients whose trials
21 resulted in the accused being convicted and cases
22 reached the appellate courts. In many such

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1 cases, the victim's mental health records were at
2 issue at trial and are potentially at issue on
3 appeal.

4 Our SVC Program is wading into those
5 appellate advocacy waters and is working to
6 ensure those privacy rights so vigorously
7 defended at trial are protected post-trial as
8 well.

9 As RCM 1209 states, the conviction
10 isn't final until all appeals are exhausted. We
11 believe this should apply to Victims Article 6(b)
12 rights as well.

13 This is an issue, obviously, from
14 earlier discussion and open to debate issue.

15 In order to further this advocacy, one
16 of our new senior SVC billets is being filled
17 within the next month with an experienced 05
18 appellate counsel who will lead us in setting up
19 processes for monitoring cases post-trial and
20 filing motions to intervene as appropriate.

21 As I close, I would be remiss if I did
22 not recognize the phenomenal support and

1 collaboration routinely exhibited by the program
2 managers in front of you including Lieutenant
3 Colonel Tracianna Winston of the National Guard
4 Bureau who is here in the audience but not
5 testifying.

6 These leaders have enabled meaningful
7 development, synthesis and cooperation as our
8 counsel continue to blaze new trails in the
9 military justice system and into the clients'
10 personal legal assistance representation.

11 The teamwork is robust, not only at
12 the senior level but also, and probably even more
13 effectively between our counsel in the field.

14 From assisting each other with the
15 nuances of the individual Service Court Rules for
16 Practice which are unfamiliar to counsel as we
17 cross Service, to organizing and executing joint
18 regional training.

19 SVCs and VLCs across the world are a
20 unique and selfless community who support each
21 other on a daily basis.

22 With one of the focus areas of the

1 most recent NDAA being on the establishment of
2 standardized guiding principles to include
3 training and performance measures, I submit the
4 Service program managers have embodied these
5 requirements since the Services were directed to
6 stand up the SVC and VLC Programs.

7 Recently, the program managers worked
8 closely together to develop a proposal for OSD to
9 implement the requirements found in Section 535
10 of the Fiscal Year '16 NDAA while retaining each
11 of the Services unique culture and Service
12 flavor.

13 I look forward to seeing what happens
14 with this proposal.

15 In closing, I have been humbled and
16 honored to lead each of the Air Force's -- the
17 SVC Program. I am proud of the organizational
18 culture we have established and the high
19 standards for compassionate and comprehensive
20 representation provided to our clients on a daily
21 basis.

22 Over the past two years, our program

1 saw an 18 percent rise in new clients, from
2 taking in 694 new clients in 2014 to 819 new
3 clients in 2015.

4 I believe this indicates that the
5 meaningful work our counsel are doing for their
6 clients and the word is getting out.

7 As the eligibility of our client base
8 continues to expand, I anticipate that this
9 trajectory will continue. But, I'm also hopeful
10 that the prevention work that our commanders,
11 leaders, victim advocates, SARCs and our SVCs are
12 doing are working to eradicate sexual assault
13 from our Air Force and our military.

14 Again, I thank you for the opportunity
15 to speak with you today. And, I look forward to
16 your questions.

17 CHAIR HOLTZMAN: Thank you very much,
18 Colonel. We very much appreciate your being here
19 and your testimony.

20 Our next presenter is Colonel
21 Katherine McDonald, U.S. Marine Corps, Officer in
22 Charge, Victims Legal Counsel Organization.

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1 Colonel, welcome.

2 COLONEL MCDONALD: Good morning, Madam
3 Chair and distinguished Panel and thank you for
4 the opportunity to appear before you today and
5 update the Panel on the progress of the Marine
6 Corps Victim Legal Counsel Organization.

7 In May 2015, I succeeded Colonel Karen
8 Joyce as the Officer in Charge of the Victims
9 Legal Counsel Organization when she retired from
10 the United States Marine Corps after having
11 served over 30 years in uniform.

12 Since assuming her responsibilities
13 for the Marine Corps VLC Program, there is not a
14 day that goes by where I don't take a moment to
15 appreciate what she and her other VLC
16 plankholders had to accomplish in late 2013 and
17 early 2014 to bring this organization to
18 fruition.

19 Since that time, since November 2014,
20 the VLCO has continued to evolve and mature into
21 a well-respected, incredible arm of the Military
22 Justice system.

1 Our VLCs are distinguishing themselves
2 in and out of the courtroom for their zealous and
3 effective victim advocacy and innovative problem
4 solving to achieve the victims' goals for
5 justice.

6 Based on feedback from my last round
7 of site visits, I can report that overall,
8 commanders, counsel, the judiciary and
9 investigators have not only come to accept the
10 role of a VLC, but have come to expect that a VLC
11 will be made available to speak on behalf of a
12 victim during each phase of the military justice
13 process.

14 Since the last report, the number of
15 VLC has grown from 13 to 18 in response to the
16 demand signal for additional VLCs.

17 Our current 18 VLCs were carefully
18 vetted, trained and certified as victims' legal
19 counsel and serve among our four regions.

20 All of our VLCs have some level of
21 military justice experience, mostly six months or
22 more or have prior civilian litigation

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1 experience.

2 Three of these VLCs are designated
3 Auxiliary Victims Legal Counsel who serve in this
4 capacity concurrent with their primary billet
5 which is most often that of a legal assistance
6 attorney and that's so that we can continue to
7 grow the organization.

8 A VLC may be detailed by a Regional
9 VLC when a conflict of interest arises or when
10 there is an increased demand for VLC services in
11 that particular region.

12 The AVLC billets were added in
13 response to the growing demand for VLC services
14 in general.

15 Another milestone achieved in the
16 maturation of the VLCO during FY15, FY16, was in
17 the training of the VLCO's enlisted Marine
18 support personnel and the hiring of civilian
19 paralegals.

20 In order to quickly stand up the VLCO
21 during FY14, local Commands staffed the VLCO with
22 Marine legal service specialists until civilian

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1 paralegals could be hired.

2 Then, during FY15, the VLCO went
3 through the process of establishing ten civilian
4 GS9 positions -- I'm sorry, eight GS9 positions
5 to be paralegal specialists at the eight VLCO
6 offices throughout the Marine Corps.

7 As of today, six of the eight GS9
8 positions have been filled in addition to a GS11
9 paralegal billet we have at the Headquarters
10 element.

11 During the hiring process, the VLCO
12 continued to send all of its Marine legal service
13 specialists to the Special Victims Counsel
14 Certification courses at either the Army or Air
15 Force JAG Schools where they sat alongside and
16 received the same training as the SVCs and VLCs
17 from the Services.

18 During FY16, the newly hired civilian
19 paralegals were also sent to the same
20 certification courses at the Army and Air Force
21 JAG Schools in an effort to equip all VLCO
22 personnel counsel legal service specialists and

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1 civilian paralegals with the most current
2 information and skills to effectively serve
3 sexual assault victims.

4 Follow on training of the Marine Corps
5 VLCO team is conducted annually during a three-
6 day Marine Corps VLCO training symposium and
7 through attendance and participation at number of
8 nationally recognized sexual assault training
9 events such as those presented by NCVLI and
10 EVAWI.

11 Significantly, this month, the Staff
12 Judge Advocate of the Marine Corps, Major Johnny
13 Ewers, will be promulgating the first Marine
14 Corps VLCO Manual.

15 The manual provides what we hope will
16 be a flexible, yet enduring, framework under
17 which to operate.

18 In addition to incorporating our best
19 practices into doctrine in order to elevate our
20 practice of law in the area of victim legal
21 advocacy and representation.

22 Last, we have identified a Marine VLC

1 to serve as our appellate point of contact for
2 the program. In his capacity as the appellate
3 VLC, he will serve as our primary appellate
4 counsel when other VLC seek advice on drafting
5 and filing appellate briefs on behalf of a victim
6 to protect their Article 6(b) rights or respond
7 to other matters that may warrant appellate
8 attention.

9 I'll now address how beneficial the
10 program has been for victims and military justice
11 overall.

12 There is no doubt that victims have
13 benefitted from the VLCO Program. VLC have been
14 instrumental in empowering victims and
15 facilitating them with navigating the military
16 justice system on their behalf and ensuring that
17 they achieve the outcome they desire.

18 Whether it is full and active
19 participation in the court martial process or,
20 alternatively, not to participate at all.

21 Victims have benefitted by having
22 their own uniformed legal representative to

1 navigate and challenge a complicated legal system
2 on their behalf, a system that may sometimes
3 ignore or under appreciate the emotional,
4 physical, personal and professional implications
5 of associated with sexual assault.

6 Having VLCs integrated into the
7 military justice system has challenged and,
8 consequently, elevated the practice of military
9 law in regards to victim participation and in the
10 exercise of the Article 6(b) rights.

11 For example, VLCs are finding that
12 their access to information has improved and the
13 importance of victim privacy is now better
14 understood.

15 We anticipate that the system will
16 continue to mature and will -- pardon me --
17 should have had that glass of water -- will
18 continue to mature through a robust and effective
19 motions practice at the trial level and when
20 warranted at the appellate level.

21 And, I do echo what my fellow program
22 managers talked about with regards to --

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1 What are the biggest challenges facing
2 the VLC Program today? Have these challenges
3 changed?

4 In 2014, the VLC Program was just
5 getting off the ground. At that time, the most
6 significant challenge was adequately training the
7 inaugural cadre of VLCs and educating the Marine
8 Corps in general about the role of the VLC in the
9 court martial process.

10 The other challenge back then was
11 building confidence in the program so that
12 victims would be comfortable asking for a VLC to
13 represent them.

14 Today, the biggest challenge facing
15 the Marine Corps VLC Program is staffing that
16 program with the right number of VLCs for each
17 region and each law center and to ensure that
18 incoming VLCs are identified, trained and
19 certified early enough in the sum of rotation
20 scheduled to replace any of those outgoing VLCs
21 and RVLCs.

22 And, again, I also echo that of the

1 other program managers that this demand signal
2 has increased because we've also increased the
3 aperture of who we represent.

4 What is the underlying objective of
5 the VLC Program and how is that measured?

6 The primary mission of the VLC -- of
7 the Marine Corps VLCO is to provide effective
8 representation and advocacy for victims by
9 ensuring that these victims of sexual assault and
10 other serious crimes have a voice in exercising
11 their 6(b) rights within the military justice
12 system.

13 Internally, we measure our mission
14 performance and effectiveness through personal
15 observation, victim feedback, weekly reports,
16 feedback from SJAs and Judges, by reviewing
17 records of trial, trial briefs, court opinions
18 and, most importantly, conducting annual site
19 visits and weekly, if not daily, dialogue with
20 our four regional VLCs.

21 I'm pleased to report that during last
22 year's site visits, I was able to meet with a

1 significant number of commanders, convening
2 authorities, staff judge advocates, NCIS and
3 SAPRO personnel who overwhelmingly spoke
4 favorably of their experiences with the VLC.

5 Additionally, by this fall, we will
6 have established and implemented a formal
7 inspection program for the Marine Corps VLCO.

8 This inspection program will serve to
9 reinforce standard operating procedures and
10 standards of practice, exercise supervision of
11 victims' legal counsel functions, emphasize VLCO
12 functional independence and support the staff
13 judge advocate to the Commandant in supervising
14 the administration of military justice as
15 required by Article 6 of the UCMJ.

16 To promote and educate the military
17 community with the VLCO program, our VLCs in each
18 region are encouraged to seek out opportunities
19 with local commanders, training and education
20 sections and Marine and family support centers to
21 provide outreach and training on the availability
22 and role of the victims' legal counsel and

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1 providing victims of sexual assault legal consult
2 and representation.

3 In recent examples where that our RVLC
4 on the West Coast provided a VLCO brief to 40
5 family advocacy counselors and UVAs.

6 An East Coast VLC presented four
7 separate briefs on the VLC Program to members of
8 a II MEF during a two-day SAPRO stand down.

9 And, the Pacific RVLC was recognized
10 for their participation in a recent uniform
11 victim advocate stakeholder tour for the VLC team
12 provided uniform victim advocates an in depth
13 look at the process relating to sexual assault
14 victim representation.

15 How are VLC performing? Who are they
16 evaluated by?

17 Each Marine in the VLCO is making a
18 positive and professional impact in performing
19 their VLC responsibilities. They endeavor every
20 day to be the best advocate they can be on behalf
21 of their clients while at the same time, they are
22 leading the way in educating the commanders, the

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1 Judge Advocates, the investigators, the Service
2 Members and the rest of the military community on
3 victims' rights and the role of the VLC in the
4 military justice system.

5 The Marine Corps is very fortunate to
6 have these officers setting the example and
7 leading from the front in victim advocacy and
8 outreach.

9 As the head of the VLCO, I have the
10 overall responsibility for the supervision and
11 organization. And, I report directly to the SJA
12 to CMC, Major Johnny Ewers.

13 In this capacity, I serve as the
14 reporting senior for the Deputy OIC of the VLCO
15 who currently is a Lieutenant Colonel.

16 The Deputy OIC serves as the reporting
17 senior for all four regional victims' legal
18 counsel who are all Majors, O4.

19 The regional VLCs serve as the
20 reporting senior for all of the VLCs in their
21 respective organization.

22 And, the VLCs hold the rank of First

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1 Lieutenant but more normally that of a Captain.

2 In conclusion, in FY15, the Marine
3 VLCO assisted approximately 650 crime victims.
4 Of this number, 60 percent were sexual assault
5 victims, 27 percent were victims of intimate
6 partner violence. Approximately 13 percent were
7 victims of other crimes such as murder and
8 assault.

9 While I am the OIC of the VLC Program,
10 I must take this opportunity to say that the bulk
11 of the credit for the VLCO's success goes to our
12 VLC which are scattered throughout the Marine
13 Corps who zealously and professionally advocate
14 for their victim clients every day.

15 As a result, commanders, members of
16 the military justice system and the military
17 community have developed a better understanding
18 and appreciation of the importance of protecting
19 victims' rights.

20 Chair and distinguished Panel, I again
21 thank you for the opportunity to talk to you
22 today.

1 CHAIR HOLTZMAN: Colonel, thank you
2 very much for your testimony. We really
3 appreciate it.

4 And now, we will hear from Ms. Christa
5 Cothrel, U.S. Coast Guard Special Victims Counsel
6 Program Manager.

7 Ms. Cothrel, welcome and we look
8 forward to your testimony.

9 MS. COTHREL: Good morning Members of
10 the Panel.

11 Thank you for the opportunity to
12 participate and provide input on behalf of the
13 Coast Guard.

14 Since mid-January of 2015, I have
15 served as the Coast Guard's Chief of the Member
16 Advocacy Division.

17 In this position, I act as the Coast
18 Guard's Special Victims Counsel Program Manager
19 and I'm responsible for all facets of the program
20 including the supervision of all the Coast Guard
21 SVCs.

22 Since November 2014, the Coast Guard

1 SVC Program has expanded and formalized its
2 process in addition to creating and hiring for my
3 position, the Coast Guard added one additional
4 experienced JAG as a full-time SVC in our East
5 Coast office for a total of six full-time SVCs,
6 three on the East Coast and three on the West
7 Coast.

8 While the Coast Guard continues to
9 utilize other Coast Guard lawyers to serve as
10 SVCs who are not in a full-time SVC billet, we
11 have changed the way these attorneys are selected
12 and trained.

13 Each attorney must be nominated and
14 approved by their supervisor and must state their
15 criminal justice experience, their unique
16 qualifications for the position and their desire
17 to serve in the role of victims' counsel before
18 being selected by the Judge Advocate General of
19 the Coast Guard Rear Admiral Poulin.

20 Each full-time and special duty SVC
21 must attend one of the sister Service SVC
22 Certification courses and must serve a short

1 probationary period with an experienced SVC
2 before being detailed to a client.

3 Furthermore, we are in the last stages
4 of drafting an SVC-specific Personnel
5 Qualification Standards, or PQS which will
6 provide specific knowledge-based tests and
7 practical exercises that each SVC will need to
8 complete during their apprenticeship.

9 In addition to increasing our ranks
10 and requiring specific training, the program
11 successfully advocated that SVC tours should only
12 be two years rather than four which aligned with
13 the length of time Coast Guard JAGs serve as
14 defense counsel.

15 The Coast Guard legal program
16 recognized that personal representation of
17 victims of sexual assault, while gratifying and
18 enriching for attorneys, can also be terrifically
19 draining. And, as such, determined two years in
20 place was the appropriate length of time to
21 ensure victims are provided the most effective
22 representation possible.

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1 Another noteworthy high point is the
2 completion of our SVC Instruction. The
3 instruction which we hope to promulgate soon
4 formally lays out the program's operational
5 framework and includes information on our
6 organizational structure, questions of client
7 eligibility and notification of SVC services and
8 details the scope of a Coast Guard SVC's
9 responsibilities.

10 Finally, we are putting the finishing
11 touches on our first ever Coast Guard SVC
12 Conference which is taking place next week.

13 The conference will be a mix of
14 moderated panels and small groups, bringing
15 together SVC and key stakeholders to discuss
16 Coast Guard specific policies as we continue to
17 work through potential points of friction.

18 It is our hope that through these
19 discussions we will all become better informed on
20 the best practices to serve victims of sexual
21 assault.

22 Due to its small size of the Coast

1 Guard's court-martial docket has historically
2 been modest. However, increased sexual assault
3 prosecutions and the concurrent establishment of
4 the SVC Program has had significantly focused the
5 Coast Guard legal program's attention on Military
6 Justice practice.

7 Last April, Rear Admiral Poulin issued
8 his 2015/2016 Judge Advocate Direction and
9 emphasized the need to ensure competence,
10 effective process and support for the Military
11 Justice function.

12 As the Coast Guard steadily gains
13 ground on military justice proficiency, a large
14 component of that success can be attributed to
15 SVCs who have proven to be successful at
16 assisting, educating and occasionally challenging
17 trial counsel and trial judges regarding the
18 decisions that impact our clients.

19 Now that I'm part of the Coast Guard,
20 I'm fond of the aphorism that a rising tide
21 raises all boats and having attorneys at
22 administrative and military justice proceedings

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1 that are trained on victims issues has required
2 all Coast Guard JAGs to get smart on the law.

3 Victims' rights have been forever
4 changed by the better by the introduction of
5 Coast Guard SVCs into the military justice and
6 legal assistance arena.

7 Our biggest challenge remains
8 staffing. The responsibilities of victims'
9 counsel continue to expand as does the breadth of
10 the law each counsel is expected to be proficient
11 in.

12 Because of the Coast Guard's small
13 number of JAGs, my staffing projections need to
14 be made and adequately justified nearly two years
15 in advance.

16 The incredibly fast changing legal
17 landscape makes it difficult for me to forecast
18 how many attorneys the Coast Guard will need to
19 expertly represent victims of sexual assault.

20 Moreover, in the past, when there was
21 funding provided to help the military components
22 meet newly created statutory obligations towards

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1 victims of sexual assault, the money was
2 distributed to the Department of Defense which
3 does not include the Coast Guard.

4 As simply as possible, our underlying
5 objective as a program is to give voice to sexual
6 assault victims choices. Our goal is to ensure
7 all victims who select SVC representation are, to
8 the greatest extent possible, afforded their
9 Article 6(b) rights and any other rights granted
10 them under law or Coast Guard policy.

11 On a larger scale, though, our
12 programmatic goal is to continue to encourage the
13 Coast Guard to fulfill Rear Admiral Poulin's goal
14 of getting better at all kinds of military
15 justice.

16 And, by doing better at Military
17 Justice, I envision the SVC Program leading the
18 way toward trauma informed, victim-centric sexual
19 assault prosecutions in the Coast Guard.

20 To that end, as a program, we
21 constantly work toward ensuring SVCs are detailed
22 to make contact with their clients within 24

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1 hours, that our rate of utilization for eligible
2 clients continues to rise, that we conduct
3 outreach both internally and externally at every
4 opportunity so that all members of the Coast
5 Guard and the public at large understand our
6 mission, that our SVCs are as well trained as
7 possible and that we continue to build trusting
8 relationships with our stakeholders so that we
9 can work together to better victims of sexual
10 assault.

11 Concerning the performance of the
12 individual Coast Guard Special Victims Counsel,
13 as the Program Manager, I am either their direct
14 supervisor or their second level supervisor.

15 Their performance is measured by the
16 same performance measures as all Coast Guard
17 Officers which include, among other areas,
18 professionalism, competence, communication
19 skills, leadership and teamwork skills, all
20 important qualities for an SVC to have and to be
21 evaluated on.

22 So, subject to your questions, that

1 concludes my remarks.

2 CHAIR HOLTZMAN: Thank you very much.

3 We'll start with questions.

4 Mr. Taylor.

5 MR. TAYLOR: Yes, well, thank you very
6 much, Madam Chair and thanks to all of you for
7 your leadership in this really important area.

8 Colonel Marotta, I have two or three
9 questions I would like to ask you.

10 You mentioned that, at this point in
11 time, nominations are made for SVCs which then
12 come back to the personnel office, I assume you
13 mean back in the central Pentagon JAG Personnel
14 Office, is that correct?

15 Do you have any feel for what
16 percentage now have previous military justice
17 trial experience as opposed to none?

18 COLONEL MAROTTA: It is truly by
19 exception, that is -- the requirement is
20 annotated in our new handbook as well as TJAG
21 policy that the SVC must have military justice or
22 prior criminal law experience.

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1 And, she goes through each of the
2 applications and if we know now well beforehand,
3 if there is someone in that packet who doesn't
4 have that experience, the SJA really needs to
5 explain why this person doesn't have that
6 experience, why this person is right for the job
7 and how they are going to get that person smart
8 on criminal law before they start taking on
9 clients.

10 So, for example, the SJA may explain
11 that person while operating under the supervision
12 of a Senior SVC who will work very closely with
13 them.

14 But, I believe in our last
15 certification, we had one person who didn't and
16 it was just because of the manning at that -- it
17 was a small installation. So, it's truly been by
18 exception.

19 MR. TAYLOR: Well, I think most people
20 on the Panel would agree with me that that's
21 welcome news that you are moving in that
22 direction. So, congratulations for doing that.

1 You also mentioned, if I understood
2 you correctly, that you thought the atmosphere or
3 the attitude had improved throughout the
4 community in terms of the acceptance of the
5 program.

6 So, my question is, are there still
7 pockets of resistance? At one point early on, we
8 heard by way of testimony in panels that there
9 were those who thought that, for example, the
10 SVCs sort of got in the way of the trial counsel
11 or the defense counsel.

12 So, are there still pockets of
13 resistance to the SVC Program?

14 COLONEL MAROTTA: Sir, I'm not seeing
15 it now. When I came into the job in the summer,
16 I was still hearing that, you know, grumblings
17 about, you know, as I was going into the role,
18 you know, everybody will pull you aside and kind
19 of give you their view on what, you know, what
20 the program is.

21 But, I just met with the -- all the
22 staff judge advocates last week. And, by and

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1 large, all of them approached me at some point
2 during my -- before and after my engagement and
3 were telling me how wonderful their SVC was and
4 raving about their program and telling me, you
5 know, all the new things they're implementing.

6 So, it's almost become now the
7 bragging rights, who's got the best programs.
8 So, I really have seen since my eight months, a
9 shift where it's now -- I just got an email
10 yesterday from an SJA at Fort Drum telling me how
11 fabulous his SVC is and all the wonderful things
12 and that I should consider her for a panel.

13 So, I'm really seeing more and more of
14 this -- the SJAs bragging about how wonderful the
15 program.

16 MR. TAYLOR: Thank you.

17 COLONEL MAROTTA: So, there's really
18 been a shift.

19 MR. TAYLOR: Thank you.

20 My last question I have for you has to
21 do with the satisfaction rate of clients.

22 Is there any trend whatsoever for

1 those who are dissatisfied as to reasons why
2 clients feel that they might not be served
3 adequately or satisfactorily by their SVCs?

4 COLONEL MAROTTA: I can't say, sir,
5 that I have seen a trend. I will say that I
6 think when you're in a client services business
7 that there will always be, you know, some people
8 that you're just never going to satisfy.

9 Because this is the horrible
10 experience that has happened to them and it's
11 hard to put those pieces back together. And,
12 some people are not ready for help yet or not
13 ready to do -- to put those pieces back together.

14 So, I can't say that I've identified
15 a trend.

16 MR. TAYLOR: Can you identify any
17 factors that people point to that might indicate
18 what some of the reasons are why people might be
19 dissatisfied? Or is it too amorphous to
20 generalize?

21 COLONEL MAROTTA: I really think it
22 is, sir. I don't have any specifics that --

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1 MR. TAYLOR: Well, all of us who have
2 practiced law for a long time certainly
3 understand your first point that you can't please
4 all your clients all the time. We certainly
5 understand that.

6 Again, welcome back to you, Captain
7 Fischer-Anderson.

8 I was I would say just a little
9 concerned about the comment that you and Colonel
10 deCamara made, also welcome back, about the
11 expansion of the program to include civilians and
12 how you thought that that would create some
13 stressors on the program that maybe you weren't
14 quite prepared to handle, not to put words in
15 your mouth.

16 But, would you elaborate on that a
17 little bit? Is it primarily a capacity issue or
18 is it a competency issue?

19 CAPTAIN FISCHER-ANDERSON: Well, sir,
20 thank you for the question.

21 I would say it's both. Capacity in
22 that, well, let me back off and say, even though

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1 that has -- that expansion has come into being,
2 we have had no DoD civilians, ironically.

3 But, I am concerned because we do not
4 train our victims' legal counsel in Merit System
5 Protection Boards or EEOs. And, much of the
6 time, the interests are against that of the
7 United States and counsel and JAG Corps Officers
8 don't represent clients who have interests
9 against the United States.

10 So, I think it comes down to managing
11 expectations. I think that it went out that DoD
12 civilians would be eligible for our services and
13 they're going to come in expecting a whole lot
14 more than we're going to be able to deliver.

15 And, if the word gets out and if we do
16 begin to see more DoD civilians, again, because
17 the case to counsel ratio that we want to keep in
18 check for our counsel, I do have some fear that
19 it will have an impact on our current manning,
20 sir.

21 MR. TAYLOR: Same question, please,
22 Colonel deCamara.

1 COLONEL DECAMARA: We have already
2 started representing DoD civilians. So, we
3 currently have I believe six DoD civilians as
4 clients currently.

5 And, we are seeing it -- we're
6 concerned about capacity as the word gets out
7 because I think the word is still not out to DoD
8 civilians that this is something that would be
9 available to them.

10 And so, I am concerned as to what will
11 it do to our capacity as we continue on.

12 But, I am primarily concerned with
13 competency. So, we have added, and we'll talk
14 about this, I know the next JPP is about
15 training, but -- and I did extend to you, Ms.
16 Carson and your Staff, if they would like to come
17 to our SVC course which is the week following the
18 next JPP.

19 But, we've added to our SVC course not
20 only a plenary session lecture block on labor
21 law, but also a two hour seminar block to work on
22 labor law issues so that they are aware.

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1 For our clients, you know, by way of
2 example, if you have -- in our -- at least in our
3 rules, our DoD civilians are only going to be
4 represented by an SVC if the subject is subject
5 to the UCMJ and the accused is subject to the
6 UCMJ.

7 And, where we have seen that with our
8 civilian clients is workplace abusive sexual
9 contact. That has so many different
10 implications.

11 And, that SVC being an attorney would
12 be expected to know filing deadlines. So, if a
13 counsel is brand new and not knowing what they
14 need to do for their client with regards to just
15 making a complaint to EEO.

16 What if, you know, what do they need
17 to do and when do they need to do it by? Because
18 if they miss that deadline, they may have
19 significantly impeded a right that a client may
20 have.

21 They also need to know what can they
22 do maybe for asking for a change in working

1 conditions? Maybe if they're a Union employee,
2 what is the Union doing? What interaction should
3 they be having with Union representation?

4 And, at what point do you cut it off?
5 I don't think it's a simple question. You know,
6 is it -- do they even sit with them when the
7 client makes a statement?

8 You know, right now, for us, in our
9 representation, our SVCs sit with our clients
10 when they do make a statement. Well, in an EEO
11 world, that first statement could be the basis
12 for that federal court complaint.

13 And so, what does 18 USC 205 in the
14 exceptions there within allow for an SVC to do?
15 Just like a defense counsel represents back
16 against the Government, I'm not suggesting that I
17 think we should go that far, but we are seeing
18 this.

19 We also have a client right now who is
20 actually an active duty member who was assaulted
21 by a civilian. And, while this might not be
22 representing a DoD civilian, I think it's

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1 illustrative of the point.

2 That DoD civilian was terminated for
3 the sexual assault. That DoD civilian is now in
4 the Merit System Protection Board and that SVC is
5 being contacted by the Merit System Protection
6 Board about depositions of their client.

7 How far along do we allow our SVC to
8 represent in that capacity?

9 So, we are working very closely with
10 our civil law directorate to not only come up
11 with what we believe is the appropriate left and
12 right limits and scopes of representation.

13 We are working very deliberately to
14 come up with what is that scope of representation
15 to, number one, manage expectations, but also to
16 come up with check lists and training for our
17 counsel so they don't miss filing deadlines which
18 I believe falls within that assist gamut that is
19 required also by this most recent NDAA.

20 And so, I am worried about our
21 counsel. You know, we are doing a lot with our
22 counsel and I think we -- all of the Services, as

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1 you point out with the Army, but all of the
2 Services are trying to get experienced counsel.

3 Experience in the military justice
4 realm does not mean you're experience in labor
5 law.

6 MR. TAYLOR: Thank you

7 COLONEL DECAMARA: And, you know, we
8 are levying on these counsel very complex areas
9 of very diverse nature.

10 So, from child representation and the
11 complexities of child representation in the
12 morning to the complexities of a DoD civilian in
13 the afternoon. And, that doesn't even get to the
14 military justice part that we've all been talking
15 about and making sure that they are the experts
16 in that courtroom on 513 and 412 issues.

17 So, that is what my concern is.

18 MR. TAYLOR: Well, thank you very much
19 for that very comprehensive answer. And, I think
20 what you're doing is commendable and I hope the
21 lessons that you are learning certainly will be
22 shared with the other Members so that they can

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1 think about something like that for their own
2 program.

3 My second and final comment on this I
4 guess is that, at least within the Army legal
5 community, you do find people who are retired
6 JAGs working in civilian legal assistance
7 capacities as civilians. Many of them working in
8 labor and civilian personnel law.

9 So, it could be that there's a
10 resource out there that you could tap who at
11 least have some previous experience in both
12 worlds.

13 I thank you, Madam Chair.

14 CHAIR HOLTZMAN: You're very welcome.

15 All right, Judge Jones?

16 JUDGE JONES: I remember around three
17 years ago when we heard about the beginnings of
18 this idea about Victim Legal Counsel and I just
19 have to congratulate everyone because it's turned
20 into a very successful and effective reality very
21 quickly.

22 So, my thinking is advanced. Thanks

1 to Colonel deCamara and McDonald and all of your
2 other comments about whether or not victims
3 should also have a say in the appellate courts.

4 I do have a couple of questions,
5 though, since there have been seven writs. The
6 writ of mandamus, of course, is for a victim to
7 take and goes to the appellate court. Is there
8 one Judge who sits on that?

9 COLONEL MAROTTA: No, no, ma'am, it's
10 --

11 JUDGE JONES: It's a full panel?

12 COLONEL MAROTTA: Yes, and they will
13 assign a panel if the panel has different
14 branches and one of them will look at the writ
15 and address it.

16 JUDGE JONES: Okay. And how's it been
17 working? And how does it worked? I don't know
18 if they're evolving in the Army or if there have
19 been other writs.

20 I see Colonel deCamara, did you have
21 experience or perhaps you had some as well,
22 Colonel Marotta, but how's it going?

1 COLONEL MAROTTA: Well, we have a very
2 successful writ recently in the case of U.S. v.
3 Ducksworth and it was regarding 513 access to the
4 victim's mental health records.

5 And, the court issued an opinion that
6 we might call it a teaching opinion where it
7 really just went through all of the analysis very
8 thoroughly and put a guidance out to the field on
9 SVCs authority.

10 So, we were very pleased to have --

11 JUDGE JONES: So, I gather the trial
12 court ruled that the records should be turned
13 over?

14 COLONEL MAROTTA: They said it needs
15 to be -- they gave the framework for how it needs
16 to be analysis.

17 JUDGE JONES: No, I'm saying how did
18 you get to your mandamus? There was an adverse
19 ruling in the trial court. And then, what did
20 the SVC actually do? Write a brief? Argue?

21 COLONEL MAROTTA: Absolutely, yes.
22 Asked for reconsideration, informed the judge

1 that they would be seeking a writ when the judge
2 said that -- it was directed that the records be
3 turned over and immediately filed a writ.

4 JUDGE JONES: And, what did the
5 Government counsel do?

6 COLONEL MAROTTA: The Government --

7 JUDGE JONES: It has no standing,
8 right?

9 COLONEL MAROTTA: Yes. Right. They
10 didn't -- they -- in this case, even the
11 Government Appellate Division didn't file
12 anything. So, it was really the SVC and defense
13 appellate.

14 JUDGE JONES: And so, that's when
15 where you got a really good opinion sort of
16 telling everybody how this is supposed to work?

17 COLONEL MAROTTA: Yes, ma'am.

18 JUDGE JONES: And, what about the
19 others?

20 COLONEL DECAMARA: Ma'am, we've filed
21 12 appellate motions, but not all writs, ma'am.

22 So, we have filed in the Air Force

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1 Court two Motions to Intervene in a case where
2 the issue was specifically the victim's mental
3 health records and whether or not they were
4 complete. We were rejected on both of those
5 writs.

6 JUDGE JONES: So, those were writs?

7 COLONEL DECAMARA: No, they were
8 Motions to Intervene. This is a post-trial. And
9 so, the issue was the victim's -- the assignment
10 of errors in that case was the victim's mental
11 health records and whether or not they were
12 complete and whether or not the victim was to be
13 compelled to provide additional mental health
14 records.

15 Our SVC moved to intervene --

16 JUDGE JONES: In the court -- trial
17 court or --

18 COLONEL DECAMARA: In the appellate
19 court.

20 JUDGE JONES: No, in the --

21 COLONEL DECAMARA: This is post-
22 convictions.

1 JUDGE JONES: Oh, post-convictions,
2 sorry.

3 COLONEL DECAMARA: So, this is in the
4 appellate court where the assignment of errors
5 was to turn over additional mental health
6 records.

7 We moved to intervene and then moved
8 for reconsideration. We were denied on both and
9 invited to file an amicus brief instead.

10 JUDGE JONES: Okay.

11 COLONEL DECAMARA: We have filed three
12 Motions to Compel Notice where the appellate
13 defense counsel has on appeal moved to unseal
14 victims' mental health records on appeal.

15 And so, to your question earlier, what
16 does that mean? That means when a defense
17 counsel moves to unseal that record --

18 JUDGE JONES: Because there's an issue
19 on the lower court's ruling? Is that it?

20 COLONEL DECAMARA: They don't even
21 have to state that they think there is an issue.
22 They just say that they want to be able to review

1 the victim's mental health records, not only what
2 was provided to the defense counsel at the lower
3 court, but all of the victim's mental health
4 records, even those that were not turned over by
5 the military judge.

6 JUDGE JONES: Well, that would never
7 be allowed in a civilian appellate process.

8 COLONEL DECAMARA: So, we moved to
9 Compel Notice because the victims' counsel was
10 not even provided notice. We found out through
11 casual conversation that this had been filed.

12 We made a Motion to Compel and a
13 Motion for Reconsideration in two separate cases.
14 Both cases at the Service court, we were denied.

15 We have filed amicus briefs at the
16 Court of Appeals for the -- well, we filed two
17 amicus briefs with the Army Court, both in
18 support of the case in which Colonel Marotta
19 spoke of as well as a previous case. Both of
20 those were accepted.

21 We currently have a writ of mandamus
22 that we filed at the Navy-Marine Corps Court

1 which was denied and is now at CAAF on an appeal
2 of the Navy-Marine Corps Court's ruling.

3 JUDGE JONES: So, you took an appeal?

4 COLONEL DECAMARA: We've taken -- we
5 have an Air Force -- we have an Air Force counsel
6 for an Air Force victim --

7 JUDGE JONES: Right.

8 COLONEL DECAMARA: -- in the Marine
9 Corps Court --

10 JUDGE JONES: Right.

11 COLONEL DECAMARA: -- who had an
12 adverse ruling at the trial level --

13 JUDGE JONES: Right.

14 COLONEL DECAMARA: -- on a mental
15 health. We took a writ of mandamus to the Navy-
16 Marine Corps Court --

17 JUDGE JONES: Okay, so that's still
18 writ of mandamus land, not appeal.

19 COLONEL DECAMARA: Yes, ma'am.

20 JUDGE JONES: Okay.

21 COLONEL DECAMARA: And, that was a
22 writ of mandamus we took there but, we have now

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1 appealed that writ of mandamus to CAAF.

2 MR. STONE: Because they denied your
3 mandamus?

4 COLONEL DECAMARA: Because they denied
5 --

6 MR. STONE: They permitted your
7 participate.

8 COLONEL DECAMARA: -- our writ at the
9 Navy-Marine Corps Court, so now we have gone to
10 CAAF.

11 JUDGE JONES: So, I don't -- I
12 obviously don't know this one provision that
13 permits the taking of a writ of mandamus very well.

14 If you're denied your writ of
15 mandamus, does that same piece of legislation
16 permit you to appeal that denial or is it
17 supposed to be over?

18 COLONEL DECAMARA: It's silent, ma'am.

19 JUDGE JONES: It's silent on that?
20 Okay.

21 COLONEL DECAMARA: So, we are seeing
22 what -- our brief has been accepted by CAAF and

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1 responses were put into CAAF and now our response
2 brief is due on Monday.

3 JUDGE JONES: Right, okay.

4 COLONEL DECAMARA: And then, we have
5 filed -- have three cases, three separate cases
6 where we have filed -- we tried to file an amicus
7 brief at CAAF with regards to these rulings to
8 unseal mental health records because we were not
9 given notice of the lower court filings. And so,
10 we didn't know about it until after the rulings
11 by the Air Force court had been ruled upon.

12 JUDGE JONES: Right.

13 COLONEL DECAMARA: So, we filed at
14 CAAF as an amicus. Our amicus briefs were
15 rejected and we do not know what that means.
16 Does that mean that they think we should
17 intervene? But, we can't intervene because we
18 didn't participate in the court below, so the
19 victim is left without any voice whatsoever.

20 JUDGE JONES: Yes, you were denied
21 your writ even at that level.

22 Thank you.

1 The only other -- I had one other
2 question unrelated to the appellate issue, and
3 that is, I heard from I think it was -- yes, it
4 was Captain Fischer-Anderson about surveys.

5 Do all the Services do surveys?

6 CAPTAIN FISCHER-ANDERSON: You mean
7 victim surveys?

8 JUDGE JONES: Yes, victim surveys.
9 Yes, I know you all do surveys. We've heard a
10 lot about all the military surveys.

11 Are there anything interesting about
12 any of the other survey results from any of the
13 other Services?

14 COLONEL MCDONALD: Ma'am, we do not
15 conduct an additional survey. We know the DoD
16 also conducts a survey and we get that
17 information.

18 Our concern is that there may be
19 survey fatigue or it may be hey, we just --

20 JUDGE JONES: Right.

21 COLONEL MCDONALD: You know, we think
22 we did a really good job for you, can you tell

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1 everybody what a good job we did for you?

2 JUDGE JONES: Right.

3 COLONEL MCDONALD: So, you know, we
4 just -- we don't want to overdo it. Obviously,
5 if it's decided that it would be better for the
6 Services to conduct a survey, we're ready,
7 willing and able to do so. But, that's our
8 reason right now for not doing that.

9 JUDGE JONES: Fair enough.

10 COLONEL MAROTTA: And, ma'am, the Army
11 does it -- the Army SVC Program does not survey.

12 JUDGE JONES: I'm talking about a
13 satisfaction survey as they -- many of the
14 program.

15 COLONEL MAROTTA: Yes, ma'am. And,
16 the criminal law folks that do have the victim
17 witness liaisons do have a survey that they give
18 victims. And, what we're doing is we're working
19 on whether or not we can maybe put a section on
20 SVCs in there and send it to the victims more
21 anonymously rather than having somebody stand
22 there and say can you fill this survey out?

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1 JUDGE JONES: Right.

2 COLONEL MAROTTA: Maybe use a platform
3 where we can send it to them and they can fill it
4 out. So, we're looking at that issue.

5 JUDGE JONES: Thanks.

6 CHAIR HOLTZMAN: Admiral?

7 VADM(R) TRACEY: Captain Fischer-
8 Anderson spoke to your case-to-counsel ratio at
9 about 30, did I get that right? Is that a common
10 metric across all the Services? Is that about
11 the ratio that you use, 30 cases per counsel?

12 CAPTAIN FISCHER-ANDERSON: That we
13 think is ideal or that we -- we think 20. We
14 believe 20, yes, ma'am.

15 MS. COTHREL: Coast Guard as well. We
16 think 20 is ideal, that's what we're shooting for
17 in particular because we don't have bricks and
18 mortar SVC shops, so our counsel are constantly
19 traveling. We think 20 and we don't have
20 administrative support as the other branches do.

21 VADM(R) TRACEY: It was 30 for Navy,
22 right?

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1 CAPTAIN FISCHER-ANDERSON: That's the
2 maximum.

3 VADM(R) TRACEY: Maximum, okay.

4 CAPTAIN FISCHER-ANDERSON: The optimal
5 maximum, but we're at about 26 open cases per
6 counsel.

7 VADM(R) TRACEY: Right, right. Do you
8 have a target that's closer to 20?

9 CAPTAIN FISCHER-ANDERSON: We'd love
10 to be closer to 20, ma'am.

11 COLONEL MCDONALD: So would the Marine
12 Corps, we're about one to 30 as well.

13 COLONEL MAROTTA: And, the Army's
14 about in the same position. We would -- we think
15 that 20's ideal but it is definitely --

16 VADM(R) TRACEY: That's a staffing
17 metric you're using for your POM justifications
18 is 30? Is that what you're saying?

19 COLONEL DECAMARA: Yes, and that's
20 what -- we're at almost 33 to one, but --

21 VADM(R) TRACEY: Okay.

22 COLONEL DECAMARA: -- we'd like 20.

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1 VADM(R) TRACEY: I understand.

2 This is a question for all of you,
3 though I don't want to march down the line here,
4 but are there some most common SVP tasks, things
5 they'd like to see different in policy, practice
6 or procedure other than more staff?

7 And, the same question around
8 convening authorities, are there things that
9 those two populations would like to see even more
10 improvement in for this program to work for their
11 respective needs?

12 COLONEL MCDONALD: I'm just going to
13 speak anecdotally, and again, based on those site
14 visits, and it was the first round, but they -- I
15 think they would like more, I mean just like we
16 always want more of something.

17 I was expecting good feedback, but I
18 wasn't -- I didn't -- but, I ended up receiving
19 much more positive feedback in a lot of ways
20 saying, gosh, if you had more, you know, we could
21 do so much, we could do -- you could actually go
22 out and train more.

1 You know, you only have X number of
2 hours in the day and X number of VLCs and they
3 were very -- they responded very favorably to the
4 outreach, you know, that education piece, the
5 ability, you know, to work with trial counsel,
6 manage the complex cases as well as those cases
7 that come in the door for the advice and consult.

8 So, in that regard, I would say that's
9 the case.

10 VADM(R) TRACEY: Did convening
11 authorities have a point of view?

12 COLONEL MCDONALD: I'm sorry, ma'am?

13 VADM(R) TRACEY: Did convening
14 authorities have a point of view of things they'd
15 like to see improved in the SVP?

16 CAPTAIN FISCHER-ANDERSON: Ma'am, a
17 lot of the -- from the convening authority point
18 of view, we have what are called SACMGs, Sexual
19 Assault Case Management Groups. And, we will
20 have -- that's turned out to be a great
21 proceeding for a victims' legal counsel to get a
22 read on the Command to see how much they know

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1 about the case.

2 Command climate, how receptive are
3 they?

4 And, the VLC have also taken the
5 opportunity during breaks to get to know the CO
6 and potentially keep issues that could get out of
7 hand very quickly to help get them resolved at
8 the lowest level.

9 It could be something as simple as a
10 young Sailor feeling like they're being
11 retaliated against in their work center, more
12 like ostracized by peers.

13 And so, being able to raise that to
14 the level at that forum of the CO has been
15 awesome. We've had great success in keeping
16 things at the lower level.

17 I would echo Colonel McDonald's
18 sentiment that once the -- once a commander gets
19 a case where a VLC is involved, it's like PAOs
20 and having lawyers on your staff, they love it.
21 They want more of it.

22 COLONEL MCDONALD: And, ma'am, I would

1 say actually, just to cite kind of a funny
2 example, but one, we had a call in from the field
3 saying, a commanding officer wants to make sure
4 that a victim has a VLC even though she doesn't
5 want one.

6 We consider that a success story and,
7 I would say that it's really the victim's choice
8 in that, but I considered that a good day.

9 CHAIR HOLTZMAN: Admiral, could I just
10 interrupt for one -- to follow up on one of your
11 points?

12 Are the victims' legal counsel part of
13 this management system? Is that what you're
14 saying?

15 CAPTAIN FISCHER-ANDERSON: They are,
16 ma'am. They are.

17 CHAIR HOLTZMAN: Okay.

18 CAPTAIN FISCHER-ANDERSON: They are
19 one and they go in and listen to their client's
20 case and they're in the receive mode.

21 CHAIR HOLTZMAN: Okay.

22 CAPTAIN FISCHER-ANDERSON: They don't

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1 volunteer but they figure out where the -- the
2 SARC is there, the victim advocates, the
3 commanding officer and so they're part of that
4 process, yes, ma'am.

5 CHAIR HOLTZMAN: Great.

6 COLONEL MCDONALD: Ma'am, I would
7 point out, though, that one of the concerns that
8 my VLCs have expressed and we call it the CMG,
9 the Case Management Group, is when you start
10 getting into a little more details than you need
11 to to update someone on the case, hey, is the
12 victim getting the services? Good to go.

13 But then, you start getting into, hey,
14 is she seeing a psychologist regularly still?
15 And then, you start a cluster.

16 So, you know, we're still trying to
17 find the water level, kind of find the balance.
18 But, I think that's really part of the maturation
19 process.

20 I think people are well intentioned,
21 but good thing the VLCs are invited to attend
22 these because they can actually stand up and say,

1 hey, we're taking this a little bit too far.

2 And so, in that way, it has been
3 beneficial to the Command as well and that's what
4 needs to get out, but what doesn't need
5 to get out remains.

6 VADM(R) TRACEY: Thank you.

7 CHAIR HOLTZMAN: Mr. Stone?

8 MR. STONE: Yes. One of the things I
9 didn't hear from any of the panel members and I'd
10 like you each to comment because it was a concern
11 much earlier on.

12 And that was whether or not if the
13 military court-martial trial level, which it
14 sounds like a lot of progress has been made in
15 the individual cases, whether or not your
16 services are routinely now getting notices of all
17 the docket filings and copies of the Motions so
18 you can decide whether that motion implicates a
19 victim's right.

20 And maybe you could each tell me if
21 that's happening in a uniform manner?

22 I know, for example, I was counseling

1 a U.S. Ninth Circuit Court of Appeals case as a
2 victim's counsel, and I routinely got the docket
3 notices and was served copies of the documents so
4 we could figure out if there was a victim's issue
5 which it may or may not be. A majority of the
6 time, there isn't.

7 But, we needed to get that in order
8 for the victim to know if they wanted to raise
9 their voice and be heard.

10 And so, maybe you can each tell me
11 whether that's happening in each of your
12 Services?

13 MS. COTHREL: I would say there isn't
14 uniformity in the Coast Guard as it exists right
15 now.

16 We have just recently changed some of
17 our processes. It's literally going to be on
18 Rear Admiral Poulin's desk on Monday.

19 Also, I did have an opportunity to
20 speak to our new Chief Judge for the Coast Guard
21 just yesterday and I do think we're going to be
22 issuing some different rules that are going to

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1 provide for that.

2 But, as it exists right now, there is
3 not a uniform decision made by the Judges or
4 trial counsel to allow for that.

5 COLONEL DECAMARA: I'd like to break
6 your question up into two parts, one for trial
7 court and one for appellate.

8 So, for the trial court, yes, it's
9 been -- our Rules of Practice have been modified
10 by our Chief Judge where it is required by the
11 parties to serve on the victims' counsel any
12 motions, any filings, any pleadings that are
13 ongoing in the trial court.

14 MR. STONE: And, are you welcome to
15 attend those?

16 COLONEL DECAMARA: Yes.

17 MR. STONE: Not necessarily
18 participate but to attend?

19 COLONEL DECAMARA: Absolutely.

20 And then, in the appellate court, no.
21 We do not get service of anything.

22 COLONEL MCDONALD: Sir, I would say

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1 the same for the Marine Corps, that at the trial
2 level, it's become rather routine that they know
3 what's going on and they're provided that
4 opportunity to attend or participate in a 412 or
5 513.

6 We also have the Navy-Marine Corps
7 Court of Criminal Appeals, or I'm sorry, the
8 Navy-Marine Corps Trial Judiciary Rules which
9 also have gone into effect which Captain Fischer-
10 Anderson commented on.

11 So, the rules are in place, now it's
12 just a matter of, you know, the educating. And,
13 you know, our people will forget, but that's the
14 exception rather than the rule I would say at the
15 trial court level.

16 But, I would also echo what Colonel
17 deCamara said, and that is, at the appellate
18 level, we would have no idea.

19 You know, sometimes I'm only as good
20 as what's in the CAAF log as far as what's going
21 on, which I think is, you know, it'll probably
22 mature, but I think at this point, we don't -- we

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1 just don't know.

2 MR. STONE: When you say the CAAF log,
3 you mean after the court --

4 COLONEL MCDONALD: CAAF is an after
5 the fact --

6 MR. STONE: CAAF court has actually --

7 COLONEL MCDONALD: Yes, sir.

8 MR. STONE: -- decided the case and
9 you didn't hear about it at your Service's
10 appellate level at all?

11 COLONEL MCDONALD: Yes, sir.

12 CAPTAIN FISCHER-ANDERSON: Sir, once
13 a VLC has filed a Notice of Appearance in
14 accordance with our uniform rules, we have seen
15 success in getting copies of the motions and
16 actually being part of the 802 conferences.

17 So, we're seeing a great change at the
18 trial court level.

19 COLONEL MAROTTA: And, sir, the Army
20 is also seeing great success with access to
21 information.

22 Our TJAG issued a policy memorandum

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1 just detailing disclosure of information and what
2 is to be provided to the victim and when. And,
3 we are seeing routine compliance with that.

4 MR. STONE: But, you're getting access
5 to the whole docket sheet?

6 COLONEL MAROTTA: If the -- all of the
7 access -- we have access to information, you
8 know, compliance. But, at the appellate level,
9 again, no -- we don't have any access at the
10 appellate court.

11 COLONEL DECAMARA: And, I'd like to
12 just bring up another issue with regard to
13 appellate when we talked about the 412 and 513.

14 In my view, the other area where I
15 have concerns is when a court exercises their
16 Article 66 factual and legal insufficiency review
17 on a case that includes a victim.

18 And, if they do a factual and legal
19 insufficiency, one of the Article 6(b) rights is
20 the victim's right to be heard on sentencing.

21 And, we are seeing where cases are --
22 maybe it's not a 412 or 513 issue that's on

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1 trial, but a factual and legal insufficiency
2 either lessens the degree of guilt or negates the
3 degree of guilt in its entirety.

4 In cases where it lessens the degree
5 of guilt, the Article 66 court is required to do
6 a sentence reassessment.

7 If the victim has no notice of that
8 determination, there is no language that I see in
9 Article 6(b) that limits Article 6(b) to just
10 trial courts.

11 So, I believe that the victim should
12 have the right to be able to be heard on that
13 sentence reassessment if we are looking at 6(b)
14 since there are no limitations placed on how 6(b)
15 is read.

16 And 6(b) explicitly states that a
17 victim has a right to be heard on sentencing.

18 Thank you.

19 MR. STONE: As to the Air Force,
20 because you've been giving us examples of just
21 those problems on appeals, are you tracking the
22 numbers of victim cases on appeals either where

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1 they're allowing you to participate because the
2 victim lost below or the number of appeals where
3 you're not even given notice and you find out
4 later because the victim maybe won partially or
5 won completely below but now it's likely to be
6 reversed?

7 Do you -- are you keeping track of
8 numbers?

9 COLONEL DECAMARA: We have gone out to
10 our counsel and so we know what cases are on
11 appeal, but we don't get any notice.

12 I mean, the only time we have notice
13 is if we see -- if we are -- we are in the distro
14 list of opinions being published, but we do not
15 have any pleadings and we are not notified that
16 there is a filing.

17 MR. STONE: And, the courts are not
18 routinely granting Motions to Participate as
19 amicus or to intervene?

20 COLONEL DECAMARA: We have not been
21 successful in any of our intervention motions to
22 date and we have -- and so, and then the ones

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1 where we know that the Government is taking a
2 writ to CAAF to challenge a lower court ruling on
3 a motion, since we did not participate in those,
4 we did try to file amicus and our amicus briefs
5 were rejected.

6 MR. STONE: Before I move on, well, I
7 guess I should ask if the other Services have
8 examples like that that they can tell us about
9 that they know offhand?

10 COLONEL MCDONALD: We don't have any
11 examples.

12 MR. STONE: Okay. Are any of the
13 other Services keeping appellate numbers like
14 that? I guess they're probably not if they don't
15 have the examples.

16 I guess I will just ask if the Air
17 Force subsequent to this would supply us with the
18 case names and numbers of the cases and maybe
19 even a copy of the pleadings where they tried to
20 intervene so that, if on a later Panel, we wanted
21 to find out what it means when you are denied
22 participation whether those, either the

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1 intermediate or the high court thinks that
2 there's a different route you should be taking or
3 they don't think the victim should be allowed to
4 have a voice and that they don't -- they think
5 the case is over for purposes of 6(b) before it
6 gets to the appellate level, we'll at least know
7 what cases to ask the panelists before they show
8 up to please comment on. So, a list would really
9 be helpful.

10 COLONEL DECAMARA: We'll provide you
11 with our pleadings, sir.

12 CHAIR HOLTZMAN: Okay, thank you.

13 Well, just on that point, if you could
14 wave a magic wand, any one of you, what should we
15 recommend or what would you recommend us be done
16 with regard to this problem with appellate
17 courts?

18 COLONEL MCDONALD: Ma'am, I think
19 that, first of all, I think we're going to
20 stagnate at the trial court level if we don't
21 have access to the appellate level.

22 So, with that, what we really need are

1 processes and procedures in place that are
2 readily accessible. And, I don't know if that's
3 answering your question or not.

4 CHAIR HOLTZMAN: Well, being more
5 specific, should we recommend, one is, if we were
6 going to recommend to Congress, to the DoD, what
7 should be done here, what should we recommend?

8 Should we recommend new Rules of
9 Procedure for the appellate courts? Should we
10 recommend statutory changes? Should we recommend
11 other things?

12 I mean, this seems to be a serious
13 problem and we'd like your help and guidance in
14 this regard. I mean, I think probably we might
15 be able to figure it out ourselves, but if you've
16 already given it some thought, we would very much
17 welcome that.

18 COLONEL MCDONALD: My recommendation
19 would just be that, you know, it's that the 6(b)
20 clearly states that it also includes --

21 CHAIR HOLTZMAN: So, we should revise
22 6(b)?

1 COLONEL MCDONALD: Yes, ma'am, to make
2 it more clear --

3 CHAIR HOLTZMAN: Everybody agree with
4 that?

5 COLONEL MCDONALD: -- beyond the trial
6 level that --

7 COLONEL DECAMARA: I just, you know,
8 like I said in my opening comments, I don't think
9 there was ever an intention to deny it. I just
10 don't think, you know, we're just at the point
11 where our representation has matured so that the
12 people who we represented and we thought, you
13 know, a lot of times it might be that our counsel
14 are the ones that are fighting for those rights
15 at the trial court.

16 We're just now seeing that those are
17 hitting the appellate court. So, I think this is
18 where the light bulb, you know, has come on that
19 there might be a gap.

20 And, I agree that 6(b) where it is
21 explicit that it pertains to post-trial or post-
22 conviction or that they apply equally to 1209.

1 I mean, I think we have a framework
2 with RMC 1209 because we specifically say that's
3 when a conviction is final. And so, I think that
4 provides some framework as opposed to an
5 arbitrary line in the sand that says the victim's
6 6(b) rights end in a certain place.

7 CHAIR HOLTZMAN: So, you're saying,
8 let me boil that down to where it's a one
9 syllable so I can get it.

10 6(b) should be changed and 1209 should
11 be changed? What are you recommending?

12 COLONEL DECAMARA: 6b, ma'am.

13 CHAIR HOLTZMAN: That's all?

14 COLONEL DECAMARA: Yes, ma'am.

15 CHAIR HOLTZMAN: Okay. So everybody
16 uniformly and, Ms. Cothrel, do you agree with
17 that, too?

18 MS. COTHREL: Yes, ma'am. And, just
19 to tack on, if there are any recommendations to
20 make it clear that it applies to the Coast Guard
21 as well.

22 CHAIR HOLTZMAN: Oh, okay, great. We

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1 get that one, thank you very much.

2 Just a question, again, on the
3 satisfaction issue. So, I know not everybody's a
4 100 percent, but do you have a feel for what the
5 -- and maybe this is kind of asking the same
6 question that Mr. Taylor asked in a different way
7 -- do you have any feel for where the level of
8 dissatisfaction is with regard to -- it's
9 obviously not great, the number of people who are
10 dissatisfied, but do you have a sense of where
11 the dissatisfaction is?

12 Is it because they had greater
13 expectations, the victim, of what was going to
14 happen? Or is it because of failing with regard
15 to training? Or other characteristics of the
16 special victims' counsel?

17 Do you have -- if we were to dig down
18 more deeply, would we have better sense of, I get
19 it that this is a great and successful program
20 and congratulations to all the Services on it,
21 but if we dug down a little bit more deeply,
22 could we get a sense of what's -- where it's

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1 going wrong, if it is?

2 I mean, where there is this
3 dissatisfaction? I mean, obviously, there are
4 some people that, you know, haven't been fully
5 satisfied and so, do you have a better sense, a
6 way of getting at it?

7 CAPTAIN FISCHER-ANDERSON: Ma'am, I
8 would tell you that I think the dissatisfaction
9 sometimes comes just in the -- in the fact that
10 the case doesn't get forwarded. And that's --

11 CHAIR HOLTZMAN: Okay.

12 CAPTAIN FISCHER-ANDERSON: -- you
13 know, we inherit the facts we inherit. And, if
14 we can help the victims understand the weakness
15 in the case and manage expectations up front, and
16 that's where I think the programs have been so
17 wildly successful is being able to educate and
18 explain to the victims up front, you know, here
19 are your options and if you do this, this could
20 happen. And, if you don't do this, it may not
21 get prosecuted.

22 But, that's where it is. They still

1 don't understand sometimes why their case didn't
2 see a courtroom.

3 CHAIR HOLTZMAN: Okay. So, that's
4 what you're sense is of the biggest
5 dissatisfaction that people have? It's not
6 really with the program, it's with the criminal
7 justice system?

8 CAPTAIN FISCHER-ANDERSON: Exactly.

9 CHAIR HOLTZMAN: Requires a certain
10 level of evidence, we understand that.

11 I see other people nodding their
12 heads.

13 COLONEL MCDONALD: I would agree with
14 that, too, ma'am.

15 And, I would also say, you know, just
16 based on the weekly feedback that we get, their
17 satisfied with the military justice process and
18 they say, by the way, can you help me with my
19 divorce or can you help me with a civil suit?

20 So, I mean, you know, so those are
21 things that, well, you can't? Well, I don't like
22 that.

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1 So, it's not a dissatisfaction with
2 what we have in place, it's just when they want
3 to go beyond that and we have to tell them that
4 that's really beyond our charter. But, I'd
5 consider that necessarily a negative.

6 CHAIR HOLTZMAN: Okay.

7 The other question I had is about the
8 percentage of people who are not taking advantage
9 of the Special Victims Counsel Program.

10 Do you have any statistics on that?
11 Should you be keeping track of it? I mean, and
12 how could you do that? I mean, there are people
13 who are filing --

14 I take it of the unrestricted reports
15 that are filed, are you getting a 100 percent
16 participation in the Special Victims Program?
17 No? Do you know why that's the case?

18 CAPTAIN FISCHER-ANDERSON: Or it may
19 be for a shorter amount of time. The victim may
20 simply be interested in an expedited transfer.

21 In other words --

22 CHAIR HOLTZMAN: Okay.

1 CAPTAIN FISCHER-ANDERSON: -- and so
2 then that ends and they're satisfied, they wanted
3 to go away there.

4 CHAIR HOLTZMAN: Right. But, of --
5 I'm not talking about the length of time, but
6 what -- could you give a percentage of the people
7 who are making -- of the reported cases where
8 there's a refusal to ask for a special victims'
9 counsel, do we have any figures on that?

10 COLONEL DECAMARA: We don't own those
11 numbers. That's owned by the SARC and the SHARP
12 Programs. And so, and then there's family
13 advocacy. And now with the DoD civilians,
14 there's not necessarily a -- you know, we don't -
15 - I don't know that EEO is tracking those kind of
16 numbers as well.

17 So, I think by us, you know, it's not
18 a case where immediately upon a report, either
19 restricted or unrestricted that we're just given
20 that by the SARC and say this person might come
21 to you.

22 The only time we know that a person

1 has made a report is when they do come and ask
2 for an SVC is when we do come.

3 I would say, from the people who, or
4 when we tried to find out from SARCs getting
5 anecdotal is, you know, sexual assault covers the
6 gamut from penetration to touching and sometimes
7 in those touching cases, they don't feel like
8 they need the representation for what -- there's
9 some that do, but I think when you look at the
10 spectrum of what 120 covers, that's what we see.

11 CHAIR HOLTZMAN: So, I guess my
12 question is, should you be getting those numbers?
13 You said the SARCs have them, but should you be
14 getting the numbers about -- I mean, maybe we can
15 separate out the non-penetration cases from
16 penetration cases, but it would be interesting to
17 know how many people are not taking advantage,
18 victims are not taking advantage of this program
19 with regard to the most serious sexual assault
20 cases.

21 COLONEL DECAMARA: It would, but not
22 everyone is eligible who go to a SARC. So, for

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1 instance, at least in our program, we don't
2 represent for pre-Service sexual assault because
3 the military doesn't have any jurisdiction over
4 the accused.

5 And so, if members comes in and
6 requests SVC services for a sexual assault that
7 happened to them when they were six by an uncle,
8 but that's getting loaded into DSAID.

9 CHAIR HOLTZMAN: I see.

10 COLONEL DECAMARA: That's their
11 numbers. Additionally, maybe it is dependent
12 spouse on dependent spouse. We don't have
13 jurisdiction over the accused in that, but that
14 dependent spouse would still be loaded in DSAID.

15 So, to pair back the numbers becomes
16 more complicated than just numbers in DSAID
17 versus who has an SVC.

18 CHAIR HOLTZMAN: But I think somebody
19 should be looking at that because it'd be a good
20 idea to know, you know, what percentage of those
21 people who are eligible are refusing this.

22 And then, if there is a big number, do

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1 we have enough outreach? Have we explained, are
2 those numbers getting better? Are more people
3 taking advantage of the program? That's my only
4 concern.

5 I don't think I have any other
6 questions at the moment. But, thank you again
7 very, very much. We really appreciate --

8 MR. STONE: I have a comment on your
9 last suggestion. I actually wonder, and I will
10 say this out loud so that maybe even our own
11 Staff can consider whether where we're involved
12 with numbers of defendants who are not Service
13 connected, maybe this should just be a category
14 of the numbers where they say, not Service
15 connected defendants is 20 or 30 or 50 so that
16 they capture -- they don't throw away that data,
17 they just qualify it so we can see that it's
18 going on perhaps even on base or on a ship.

19 So, I just think that -- I think it
20 was a very useful point and I just think it means
21 that maybe we should ask in considering how they
22 capture numbers simply to note that category.

1 I also have, very quickly, a semantic
2 question for a minute on three words that I just
3 wondered if the panel, any members of the panel,
4 have any reaction to them.

5 The first is, I know some of you use
6 VLCs and some use SVCs, is there any movement or
7 thought about adopting one category across the
8 Services that you'd like?

9 That's if you want to comment on that.

10 And, the other thing is, I have heard
11 from the panel today two other terms, interveners
12 and amicus parties used to describe what the SVCs
13 and the victims are trying to do.

14 I, myself, don't think either of them
15 are apropos. I don't think victims are a friend
16 of the court and that's why they're involved.

17 And, I also don't think their
18 intervenors, if not for them, there wouldn't have
19 been a criminal case in the first place.

20 So, it seems to me, it's even possible
21 that's the reason the courts don't want to give
22 them that status because they don't exactly fit

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1 into that status.

2 And, I wonder if any of you either
3 agree with me, disagree, have your own thoughts
4 and want to comment on either of those concerns I
5 have about amicus and intervening.

6 COLONEL DECAMARA: We would agree with
7 you that -- and we believe that we're not
8 appropriate. There's actually federal case law
9 that says that if a person is at issue of the
10 subject of the appeal, that they, by virtue,
11 cannot be amicus.

12 And, that was relied upon actually be
13 appellate defense to get our amicus briefs
14 denied, is because they actually said, well, they
15 have an issue here. So, they really can't file
16 an amicus.

17 However, you know, and we chose the
18 word intervenor just from our old civ pro
19 practices for lack of a better because in some of
20 these cases, what is a real party in interest?
21 We'd like to call ourselves a real party in
22 interest, but there is no -- we found no

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1 authority for that.

2 And so we, because we recognize that
3 there are two parties as Judge Jones brought up
4 earlier, the prosecution and defense, to
5 recognize that we believe it's more significant
6 than an amicus because it is our issue and it's
7 our client's issue that is being debated, that
8 amicus is not appropriate.

9 But, to come up with a real party in
10 interest type filing, we just chose to use the
11 Motion to Intervene for lack of any other
12 guidance or authority.

13 MR. STONE: And, just a last thought,
14 could you provide us with the briefing of -- that
15 you had from both sides on that? That'd be very
16 interesting for us.

17 COLONEL DECAMARA: Yes, definitely.
18 I have that as a note to give you the filings.

19 CHAIR HOLTZMAN: May I ask just one
20 final question about this? Has anybody drafted
21 any language to change 6(b)? I'm into that big
22 time, right now.

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1 COLONEL DECAMARA: As I stated, ma'am,
2 we all like to work together, so I'm sure that we
3 can take that on.

4 COLONEL MCDONALD: We like to find
5 reasons to get together.

6 CHAIR HOLTZMAN: Okay, great. Well,
7 if you could do it really quickly -- yes, right -
8 - because if, frankly, if this is something we
9 could get some suggestion on, I don't know how
10 the other Members of the Panel feel, but I could
11 easily see sending this over to -- as a
12 recommendation and maybe this could get into the
13 next NDAA that's going to be voted on before the
14 end of April.

15 So, this is our last meeting so if you
16 get something to us, maybe we could consider it.

17 Thank you, again, very, very much for
18 the wonderful work -- I'm sorry, Colonel, did you
19 --

20 COLONEL MAROTTA: If I might, I did
21 want to address why the Army's scheduled a five-
22 day course in a four-day week.

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1 It was not our normally scheduled
2 course. So we, in the prior years, we had our
3 certification course on either side of the PCS,
4 one in May and one in August and our child course
5 was, which is a four-day course was that week in
6 January.

7 But, because of demand from the field
8 for a certification course, the SJAs didn't want
9 to wait until May and there were none scheduled,
10 we decided to utilize that four-day and for the
11 certification course there and slide our child
12 course into earlier in the fall.

13 And then, what we did was we
14 structured it so it was still the same number of
15 training hours, we just made the days longer as
16 we did working lunches and instead of a half day
17 on Friday, we went all the way to the end of the
18 day.

19 So, that was the thinking on that.

20 VADM(R) TRACEY: Thank you.

21 CHAIR HOLTZMAN: Thank you, Colonel.

22 Thanks everybody for the great job.

1 And, please, give us 6b language.

2 Thanks.

3 We're adjourned for an hour for lunch.

4 (Whereupon, the above-entitled matter
5 went off the record at 12:23 p.m. and resumed at
6 1:36 p.m.)

7 CHAIR HOLTZMAN: Thank you very much,
8 we're ready to proceed -- I'm sorry we're a
9 little late -- with the MCIO overview and
10 perspective of the SVIP policies, practices and
11 procedures.

12 Because we're late and we want to --
13 some of us have a train to catch, I'm going to
14 impose on everybody including the chair a five-
15 minute rule for questions so that we can move
16 this along.

17 We'll proceed in the order that is
18 listed on my agenda which I have no idea how the
19 staff compiled this, so please don't take it
20 personally.

21 We'll begin with Mr. Guy Surian, U.S.
22 Army Department Deputy Chief of Investigative

1 Operations, Investigative Policy and Criminal
2 Intelligence. Mr. Surian, thank you for being
3 here and we look forward to your testimony.

4 MR. SURIAN: Thank you, ma'am. Good
5 afternoon. I am Guy Surian with the Army CID.
6 I'd like to thank you for this opportunity to
7 speak with you today on this very important
8 topic.

9 I want to point out that I'm
10 accompanied by a senior special agent T.L.
11 Williams right behind me. She's my chief of
12 policy, investigative policy.

13 CID takes sexual assaults extremely
14 seriously and we have addressed the investigation
15 of sexual assaults with enhanced training and
16 investigative procedures.

17 In regards to your question about
18 innovative steps, CID has taken steps to improve
19 our response to sexual assault since 2005.

20 In 2009, CID and the U.S. Army Military
21 Police School, developed an 80-hour special
22 victims investigation course which implemented

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1 the forensic experiential trauma interview
2 technique when interviewing victims of sexual
3 assault and other violent crimes.

4 It focuses on trauma-informed
5 interviews based on developments in neurobiology
6 and is the core for our trauma-informed
7 investigative practices.

8 The course has continued to evolve
9 over time and has input from all the services,
10 DoD, IG and the SAPRO.

11 We have published and routinely update
12 a sexual assault investigative pamphlet to assist
13 agents with their investigations.

14 We have taken the mandate to have an
15 SVIP capability teams to mean the fielding of
16 trained and certified agents at every Army post
17 where there is a CID office.

18 We now have over 600 certified and
19 trained agents at all Army installations
20 worldwide covered by CID.

21 CID has incorporated the GAO
22 recommendation for early CID and prosecutor

1 coordination into our policy.

2 CID conducts frequent sexual assault
3 awareness briefings to commanders identifying
4 trends and patterns to assist in prevention.

5 CID has instituted an intensive case
6 review and quality assurance program to ensure
7 that cases are being thoroughly investigated.

8 And the CID has required their agents
9 to update and brief the victims or their
10 designated representatives on the status of an
11 investigation at least every 30 days.

12 In regards to training, we feel our
13 training of the right agents is adequate to fully
14 prepare them to investigate sexual assault cases.

15 All CID agents attend 15-week basic
16 CID course that focuses on felony-level
17 investigations including all violent crime.

18 In that basic course the agents
19 receive 16 hours of classroom instruction on
20 sexual assault, as well as practical exercises
21 concerning sexual assault investigations taught
22 by the same instructors as our special victim

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1 investigation course.

2 They get about 125 hours of crime
3 scene instruction and another 200 hours in
4 criminalistics which includes evidence
5 identification, processing, crime scene
6 processing, interviews and interrogations.

7 For CID agents to become selected for
8 assignment to an SVIP capability team they must
9 be fully accredited, have at least one year of
10 investigative experience, be an agent in good
11 standing, and complete the 80-hour special victim
12 investigation course.

13 To be a senior certified investigator
14 assigned to an SVIP capability team in addition
15 to attending the special victim investigation
16 course the agent must complete the DoD child
17 abuse prevention, intervention and treatment
18 course which includes child forensic interview
19 training, the DoD domestic violence intervention
20 training and the MP school's advanced forensic
21 training.

22 For continuing education for our 30

1 civilian sexual assault investigators, we have
2 them attend the annual Ending Violence Against
3 Women International Conference.

4 All the agents receive annual sexual
5 assault refresher training. Last year it focused
6 on male sexual assault victims as highlighted in
7 the GAO report.

8 Since there had been increased
9 interest in retaliation and reprisal, this year's
10 annual refresher training is focused on that
11 topic in order to enhance our agents' knowledge
12 in the investigative approach to those crimes.

13 In regards to investigative
14 independence the Army has organized CID so that
15 it's a so-called stovepipe element that doesn't
16 report nor is subordinate to any local or
17 regional Army organization.

18 CID agents assigned to the SVIP report
19 directly to the CID supervisors up the chain of
20 command to the commanding general who reports to
21 the Chief of Staff of the Army and the Secretary
22 of the Army.

1 Because of public law resulting from
2 DoD implementing instructions and policies, and
3 inspections by GAO and DoD IG we are concerned
4 that there are perceptions that CID agents
5 assigned to the SVIP are working for the
6 prosecution.

7 To counter that perception we
8 emphasize at every opportunity and at every forum
9 that CID is a neutral, fact-finding,
10 investigative unit dedicated to the diligent
11 pursuit of the truth no matter if the facts
12 uncovered benefit the alleged victim or the
13 alleged offender.

14 In regards to conflicts, there are on
15 occasion conflicts or disagreements between the
16 agents and the prosecutors.

17 The Office of the Staff Judge Advocate
18 and CID have recently signed a memorandum of
19 agreement that establishes procedures to process
20 such disagreements.

21 The process starts with the
22 supervisors at the lowest level and elevates if

1 needed to the convening authority's SJA.

2 In regards to special victim councils,
3 we consider the introduction of the special
4 victim council to still be a work in progress in
5 some respects.

6 The agents have been provided
7 extensive guidance on how to work with the SVC.
8 The agent has the responsibility of notifying the
9 victim of their right to an SVC representation.

10 The victim's SVC is allowed to be
11 present during the interviews. The requirement
12 to notify the SVC prior to interviewing the
13 victim along with the SVC's primary duty to best
14 represent their client's interests have on
15 occasion been problematic.

16 We have an example recently in which
17 two soldiers both arrived at a CID office and
18 both claimed to have been sexually assaulted. So
19 we had to notify two SVCs.

20 After the victims had talked to their
21 SVCs they declined to make any statements to the
22 CID which was problematic.

1 Thank you again for allowing me to
2 speak to the panel. I stand ready to answer any
3 of your questions, ma'am.

4 CHAIR HOLTZMAN: Thank you very much,
5 sir. We very much appreciate your testimony.

6 Our next presenter is Mr. Jeremy
7 Gauthier, U.S. Navy, Deputy Assistant Director,
8 Criminal Investigations and Operations
9 Directorate, NCIS Headquarters. I hope I
10 pronounced your name correctly.

11 MR. GAUTHIER: Yes, ma'am.

12 CHAIR HOLTZMAN: Thank you. Welcome
13 and we look forward to your testimony.

14 MR. GAUTHIER: Madam Chairwoman,
15 distinguished members, thank you for the
16 opportunity to address the SVIP and its
17 relationship to NCIS and how we've incorporated.

18 Overall I would say the advent of the
19 SVIP concept and protocol have been extremely
20 positive for us as an organization.

21 NCIS has always maintained a positive
22 working relationship with Navy and Marine Corps

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1 trial counsel.

2 There are many nuances to the changes
3 of Article 120 and, as such, maintaining close
4 and collaborative working relationships is
5 important to ensure that those nuances are
6 understood by investigators and incorporated into
7 our investigative process.

8 While we may experience differences of
9 opinion on the need for certain investigative
10 steps, we have always maintained our independence
11 in ensuring we exploit all investigative
12 techniques to seek the truth.

13 NCIS maintains a team of dedicated
14 family and sexual violence billeted personnel in
15 our fleet concentration areas.

16 In addition, we maintain a presence of
17 specially trained investigators in all Navy and
18 Marine Corps locations.

19 We train any agent or supervisor who
20 could respond to, investigate, or supervise
21 sexual assault investigations.

22 We're at approximately 50 percent of

1 our entire agent corps that's been trained. We
2 naturally have it projected out through our FY
3 '17 training cycle.

4 We previously established the family
5 sexual violence program at our headquarters
6 level, which is one of the portfolios that falls
7 under the Criminal Investigations Directorate.

8 And the program is responsible for
9 development and training, curriculum reviews and
10 continued SVIP stakeholder engagement.

11 The program reviews investigations
12 with a focus on trends as well, and allows us to
13 engage early in terms of investigative trends
14 that we're seeing both on the positive and on the
15 negative side that we can address.

16 They also track all the changes in
17 congressional mandates and develop policy to
18 ensure all field elements are incorporating any
19 changes into investigative protocol.

20 In collaboration with special victim
21 prosecutors and all SVIP members we continuously
22 evaluate our training curriculum and look for

1 ways to improve.

2 Navy and Marine Corps special victim
3 prosecutors attend our advanced family training
4 courses which has been very beneficial for both
5 parties in working together. And part of that
6 involves the collaborative process of processing
7 scenes, conducting interviews, working through a
8 case, and having that knowledge together in many
9 instances and trying to focus on bringing those
10 special victim prosecutors and agents from those
11 offices together to attend the training together.

12 All SVIP members also provide
13 instruction to each of our advanced sexual
14 assault courses to include the victim legal
15 counsel as well.

16 While our investigators are adequately
17 trained to investigate sexual assault cases, we
18 continue to make adjustments as necessary.

19 We are working to augment our courses
20 with specific interrogation training above and
21 beyond that obtained through basic investigator
22 training.

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1 The special victim counsel program has
2 come a long way since its inception. And the
3 Navy and Marine Corps ladies that spoke earlier,
4 we have an outstanding working relationship with
5 them and I would certainly say that they've done
6 a lot for moving the program where it is today.

7 The advent of this service has had an
8 impact on our investigations.

9 The coordination required to ensure
10 all victim service personnel can attend
11 interviews oftentimes delays the interview
12 process.

13 Collateral misconduct in service can
14 impact victim disclosure and evidence collection
15 concerns.

16 Often that creates a challenge to
17 forming a trustful relationship with the victim
18 throughout the course of the investigation.

19 In some instances the victim has
20 elected not to meet with NCIS at all which
21 negates our ability to explain the investigative
22 process and ensure the victim is making a fully

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1 informed decision as to their level of
2 participation.

3 We have maintained positive
4 relationships, engaged early and often, and in
5 most instances can quickly address the issues.

6 And barring that I look forward to
7 your question.

8 CHAIR HOLTZMAN: Thank you very much,
9 Mr. Gauthier. Our next presenter will be Mr.
10 Kevin Poorman, U.S. Air Force, Associate
11 Director, Criminal Headquarters, Air Force Office
12 of Special Victims Counsel Investigations. Mr.
13 Poorman, welcome and we look forward to your
14 testimony.

15 MR. POORMAN: Thank you, Madam
16 Chairman and panel members.

17 As my colleagues have done in
18 consideration of the time limit, I'll briefly
19 provide a summary of over five topics that in
20 consultation with staff we thought might be of
21 particular interest to the panel.

22 Prosecution relationships, our

1 relationships with the attorneys, the integration
2 of the SVC program into investigations, steps
3 we've taken to improve our processes and some of
4 the training our investigators are getting.

5 As to investigators maintaining
6 independence from prosecution to ensure objective
7 and thorough investigations, we don't see this as
8 a problem for us.

9 We have a longstanding history of
10 statutory authority pertaining to opening and
11 conducting investigations independent of
12 commands' involvement.

13 Certainly working closely with Air
14 Force prosecutors there are occasions in
15 investigations where there will be discussions
16 and even debate about what investigative actions
17 are needed, or perhaps the sequencing of those
18 actions.

19 But in the end our investigators
20 decide what the scope and duration of our
21 investigations consist of.

22 While we are certainly attending to

1 those concerns, the prosecution, certainly as
2 they relate to the legal aspects of
3 investigations, we also hold firmly to our
4 responsibility to collect information and report
5 it that may serve in some cases to raise doubt or
6 even to exonerate those accused.

7 As to relationships between OSI agents
8 and government attorneys, we hear from our
9 investigators working in the field that these
10 relationships are in general collaborative and
11 effective.

12 Our headquarters IG team regularly do
13 field inspections and they report that our
14 prosecutor and OSI relationships in the field are
15 good.

16 Specific to sexual assault
17 investigations, OSI has assigned a senior
18 investigator to oversee and resolve issues
19 related to special victim investigation and
20 prosecution matters.

21 This agent has regular contact with
22 Air Force senior trial counsel personnel who

1 prosecute sexual assault cases to help resolve
2 any concerns or issues that involve ongoing
3 investigations in the field.

4 We believe OSI agents and Air Force
5 attorneys training together also help facilitate
6 collaborative relationships and communication.

7 Our agents attend the Air Force judge
8 advocates advanced sexual assault litigation
9 course.

10 In turn, 6 - 20 percent of every class
11 of OSI agents attending the special sex crimes
12 investigations course that we offer, 6 - 20
13 percent are Air Force attorneys that participate
14 in that two-week course with us.

15 As to the special victims counsel
16 program, the Air Force's SVC pilot program rolled
17 out in January of 2013. So we have a little over
18 three years' experience working with our
19 counterparts in the SVC community.

20 Certainly as with any new and evolving
21 service similar to those provided by SVCs, there
22 will be impact.

1 At rollout there was the impact to
2 investigators and SVCs in trying to understand
3 exactly what SVC services to provide.

4 There was the impact of investigators
5 trying to understand how SVC services differ from
6 ADC services, area defense counsel services.

7 There was some confusion about what
8 protocol should be with regard to SVCs'
9 involvement in the investigation phase such as,
10 whether SVC should be allowed to sit in during
11 victim interviews, which we do allow.

12 There has been impact from trying to
13 adjust to the evolution of services SVCs provide
14 from in the beginning advisory services
15 pertaining to how the military justice system
16 works to now client advocacy services.

17 Early in the rollout many
18 investigators were frustrated with attempts to
19 contact the few SVCs that we had, and in some
20 instances obtaining timely responses.

21 This concern has largely waned with
22 the arrival of more SVCs, the establishment of

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1 intermediate SVC supervisors in the field, as
2 well as SVCs getting cell phones so that we could
3 contact them, facilitate exchanges of information
4 during non-duty hours.

5 These issues were to be expected. We
6 had similar challenges with the arrival of the
7 sexual assault response coordinator program, the
8 SARC program.

9 However, together the growth and
10 maturing of the SVC program, as well as the
11 arrival of specific guidance about when SVCs
12 would be contacted, agents working relationships
13 with SVCs have largely normalized.

14 Having senior members of the SVC
15 program provide a two-hour block of training and
16 our advanced course during our advanced training
17 has been also very helpful just in understanding
18 each other's roles and each other's positions on
19 issues.

20 We have published policy about working
21 with SVCs. We are revising our current policy in
22 consult with the DoD IG as a result of the need

1 to notify at the front end of an investigation
2 and suspend interviews until such time as they
3 have the opportunity to talk with an SVC.

4 We're still trying to resolve with DoD
5 IG a definition for exigent circumstances so that
6 we may understand when the exception may exist
7 where an investigator may ask questions before an
8 SVC consultation should occur.

9 Most of that is settling into a safety
10 issue with safety to the community, safety to the
11 victim would be -- in most instances we're going
12 to defer and allow that consultation to occur
13 because in many instances our reports are older
14 and there is very little in the way of loss of
15 perishable information or evidence that would
16 occur in waiting.

17 Regarding innovative steps we've taken
18 to improve our response and investigate sexual
19 assault complaints, we have made many over the
20 last years.

21 We record all subject interviews. We
22 open on all sexual assaults falling within our

1 jurisdiction. We stood up an advanced sexual
2 assault course which introduces a variety of
3 advanced techniques such as cognitive
4 interviewing and the need for investigators to
5 better appreciate the cognitive biases they may
6 have in investigations and attend to those.

7 In considering research indicating
8 that a percentage of sexual assault perpetrators
9 and acquaintance cases are serial offenders, we
10 have moved to require investigators to look as a
11 matter of routine protocol into whether the
12 accused may have engaged in similar behaviors and
13 crimes in the past with acquaintances or romantic
14 partners.

15 More and more we are seeing cases now
16 with multiple victims.

17 We've published policy on how and when
18 to inform SVCs on information and investigation
19 so that they can better do their jobs.

20 Our initiation of case quality reviews
21 at headquarters has also helped us improve and
22 sustain the quality of our cases.

1 As verified in the DoD IG 2015
2 assessment of the MCIO investigations in which 99
3 percent of our investigations collectively were
4 found to be -- that the investigations were
5 sufficient.

6 In the last two years we've also
7 improved the median timeliness of our
8 investigations from about 130 days on median to
9 75 days on median. And we've sustained that
10 median 75-day turnaround time for over a year
11 now.

12 As to the last issue I wanted to
13 address regarding whether training provided to
14 investigators is adequate, we believe that it
15 very much is.

16 OSI agents receive extensive training
17 in running a wide variety of criminal
18 investigations during their 17 weeks of basic
19 investigative training at the Federal Law
20 Enforcement Training Center in Georgia.

21 In addition, through our eight-day
22 sexual assault investigators training program,

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1 which was stood up in 2012, we've trained over
2 300 investigators and 80 Air Force JAGs.

3 Finally, assuming that the quality of
4 our sexual assault cases reflect the quality of
5 training agents receive to conduct these cases,
6 DoD IG had determined again in March of 2015
7 through a random selection of 550 MCIO cases
8 collectively that 99 percent of these were
9 conducted in investigative standards.

10 And this was an improvement over the
11 11 percent that we had as insufficient in the
12 previous assessment done in 2013.

13 I thank the panel members for their
14 time and attention and I look forward to
15 answering your questions.

16 CHAIR HOLTZMAN: Thank you very much,
17 Mr. Poorman. Our next presenter is Ms. Beverly
18 Vogel.

19 MR. BUCHANAN: Actually, I'm the
20 substantial equivalent.

21 CHAIR HOLTZMAN: I'm sorry. Great.

22 MR. BUCHANAN: My name's John

1 Buchanan, Madam Chairman. I'm the Deputy
2 Director for Coast Guard Investigative Services.

3 CHAIR HOLTZMAN: Welcome.

4 MR. BUCHANAN: Thank you.

5 CHAIR HOLTZMAN: We look forward to
6 your testimony.

7 MR. BUCHANAN: Thank you very much.
8 Thanks for the opportunity to be here.

9 Instead of kind of running through a
10 little more verbatim, I'm going to use my written
11 comments as kind of an outline and just try to
12 touch on some high points in the interest of
13 time.

14 Starting with the independence
15 question. CGIS special agents do confer with
16 servicing legal officers as needed during the
17 investigative process.

18 However, as we have heard from our
19 other sister agencies CGIS special agents
20 continue to maintain their independence from the
21 prosecution while conducting their thorough
22 investigations into sex assault and any other

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1 crime for that matter.

2 CGIS focuses on following leads
3 regardless of where they take us to their logical
4 conclusion.

5 And we're committed to establishing
6 the facts to the greatest extent possible.

7 Moving onto the impact that the SVC
8 program may have had on investigations, on
9 occasion as we have heard previously, our special
10 agents who were investigating sex assaults have
11 notified CGIS headquarters that there have been
12 some conflicts with SVCs while attempting to
13 interview victims, to contact victims, to arrange
14 an interview or to gather potential evidence.

15 These conflicts have generally
16 involved kind of the mechanics of the process if
17 you will - timing, procedures during interviews
18 and obtaining electronic evidence.

19 While the SVC program is relatively
20 new to the Coast Guard, CGIS headquarters
21 continues to work closely with the chief of the
22 Office of Member Advocacy. I speak with Christa

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1 Cothrel on a fairly regular basis to resolve any
2 differences that we have.

3 Suffice it to say I think those are
4 minimal in nature at this point certainly.

5 We also of course want to ensure
6 policy and procedure related to victims' rights
7 and the judicial process are addressed as
8 appropriate.

9 Victims of sex assault have requested
10 SVCs prior to investigative interviews, and
11 agents have made accommodations to accomplish
12 that.

13 The CGIS sex crimes program manager
14 has also heard -- that is Ms. Vogel, by the way -
15 - have heard from CGIS special agents who have
16 reported very positive experiences working with
17 SVCs during criminal investigations, and have
18 seen value in the program.

19 We do recognize and appreciate the
20 value added.

21 However, I would be remiss if I did
22 not discuss what I view as a significant obstacle

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1 presented to CGIS by the SVC program.

2 While the goals of the program are
3 laudable, victims' rights are critical factor in
4 the pursuit of justice, it has in my view created
5 an extra barrier for criminal investigators.

6 As you know, victims of sex assault
7 have suffered trauma. They are often fearful and
8 may be understandably hesitant to relate what
9 they have been through.

10 The investigator's primary tool in
11 this difficult process is trust. The agent must
12 establish a level of trust with the victim in
13 order to be successful in obtaining all the
14 relevant facts.

15 Some Coast Guard victims are quite
16 young and may have been involved in collateral
17 misconduct.

18 Being told by the CGIS agent or
19 someone else at the very beginning of this
20 painful process, quote, "you are entitled to an
21 attorney to represent you" must have an ominous
22 and even confusing impact on the victim.

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1 We believe that developing the all-
2 important trusting relationship between the agent
3 and the victim can be hindered as a result.

4 After all, anyone that watches
5 television knows that only those folks who are
6 facing serious trouble need a lawyer to represent
7 them.

8 Our agents make every effort to
9 succeed in building trust, whether an SVC is
10 requested or not.

11 And we do have a unique appreciation
12 for the high price that all victims of violence
13 pay.

14 We are not in a position to
15 objectively measure what the effect of the SVC
16 process as it is currently administered is.

17 Is there an effect on the reporting of
18 sex crimes that could be measured perhaps?

19 Is there any effect on the victim's
20 willingness to cooperate fully? Are victim's
21 decisions about making restricted or unrestricted
22 reports affected by the things that I've

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1 discussed?

2 We don't know the answers to those
3 questions, but we would certainly like to.

4 And we do of course recognize there's
5 an overlap here between SVC and the collateral
6 misconduct.

7 We're in a complicated business and we
8 are constantly on the lookout for ways to improve
9 what we do.

10 Answers to the questions that I
11 mentioned above would help us understand reality
12 and also help us become more effective.

13 I'll finally move onto a couple of
14 comments about some things that we are doing
15 relative to creating an even more capable agent
16 cadre than we already have.

17 Many of the trainings that have been
18 mentioned here already we participate in
19 including the Army's special victims unit
20 investigations course, which I think is now
21 called the special victim capability course.

22 So, we believe we have shown our

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1 commitment and continue to show our commitment in
2 that regard.

3 We do have one program in particular
4 that I wanted to highlight, however.

5 In 2013 we created the embedded agent
6 program which allows CGIS agents to shadow sex
7 crimes and family violence investigators from
8 large metropolitan police departments across the
9 country who have notable reputations for
10 conducting thorough investigations.

11 Currently we're working with five
12 agencies in that regard. These would be Austin,
13 Boston, Philadelphia, Phoenix and Los Angeles
14 PDs.

15 We've found that that's been a very
16 successful program for us in raising the level of
17 skill that our agents have.

18 We're always involved in looking for
19 ways to improve what we do, provide even better
20 service to our victims and to the Coast Guard.
21 And that's just one example.

22 I think in the interest of time I'll

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1 conclude my remarks there and welcome any
2 questions. Thank you for your attention.

3 JUDGE JONES: Thank you very much. In
4 the absence of the chair I'm going to ask you,
5 Mr. Stone, if you would like to begin with any
6 questions?

7 MR. STONE: Yes, I would. The first
8 question I have, it's a comment and I'd
9 appreciate a response from all of you.

10 It looks to me from your titles and
11 your dress that you are all civilian employees.
12 And I guess my question is I'm assuming -- maybe
13 I'm wrong -- that a large percentage, if not all
14 of the investigators in your services are also
15 civilian employees.

16 Would you tell me what percentage
17 there are among the different services if I'm
18 right? Or if I'm taking the wrong approach?

19 MR. SURIAN: You're a bit incorrect,
20 sir. For the Army, approximately probably 800 of
21 our agents are military. The other 200 agents
22 are civilian.

1 MR. GAUTHIER: So for NCIS we're all
2 civilians. However, we do have a small cadre of
3 Marines, active duty Marines that are assigned to
4 NCIS on an operational basis at Navy Marine
5 bases.

6 MR. POORMAN: About 20 percent of our
7 investigators are civilian. The rest are
8 military.

9 MR. BUCHANAN: We have actually four
10 categories of agents, Mr. Stone. We have
11 civilian agents. We have Reserve agents. We
12 have enlisted and chief warrant officer agents.
13 We have a small number of officer agents, and of
14 course civilians.

15 Our percentages are -- and I'm
16 guessing here. I can give you the absolute
17 numbers later if you would like.

18 MR. STONE: Okay. Well, no, let me
19 tell you why I asked the question and why I'd
20 like a response. Maybe I should have said
21 investigators of sexual assault cases.

22 You've all admirably told us how you

1 train your agents, and how this is -- and we
2 believe it is a somewhat different field than
3 investigating a burglary or a robbery,
4 particularly because the victims often have an
5 emotional reaction and it may be involving a
6 person they're intimate with. There's any number
7 of things that change it from the ordinary crime.

8 And I'm kind of concerned, frankly,
9 and therefore I'd like your reactions to it about
10 the fact that I have had the experience, and even
11 I just heard that our staff director, his tour is
12 up here and he's going to be rotated.

13 And I frankly know that in the private
14 sector, because I'm a victims counsel in private
15 sector, that the agents that we love to work with
16 are people who have 5, 10, 15 years' worth of
17 experience.

18 And they really, they get in a second
19 what a new agent may walk around for three days
20 thinking about before it clicks that gosh, why
21 didn't I follow this up, why didn't I follow that
22 up. I better run back there.

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1 And so I guess I'm concerned about how
2 the rotation of military personnel impacts on
3 your organizations, and if mostly your sexual
4 assault investigators are randomly distributed
5 among the civilian and military employees, or if
6 they're not, if you think maybe it would be
7 better to have a larger percentage civilian
8 because they wouldn't have to be rotated.

9 MR. SURIAN: We've got 30 civilian
10 sexual assault investigators spread at the
11 largest Army bases. They function as the team
12 chief, teacher and mentor for the military agents
13 that are assigned there.

14 The agents that normally work the
15 sexual assault cases are all fairly senior
16 military members that have been around for a
17 while.

18 And the rotation doesn't seem to
19 affect the investigations at all, sir.

20 MR. STONE: How would they be seeing
21 it? Aren't they rotated out of your service in
22 three years or four years?

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1 MR. SURIAN: No, sir. Once they're a
2 CID agent they're a CID agent for their entire
3 career.

4 MR. STONE: I see. So they're rotated
5 within CID.

6 MR. SURIAN: They rotate within CID.
7 So they may be working for three, four, five
8 years at Fort Bragg, and then they'll be maybe
9 transferred to Fort Hood and they'll work for
10 three, four, five years at Fort Hood.

11 MR. GAUTHIER: Sir, we're civilian but
12 we also at NCIS, have a mobility policy. So,
13 much like the Navy and Marine Corps presence
14 overseas that dictates our mobility policy as
15 well.

16 But that's staying within the
17 infrastructure of the family and sexual violence
18 billeted personnel, or our active personnel
19 agents.

20 We have not experienced a negative
21 impact that we've seen.

22 We do have some 1810 investigators

1 that we've hired in major fleet concentration
2 areas that were like former state troopers,
3 things like that, that retire and were special
4 victims crimes detectives. They don't move.

5 So, when we have new agents coming on
6 and specifically into the family sexual violence
7 program they'll often shadow those individuals
8 and our senior agents to get that experience as
9 well.

10 MR. POORMAN: So, once you become an
11 OSI agent you're going to stay an OSI agent. You
12 will rotate within OSI.

13 I think to your question, and it's a
14 valid concern, is as a whole military is a fairly
15 young population.

16 So we have young airplane mechanics,
17 we have young attorneys, we have young
18 investigators.

19 And I do agree that having some
20 experience is important in this. So what we've
21 done is at 17 of our main operating locations,
22 main bases out there, they have large populations

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1 and a fairly high sexual assault caseload.

2 We've placed a civilian investigator
3 at each of those locations, and each of those
4 investigators have 10 years plus experience.

5 So they serve to mentor the younger
6 investigators and serve as the continuity at
7 those locations to try to sustain and overcome
8 some of the points you raised.

9 MR. BUCHANAN: Coast Guard is very
10 similar. Our military folks will rotate
11 geographically, but they do not leave the Coast
12 Guard Investigating Service.

13 Our civilians typically stay at an
14 assignment significantly longer than the two- to
15 three-year standard rotation for our military
16 folks.

17 And as has been mentioned they do kind
18 of function as the institutional memory if you
19 will and the experience base for those geographic
20 areas.

21 MR. STONE: Do any of you think -- do
22 you like the way that works, or do any of you

1 think it would be better to have more civilian or
2 dedicated people who don't rotate, or you think
3 that the rotation is not hurting your
4 investigator service?

5 MR. BUCHANAN: I think as long as we
6 keep a good civilian cadre there's a significant
7 advantage to having, from my perspective, to
8 having military personnel inside our organization
9 as well.

10 Because they help us keep that
11 understanding of the military perspective which
12 is not exactly the same as the civilian world. I
13 know that's a shock. So, we think there's a good
14 balance there.

15 And a little more flexibility perhaps
16 in managing this multidisciplinary workforce
17 would be appreciated.

18 But I think in the main it has value
19 in the way it's built.

20 MR. STONE: Let me go to a second area
21 and that is you all spoke --

22 CHAIR HOLTZMAN: We have a five-minute

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1 rule.

2 MR. STONE: I have to ask these
3 questions. Do you want me to send them in
4 writing to them?

5 CHAIR HOLTZMAN: I don't know what the
6 answer is, but we're going to try to cut this
7 down.

8 MR. STONE: Well, I can try and make
9 it quick, but this is an important panel to me.

10 The second question has to do with the
11 fact that all your presenters said you're
12 neutral, which means to me you don't work for the
13 defense or the prosecution service.

14 And my question is, what happens when
15 one of those two services asks you to do
16 additional investigation after you think the
17 investigation file is closed and you've passed it
18 on. Do you do it when you get a request like
19 that?

20 MR. SURIAN: Yes, sir, we do.

21 MR. BUCHANAN: Yes, we do.

22 MR. SURIAN: We open the case if it's

1 been closed and do the extra work requested by
2 either the prosecutor or if the defense has an
3 alibi, or credible information of some nature
4 that might affect the outcome of the case we'll
5 reopen it.

6 MR. GAUTHIER: I would say, sir,
7 depending on the context. Before adjudication is
8 done, if in trial preparatory process they have
9 additional stuff that they're looking at taking,
10 we will certainly discuss that and do that.

11 Now, if their case is closed it would
12 be dependent upon the information that came up.
13 If it brought a new witness, new information to
14 light we would base that decision on if there was
15 more investigative steps to do.

16 MR. POORMAN: If it was significant
17 and relevant we would. In most instances though,
18 we haven't had to because right before a case is
19 closed there's supposed to be a closing
20 collaboration between our investigators and the
21 prosecution to determine whether there's any
22 outstanding leads still required in the case.

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1 MR. STONE: So, that means you all, if
2 I'm hearing you correctly, have the discretion to
3 decline to do further prosecution or defense
4 investigation even if they ask it because you
5 don't serve either one, you serve the service,
6 correct?

7 MR. POORMAN: We could decline, yes,
8 correct.

9 MR. STONE: Okay. Do you think that
10 it would be helpful if each of your services had
11 a team that was an investigative team and a
12 defense team the way in the civilian area the
13 prosecution and the defense have their own
14 investigators because they see the world a little
15 bit differently and they want the investigators
16 to follow up how they see it differently?

17 MR. POORMAN: I think that the defense
18 community would appreciate having that. From our
19 side I'm sure that it would in many ways cross
20 check some of our approaches to cases,
21 anticipating that they could be raised.

22 As to whether we should do that or not

1 I would have to defer to upper-level management
2 on that.

3 MR. STONE: I guess the reason I'm
4 asking that question is, because in your comments
5 I just heard one other presenter say that two
6 victims wouldn't speak to them, and he found that
7 problematic.

8 And then another presenter said that
9 except in exigent circumstances you will talk to
10 the victim even if there's no special victims
11 counsel who can get there.

12 And in the third case I heard one of
13 you say that it presents an extra barrier and
14 only a guilty person needs a lawyer to represent
15 them, which sounds like, and maybe I'm wrong, but
16 I don't think you would make any of those same
17 statements if it was a defendant who said I don't
18 want to talk to you right now. Am I correct?

19 MR. BUCHANAN: Sir, let me respond to
20 that. One of those comments was mine.

21 And the point I was making was that in
22 particular, a young person who has been already

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1 traumatized and hears someone say that you need a
2 lawyer, you should have a lawyer, it's possible
3 for you to have a lawyer.

4 I was trying to explain the
5 circumstances of how that person might react to
6 that statement.

7 It was not a comment on a defense
8 issue.

9 MR. STONE: Well, okay. Just for the
10 record let me just state that I think the reason
11 those upset me and you invited a response, you
12 said you'd like an answer to the question to help
13 you as to why the victim might not be speaking to
14 you after the special victims counsel talked to
15 you.

16 And the response is because it has
17 nothing to do with your job. It has to do with
18 the victim.

19 If the victim's behavior during that
20 let's say it's a rape comes out, number one, that
21 may be what the victim feels is gross invasion of
22 their privacy, and they'll be so embarrassed that

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1 they'd just as soon, when they understand the
2 extent to which it comes out, not prosecute.

3 And I've had victims say if I have to
4 go through the details, and then my associated
5 records carry that forever, I don't want to go
6 forward. It has nothing to do with you, it has
7 to do with them.

8 And similarly in the military, even
9 more than the civilian sector, they may well know
10 as we've heard from other witnesses here that if
11 they bring a charge, even if it's successful it
12 may well negatively affect the rest of their
13 career because people feel that they broke up a
14 very well functioning unit, and they're not a
15 team player, even if they were able to prove it.

16 So I think that I'm particularly
17 concerned to hear comments like that because
18 Miranda warnings and telling defendants they can
19 have lawyers have been accepted for an awfully
20 long time. And I think it lacks a certain
21 sensitivity.

22 And that's why I ask the question

1 whether you should have defense investigative
2 teams and prosecution investigative teams so they
3 would see it that way.

4 CHAIR HOLTZMAN: Excuse me, Mr. Stone,
5 I'm cutting this off now. You had 10 minutes of
6 time. We're going to proceed to the next
7 question on the chair now.

8 VADM(R) TRACEY: If I could ask just
9 very briefly, how well are you able to apply the
10 standards and the training to deployed forces
11 both afloat and ashore? Can you talk a little
12 bit about whether there are differences in your
13 ability to do that?

14 MR. BUCHANAN: We have flown agents
15 out to either meet ships at sea or meet them at
16 their next port in an effort to respond as
17 quickly as possible when there is a report of
18 someone who is afloat.

19 Depending on the distances and the
20 times we do our very best to be as responsive as
21 we can in those circumstances. That's the
22 primary Coast Guard relationship to your question

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1 I think.

2 MR. POORMAN: About one-third of our
3 criminal investigators have been through the
4 advanced training. I can't think of a situation
5 where we haven't had one or more of those
6 investigators in theater when we've had one of
7 these cases come up.

8 Should we have that happen though,
9 agents are trained to stabilize and then request
10 backup assistance to come in and handle any
11 advanced issues.

12 VADM(R) TRACEY: So, it may be that
13 initial investigation is not done by somebody
14 who's trained if they're in a forward deployed
15 site.

16 MR. POORMAN: Specialized advanced
17 training. All investigators are trained on how
18 to handle crime scenes and handle immediate
19 crimes of violence and to stabilize that.
20 They're all trained to handle that.

21 VADM(R) TRACEY: But not special
22 victims training. Is there special victims

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1 training in their basic training?

2 MR. POORMAN: There is some limited,
3 yes.

4 MR. GAUTHIER: Any of our agents that
5 are assigned afloat have been to our advanced
6 sexual violence courses.

7 Also in our forward deployed areas,
8 Iraq, Afghanistan, historically we will have --
9 if limited resources, we may have one that's been
10 through training and would certainly handle those
11 types of cases, or bring others in as necessary.

12 MR. SURIAN: We make sure that we've
13 always got specially trained sexual assault
14 investigators deployed to the major hubs in any
15 deployed environment, and try to get them out to
16 almost all the CID offices that might be at more
17 far-flung posts in wherever we're at.

18 The only real problem is the case of
19 just getting from point A to point B in theater
20 due -- for force protection reasons and what have
21 you.

22 MR. POORMAN: Thank you.

1 CHAIR HOLTZMAN: Thank you, Admiral.
2 Judge Jones?

3 JUDGE JONES: Just one quick question.
4 Mr. Buchanan, I understand your comment about
5 advising a victim that they have a right to a
6 lawyer to be the problem. That with young people
7 if you tell somebody they have a right to a
8 lawyer that may heighten their anxiety and
9 concern that maybe they're under investigation.

10 So I assume that the way you and
11 everyone else tries to handle that is to explain
12 it in the best possible terms, which is there's a
13 special program now in the services. It's called
14 Special Victims Counsel. They're here and
15 available to you to help you through this
16 process.

17 And if done in terms like that, is it
18 helpful?

19 MR. BUCHANAN: Absolutely. There are
20 ways around this. I did not mean to imply this
21 was an insurmountable problem.

22 Certainly our agents are trained to be

1 sensitive. The SVCs of course are good at
2 explaining their role. The SARCs as well.
3 There's a number of people involved in sort of a
4 support structure.

5 And one of the things that we would
6 like to see in this trusting relationship is
7 where the victim sees the agent as part of that
8 effort to seek justice and also to support them
9 to the extent that makes sense from a role as an
10 investigator.

11 JUDGE JONES: Thanks. No other
12 questions.

13 MR. TAYLOR: So, at least three of you
14 mentioned the problem of having delays while you
15 were awaiting the arrival of SVC counsel.

16 So I guess my question is, can you
17 think of any instance in which you materially
18 affected the outcome of an investigation because
19 of any delay? Or is it just a matter of minor
20 inconvenience in terms of wanting to do it
21 faster? Anyone?

22 MR. GAUTHIER: I would say, I can't

1 necessarily give you a specific case other than
2 to say that it's very hard to prove it had a
3 material impact to the case in most instances.

4 And it's not even necessarily that we
5 want to do it quicker. I think most would
6 recognize that the quicker we get information,
7 understand the breadth, the number of witnesses,
8 potential evidence implications.

9 That being said there's certainly not
10 necessarily a bad thing in giving a victim a few
11 days to get through those other processes and to
12 go through that.

13 So, I'd just say that we've seen a
14 fairly -- in a number of our total cases we've
15 seen an increase in the number of delayed
16 reports.

17 I'm not suggesting that's attributed
18 to the special victims counsel program. I think
19 there's a lot of factors that play into that.

20 And just looking at cases in general
21 you kind of want to be able to get on target as
22 quickly as possible to maximize any evidence,

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1 witnesses, things of that nature.

2 MR. TAYLOR: Anyone else have a
3 comment on that?

4 MR. POORMAN: We had concerns, but
5 ours have largely as I said waned with the
6 ability just to reach out and contact and develop
7 better relationships. So we're not seeing that
8 problem.

9 MR. SURIAN: The delays were I think
10 more when they first started the SVC program and
11 there weren't many around and so there weren't
12 enough to handle the workload at times.

13 Now that we've had more the response
14 times are much better. And the telephones and
15 other means of convo help a lot.

16 MR. TAYLOR: Just one final question.
17 And perhaps, Mr. Poorman, you can answer this
18 since you raised it.

19 You said there might be certain
20 circumstances, exigent circumstances, under which
21 you would consider not allowing an SVC counsel to
22 arrive before you started questioning if I

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1 understood you correctly. What might those be?

2 MR. POORMAN: Well, that's what the
3 legislation, the NDAA says, unless exigent
4 circumstances.

5 We're working with the DoD IG who
6 write, if you will, the overarching policy that
7 then we follow as to define exigent circumstances
8 so we can avoid misunderstandings.

9 Our interim guidance to our
10 investigators, it's going to be very rare where
11 you're going to have a situation where you would
12 not go ahead and allow a request to see an SVC.

13 Those circumstances we foresee maybe
14 involve would be, say, a victim where it's fresh
15 and we really do think we have a perpetrator, and
16 that perpetrator may be a threat to society and
17 our community out there, and trying to figure and
18 balance the interests of the victim versus those
19 of society in trying to identify this individual,
20 and get a BOLO out, get him identified and get
21 him apprehended.

22 But that would be the kind of

1 situation which we see as very rare, frankly.

2 MR. TAYLOR: Thank you.

3 MR. GAUTHIER: Mr. Taylor, if I might
4 add to that too. For us that we've had maybe
5 that type of situation where we have exigent
6 concerns, if the -- we've interacted with the
7 victim's legal counsel and even put them on the
8 phone with the victim to kind of say, hey, it's
9 okay, talk to them, to work that through.

10 We have no interest in undermining the
11 victim's confidence in that, that we have
12 appraised them of they have that option. So
13 there's other workarounds too.

14 MR. TAYLOR: Thank you.

15 CHAIR HOLTZMAN: I don't have any
16 questions. Mr. Stone has one question.

17 MR. STONE: One further question, and
18 this stems from the fact when I attended the SVC
19 training conference last summer I heard the Army
20 CID person at that conference give a very high
21 number of the number of cases in which an
22 offender had multiple victims.

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1 And in fact, he said to the training
2 conference, which was very large, that one of the
3 first things he does is ask the victim, or try to
4 find out other prior girlfriends of the same
5 perpetrator to see if this is a serial victim.

6 Mr. Poorman mentioned that he's seeing
7 more and more multiple victim cases. Can you
8 from your knowledge and your training tell me the
9 kinds of numbers you estimate that you see where
10 there are multiple victims, serial perpetrators?

11 Because at the training conference my
12 recollection is, it was way more than half. And
13 I'd like to know what your answers are, if you
14 know. Unless you think that you don't have the
15 statistics or the basis to answer the question.

16 MR. POORMAN: We're working through
17 that data right now. A 10-year look at cases,
18 those before we started looking into the history
19 and then those after we began looking into the
20 history and then trying to determine which ones
21 in fact had priors.

22 Right now the research or the data

1 that are coming in for us indicate somewhere
2 around 15 to 20 percent may have multiple victims
3 associated with them.

4 Those are cases we know about. Those
5 are cases we actually have.

6 How many we should be getting that we
7 don't know about, is what will always be the
8 outlier to that.

9 But part of this assessment is
10 determining of those that were serial, what were
11 the methods of operation used by the individual.
12 All of that will help inform, we think, a more
13 sophisticated protocol and us asking the kind of
14 questions that perhaps would lead to
15 identification of even additional victims.

16 But this is all relatively new to us
17 in trying to sort through and approach and
18 appreciate.

19 So, I don't know where that data comes
20 from on the Army side. I don't have that. We
21 now have enough cases where we're going to
22 actually be able to look at our own data.

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1 MR. STONE: Well, I don't think he was
2 talking about cases per se. I think he was
3 talking about in each case he's following up
4 leads that suggest even though it may never have
5 been reduced to an actual prosecution
6 recommendation that he's dealing with a serial
7 violator.

8 MR. SURIAN: We do teach our agents
9 just like the OSI teaches their agents to look
10 for those former girlfriends or romantic
11 interests, intimate partners that might have been
12 violated.

13 I don't have the numbers, sir. I
14 can't give you the numbers. I can -- we can try
15 to sort that out if the panel wants it, sir.

16 MR. STONE: Does anybody else have any
17 reaction to that?

18 MR. GAUTHIER: No, sir. I mean, I
19 would say when we follow it if there's
20 indications that that subject is involved in
21 multiple offenses we're naturally going to follow
22 that as well.

1 MR. BUCHANAN: We're concerned about
2 it. We've got that on our list of analytical
3 projects we'd like to undertake.

4 We have a brand new records management
5 system and so it's going to be a little while
6 before we can undertake something like that.

7 But I think it's a significant problem
8 just anecdotally.

9 JUDGE JONES: Thank you very much,
10 gentlemen, for taking the time to come and speak
11 with us and for your testimony.

12 All right, the next panel will be JAG
13 Prosecutor and Paralegal Overview and Perspective
14 of the SVIP Policies, Practices and Procedures.

15 All right, good afternoon to everyone.
16 And I would like to begin with Colonel Batdorff
17 who happens to be first on our list as the chair
18 has been pointing out. Go ahead.

19 LT COL BATDORFF: Ladies and
20 gentlemen, distinguished chair, I am Lieutenant
21 Colonel Bret Batdorff and I'm the chief of the
22 Army's Trial Counsel Assistance Program.

1 As such I have the honor and privilege
2 of leading 82 personnel, military and civilian,
3 who are dedicated to training other prosecutors,
4 as well as ensuring that every instance of sexual
5 assault, child abuse, or domestic violence is
6 properly investigated, properly charged and
7 properly prosecuted when warranted.

8 The TCAP's mission is to provide
9 support and resources to the prosecutorial
10 function in the field. And we accomplish that
11 mission in several different ways.

12 First, we provide approximately 30
13 different continuing legal education offerings to
14 all of our prosecutors across the world.

15 And next, and probably more
16 significant to this panel, the Army's TCAP
17 manages the Army's Special Victim Prosecution
18 program.

19 In 2009 the Army created the special
20 victim prosecutor position. At that time we
21 started with 15 authorizations for SVPs. Last
22 year we had 23 SVPs spread across our 21 largest

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1 Army installations. Right now we have 24 special
2 victim prosecutors and starting this summer we
3 will have 25 special victim prosecutors, again,
4 spread across our 21 largest Army installations.

5 Per our policy of our judge advocate
6 general, as well as the guidance that I provide
7 to all of the SVPs as their immediate supervisor
8 and rater, their primary mission again is to
9 ensure that every case involving sexual assault,
10 intimate partner violence and/or child abuse is
11 properly investigated, properly charged and
12 properly prosecuted when necessary.

13 The SVP's secondary mission is to
14 ensure that all of the junior prosecutors within
15 their area of responsibility are coached, trained
16 and mentored so that we're growing the next crop
17 of special victim prosecutors.

18 I'll talk a little bit about the
19 selection of our 24, soon to be 25 SVPs in the
20 Army. All of our SVPs are personnel who have
21 been nominated either by our military judges, our
22 staff judge advocates, our chiefs of justice, in

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1 some cases our regional defense counsel as
2 officers who have been identified for having a
3 knack and ability for litigation and prosecuting
4 and dealing with victims of serious crimes.

5 The training for our SVPs, in addition
6 to the normal training that every judge advocate
7 gets at the Judge Advocate General School in
8 Charlottesville, there are four special
9 requirements that all of our SVPs -- training
10 requirements that they must fulfill either before
11 they start being an SVP or soon after starting
12 the job.

13 And those are they must attend the
14 National District Attorneys Association's career
15 prosecutor course.

16 They also must attend the SVP course
17 which is the course that we put on twice every
18 year, once in July, once in December.

19 They also are required to conduct a
20 two-week on the job training with a civilian SVU
21 unit and a district attorney's office. I do not
22 require that they conduct it at an SVU office

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1 near where they are stationed, but that is what
2 we encourage them to do so that not only do they
3 get the benefit of seeing how those offices run
4 and how they prosecute their cases and
5 investigate their cases, but they also get to
6 build the relationships with the local district
7 and commonwealth's attorney in the area where
8 they'll be serving.

9 And then finally, they also have to
10 attend kind of our capstone course which is the
11 sexual assault trial advocacy course, or SATAC.

12 SATAC is a joint course that Army TCAP
13 puts on with the Army Defense Counsel Assistance
14 Program; it's two weeks every summer. This year
15 it will be held at the University of Utah Law
16 School.

17 And for the first time this year we're
18 also inviting some of our special victim counsel
19 to attend the training. So it will truly be a
20 joint training between our special victim
21 prosecutors trial counsel, as well as some of our
22 defense counsel and special victim counsel.

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1 The reason why we made that change
2 this year is because it's a practical exercise-
3 based training.

4 And after attending it last year, some
5 of the trainings are victim interviewing. We do
6 a mock 412 hearing. We do a mock 513 hearing.
7 We do a mock sentencing hearing.

8 And we all realized at the leadership
9 that doing all of those exercises without the
10 SVCs was really not realistic training. So for
11 the first time this year, the Army special victim
12 counsel will also be invited to our capstone
13 training course that we do every summer.

14 Shortly after the Army created the SVP
15 position we realized that they needed paralegal
16 support. And so wherever there is an SVP
17 located, there is also a special victim non-
18 commissioned officer paralegal, or SVNCO
19 paralegal who provides paralegal support to the
20 SVP with whom they are collocated.

21 All of our special victim non-
22 commissioned officer paralegals are either E5,

1 sergeants or E6, staff sergeants.

2 Last year we also began hiring 23 GS-
3 11 special victim witness liaisons or SVWLs.
4 Each of the SVWLs are also collocated with our
5 SVPs and our SVNCOs at our 21 largest
6 installations.

7 Later this afternoon you will hear
8 from Ms. Christa Thompson, who is our new SVWL
9 program manager, who works with me at Army TCAP
10 down the road at Fort Belvoir.

11 These three individuals, the SVPs, the
12 SVNCOs and the SVWLs work and train together
13 alongside with CID's sexual assault investigators
14 to ensure that every special victim case is
15 properly investigated, charged and prosecuted
16 when warranted.

17 The addition of the 24, soon to be 25
18 SVPs, 23 SVNCOs and 23 SVWLs as well as the SAIs
19 have been extraordinarily beneficial to our
20 survivors and the military justice system
21 overall.

22 The most useful thing the SVIP

1 capability has done for our victims is ensure
2 that the military investigators, paralegals and
3 prosecutors are specifically trained on
4 investigating special victim offenses and dealing
5 with survivors of these crimes.

6 This affects everything from how well
7 the crime is investigated, to how a survivor is
8 treated during the interview, to making sure the
9 survivor is offered the appropriate services at
10 the appropriate time, making sure that the
11 survivor is educated on the process, and made
12 aware of developments in the investigation and
13 the case.

14 In preparation for this meeting,
15 members, I sent your questions to all of our SVPs
16 and SVNCOs because they're the ones who are
17 actually out there in the field working these
18 issues every day.

19 I asked them to provide me with candid
20 individual responses. And with the 23 litigators
21 that I have getting candid responses is not
22 difficult.

1 All of our criminal litigation experts
2 love the law, they love litigating, they love
3 pursuing justice. They're all type A
4 personalities and I'm sure you know the type of
5 person I am talking about.

6 And while they all share those aspects
7 in common, getting a group of 24 lawyers to agree
8 on anything is nearly impossible.

9 With that said, their responses
10 regarding how beneficial the SVIP capability has
11 been for their survivors and military justice
12 were clear and unanimous. And if you would
13 indulge me, I would like to share with you some
14 of the comments that they shared with me
15 regarding the benefits to the military justice
16 system and the survivors since the advent from
17 2009, the advent of the SVP program to where we
18 are today with 82 personnel dedicated to this.

19 I cannot imagine the current state of
20 military justice without this capability. The
21 SVP injects high levels of experience who can
22 solely dedicate themselves to these types of

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1 cases.

2 It has brought a level of competence
3 that was not here before 2009. This has
4 increased the competence of the individuals
5 dealing with victims in a way to empower them,
6 help them feel involved, and all the while
7 showing an appropriate level of empathy that I
8 think has allowed the victims to feel more
9 comfortable throughout the process.

10 The biggest effect has been on the
11 quality of the investigations. Having
12 investigators dedicated solely to sexual assault
13 cases has allowed the agents to hone their skills
14 and do more complete quality work.

15 Having a quality investigation
16 completed up front means less surprises at trial
17 which increases our chances for conviction once
18 we get to trial.

19 Having SVPs and SVNCOs who are
20 singularly focused on special victim cases has
21 given victims a higher degree of confidence in
22 the government's commitment and competence

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1 regarding the investigation and prosecution of
2 these offenses.

3 Having the ability to tell the victims
4 when I meet with them that their type of case is
5 the only type of case that we manage encourages
6 them.

7 We also bring a level of maturity,
8 experience and empathy that junior captains
9 working as trial counsel generally have not yet
10 attained.

11 The SVIP capability has increased
12 victim's confidence in the military justice
13 system as a whole.

14 For example, I often meet with a
15 survivor within days of an initial report side by
16 side with the regular unit prosecutor.

17 When I tell him or her that I am
18 specially trained in sexual assault, domestic
19 violence and child abuse cases I always see their
20 guard go down because then he or she knows from
21 the outset that we are now taking this seriously.

22 In summary, the SVIP capability is

1 every day transforming our investigation and
2 prosecution of special victim cases in a
3 profoundly positive manner.

4 Thank you and I look forward to your
5 questions.

6 CHAIR HOLTZMAN: Thank you.
7 Lieutenant Commander Ryan Stormer, you are -- I'm
8 sorry, Ryan Stormer, U.S. Navy, Deputy Chief,
9 Trial Counsel Assistance Program. Welcome. We
10 look forward to your testimony.

11 LT CMDR STORMER: Thank you, ma'am.
12 Thank you members of the panel for the
13 opportunity to talk to you this afternoon about
14 the Navy's trial counsel organization and our
15 SVIP training.

16 CHAIR HOLTZMAN: Can I also ask you if
17 it's possible, to try to condense your testimony
18 because we have limited time.

19 LT CMDR STORMER: Yes, I will. Again,
20 my name is Lieutenant Commander Ryan Stormer. I
21 am currently serving as the Assistant Director at
22 Navy's Trial Counsel Assistance Program where I

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1 have served in this capacity for the last three
2 years.

3 In this capacity I've had the
4 opportunity to talk, train and teach trial
5 counsel of all levels in the Navy around the
6 world in addition to observing litigation of
7 special victim cases in all the Navy's regions
8 around the world.

9 We at Navy TCAP are responsible for
10 monitoring major cases in the courtrooms for the
11 Navy around the world.

12 Currently the Navy Judge Advocate
13 General's court has nine legal service commands
14 called region legal service offices.

15 Within each of these offices there are
16 trial departments that are responsible for
17 prosecuting services to the fleet across the
18 world.

19 Each of our trial departments are led
20 by a senior trial counsel, either an O4 or an O5,
21 a lieutenant commander or a commander.

22 Additionally, each department has a

1 core counsel detailed where a prosecutor with
2 more than two years of military experience.

3 The number of core counsel will be
4 contingent upon the size of the region in which
5 the RLSO serves.

6 Our senior trial counsel will detail
7 these prosecutors to cases based on the
8 prosecutor's litigation skills, professionalism,
9 experience, and leadership to make sure that we
10 are providing the highest quality of legal
11 representation for the United States Government
12 in all cases.

13 And for special victim crimes,
14 detailing focuses on the trial counsel's aptitude
15 to prosecute the cases, and his or her ability to
16 provide necessary support for victims.

17 As far as our manning, for each trial
18 counsel they first must be in the pay grade of O4
19 or above.

20 Currently three of our senior trial
21 counsel at our larger fleet concentration areas
22 are O5 or O5-select officers.

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1 This detailing policy was set to
2 assure that our junior counsel are supervised by
3 experienced military officers and convening
4 authorities are provided legal advice with not
5 just operational considerations, but with proper
6 legal considerations about whether or not to
7 bring forward charges.

8 Second, each of these senior trial
9 counsels have been selected as a member of the
10 Navy's military justice career litigation track.

11 To be selected on this track the Navy
12 JAG Corps holds a non-statutory board to select
13 amongst its candidates demonstrating military
14 justice experience, training and focus.

15 Once selected, these officers
16 detailing focuses on these billets relates to the
17 military justice in courtroom and that will be
18 their career path throughout their career.

19 The combination of our senior trial
20 counsel's seniority and being part of our
21 military justice litigation career track ensures
22 every office is supervised by a senior prosecutor

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1 with the necessary qualifications to ensure
2 special victims crimes are litigated competently
3 and with expertise.

4 Specifically to our training, all
5 counsel to litigate special victims crimes the
6 Navy has several courses and programs the trial
7 counsel attend.

8 One course is our special victims
9 crime course at Naval Justice School. This
10 course provides 32 hours of instruction on issues
11 relating to prosecuting special victims crimes,
12 and is taught by military and civilian experts in
13 this field.

14 A core component of this course is a
15 practical element, where prosecutors work hand in
16 hand through practical exercises with actual
17 experts in various scientific and legal fields to
18 develop litigation skills to prosecute special
19 victims crimes.

20 Two other courses involve training
21 with NCIS. These are the NCIS advanced adult
22 sexual assault investigations training program

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1 and the NCIS advanced family and sexual violence
2 training program.

3 At these courses Navy prosecutors not
4 only get instruction on these types of cases from
5 experts in psychology, medicine, law enforcement
6 and litigation, but the courses are typically
7 made up of NCIS special agents, Navy trial
8 counsel and United States Marine Corps trial
9 counsel.

10 This further enhances the learning
11 experience of both the trial counsel and the
12 special agents by allowing different perspectives
13 to be shared throughout the course, and to allow
14 collaboration on how to better investigate and
15 prosecute these types of cases.

16 We have also found that by holding
17 joint trainings with our agents, trial counsel
18 and agents later work earlier and closer on
19 cases.

20 Last, as far as training, Navy TCAP
21 visits all nine RLSOs every year for training
22 during what we call our TCAP targeted mobile

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1 training team course.

2 These TMTTs focus on practical nuts
3 and bolts litigating special victims crimes to
4 include subjects such as charging decisions,
5 evidentiary issues relating to MRE 412, 413, 414
6 and 513, as well as working with victims.

7 One example we have is a survivor of
8 a sexual assault sits down with trial counsel and
9 discusses her experience she had, and what things
10 trial counsel should consider throughout their
11 work on a case.

12 Our TMTTs are a critical asset to
13 addition to TCAP's regular reach-back assistance
14 that we provide on a daily basis.

15 In my personal opinion and not that of
16 the United States Navy or TCAP, the Navy's
17 overall ability to prosecute special victims
18 crimes while helping victims has improved
19 significantly since when I first came in in 2004,
20 and especially over my last three years at TCAP.

21 I personally believe this is directly
22 related to the courses and trainings that I

1 discussed.

2 The training our prosecutors have
3 received is focused and from a variety of experts
4 that talk to us and teach us how to work and help
5 victims throughout these cases.

6 They are taught about the victim
7 trauma, how to use the trauma -- to use informed
8 techniques for interviewing and for better
9 presenting their cases in court.

10 This not only helps TCs gather better
11 evidence and present better cases in court, but
12 it also helps victims in their healing process
13 and making them whole again.

14 Since the SVIP capability was
15 instituted it is also my opinion, that the
16 relationship and effectiveness of trial counsel
17 working with NCIS has also improved.

18 In the past, especially when I first
19 started prosecuting cases in 2004, there were
20 times when a prosecutor would not become involved
21 in a case until months after it had been
22 reported.

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1 Now we are seeing that the Navy is
2 adopting a multidisciplinary approach to cases
3 from the very beginning.

4 NCIS special agents are reaching out
5 to senior trial counsel and trial counsel early
6 and often in most cases.

7 This approach has made the process
8 much more effective and efficient, and has
9 allowed Navy prosecutors to develop his or her
10 case early on.

11 It also ensures victims are receiving
12 the help and assistance that they need in a case
13 of this matter.

14 This approach is taught at the two
15 courses that I previously talked about. Thank
16 you for your time and I look forward to answering
17 any questions you may have.

18 CHAIR HOLTZMAN: Thank you, Commander.
19 Our next presenter is Major Jesse Schweig, U.S.
20 Marine Corps, Officer-in-Charge, Trial Counsel
21 Assistance Program. Major, welcome, and we look
22 forward to your testimony.

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1 MAJOR SCHWEIG: Good afternoon, Madam
2 Chairwoman, distinguished panelists. And Madam
3 Chairwoman, thank you for getting my last name
4 correct. I think that's the first time in my
5 life that has ever happened. I owe you a great
6 debt of personal gratitude.

7 This is my first time testifying
8 before all of you. It cannot yet be said that I
9 am a glutton for punishment, but if I appear
10 again I will gladly claim that title.

11 As a direct consequence of the SVIP
12 requirement, we've taken great strides in both
13 improving our training and articulating the
14 qualifications for our special victim
15 prosecutors.

16 Today 46, or more than half of Marine
17 prosecutors are deemed what we would call special
18 victim qualified.

19 The special victim qualification in
20 our service comprises a temporal, subjective and
21 objective elements.

22 So you must serve a certain amount of

1 time in the billet, you must be nominated by an
2 officer in charge and you must also attend
3 training and have sat on a certain number of
4 special victim contested cases.

5 We qualify our counsel individually
6 and we specifically detail them to cases as those
7 cases arise.

8 Our structure is equally part of our
9 SVIP capability. It comprises a regional trial
10 counsel responsible for all cases within the
11 region and it's roughly analogous to a civilian
12 district attorney model.

13 In addition to our special victim
14 prosecutors, our SVIP capability includes a
15 regional trial investigator which is a trained,
16 credentialed CID agent that works in conjunction
17 with the special victim prosecutor to accomplish
18 any additional investigation that may be required
19 on the case.

20 We also have our civilian highly
21 qualified experts all of whom were selected for
22 their subject matter expertise and the number of

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1 years they have spent prosecuting. And they
2 again work in conjunction with our special victim
3 prosecutors to form our SVIP capability.

4 We also have specially trained legal
5 administrative support specialists that are part
6 of that team.

7 This really means that any special
8 victim prosecutor in the Marine Corps has access
9 at a minimum to 20 years of prosecution
10 experience, to that trained agent and specially
11 trained admin support personnel.

12 If we're wrestling with anything right
13 now it's really deciding what we turn over to
14 victim counsel or victims and when we turn it
15 over.

16 Discovery is the wrong word, but it's
17 the right concept. And we're sort of trying to
18 figure out what exactly we're going to turn over
19 and when, and what the policy should look like
20 with respect to that.

21 We're really on the right track; we
22 feel we're on the right track. If we need

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1 anything right now it's time. We need time to
2 allow our newly instituted processes to sort of
3 normalize and become ingrained within the
4 culture.

5 And subject to your questions, that's
6 all I have.

7 CHAIR HOLTZMAN: Thank you very much,
8 Major. I appreciate your testimony.

9 We'll next hear from Captain Bradley
10 Palmer, U.S. Air Force, Special Victims Unit
11 Senior Trial Counsel. Captain, welcome, and we
12 look forward to your testimony.

13 CAPT PALMER: Thank you, Madam Chair,
14 members of the panel. Thank you for the
15 opportunity to talk to you today about the Air
16 Force's SVIP capability.

17 And I am a senior trial counsel with
18 the special victims unit so I spend my days,
19 weeks, months going around and pouring my blood
20 and sweat and tears into these cases that these
21 cases deserve.

22 And the Air Force has had some type of

1 SVIP capability really since 1972. In 1972 the
2 Air Force started their senior trial counsel
3 program which is a select group of experienced
4 prosecutors who have demonstrated over at least
5 two tours, so that generally means they've served
6 in two different billets for five or six years
7 and demonstrated an ability in the courtroom, and
8 those prosecutors are then handpicked by the
9 chief of the government trial and appellate
10 division to fill these positions.

11 We've had that capability since 1972
12 and right now the way we're currently organized
13 is, we are geographically located so that there's
14 three CONUS geographic divisions and then two
15 outside of the continental United States.

16 And we essentially travel all over the
17 world and prosecute these cases. To give you an
18 idea of our travel schedule, my first year as a
19 senior trial counsel I spent over 200 days on the
20 road just doing these types of cases.

21 Right now there are 16 of these senior
22 trial counsel positions around the Air Force.

1 Within that unit there is a smaller
2 subset that was -- and this unit was started in
3 April of 2012 called the special victims unit.

4 And so from within our senior trial
5 counsel ranks are hand selected, again by the
6 division chief, 10 people who have been a senior
7 trial counsel for at least a year, who have
8 attended at least two specialized trainings on
9 sexual assault prosecutions and who have
10 demonstrated an ability to handle these types of
11 cases.

12 To give you an idea of how involved
13 senior trial counsel are in these types of cases,
14 during the calendar year 2015, 90 percent of all
15 sexual crimes of any nature that made it to a
16 general court martial had a senior trial counsel
17 assigned to them. And those include cases where
18 there was a guilty plea or a pretrial agreement
19 in place.

20 And so by and large almost all of our
21 cases of this nature have a senior trial counsel
22 assigned, and a large majority, I don't have a

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1 number on this, but a large majority of our cases
2 that involve penetrative offenses or sexual abuse
3 of children have a member of the SVU assigned to
4 them as well.

5 In addition to providing this
6 expertise as we go around and prosecute these
7 cases, we also provide training as we go.

8 So every time I go to a base to
9 prosecute a case, I stay a little later
10 afterwards or arrive a little early to provide
11 training to the local prosecutors so that way we
12 are providing in addition to the formal training
13 they're receiving, they're receiving kind of one-
14 on-one mentoring from the senior trial counsel
15 who's there as well as some training on hot
16 topics, things that are coming up, things that we
17 see as we travel around and deal with these
18 cases.

19 To give you an idea of how much
20 training, last calendar year senior trial counsel
21 provided over 2,100 hours, man hours of training
22 around the Air Force.

1 One challenge that we face, and it's
2 a challenge that we're improving on is just
3 manning, is just having enough billets, enough
4 bodies.

5 By the end of this summer our number
6 of senior trial counsel will go from 16 to 24.
7 And so that will significantly improve our
8 ability to get involved in cases early.

9 And I've seen an improvement in that
10 area already. We currently strongly recommend,
11 my leadership currently strongly recommends, that
12 any case that involves a crime of a sexual nature
13 be sent to a senior trial counsel to review the
14 charging decision before the charges are ever
15 brought to make sure as we charge this we're
16 charging it in the right way so that we can put
17 our best foot forward from the get-go.

18 As we increase the number of senior
19 trial counsel that's going to improve our ability
20 to get out early on and get involved and build
21 rapport with victims to that they can know who we
22 are, so that they can trust us.

1 I always try personally, and I think
2 this is a practice for a number of my coworkers,
3 is I try to get involved early on with victims.

4 If I can't travel personally to meet
5 them, early prior to trial, I'll do a Skype chat,
6 or we'll have a telephone call.

7 I think that rapport building is
8 important so, that they can understand what my
9 role is and what I do. They can understand the
10 Air Force thinks this case is important enough
11 that they're going to assign someone with
12 significant experience doing this type of work to
13 their particular case.

14 I think with the increased numbers,
15 that will allow us even more availability so that
16 we can travel out and do these rapport-building
17 interviews face to face. And I think that will
18 help us as we move forward.

19 I've also seen, and I know this has
20 been talked about already, but a huge benefit
21 from the special victims counsel and working in
22 coordination with special victims counsel.

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1 Before the special victims counsel
2 program it was always somewhat unsatisfying to me
3 when a victim had a question that required the
4 provision of legal advice which I couldn't give
5 them.

6 I could explain to them how things
7 worked and what their rights were, but I couldn't
8 give them advice.

9 And it's so nice to be able to say
10 here's how it works. If you want advice go talk
11 to your attorney. So that's been a great thing I
12 think for the military justice system in general.

13 And just the special victims
14 prosecutor, the STC and SVU capability within the
15 Air Force has been a benefit to victims.

16 And it's, like Lieutenant Colonel
17 Batdorff mentioned, it's nice to be able to tell
18 a victim the Air Force sent someone to this case
19 who is specially trained, who does this all the
20 time and has a lot of experience under their
21 belt, so that they can understand that we take
22 this seriously.

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1 And I enjoy having those conversations
2 with them so that they can understand that
3 process.

4 One final question that I know you
5 asked us to address was, how the policy to
6 withhold disposition to an O6 has changed our
7 practice.

8 And I will tell you the short answer
9 is not very much in reality, because prior to
10 that change if you had a rape or a sexual assault
11 case that O6 was already involved in those cases.
12 Those were serious enough cases that your wing
13 commander, who is our disposition authority, is
14 going to know about them, is going to be involved
15 in the disposition already.

16 So the practical answer is, not a
17 whole lot of change. There are some formalities
18 now, forms have to be signed by the right people,
19 but as a practical matter very little has changed
20 in regards to that disposition withholding.

21 And that ends my remarks and I look
22 forward to answering your questions.

1 CHAIR HOLTZMAN: Thank you very much.
2 Judge Jones?

3 JUDGE JONES: I was just interested in
4 your comment, Major Schweig, about how much
5 discovery to give to victims.

6 We're all familiar with the defendant
7 asking for discovery. What do victims ask for?
8 Do they expect the same discovery you're giving
9 the defendant?

10 And I think we all understand you
11 don't always want your main witness to see
12 everything.

13 MAJOR SCHWEIG: I'm sure they would
14 like --

15 JUDGE JONES: Is that right?

16 MAJOR SCHWEIG: I've never been a
17 special victims counsel myself but I would want
18 everything, otherwise I don't know that I could
19 adequately advise my client.

20 Our policy on this currently consists
21 of a non-binding practice advisory, which has
22 been provided to the JPP in response to your

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1 question set number 6.

2 And what we really do, is we break it
3 down into a post referral and pre-referral
4 stages.

5 But what it comes down to is we are
6 providing the victim or victim counsel with a
7 copy of any statement the victim has made.
8 That's the simple answer.

9 If they want additional portions of
10 the investigation they can request it from the
11 trial counsel and we are leaving it up to the
12 discretion of the trial counsel as to whether to
13 actually turn it over at that point.

14 And the obvious exception to that is
15 anything that directly pertains to a 412 or 513
16 type motion.

17 LT COL BATDORFF: In the Army the
18 Judge Advocate General signed a policy about a
19 year and a half ago dictating to all the military
20 prosecutors, trial counsel, senior trial counsel,
21 special victims prosecutors, chiefs of justice of
22 what will be provided to the victim and when.

1 And it's her statement of course, a
2 redacted charge sheet in case there's other
3 victims on there that that victim's privacy is
4 protected and basic things like that, ma'am.

5 JUDGE JONES: Okay. Do you have any
6 -- none of you have raised any criticisms or
7 difficulties caused by having special victims
8 counsel. Are there any? I know they've been
9 around for a little while now, but there must
10 have been some issues. Or if not, fine. But if
11 there were, how have they been resolved?

12 LT CMDR STORMER: Ma'am, I would say
13 not necessarily an issue, but just something I
14 think possible, we tell our prosecutors something
15 to be aware of is, we just want to push out to
16 our prosecutors that we still feel it's very
17 important that the prosecutor in the case
18 develops that rapport with the victim.

19 With victims counsel there may be that
20 particular relationship, but we want to make sure
21 that when we talk to our prosecutors that it's
22 important for our prosecutors to still maintain

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1 that good rapport with the victim.

2 So while we have another counsel now
3 involved who the victim may be going to for more
4 of his or her problems in a case where in the
5 past they may have come to, say for instance, me
6 as the prosecutor they now go to their own
7 counsel.

8 I wouldn't say that it's created
9 barriers. I haven't seen any necessarily,
10 problems that are consistent. But I think it's
11 an issue that we want to highlight to our
12 prosecutors that just because this person has a
13 counsel, doesn't alleviate any of our
14 responsibilities as a prosecutor to prep this
15 witness for trial, develop the rapport for trial
16 to make sure that we're doing everything that we
17 can to present our case in court.

18 JUDGE JONES: Thank you.

19 LT COL BATDORFF: I think at first
20 there definitely were issues. And I think any
21 time you have change and people are used to doing
22 things a certain way, there's going to be

1 resistance to that change.

2 And the way that we've overcome that
3 is both formal and informal.

4 Formally we have things like TJAG's
5 policy memo that dictates what you will provide
6 to the victim through their victims' counsel.

7 Just signed this week, the TJAG signed
8 a new SVC handbook, that Colonel Marotta
9 referenced during her testimony, that says you
10 should always zealously advocate for your client,
11 but it provides guidance in there, understand the
12 importance of your client also building that
13 relationship and the rapport with the prosecuting
14 attorney in the case.

15 And then informally, we've just tried
16 to send the message that it's relationships,
17 relationships, relationships.

18 Whether it's at our level, so Colonel
19 Marotta and my team work together all the time.
20 We send our people to go teach at their classes.
21 They send people to come tell us about SVCs.
22 We're building relationships at that strategic

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1 level.

2 And the same thing is occurring at the
3 base camps and installations too, where as people
4 are more familiar with the program they build
5 those relationships, the trust is built. And I
6 think that's how we've overcome some of the
7 initial problems, ma'am.

8 JUDGE JONES: One last quick question.
9 You were talking about a training session on 412,
10 513 mock trial type. Do you also bring in
11 special victims counsel to be trained along with
12 the trial counsel?

13 LT COL BATDORFF: Yes, ma'am. Yes.

14 JUDGE JONES: It's not just teachers.

15 LT COL BATDORFF: No, ma'am. So the
16 way that it works is we actually will have a
17 class. So there's a plenary session where we
18 learn the law, get refresher training on the law
19 and then, there are breakout sessions where one
20 of my training officers will actually play the
21 role of the survivor.

22 And prior to that, he or she will have

1 met with the SVC --

2 JUDGE JONES: Who's also in training?

3 LT COL BATDORFF: In training, ma'am.

4 And then they'll go, the SVC will go, to the mock
5 interview with the prosecutor and the mock
6 interview with the defense counsel.

7 And then they'll go have a 412 hearing
8 after that, ma'am.

9 JUDGE JONES: Thank you very much.

10 CHAIR HOLTZMAN: Admiral Tracey.

11 VADM(R) TRACEY: So, Commander, did I
12 understand correctly, the other services seem to
13 have carved out a subset of their senior trial
14 counsels and designated them as special victim
15 prosecutors.

16 And Navy has trained everybody and
17 doesn't have that special cadre, special
18 designation? Did I understand that right?

19 LT CMDR STORMER: Yes, ma'am. There's
20 no special SVIP prosecutor only.

21 The way that the Navy is currently
22 doing it, is we have SVIP certified offices. So

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1 while we have senior trial counsel, who I said
2 are O4 or O5 military justice career litigation
3 track individuals we are certifying or trying to
4 certify, all trial counsel to go through our
5 training pipeline to get what we call SVIP
6 certified.

7 So yes, ma'am, we do not have a
8 specific SVIP cadre. Our offices as a whole are
9 certified to handle these cases.

10 VADM(R) TRACEY: Okay, thank you.

11 CHAIR HOLTZMAN: Mr. Stone?

12 MR. STONE: Yes. We've got -- earlier
13 in this meeting we looked at a draft report we're
14 doing and it doesn't show -- well, what it does
15 show is that the conviction rate in sexual
16 assault cases is -- it's certainly not very far
17 off. About half of the cases.

18 I gather that -- I hear and I agree
19 that your services are doing a lot of training.

20 But in the civilian area, civilian
21 arena, what they call an experienced prosecutor
22 has about twice as much time before he's going to

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1 get a serious rape case on his own to try as
2 compared to the military because you have tours
3 and you move people around.

4 They may do burglary trials. They may
5 do other trials. But there's only so much time
6 that they're doing the sexual assault trials.

7 Now, I just heard the last panel of
8 investigators say that one way that it seems to
9 me they address that is they have at least one
10 military civilian experienced investigator, and
11 often more, in each the equivalent of I'll just
12 say regional office. Somebody who doesn't rotate
13 and has been there probably a decade who they can
14 go to.

15 And I guess my question to each of
16 you, and I'd like your reaction, is why shouldn't
17 we be recommending that in each regional office
18 you have one military civilian employee who's a
19 lawyer, might have been a retired military
20 lawyer, but someone who's done 10 years of sexual
21 assault prosecutions?

22 Because I don't think training is ever

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1 a substitute for actually doing the cases. And
2 I'd like to know if you think that will help
3 raise this level of conviction.

4 CAPT PALMER: Sir, I'll I guess start
5 out by saying some base legal offices, and I'm
6 not just speaking about the regional areas that
7 the senior trial counsel are located in, but the
8 base legal offices do have such a civilian.

9 For example, Lackland Air Force Base
10 which has traditionally been the busiest military
11 justice base in the Air Force has a senior
12 civilian who works on military justice issues,
13 and advises, and teaches, and trains and provides
14 assistance with those cases.

15 MR. STONE: A senior civilian
16 attorney.

17 CAPT PALMER: Correct. Yes, sir. And
18 then we also have reach-back support within --
19 we, as far as the senior trial counsel cadre in
20 the SVU, have reach-back support within the
21 Government Trial and Appellate Division. We have
22 senior civilians who work in there, as well as

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1 our military leadership who have been doing this
2 for a very long time.

3 MAJOR SCHWEIG: Sir, the Marine Corps
4 assigns civilian prosecutors as highly qualified
5 experts by region. And they have between 15 and
6 25 years' experience.

7 LT CMDR STORMER: Sir, we have
8 something similar to the Marine Corps. We have
9 two highly qualified experts. Most of those
10 individuals work with me at Navy TCAP and provide
11 reach-back assistance.

12 One of our highly qualified experts is
13 a very experienced former prosecutor for adult
14 sexual assault and domestic violence.

15 And then we have another what we call
16 HQE for child abuse, child molestation cases.

17 LT COL BATDORFF: We have -- at TCAP
18 we have three HQEs, each of whom -- highly
19 qualified expert attorneys, each of whom have 20-
20 plus years prosecuting primarily sexual assault,
21 sexual violence cases.

22 One was 20 years in the Chicago Cook

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1 County DA's office. Another one in Connecticut.
2 And another one who was when she joined us a year
3 and a half ago was the head of crimes against
4 women and children in Cobb County, Georgia.

5 What they do is -- the reason they're
6 not here today is because I think all of them are
7 on the road actually sitting behind the bar at
8 courts martial going on at various camps,
9 stations and posts across the world right now.

10 They'll go out there a week before the
11 trial, and sometimes earlier than that, and
12 they'll sit there and help them with their
13 opening statement.

14 They'll go out there and help them
15 interview the victim, sir.

16 MR. STONE: I'm delighted to hear
17 that. Do you think particularly where you have
18 two you could use a few more? I guess that's my
19 question. It sounds like CID has quite a few
20 more. Do you think it would help if we
21 recommended that you had more than two, that you
22 had, I don't know, a half dozen throughout each

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1 service?

2 LT COL BATDORFF: So far the three
3 that we've had have been meeting our demand, sir.

4 And I should -- the three that we
5 have, the three HQEs that work at TCAP go out and
6 assist on cases. They're providing direct
7 assistance to cases in the preparation of cases
8 and preparation of survivors for their testimony
9 and things like that.

10 We also have other civilian HQEs, one
11 who is the head of our advocacy who works in the
12 Pentagon who was a longtime prosecutor and
13 civilian defense counsel before joining us.

14 And another HQE -- so we actually have
15 five -- who works full-time at our JAG school
16 helping develop curriculum, sir.

17 CHAIR HOLTZMAN: I just have at the
18 moment one question, which is all of you seem to
19 be talking about how the number of your
20 prosecutors is increasing. And why is that? The
21 number of cases going up?

22 LT COL BATDORFF: So, the genesis of

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1 it, ma'am, was in 2009 we decided there was a
2 problem and we needed to fix it.

3 The Judge Advocate General at the time
4 went to the Secretary of the Army and he said you
5 have 15 additional authorizations.

6 So these special victim prosecutors
7 were not taken out of hide as we say. So they
8 weren't other jobs that we had within the JAG
9 Corps. They were new positions that were grown
10 in response to the fact that we wanted to provide
11 people who solely focused on the investigation,
12 charging and prosecution of special victim cases.

13 CHAIR HOLTZMAN: Right, but what I'm
14 seeing though is that the number keeps going up.
15 One, two, a year, whatever. I mean, is it a
16 situation where you have a number in your mind
17 that you're reaching out to, one a year? Or do
18 you find that the workload is just increasing
19 that much so you need one more each year?

20 What I'm trying to arrive at is what
21 is your ideal number? Are you there?

22 LT COL BATDORFF: I think we are,

1 ma'am. And it's not the cases are rising. If I
2 had a map I could show you where they're located.

3 It's that some of my SVPs cover
4 multiple installations. So the travel that's
5 involved.

6 So, for example, I have two special
7 victim prosecutors who are at Fort Bragg. One of
8 them also covers Fort Jackson, South Carolina.
9 And so it's the geographic travel that is why
10 we've grown the numbers, ma'am, to cut that down.

11 CHAIR HOLTZMAN: Anybody else have any
12 comment? Similar problems?

13 CAPT PALMER: Ma'am, I think by the
14 end of this summer as I mentioned we'll have 24
15 senior trial counsel which will be more than I
16 have seen in I think --

17 CHAIR HOLTZMAN: I understand that,
18 but is that the number you need?

19 CAPT PALMER: Yes, ma'am, I believe
20 that's the number we need.

21 CHAIR HOLTZMAN: Okay. Major Schweig?

22 MAJOR SCHWEIG: Ma'am, we have not

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1 increased our numbers. We simply qualify people
2 at the existing bases once they meet the
3 prerequisite criteria.

4 CHAIR HOLTZMAN: I'm sorry, yes.

5 MR. TAYLOR: So, a couple of you
6 mentioned that you had earlier coordination with
7 your respective MCIOs in order to make a
8 determination about whether to proceed, I suppose
9 to put someone's name in the subject block. Is
10 that the idea? Of a report. That is, to
11 continue the investigation.

12 So, my question is what standard do
13 you use when you're at that stage of an
14 investigator.

15 One of our concerns is that we need to
16 know how cases get washed out, or not get into
17 the system.

18 So, for you people who are on the
19 front lines working with the MCIOs what standard
20 do you use when you're sitting down with the
21 investigator to say, okay, we're going to go
22 forward with this. This is an appropriate case

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1 to send to a commander for a charge.

2 LT COL BATDORFF: There are two gates,
3 sir, for us.

4 Initially, pretty early on there's
5 just a probable cause determination. It's the
6 standard probable cause determination that we
7 always make in coordination with our CID.
8 Whether it's just a regular case or a special
9 victim case we're working with the SIA, sir. So
10 that's early on.

11 And then there's a second consultation
12 that occurs where we determine whether there's
13 enough evidence for it to go to court.

14 So there's two times -- well, much
15 more than two, but there are two required points
16 where there has to be coordination between the
17 prosecutor and the CID.

18 MR. TAYLOR: And just comment if you
19 will, on that second stage. Enough evidence to
20 go to court.

21 How would you describe that? Clear
22 and convincing? More likely than not?

1 LT COL BATDORFF: I don't think we
2 have it in our policy. There's just a required
3 meeting that has to occur.

4 LT CMDR STORMER: Sir, we have
5 something very similar. We are meeting with
6 investigators more with a probable cause
7 standard.

8 In the Navy we are -- all prosecutors
9 are, especially in special victims crimes are
10 doing what we call prosecutory merits memo.

11 And within that memo the prosecutor
12 will go through, they'll list the charges,
13 they'll list the elements, they'll list the
14 evidence that support, don't support.

15 And then we use that merits memo to
16 kind of make a determination of whether or not
17 the case should go forward, whether there should
18 be a referral, whether it should go to an Article
19 32.

20 And then ultimately if there is an
21 Article 32, should the case go to trial and the
22 case be referred.

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1 So we use -- the standards are pretty
2 similar to what the colonel just said as well.

3 MR. TAYLOR: So, on the second stage
4 decision that was described do you have anything
5 more definitive, or is it just the combination of
6 all the circumstances and the factors that you
7 described?

8 LT CMDR STORMER: It's all the
9 combination of the factors described, sir. Under
10 RCM 306 there's a list of disposition factors
11 that a commanding officer or convening authority
12 can consider.

13 So what we try to do is we take the
14 elements, we take all those things, and we make
15 our recommendation based on those standards that
16 are laid out in 306.

17 MAJOR SCHWEIG: Sir, actually I've got
18 a copy of the circuit diagram that shows how the
19 case gets from report to the commander's initial
20 disposition decision.

21 What we do is similar to the Navy.
22 And Agent Gauthier I'm sure we, correct me

1 mercilessly if I get this wrong, but provided
2 there has been a subject title, an investigation
3 subject title, it's going to go to a commander
4 for disposition.

5 Along the way a special victim
6 prosecutor will provide a merits memorandum to
7 that commander's SJA as part of the decision-
8 making process. But ultimately it's up to the
9 commander.

10 CAPT PALMER: In the Air Force, as
11 Major Schweig just mentioned, if there is a
12 subject in the investigation there will be an
13 investigation.

14 And the next stage in that again, is
15 the commander making the decision.

16 But prior to the commander making that
17 decision whether there's enough evidence to go to
18 trial, using the factors in RCM 306 there is
19 draft charges done by the legal office with a
20 proof analysis showing each element under that
21 specific charge.

22 The government has to prove what

1 evidence you have for each element. And then
2 that proof analysis is then -- and the draft
3 charges are sent to a senior trial counsel member
4 of the SVU who has a chance to look at them,
5 provide additional inputs.

6 Then that goes to the commander, who's
7 given advice from his local SJA with input from
8 the senior trial counsel who did the charging
9 review. And then the commander makes that
10 decision.

11 MR. STONE: Is that just on
12 penetrative offenses, or contact offenses too?

13 CAPT PALMER: Contact offenses as
14 well, sir.

15 MR. STONE: Thank you.

16 CHAIR HOLTZMAN: Okay, I think -- are
17 you finished? Great. Thank you very much,
18 members of the panel, for coming in and
19 enlightening us about what's happening in your
20 service. And thank you so much for the benefit
21 of your testimony.

22 I think we will take -- we're almost

1 catching up to where we should be. We'll take a
2 five-minute break at this point. No more.
3 Please be back so we can get started.

4 (Whereupon, the above-entitled matter
5 went off the record at 3:13 p.m. and resumed at
6 3:20 p.m.)

7 CHAIR HOLTZMAN: Kyle, are we ready to
8 move with this right away or should we take the
9 panel first?

10 COL GREEN: Ms. Holtzman, based on
11 this morning's deliberation session the staff
12 went back and made revisions to recommendations
13 37 and 38. Each of you have a copy at your seat.

14 And you approved these recommendations
15 subject to your revisions and so we just wanted
16 to get your approval that these revisions in
17 recommendations.

18 I understand there may be language in
19 the draft of the report that we can continue to
20 revise just to reflect the language in the
21 recommendations.

22 But I wanted to make sure

1 recommendations 37 and 38 as restructured or
2 revised are accurate and appropriate.

3 CHAIR HOLTZMAN: Just having looked at
4 the recommendation 37 don't you need on line 2
5 the word "in?" You have "Department of Defense
6 collect and analyze case adjudication data."
7 Shouldn't it be "in a standardized collection
8 model?"

9 COL GREEN: Using a standardized
10 document-based collection model.

11 CHAIR HOLTZMAN: Okay. Using, okay.
12 You can't really see. Can you just read it to
13 us?

14 COL GREEN: Sure. "The Department of
15 Defense collect and analyze case adjudication
16 data using a standardized document-based
17 collection model similar to systems used by the
18 Judicial Proceedings Panel or Sentencing
19 Commission that incorporates uniform definitions
20 and categories."

21 CHAIR HOLTZMAN: Is there any
22 objection to this recommendation as revised?

1 Okay, without objection it's accepted.

2 Now, recommendation 38. Do we need
3 that read to us too?

4 COL GREEN: "The Department of Defense
5 change its policy that excludes adult victim
6 cases that are handled by the Family Advocacy
7 Program from Sexual Assault Prevention and
8 Response Office reports and include legal
9 disposition information related to all adult
10 sexual assault complaints in one annual DoD
11 report."

12 CHAIR HOLTZMAN: Is that correct?
13 Okay, do we have any objections to this revised
14 recommendation?

15 MR. STONE: Just my standing objection
16 that I would have footnoted that it's only
17 limited to adult because we don't have
18 jurisdiction over the juvenile.

19 CHAIR HOLTZMAN: Okay, noting that
20 objection, any other objection to this? Then
21 this is accepted.

22 Colonel Green, do we have to accept

1 the changes that were made and read in the
2 report?

3 VADM(R) TRACEY: So those were the
4 revisions that I had asked for just because it
5 was -- it's not that we didn't include the data.
6 The data is not available yet for the post-2012
7 prosecutions.

8 And I did ask for a modification on
9 the first page just so that it was a little bit
10 clearer that it's not that we didn't choose to do
11 it.

12 I think this last page is quite -- I
13 just rewrote the last sentence to say that the
14 proportion of appellate data covering offenses
15 adjudicated under the 2012 statute will increase
16 in future JPP reports.

17 I think the longer paragraph that
18 you're looking at, Madam Chair, is very clear. I
19 think the front page was not.

20 CHAIR HOLTZMAN: Front page, you mean
21 page 3.

22 VADM(R) TRACEY: Page 3, correct.

1 CHAIR HOLTZMAN: Okay.

2 VADM(R) TRACEY: So I propose to
3 rewrite the second sentence.

4 CHAIR HOLTZMAN: Is everyone satisfied
5 with this? Are you satisfied with this as it's
6 written on page 3?

7 MR. STONE: You want increase, right?
8 You want to add the words "will increase?"

9 VADM(R) TRACEY: "The proportion of
10 appellate data covering offenses adjudicated
11 under the 2012 statute will increase in future
12 JPP reports."

13 I think that's accurate. Not -- this
14 sentence is not accurate.

15 And I think the longer paragraph that
16 is on the last page of this is very clear.

17 CHAIR HOLTZMAN: On page 48.

18 VADM(R) TRACEY: Yes. I'm sorry, I
19 don't have my copy.

20 CHAIR HOLTZMAN: So, what is going to
21 change now? What's your proposal, Admiral?

22 VADM(R) TRACEY: My proposal is that

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1 on page 3 the second sentence reads as follows:
2 "The proportion of appellate data covering
3 offenses adjudicated under the 2012 statute will
4 increase in future JPP reports."

5 CHAIR HOLTZMAN: Any objection to
6 that? Staff agree that that's an accurate
7 statement. Yes, okay. Without objection that's
8 going to be accepted. Okay.

9 Then we're up to -- any problem with
10 page 6, the changes on page 6? Not hearing any
11 objection that change is accepted.

12 And then on page 48 there's a change
13 in red. Sorry to be nitpicky here, but shouldn't
14 it say "will likely more?" In the second to last
15 line shouldn't it be that appellate decisions
16 from Fiscal Year 2015 and beyond will likely
17 cover more courts martial adjudicated under the
18 2012 statute? Okay, great.

19 So with that correction is there any
20 objection to the changes on page 48? Okay,
21 hearing none, accepted.

22 Okay, now we're up to our next panel.

1 Thank you for your patience.

2 This panel addresses Victim Witness
3 Liaison Overview and Perspective of the SVIP
4 Policies, Practices and Procedures.

5 We'll begin with Ms. Christa Thompson,
6 U.S. Army, special victim witness liaison program
7 manager. Ms. Thompson, welcome and we look
8 forward to your testimony.

9 MS. THOMPSON: Thank you. Honorable
10 Holtzman and members of the panel, thank you for
11 the opportunity to address you today.

12 My name is Christa Thompson and I
13 serve as the program manager for the Army special
14 victim witness liaisons.

15 I work at the Trial Counsel Assistance
16 Program, Fort Belvoir, Virginia.

17 First, my background. I served as a
18 victim witness liaison for 20 years at Fort
19 Carson, Colorado, and I am a subject matter
20 expert in the area of victim witness assistance.

21 Like many of the Army's victim witness
22 liaisons I wore two hats. I was a paralegal and

1 my secondary duty was as a VWL.

2 Over time the duties of the VWL became
3 a full-time requirement and I performed less and
4 less of the paralegal duties.

5 The Army recognized that many of the
6 VWLs that were wearing two hats were not able to
7 perform the duties of the VWL to the standard
8 necessary to properly assist victims and
9 witnesses.

10 One of the innovative steps that the
11 Army has taken is to create the unique position
12 titled special victim witness liaison, or SVWL.

13 In Fiscal Year '15, the Army received
14 authorization and funding to pay for 23 full-time
15 special victim witness liaisons and one program
16 manager.

17 This is the Army's innovative approach
18 to now have full-time special victim witness
19 liaisons who work for the special victim
20 prosecutor and are a member of the special victim
21 capability team.

22 The SVWL's mission is to focus on the

1 special victims and witnesses associated with
2 special cases.

3 The term "special" refers to cases
4 involving sex assault, domestic violence and
5 child abuse.

6 The SVWL position is somewhat
7 different than the installation VWL because the
8 SVWLs work exclusively with victims and witnesses
9 involved in special cases.

10 The installation VWL position is still
11 required to handle non-special victims and to
12 back up the SVWL when necessary.

13 This is making a significant positive
14 change in how special victims are treated since
15 they now have an SVWL dedicated to keeping them
16 informed and up-to-date on their cases.

17 It is also helping the way non-special
18 victims are treated because the VWL isn't seeing
19 as many victims, so the VWL can devote more time
20 to other victims while performing their other
21 assigned duties.

22 The response from the installation,

1 staff judge advocate and special victim
2 prosecutors has been very positive.

3 Another innovative step is my
4 position. I relocated to Fort Belvoir last
5 December and began my new position as the program
6 manager for the special victim witness liaison.

7 As the Army's subject matter expert on
8 victim witness issues I provide policy guidance
9 to the SVWLs.

10 I am responsible for overseeing the
11 hiring of the SVWLs assigned to the SV capability
12 team at the identified installations.

13 I am also responsible for managing the
14 SVWL program and training the SVWLs.

15 Regarding the training, we have been
16 providing as much as possible in different forms.
17 All have been offered training online and some
18 have been able to attend TCAP-sponsored
19 conferences.

20 Others have attended local conferences
21 specific to the state in which they reside.

22 We will offer another innovative

1 training session in July. It is innovative
2 because it will be the first time TCAP has
3 brought together the SVP, the SVNCO and the SVWL
4 to the same training.

5 The goal is to have all of the SVWLs
6 trained in the VWAP program by 1 August of this
7 year.

8 The SVWLs will all be trained to be
9 trainers, in order to educate the personnel on
10 their installations regarding their role as an
11 SVWL and the VWAP program.

12 I have asked for feedback from the
13 installations regarding conflicts in the SV
14 capability team and have not received any
15 negative comments.

16 However, there are times when there
17 are issues about how best to provide services to
18 a victim who has an SVC.

19 The guidance I'm providing to the
20 SVWLs is to work with the SVCs to build trust and
21 confidence to make sure the SVCs know that they
22 are not there to question the victim about the

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1 case, but to provide information to the victim.

2 The SVWLs are working with the SVCs to
3 determine when it is appropriate for the SVWL,
4 the SVP and the victim to meet in order for the
5 SVWL to provide information in proper necessary
6 forms.

7 We are now seeing more access to
8 victims because the SVWLs are now part of the
9 prosecution team.

10 The key is for the SVWL not to
11 question the victim about their testimony or
12 about any mental health issues.

13 Recently an SVWL told me the success
14 of the new program has been lauded by the trial
15 counsel, the SVP and the witnesses and victims
16 involved in the military justice process.

17 With the creation of the new SVWLs,
18 the Army has provided a professional team that is
19 now an integral part of the OSJA and the Army's
20 future.

21 Thank you. I welcome your questions.

22 CHAIR HOLTZMAN: Thank you very much.

1 Our next presenter will be Mr. John Hartsell,
2 U.S. Air Force, Associate Chief, Military Justice
3 Division. Welcome, Mr. Hartsell, and we look
4 forward to your testimony.

5 MR. HARTSELL: Thank you, Madam,
6 members of the panel.

7 In response to your request to discuss
8 victim support innovations and training I'd like
9 to talk about the Air Force's establishment of
10 the victim rights and special crimes instructor
11 position at our JAG school.

12 And that position was filled
13 approximately 18 months ago. What that position
14 allows us to do is to rapidly implement all the
15 changes in statutes, regulation and policy into
16 our training curriculum there at the JAG school.

17 But he does far more than that. One
18 of the other aspects that he provides is part of
19 that instructional feedback that's out there.

20 And let me pause momentarily and step
21 back and talk about that feedback piece, that
22 inspection piece.

1 As you're probably aware under Article
2 6b of the UCMJ the judge advocate generals have a
3 requirement to go out and inspect the field, or
4 have their staff to inspect the field with
5 respect to military justice.

6 Now, approximately five years ago our
7 Judge Advocate General stood up an inspection
8 directoriate consisting of senior folks who have
9 lots of experience to go out and inspect the
10 field.

11 When they go out and inspect the field
12 they have a standardized checklist, and they go
13 out, and they comb through files, and they comb
14 through records, and they interview folks within
15 the legal office and the clientele around the
16 installation.

17 And the folks who run those legal
18 offices are graded. And there are lessons
19 learned that are collected, best practices that
20 are collected, and there are deficiencies that
21 are collected.

22 Those folks live out of a suitcase and

1 they go from installation to installation.

2 When they get back to Washington, D.C.
3 they go through their notes. What they do, is
4 they have a centralized website that's internal
5 to the JAG Corps that they post up there for
6 everybody all of these lessons learned and best
7 practices and deficiencies so folks can learn
8 from there.

9 So whether you're a paralegal in the
10 field, a staff judge advocate, a trial counsel,
11 or whomever, you can access this to figure out
12 what folks have done right and folks have done
13 wrong.

14 Well, one of the folks who obviously
15 reaches that is that new instructor who can go
16 out there and complete that educational cycle.
17 We call it an OODA loop in the Air Force. And
18 what that essentially is -- observe, orient,
19 describe and then act. And it's a cycle.

20 And what they're able to do with that
21 inspection process, this instructor, is look out
22 to the field, look out what the results are of

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1 those inspections and how is our training
2 working.

3 There is a lag time to that, but what
4 it allows you to do is to complete that
5 instruction.

6 Now, this instructor position is not
7 just limited to implementing updates and going
8 out and making sure everything is getting out to
9 the field, this kind of push-pull education
10 process.

11 He is actually providing training as
12 well. He's injected victim-centric training into
13 12 of our courses where he participates directly
14 in training. Whether it's defense counsel,
15 whether it's SVCs, whether it's our field grade
16 officers who are there for air command and staff
17 college, our junior paralegals, our senior
18 paralegals, he is providing training to all of
19 them.

20 What he also runs is our five-week
21 VWAP program. It's a five-module program and
22 it's a distance education program.

1 And it's not simply accessing YouTube
2 videos online. What this involves, there are
3 five instructors. And SJAs nominate their staff
4 and they go in and they train. There are graded
5 assignments, and there are graded exams, and
6 there are discussion forums once those videotapes
7 are completed. So, thorough training that goes
8 in there as well.

9 What the instructor position also
10 provides is an educational ombudsman. Now, we
11 talked earlier amongst the panel and amongst
12 other members about conflict, conflict that can
13 occur between various divergent interests that
14 are involved in advocacy and litigation.

15 And what he provides, he's the honest
16 broker, as he moves from interest group to
17 interest group training them on other things.
18 What he does is he provides the perspectives.

19 As we try to essentially get comfort
20 with our new normal of dealing with all the new
21 players, all the new rules, all the new laws so
22 that there is somebody who is ensuring that any

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1 conflicts with a little "c" don't turn into
2 acrimony and ultimately to harm to either victims
3 or processes. So, he provides that role as well.

4 So, he certainly is not making the
5 process or the overall system perfect, but he's
6 accelerating us towards that direction.

7 So, with that I look forward to any of
8 your specific questions.

9 CHAIR HOLTZMAN: Thank you very much,
10 Mr. Hartsell. Our next presenter is Mr. William
11 Yables, Jr., U.S. Marine Corps Paralegal
12 Specialist, Installation Victim Witness Liaison
13 Officer. Welcome, Mr. Yables, and we look
14 forward to your testimony.

15 MR. YABLES: Thank you, ma'am. And
16 like you did last time with the major, you said
17 my time properly. About the first time, so I
18 appreciate that as well.

19 CHAIR HOLTZMAN: I better quit while
20 I'm ahead. Thank you.

21 MR. YABLES: Well, good afternoon. My
22 name is William Yables and I am the installation

1 victim witness liaison officer stationed at
2 Marine Corps Air Station New River in
3 Jacksonville, North Carolina.

4 First of all, I'd like to say thank
5 you for the opportunity to come brief this panel
6 today on the special victims capability from the
7 perspective of the victim witness assistance
8 personnel.

9 One of the things you have not read in
10 my bio is I've been a part of the victim witness
11 assistance program since 2006.

12 I was a military justice chief and I
13 was also assigned as a victim witness liaison
14 officer.

15 I attended the Department of Defense's
16 Victim and Witness Liaison Conference and since
17 that time, I've had the desire and the goal to
18 have one of the best VWAP programs in the Marine
19 Corps. And this past year I've obtained that.

20 I enjoy sharing my knowledge of the
21 VWAP program and experiences with others wherever
22 I go during inspections or during my training.

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1 Please understand that the victim
2 witness assistance program is responsible for all
3 victims of crime, but we do pay special attention
4 to those victims of sexual assault.

5 I need to state that the VLOs in the
6 Marine Corps are a collateral duty and as a
7 result I've seen VLOs serve as short as six
8 months, and I've seen unit victim coordinators
9 serve as short as three months.

10 Over the past few years the VWAP
11 program has grown extremely fast with the
12 creation of the special victims investigation and
13 prosecution team, and the victim legal counsel,
14 with little to no training to the VWAP program.

15 I'm fortunate that headquarters Marine
16 Corps seeks out my opinion regarding the drafting
17 of new orders and inspection questions. So
18 therefore, I have a lot more knowledge than most
19 other VLOs in the Marine Corps.

20 Some of the innovative steps to
21 improve support to the victims of sexual assault
22 is the VWAP quarterly counsel meetings that we

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1 have where we discuss any issues that any victim
2 shall have. And we have all the key personnel
3 there at that counsel to take care of those
4 needs.

5 Additionally, at my installation, at
6 New River I've created an air station order which
7 requires all new personnel to check in with their
8 unit, the unit's victim witness assistance
9 coordinator.

10 I've created a VWAP pamphlet and a
11 VWAP intake form.

12 The VWAP intake form which can be
13 accessed by anyone, go onto Navy forms, or go on
14 Google and Google "VWAP intake form."

15 It can be utilized by VWACs, UVAs,
16 VAs, SARCs to gather relative information to be
17 passed on, so we know what information has been
18 passed on and what needs to be passed on to the
19 victim so we don't violate anybody's rights.

20 I've also conducted courtesy
21 inspections at my installation to ensure
22 regulations are being taken care of.

1 Headquarters Marine Corps provides
2 annual VWAP training and it's open to anyone in
3 the victim witness assistance personnel to
4 include the VLOs, the VWACs, UVAs, VAs, SVIP and
5 SARCs to ensure that adequate assistance is
6 available to victims, both all victims and
7 special victims of sexual assault.

8 During this training we have -- we're
9 going to include all special victims capabilities
10 so, we all know what all that they all do and
11 also how to assist victims of sexual assault
12 better.

13 Also during this training we have
14 members from the SVIP actually conduct those
15 briefs. We ensure that we pass, during all
16 annual training, the importance of communicating
17 with victim advocates and the VLC.

18 I believe that additional training is
19 needed for VLOs to allow or require them to
20 attend all training given to SARCs, UVAs, victim
21 advocates, or the SVIP personnel.

22 If I do not know what they know, then

1 how am I to know what they are providing to the
2 victim for support under the VWAP program.

3 There have not been any conflicts
4 working with the SVIP, victim advocates or the
5 VLC. I believe the creation of the VLC has a
6 positive impact as all victims, eligible victims
7 are provided that VLC upon initial contact.

8 Like I stated before this is a
9 collateral duty. Most other civilian VLOs do not
10 have prior military justice experience. Most
11 military VLOs and VWACs only stay for a short
12 period of time before they rotate to a new
13 position or a new duty station.

14 I appreciate the opportunity to come
15 here today and give you my views and the status
16 of the VWAP program in the Marine Corps, and I
17 welcome any and all your questions you have.
18 Thank you.

19 CHAIR HOLTZMAN: Thank you very much,
20 sir. Admiral?

21 VADM(R) TRACEY: Mr. Yables, how does
22 the fact that it's a collateral duty, how is that

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1 affecting effectiveness?

2 MR. YABLES: Well, I'm a paralegal at
3 the SJA's office so I have all my other duties.
4 And then as this comes up I have shorter time to
5 work with something, or I have to put something
6 else off to focus strictly on the VWAP program.

7 VADM(R) TRACEY: But are you at risk
8 of leaving this role in the middle of an
9 engagement with a victim witness?

10 MR. YABLES: No. I have the luxury of
11 managing my time. So if I'm working the VWAP
12 program, all the other stuff gets pushed back to
13 the SJA and his deputy to get that work done. So
14 I do have that luxury.

15 But if I've got something crunched on
16 the left side, I know I'm going to have to do it.
17 So it's time management.

18 VADM(R) TRACEY: Just one more
19 question. I thought I understood you to say that
20 people stay in this role only for a few months
21 and then they roll onto something else.

22 MR. YABLES: Correct. That's the

1 military folks, the people that are wearing the
2 uniform.

3 There's only certain jobs that they
4 can do, and if they get the transfer -- so they
5 have a short in defense, then they'll transfer
6 them over to defense, or to trial counsel, or
7 legal assistance.

8 SJAs, all those people are not allowed
9 to be a VLO. So there's a couple of jobs that
10 attorneys can actually be, and usually that's who
11 they assign is attorneys to be VLOs at other
12 installations.

13 At the unit level is the unit, it's
14 the victim witness assistance coordinators. And
15 they have their primary job as a whole. And
16 those folks, if they said they can't handle it,
17 they give up, and then they tell the CO that they
18 can't handle that because it's interfering with
19 their other job. And mission comes first so then
20 they move it on to somebody else.

21 Does that answer your question, ma'am?

22 VADM(R) TRACEY: Yes.

1 MR. YABLES: Okay.

2 CHAIR HOLTZMAN: Mr. Stone?

3 MR. STONE: I want to follow up on
4 that last response. I had asked the last panel
5 whether having at least one civilian military
6 person in that particular role either regionally
7 or at each location would help alleviate that
8 rotational problem that people need to rotate to
9 get promoted in the military.

10 Do you think so? It sounds like from
11 your testimony, just logically, that it would be
12 good to have at least one civilian military
13 person in that victim witness liaison role who
14 doesn't rotate. What's your reaction?

15 MR. YABLES: Well, it certainly would
16 be beneficial. However, that would be creating a
17 lot of civilian positions, and there's a lot of
18 other areas where what would our collateral duty
19 be.

20 I think the better thing would be is
21 to once you're assigned to be a VLO that you have
22 a minimum of 12 or 18 months minimum. Like

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1 defense counsel, they have a minimum where
2 they're for 18 to 2 years. So I think if we put
3 some criteria to make it to where they have to be
4 18 months then that would help.

5 MR. STONE: Do the other services have
6 a minimum period, or can a person get transferred
7 if he's needed elsewhere in three to six months?

8 MS. THOMPSON: Well, the SVWLs are all
9 civilian positions. Those are GS-11 positions.
10 They're not going anywhere. And we do think that
11 that adds a level of continuity with the victims.

12 So that even if the special victim
13 prosecutor moves on, that victim can always call
14 back to that office and they're hearing that one
15 voice that they've heard before.

16 And that does make them feel very
17 comfortable knowing that that person is still
18 there to answer questions.

19 MR. HARTSELL: Yes, sir. In the Air
20 Force we have a number of full-time civilian VWAP
21 coordinators and a small number of installations.

22 For the most part it's run by

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1 paralegals and attorneys at the installation
2 level.

3 With respect to whether or not it's
4 beneficial to have a civilian to provide that
5 continuity, I would agree with that as long as a
6 civilian is located in a strategic place so that
7 that individual has a full plate of
8 responsibilities and can provide that
9 information.

10 But what we don't want to lose is that
11 ability to cross-pollinate our talent, to move
12 around and get more experiences, and become
13 better. Otherwise we keep eating our own seed
14 corn.

15 So, not only that, but we also need to
16 be able to make sure we've got the assets to
17 deploy them down range to where civilians aren't
18 necessarily there.

19 So we deploy our paralegals with those
20 VWAP skills.

21 But absolutely, civilians at the right
22 strategic location is definitely helpful. But

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1 there is a LIMFAC there.

2 Now, the LIMFAC is we always assume
3 that the civilian will be there forever. And
4 having supervised a number of civilians who you
5 think you've found the right person who will be
6 there forever, and then they take the next higher
7 paying job, or they move because of a better
8 location or what have you, and you lose them.
9 Then you lose all that continuity as well.

10 So it's not the holy grail. There are
11 some limitations.

12 MR. STONE: Just one other fast
13 question. And correct me if I'm wrong. When we
14 started to hold hearings we heard that it was
15 hard to staff liaison positions in a lot of
16 different places particularly with the Air Force,
17 and that some victim witness liaisons were not
18 located, and there weren't enough to locate them
19 in every base that needed them.

20 And some of them were doing two bases
21 and flying back and forth, or only using Skype or
22 something because they couldn't get to different

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1 places.

2 Are we at the point now where pretty
3 much every location has at least one collateral
4 duty person, so that there isn't as much of this
5 flying around stuff that there was at the
6 beginning of the program?

7 MR. HARTSELL: Yes, sir. I wasn't
8 there, but I'm going to assume based upon the
9 details of your question, that that was probably
10 in reference to the SVC program itself.

11 Because we had a lot of folks with a
12 lot of pans on the stove trying to take care of a
13 lot of clients. And that was with the SVC
14 program.

15 But with this recent surge in manpower
16 with our SVCs, the goal is to try to make sure
17 we've got an SVC available at every significant
18 installation that's out there.

19 With respect to our VWAP liaisons
20 they're at every installation. Back in 1995, the
21 Air Force, we came up with what's called Air
22 Force Manpower Standard 102a.

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1 We identified 71 core tasks that every
2 single legal office had to do. And then you
3 looked at those core tasks, and then you looked
4 at how many people were on the installation, and
5 then you figured out how much manpower you've
6 got.

7 One of those core tasks was VWAP. So
8 we were able to determine how much of an FTE,
9 full-time employee, we received for the victim
10 services at that particular installation.

11 MS. THOMPSON: Every installation has
12 a victim witness liaison. But that's a dual-
13 hatted person. So they might be a claims
14 examiner and also be a VWL.

15 In 21 of the installations are now
16 also having the SVWL. So they're having actually
17 those two at those installations.

18 MR. YABLES: For the Marine Corps we
19 have an installation VLO at every installation.
20 When the new orders come out, after the new
21 billet comes out, we'll have a special victims
22 coordinator which will be another collateral duty

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1 that the VLO will have.

2 So they'll be able to go out and
3 assist the victims, civilian victims out in town,
4 and getting them their proper services.

5 CHAIR HOLTZMAN: Mr. Taylor?

6 MR. TAYLOR: Yes, thank you. First of
7 all, thanks to all of you for your longtime
8 service in a very important mission.

9 Ms. Thompson mentioned that the
10 relationships working with SVCs is really
11 important.

12 And my question for all three of you
13 just briefly is this, because the SVCs establish
14 these trusting relationships, these close
15 relationships with the victims, how has that
16 program changed in any way what the special
17 victims witness liaison brings to the table? Has
18 it made it more difficult? Has it made it
19 easier? Has it changed the way you think about
20 your services? Start with you, Ms. Thompson.

21 MS. THOMPSON: Well, it's pretty new
22 for us, but I think that it's making a big

1 difference in the way that, you know, when the
2 victim first found out there was a special victim
3 prosecutor and that made them think, wow, they
4 actually have a trained prosecutor ready to
5 prosecute my case. That made them feel more at
6 ease and better.

7 And I think the same is with the
8 special victim witness liaison, that they're
9 seeing that we're taking this seriously, that we
10 intend to give them the best service we possibly
11 can. And so I think that makes a huge difference
12 to them.

13 The SVWLs being part of the
14 prosecution team, I think it makes the SVC see
15 them as part of the process instead of that
16 person that's down the hall in claims, maybe they
17 don't know everything that they want them to
18 know, maybe they're not as trained as they'd like
19 them to be.

20 Where they know they're taking them to
21 the SVWLs, they're professionals, they have the
22 training, they have the tools to speak to people.

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1 So we think that that's going to make a
2 significant difference in how the SVCs are going
3 to see them and how the victims are going to see
4 them.

5 MR. HARTSELL: Yes, sir. I think it's
6 a paradigm shift for folks. I think initially
7 when the SVC program first came out people's
8 immediate reaction, many of them who were
9 parochial thought but I'm the knight in shining
10 armor. I'm the one who works with the victim.

11 MR. TAYLOR: Right. That's exactly my
12 point, right.

13 MR. HARTSELL: And so, but as you
14 adjust to it and adjust the paradigm and realize
15 that that protection or that service is not
16 distinct but actually complementary. If you
17 approach it from that perspective it actually
18 does what it's supposed to do.

19 And it's supposed to essentially try
20 to educate whether they're victims or witnesses
21 on the military justice process to ensure all
22 victim rights are protected and answer those

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1 questions, and try to mitigate whatever
2 additional harm may occur as a result of an
3 investigation and prosecution.

4 And if done correctly it does that.
5 Our SVCs work very well with the VWAP who is
6 assigned, the VWAP liaison who is assigned to the
7 case.

8 They coordinate all the way down to
9 things like travel vouchers for a victim who may
10 have to travel, where they're trying to
11 reconcile, okay, now who's making the travel
12 arrangements. Is the SVC going into DTS to help
13 the victim or is it the victim liaison.

14 Many times the reconciliation of the
15 travel voucher money, a lot of times our VWAP
16 liaison will be able to take care of that because
17 they've done it far more frequently with lots of
18 witnesses.

19 But the idea is they've got to work
20 together and that's what we train them. We train
21 them that if you do not work together, you're
22 going to lose your victim. And that makes the

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1 harm that much worse. So it's got to matter to
2 everybody.

3 So these protections and this
4 interoperability is not exclusive.

5 MR. YABLES: The Marine Corps, we
6 don't have a special victim liaison or anything
7 like that.

8 We have the victim witness liaison
9 officers, we have the special victim legal
10 counsel, we have unit victim witness
11 coordinators. So we're set up a little bit
12 different than everybody else. So I really can't
13 answer your question, sir.

14 MR. TAYLOR: Thank you.

15 CHAIR HOLTZMAN: Okay, well maybe last
16 and most confused. So what's the difference
17 between the victim witness liaison person and
18 special victims counsel? What services does the
19 victim witness liaison offer that the special
20 victims counsel doesn't? Can we start with you,
21 Ms. Thompson?

22 MS. THOMPSON: Well, first of all, the

1 special victims counsel can't take care of every
2 victim that comes in that door, because they have
3 to be an ID cardholder. So there are certain
4 criteria --

5 CHAIR HOLTZMAN: What's that mean?

6 MS. THOMPSON: Well, if they're not
7 military --

8 CHAIR HOLTZMAN: I see, okay.

9 MS. THOMPSON: -- then they're not
10 going to -- or a dependent of a military they're
11 not going to be able to get that service.

12 So we have a lot of civilian victims
13 who come through that door and that are going to
14 get the SVWL to help them.

15 CHAIR HOLTZMAN: Okay, but let's talk
16 about a military victim.

17 MS. THOMPSON: Okay. For a military
18 victim, the SVWL is still going to be the one to
19 provide them with the required DD forms. There's
20 a 2701, 2702. The 2701 talks about the initial
21 information that a victim needs. The 2702 talks
22 about the court martial process. And the 2703

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1 talks about the post-trial matters. And then
2 they have to fill out a 2704 that goes to the
3 confinement facility if the individual is found
4 guilty and receives confinement. So all of those
5 forms have to be provided by the SVWL, or by the
6 VWL whichever is handling the case.

7 And so those forms are a requirement
8 under AR 27-10 Chapter 17. And so we make sure
9 that the SVC knows that and that they -- so that
10 the SVWL can provide that information along the
11 way.

12 It's kind of a way to guide that
13 victim through the military justice process,
14 here's the initial information, and usually CID
15 gives that to them.

16 And then when we decide that there's
17 going to be charges preferred, then the 2702 is
18 provided to that victim.

19 And that gives that VWL or SVWL an
20 opportunity to tell that victim, here's how the
21 court martial process works.

22 Would the SVC do that as well? He

1 may, or she may, but hearing it more than once
2 has never been a problem for our victims because
3 they don't retain a lot of information.

4 When you're in traumatic situations
5 like that you tend to forget a lot of
6 information. So, we don't feel like it's
7 overwhelming them with too much information. We
8 feel like they need that.

9 And then it also kind of confirms with
10 them, oh, the SVC is giving me everything I need
11 because the SVWL is saying the same thing, that
12 we're not providing different information about
13 the same thing. So that they see that we really
14 are working as a team, that we all have the same
15 goal in mind and that is to take care of her or
16 him, and get them through that process.

17 Plus the SVWL will take care of
18 witnesses as well. So witnesses often times, are
19 very traumatized by the situation and are very
20 afraid to go through a court martial process and
21 also need someone to help guide them through it
22 and make sure that they understand what's

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1 happening.

2 So again, the SVWL is providing that
3 information where the SVC would not.

4 CHAIR HOLTZMAN: Mr. Hartsell?

5 MR. HARTSELL: Yes, ma'am. Referring
6 back to what Captain Palmer talked about earlier
7 when he mentioned prior to the SVC program he
8 would work with a Victim, and one of his
9 frustrations would be if the victim needed legal
10 advice. And that is probably the most critical
11 distinction between the two, the SVCs provide
12 privileged legal counsel to those victims and
13 that's a critical aspect.

14 Now, separate and distinct from that,
15 what the VWAP provides -- the VWAP provides --
16 advises them of their Article 6b rights. The SVC
17 does that as well.

18 Advise them on the legal military
19 justice system. The SVC provides that as well.

20 But the VWAP also needs to do the DD
21 form 2701, 2702, 2704 as discussed, but also
22 ensures that there's a separate waiting room

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1 area, ensures that the facilities for the victim
2 are set up in advance prior to trial because the
3 SVC may not necessarily be doing that because
4 they're working with their counsel.

5 So in effect what the VWAP liaison is,
6 is really the proverbial liaison within the legal
7 office assisting or providing the assistance to
8 the SVC who may need some interactive heavy
9 lifting there within the legal office to help
10 better support their client.

11 CHAIR HOLTZMAN: Mr. Yables?

12 MR. YABLES: Very similar with both of
13 them, but a little bit of a mix. I'm a hybrid.

14 We have the special victims witness
15 assistance coordinator which will be coming out
16 with the new VWAP order which will talk about
17 assisting the victims, getting services and
18 different things, where the VLC or the SVCs as my
19 counterparts talked about is strictly there for
20 giving the legal advice, making sure that
21 everything is taken care of at the court martial
22 side.

1 If it's not dealing with court, then
2 it's back down to the VWAP.

3 Same thing with the forms. Either the
4 trial counsel is giving them out if it's going
5 through the court martial, if it's a summary
6 court martial, or a different situation then it's
7 going to be the VWAP or the special victims
8 witness assistance coordinator taking care of
9 that situation.

10 So, we're just a little hybrid, a
11 little bit of terminology difference between the
12 two branches here.

13 JUDGE JONES: I have one quick
14 question. At what point is a victim witness
15 liaison appointed? You don't start the moment a
16 victim makes a complaint and gets an SVC, or do
17 you?

18 MS. THOMPSON: We do. So, first they
19 go to CID and they make their complaint.

20 They might get an SVC right then, or
21 they might wait. It depends on the
22 circumstances.

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1 But we want them to meet with that
2 victim within two weeks of them making that
3 complaint. They are not going to the hospital
4 with them where the SVC, I guess could. So they
5 are going to follow up after the complaint has
6 been made to make sure that victim knows that
7 they are there, and if they have any questions
8 they can ask.

9 But if they have an SVC, then they
10 will go through the SVC to do that. They can't
11 go directly to the victim.

12 JUDGE JONES: Once a process has
13 started, charges have been referred I assume that
14 -- because this is something that I remember were
15 part of the duties I thought of victim witness
16 liaisons, you are an arm of the prosecution.

17 MS. THOMPSON: We are now.

18 JUDGE JONES: You are now.

19 MS. THOMPSON: If you're an SVWL.

20 JUDGE JONES: And so part of what you
21 do as well, is make sure that the victim witness
22 knows the schedule, is alerted to all those sorts

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1 of things, in addition to all the other things
2 you've talked about.

3 MS. THOMPSON: That's correct.

4 JUDGE JONES: Do you also though, get
5 involved in -- because I remember at the
6 beginning it seemed like there were an awful lot
7 of people helping the victim witness out. You've
8 talked about a bunch of them.

9 Do you also get involved in saying, oh
10 by the way, you might want to use this service?

11 MS. THOMPSON: That's one of the most
12 important things I think --

13 JUDGE JONES: So you repeat, perhaps,
14 what they've already been told by someone who
15 would recommend that they go to the hospital for
16 a SANE exam, or they maybe want to get some
17 mental health?

18 MS. THOMPSON: We try to stay away
19 from the mental health issue now as much as
20 possible. But we might say something like, it is
21 not uncommon for someone to need mental health
22 advice or help. And if that's something you

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1 choose to do, and you're not comfortable with who
2 you go to see you can always go to somebody else.

3 We try to make sure that they
4 understand that they don't have to necessarily go
5 to the first one. Maybe when they go see a
6 counselor the first time they're like I don't
7 like this person. This person's not helping me,
8 or they're not the right fit for me.

9 So instead of talking to them maybe
10 about whether or not they need mental health, is
11 that if they decide to go to mental health that
12 they might not like the mental health advisor
13 that they get, they can always try to get another
14 one. And that is not an uncommon thing, and that
15 they should be comfortable with that.

16 But we don't go into details about
17 things like that.

18 JUDGE JONES: But you're fully
19 conversant about all the services available to
20 them.

21 MS. THOMPSON: Absolutely.

22 JUDGE JONES: You'll remind them of

1 that.

2 MS. THOMPSON: Absolutely.

3 JUDGE JONES: As well as the
4 administrative details. Telling them what time
5 they may have to show up for court, that sort of
6 thing.

7 MS. THOMPSON: Absolutely. What to
8 wear when they're going to court. What the
9 uniform, if it's an active duty person. And if
10 they want to bring a support person with them, we
11 now are able to pay for a support person to fly
12 with them. If they've moved from one
13 installation to another and we're bringing them
14 back, they can now bring this support person with
15 them on the government's dime. So, that's been a
16 big help for us.

17 You know, we want to make sure when
18 they're walking into court they're not by
19 themselves. Whether I meet them at the front
20 door, or one of the attorneys is meeting them at
21 the front door, or meeting them in another
22 building and walking them over, we discuss all

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1 that before they get to court so that they aren't
2 surprised by the accused being there or anything
3 like that at the front door.

4 JUDGE JONES: So you sort of look at
5 the totality of needs, and I mean totality.

6 MS. THOMPSON: yes, ma'am.

7 JUDGE JONES: To make sure that this
8 victim witness is in the right place, at the
9 right time and the right frame of mind if you
10 will, and has had all the services?

11 MS. THOMPSON: Yes, ma'am. We try to
12 predict all the things that can go wrong, and try
13 to prepare them for things.

14 JUDGE JONES: So you're a little bit
15 like a controller and a concierge.

16 MS. THOMPSON: A coordinator I
17 suppose, yes.

18 JUDGE JONES: Yes, thank you.

19 CHAIR HOLTZMAN: Okay. Well, I don't
20 think there are any other questions so I want to
21 thank all the members of the panel, again,
22 compliment you on the important work you've done

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1 and thank you very much for your time and for
2 your presentations here today. You've been very
3 helpful to us.

4 And I think now we have time for
5 public comment. So we'd like to recognize some
6 of our people who are gluttons for punishment.

7 COL GREEN: Ma'am, we didn't receive
8 requests for public comment.

9 CHAIR HOLTZMAN: It's not a public
10 comment, but this is -- oh, this is the comment
11 we're receiving. Whatever you want to call it.
12 Helpful comment. Critical comment. Wise
13 comment.

14 COL DECAMARA: Your glutton on behalf
15 of the SVC program managers is reporting as
16 ordered, ma'am.

17 I've made copies if the panel would
18 like.

19 CHAIR HOLTZMAN: Great. Excuse me,
20 for the record would you mind introducing
21 yourself?

22 COL DECAMARA: Yes, ma'am, sorry.

1 This is Colonel Andrea deCamara on the record,
2 again from the Air Force Special Victims Counsel
3 Program, on behalf of the six program managers to
4 include Lieutenant Colonel Winston of the
5 National Guard.

6 Per your request we got together in
7 the lunchtime hour, as well as following --
8 during some of the presentations earlier this
9 afternoon and crafted a few amendments to Article
10 6b as well as Article 70.

11 And I tried to conserve Holiday Inn's
12 paper so I did it double-sided.

13 CHAIR HOLTZMAN: That's fine, thank
14 you.

15 COL DECAMARA: And I apologize for the
16 quality of the copy.

17 CHAIR HOLTZMAN: Nothing to apologize
18 for. We are amazed and in wonder, in awe of the
19 amazing job you've done.

20 COL DECAMARA: So, the changes that we
21 are requesting is that in subparagraph (a)
22 subsection (2) of 6b to add "all pleadings filed

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1 by all parties."

2 Now there is some -- that would be the
3 only paragraph that there was some concern by
4 some of the program managers, specifically the
5 Army that it says "all pleadings" and not
6 "pleadings arising from the offense" or involving
7 a statutory, constitutional, or regulatory right
8 of the victim, that the SVC would be receiving
9 too many pleadings.

10 However, there are other people that
11 voiced if we had that, if we qualified it too
12 much, then we would have to fight for pleadings.
13 So, we'll leave that to your wise discretion.

14 So, changing subsection (2) and then
15 coming down to subsection (C) of subsection (2).

16 CHAIR HOLTZMAN: Excuse me. Would a
17 change such as -- you had all pleadings except
18 those specifically rejected, or a notice of some
19 kind of rejection was given by the special
20 victims counsel.

21 COL DECAMARA: I'm sorry, I don't
22 understand. I'm trying to follow.

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1 CHAIR HOLTZMAN: Okay. You've said
2 that the problem with all pleadings filed by all
3 parties is, that the special victims counsel
4 could get overwhelmed.

5 COL DECAMARA: Well, or pleadings that
6 don't -- if it's at the trial level, maybe it's a
7 motion that has nothing to do with the victim at
8 all. And so that was the concern.

9 So they had suggested all pleadings
10 involving a statutory, regulatory or
11 constitutional right of the victim filed by any
12 party, instead of all pleadings by all parties.

13 CHAIR HOLTZMAN: I see, okay. So
14 there's some concern about that language. I
15 mean, my suggestion was --

16 COL DECAMARA: On the flip side, the
17 concern is that --

18 CHAIR HOLTZMAN: You wouldn't get what
19 you need.

20 COL DECAMARA: Too qualified then we'd
21 have to fight each time we want if there was a
22 pleading.

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1 CHAIR HOLTZMAN: All right. So that's
2 one. And then you have a change under (C).

3 COL DECAMARA: Under subsection (C) to
4 say at the following this is the timely notice of
5 any of the following, a court martial or any
6 appellate matters to include post trial review
7 relating to the offense, to address getting the
8 notice of those filings with regards to a
9 victim's case.

10 CHAIR HOLTZMAN: All right. Then
11 you're up to (4).

12 COL DECAMARA: And then under
13 subsection (4) sub (B) is a sentencing hearing to
14 include sentence reassessment in accordance with
15 the review under Article 66 UCMJ to address when
16 a lesser guilt.

17 CHAIR HOLTZMAN: Right, and the right
18 of the victim at that point to be heard on that
19 issue.

20 COL DECAMARA: Yes, ma'am.

21 CHAIR HOLTZMAN: Okay.

22 COL DECAMARA: Adding a new subsection

1 (D) any and all appellate matters and hearings
2 arising out of the offense.

3 And because one of the things that we
4 didn't bring up here, but it's something that we
5 have talked about regularly within the SVC, VLC
6 program managers, is there are varying degrees of
7 what is allowed in administrative boards.

8 And we're talking about if there's an
9 alternate disposition for an accused to say non-
10 judicial punishment, but then an administrative
11 separation board.

12 Some services as a matter of practice,
13 the SVC can be present to represent the victim's
14 rights which are becoming many hearings involving
15 513, or 412 and 513 issues.

16 Other services, the SVC is not allowed
17 in at all. And so we took the liberty to add in
18 any and all administrative boards and other
19 adverse administrative proceedings arising out of
20 the offense.

21 MR. TAYLOR: Could I just ask a
22 clarifying point? Did you mean by this to

1 include non-judicial punishment proceedings?

2 COL DECAMARA: We discussed that, sir.
3 And we know that there are different standards at
4 each of the -- in each of the different services.

5 So, captain's mast is handled
6 differently for Navy, say, if you're deployed and
7 afloat, in that the accused might not even have a
8 counsel. So we are mindful that the service
9 cultures might dictate differences with regards
10 to NJP specifically.

11 So we didn't want to put in
12 definitively non-judicial punishment or not. We
13 just decided on "other administrative
14 proceedings."

15 MR. TAYLOR: To be determined.

16 COL DECAMARA: It could be to be
17 determined by service regulation.

18 MR. STONE: So it would include
19 Article 15's.

20 COL DECAMARA: If that's what the
21 service --

22 MR. STONE: Well, I'm asking your

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1 intent. Do you mean to cover Article 15's?

2 COL DECAMARA: I think for most of --
3 yes. We are concerned about GOMORs in the Army,
4 where it's the general officer memorandum of
5 reprimand, is where I think we were getting into
6 the privacy of the accused.

7 CHAIR HOLTZMAN: So what is the
8 language you're suggesting? Mr. Taylor, did you
9 have an amendment that you're suggesting to (E)?

10 MR. TAYLOR: Well, not necessarily. I
11 was just trying to understand what it meant and
12 what it included and what it didn't include.

13 And I do think the point is well taken
14 that if you're talking about a captain's mast,
15 where you don't have necessarily the right to
16 counsel, then it's very hard to argue that you
17 would expand it to an SVC, right? Isn't that the
18 argument?

19 COL DECAMARA: That was exactly the
20 concern, sir. For specifically putting in there
21 non-judicial proceedings.

22 MR. STONE: So, should the end of it

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1 say -- just add onto the end there "arising out
2 of the offense where counsel are present?" Would
3 that do it?

4 COL DECAMARA: I'm turning to my
5 colleagues.

6 My service friends who are afloat,
7 they say yes.

8 JUDGE JONES: Can I just go back one
9 minute? So if I could just go back to (D) for a
10 minute.

11 COL DECAMARA: Yes, ma'am.

12 JUDGE JONES: So, this would mean that
13 you would have the right to be reasonably heard
14 at any and all appellate matters and hearings
15 arising out of the offense, regardless of the
16 issue?

17 You're not, you know, sort of focused
18 on 513, 412.

19 COL DECAMARA: We were concerned that
20 there could be other issues that would cause for
21 a sentence reassessment.

22 So we are concerned about the sentence

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1 reassessment. I realize this is addressed in
2 other -- up in (C), in 2(C).

3 JUDGE JONES: Right.

4 COL DECAMARA: But we tried to be
5 broad since we don't know -- because we're faced
6 with a gap, we wanted to actually err on the side
7 of being a little bit more broad than too
8 narrowly scoping it, which seems to have put us
9 maybe in the quandary that we're in right now.

10 JUDGE JONES: Yes.

11 MR. TAYLOR: So, just back to (E) for
12 a second. Can you think of any other instance --
13 I'm not an expert on the UCMJ, but can you think
14 of any other instance where in a change to the
15 UCMJ you create a right in an administrative
16 board that's unrelated to the UCMJ?

17 For example, administrative separation
18 boards aren't governed by the UCMJ. They're
19 governed by a completely different set of
20 regulations.

21 So of all the military justice experts
22 in here do you know of one? Because I think if

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1 so -- I mean, if not, then this creates a
2 precedent that would be troubling which is to use
3 the UCMJ as a vehicle to create some sort of
4 right in an administrative board that is not
5 covered by the UCMJ.

6 COL DECAMARA: I think Article 31
7 would always apply.

8 MR. STONE: And I think that the
9 phrase "arising out of the offense" qualifies it.

10 Because, for example, if a person
11 decided to go to the board you just mentioned
12 because he was charged with a sexual assault
13 offense as a way to avoid the prosecution, I
14 think that the victim should have a voice there.

15 In other words, it's limited to
16 arising out of the offense.

17 CHAIR HOLTZMAN: Okay, let's go to the
18 -- before we decide on all of these points. I
19 guess you have a point if we turn the page,
20 right?

21 COL DECAMARA: So if we turn the page
22 in subsection (E) we have added a new subsection

1 (4) and renumbered subsection (4) to subsection
2 (5) to include, and this is for the standing
3 aspect of it, the counsel of the accused and the
4 government file appellate proceedings in a matter
5 arising out of the offense the victim shall be
6 served notice of the pleadings in accordance with
7 paragraph (a) (2) and may file pleadings as a real
8 party in interest when a victim's statutory right
9 or constitutional right is implicated.

10 And then we added in that subparagraph
11 (4) into the new sub (5) to say what those rights
12 would be.

13 CHAIR HOLTZMAN: Okay. And then 870?

14 COL DECAMARA: And then 870 deals with
15 appellate counsel. There is a specific provision
16 regarding appellate counsel and who the Judge
17 Advocate General can appoint, and right now it
18 only states appellate government counsel and
19 appellate defense counsel.

20 And so, we're recommending to add in
21 sub (a) the phrase "and one or more commissioned
22 officers as appellate victims counsel," and then

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1 adding in a new sub (e) that states "Appellate
2 victim's counsel shall represent the victim
3 before the Court of Military Review."

4 It's basically taking the language
5 from the sub (c) for defense counsel.

6 And instead of having "when the United
7 States is represented by counsel" we have added
8 in "when any Article 6b right is implicated
9 during trial, or in any appellate pleading or
10 matter."

11 And then we renumbered subsection --
12 the original subsection (e) to subsection (f).

13 CHAIR HOLTZMAN: Okay. So, I just
14 wanted to raise a few points with you.

15 Do we solve the point in (a)(2) by
16 saying a right to reasonable, accurate and timely
17 notice in all relevant pleadings? If we were to
18 put the word "relevant?"

19 MR. STONE: The problem with that is
20 going to be that the defense counsel is going to
21 tell you it's not relevant.

22 CHAIR HOLTZMAN: Yes, but at least you

1 have an opportunity to -- you're not going to be
2 inundated with every single pleading, and at
3 least there's a signal to the appellate courts as
4 to what's meant here.

5 MR. STONE: This is in the trial
6 court.

7 CHAIR HOLTZMAN: No, no, no, this is
8 not just for the trial court. This is for the --
9 am I wrong?

10 COL DECAMARA: It's for both trial --
11 (a) sub (2) is for trial and appellate. Because
12 we're adding in appellate because it's all been
13 assumed to be trial at this point.

14 CHAIR HOLTZMAN: Oh, okay.

15 COL DECAMARA: And so it would be
16 applicable to both trial and appellate.

17 CHAIR HOLTZMAN: Well, I still think
18 that that might help solve the problem because of
19 this.

20 COL DECAMARA: The compromise
21 language.

22 CHAIR HOLTZMAN: Yes. I don't know

1 that -- learned counsel in the back, do you have
2 any comments about that?

3 MS. FRIED: Madam Chair, it might be
4 appropriate, and I defer to you on that, but this
5 is going to be posted on the website.

6 We probably should give an opportunity
7 for the service reps to comment on how this --
8 any recommendations or suggestions that they
9 would have with respect to the proposal. Submit
10 that for the panel's consideration.

11 CHAIR HOLTZMAN: I just wanted to make
12 two other suggestions.

13 One is from a drafting point of view I
14 don't like the term "to include" when it means
15 "including." So you don't have any objection to
16 using the word "including" instead of "to
17 include?" "To include" is military kind of
18 jargon.

19 And I am concerned about 4(E) for the
20 points that you've raised, Mr. Taylor. So I
21 don't know whether that's something that maybe
22 should -- at this point if we got everything else

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1 and we didn't have 4(E) we might be very happy.

2 So I just leave to people's
3 consideration as to whether that should be
4 removed.

5 Also on 4, on the back side of this,
6 point 4, if counsel for the accused or the
7 government -- it should be files appellate
8 pleadings instead of file because it's singular.

9 Okay, those are my comments. Judge
10 Jones?

11 JUDGE JONES: I would like time to
12 consider this. To me it strikes me as broader
13 than what we were talking about earlier.

14 I certainly like the idea and approve
15 the idea that with respect to two different
16 things at least, and maybe there are more.

17 The notion that there's a real issue,
18 or an issue as to 412 or 513 that you can't be
19 stopped with just a writ of mandamus.

20 And I can see and making amendments
21 that would make sure that you knew, that the
22 appeals courts knew, that you would be considered

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1 either a party in interest, or someone who not
2 only got notice, but should be permitted to argue
3 and file a brief.

4 I'm a little worried about the breadth
5 of some of the rest of it, because it seems to
6 make you a party in interest for purposes of the
7 appeal period.

8 And I'm sorry, I just go back to who I
9 think the parties are. That's all.

10 So I would just like the time to look
11 at this. I think it's a little too broad for me.

12 And I don't understand the point you
13 made at all, so I need to think about that. I
14 have to confess.

15 CHAIR HOLTZMAN: Right, that's the
16 point (E).

17 JUDGE JONES: I'm sure you're right,
18 whatever you're saying.

19 MR. TAYLOR: Thank you, but you have
20 more confidence in my assessment than I do.

21 But I would like to go back to a
22 process issue. And I think that, again, I think

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1 the gravamen of what we're trying to do here is
2 definitely in the right direction.

3 But as a process matter I would feel
4 better about this if we took it up at our next
5 meeting, perhaps at the very beginning at the JAG
6 school, and gave the services time to comment on
7 their views and perhaps the staff to develop
8 something that addresses some of the concerns
9 that we've expressed here today.

10 COL GREEN: Yesterday, just the way
11 we've done that in the past when the panel
12 received recommendations regarding Article 120
13 from the subcommittee, we submitted that out
14 through our public notice that we provide at
15 meetings and asked for public comments from
16 everybody on our distribution lists.

17 And we received comments that then the
18 panel could consider in the course of its
19 recommendations.

20 CHAIR HOLTZMAN: So my thought about
21 that is, so we could post this on our website,
22 correct?

1 COL GREEN: That's correct, ma'am.

2 CHAIR HOLTZMAN: And indicate why
3 we're posting it, and the concerns that it's
4 designed to address that the panel has raised.
5 Namely, the rights of a victim at the appellate
6 level that had come to our attention. And they
7 were very concerned about vindicating those
8 rights.

9 This is a proposal to address them and
10 we'd like comment on that.

11 COL GREEN: Yes, ma'am, we can do
12 that.

13 CHAIR HOLTZMAN: And that would give
14 people an opportunity to know that this was a
15 problem, might address it if they wanted on their
16 own. How do the rest of you feel about that?

17 JUDGE JONES: I think that's right.

18 MR. TAYLOR: I think that's the right
19 way to go. I agree.

20 JUDGE JONES: And I think it's our
21 sense that something needs to be done under 6b.

22 MR. STONE: I agree, and I'd just like

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1 to add for the record, that before my service
2 here I was on the receiving end of situations
3 just like they were explaining before where we
4 weren't given status in some appellate venues.

5 And then the Supreme Court decided the
6 Paroline case, and the Seventh Circuit decided
7 the Larrimore case. And they used language just
8 like is being used here, in that 4 paragraph on
9 page 2, real party in interest when a victim's
10 statutory, regulatory or constitutional right is
11 implicated.

12 That's exactly what they are. They're
13 a real party in interest for that victim's issue.
14 That's the proper description.

15 And I think those two cases,
16 particularly the Paroline case in the Supreme
17 Court makes that point.

18 I would also just like to say for the
19 record as to the (E) provision, the 4(A), 4(E), I
20 think at a minimum -- if you think any and all
21 administrative boards and other adverse
22 administrative proceedings arising out of the

1 offense is too broad, then I think it at least
2 should say under (E) Article 15 and other adverse
3 administrative proceedings arising out of the
4 offense.

5 Because I think we know from all the
6 testimony we've heard over our existence, that
7 many of these offenses get dropped down to an
8 Article 15. So we know that that's a proceeding
9 that needs to be covered.

10 CHAIR HOLTZMAN: But I think without
11 objection from anybody here, we should have --
12 the statement should reflect the panel's concern
13 about the need to have victims' rights vindicated
14 at the appellate level.

15 And the testimony that we've heard
16 that that's not happening now. And this is a
17 proposal that addresses it. And we would welcome
18 comment.

19 So that it's quite clear to the world
20 that we have a concern, that the issue has been
21 brought to our attention and we have a concern
22 about it.

1 Any disagreement with that? Okay.
2 And I want to thank you very much, Colonel, for
3 this remarkable job that you've done. And who
4 knows what could happen.

5 Thank you very, very much. And to
6 your colleagues in the back of the room, thank
7 you too for your wonderful assistance here and
8 assistance to the panel. We really appreciate
9 it.

10 MS. FRIED: Madam Chair, are we done?

11 CHAIR HOLTZMAN: I think so.

12 MS. FRIED: Thank you, this meeting is
13 closed.

14 (Whereupon, the above-entitled matter
15 went off the record at 4:26 p.m.)

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