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
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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MS. FRIED: Good morning everyone. Thank you for being here today. Welcome to the Judicial Proceedings since Fiscal Year 2012 Amendments Panel.

My name's Maria Fried and I'm the Designated Federal Official for the JPP. Colonel Kyle Green is the Staff Director to the JPP.

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

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

Members' biographies are available at the JPP website at http://www.jpp.whs.mil.
This Panel is a Federal Advisory Committee and must comply with the Federal Advisory Committee Act and the Sunshine Act.

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

Madam Chair?

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

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

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

The Judicial Proceedings Panel was created by the National Defense Authorization Act for Fiscal Year 2013 as Amended by the National Defense Authorization Acts for Fiscal Years 2014
and 2015.

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

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

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

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

Ms. Carson will also suggest -- I'm
sorry, will also share information from a January
2016 Special Victims Counsel training course she
attended at the Army JAG School.

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

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

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

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

We very much appreciate everyone's
attendance today and we look forward to hearing
from and speaking with each of you.
Finally, each public meeting of the Judicial Proceedings Panel includes time to receive input from the public. We received no requests for public comment at today's meeting.

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

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

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

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

Those letters pointed out issues of potential factual inaccuracy in presentations made to the Panel, JPP, and to potential inaccuracies in our report.
I want to say that we very much welcome the attention that's being paid to our work. And, we very much welcome any effort to point out any inaccuracies. It's vital because of this very important subject of sexual assault in the military that our reports reflect only accurate information.

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

Okay, we're ready to begin.

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

Colonel Kyle Green, please?

COLONEL GREEN: Ma'am, as you mentioned, last month, the Panel held a deliberation session on this topic reviewing materials that you had received from the course of months and statistical information as well as inputs from speakers that you heard.
Last month, the Staff provided you an initial draft report summarizing information that the Panel had received and you deliberated on this topic and we concluded regarding recommendations.

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

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

And so, there are some additions specifically related to those letters, specifically related to conviction rates and the information received from the Bureau of Justice Statistics study in 2009 as well as a complete review of the appellate data that we had provided to you previously. And so, those portions of the report have been updated based on the continued Staff analysis.
So, unless there are questions from the Panel regarding those issues, the way we've proceeded in the past is to review the recommendations of the Panel.

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

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

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

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

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

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

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

CHAIR HOLTZMAN: Sure.

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

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

Is that also a case management system? How does it interact with what we're suggesting? Or is it simply an effort to standardize across
the Services so that we'll all be looking at the same event called by the same name?

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

COLONEL GREEN: No --

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

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

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

Again, the proposal from DoD was submitted in January.

JUDGE JONES: Of this year?

COLONEL GREEN: And so, it's a
legislative proposal and I would have to say that
the -- Mr. Koffsky's description of it here
really stands as the only information.

    JUDGE JONES: Is about all we know?
    COLONEL GREEN: Yes, ma'am.
    JUDGE JONES: Okay.
    CHAIR HOLTZMAN: Are there any other
    further questions?

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

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

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

    If this proposal was transmitted to
Congress, shouldn't we be able to get a copy to
put -- to distribute to the Panel?
COLONEL GREEN: You received a copy of the proposed -- it's Article 140A. It's in the January materials. We have a copy of it here, Mr. Stone, and I'm happy to share that with you.

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

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

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

COLONEL GREEN: I think the -- relative to other proposals that came out of the Military Justice Review Group, the Panel's determination as it related to Article 120 matters was that the Panel didn't receive additional information regarding anything other than the documents itself.
And so, you know, the Panel's other reports have indicated that you didn't study or analyze and you made no comments regarding the MJRG's proposal and you made yours independently.

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

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

COLONEL GREEN: That's correct.

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

Are we required to comment on various proposals?

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

CHAIR HOLTZMAN: Well, regarding -- but I'm not talking Article 120 in general, I'm talking about the Section 1104, the proposed Military Justice Act. Okay.
So, going back to the point I want to make, would you mind just highlighting the areas of the report that have changed, that you're recommending that be changed --

COLONEL GREEN: Yes, ma'am.

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

COLONEL GREEN: Yes, ma'am.

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

And, the Panel Members had questions about what the overall conviction rate was. And, in the course of that discussion, it's confusing because the BJS study includes information regarding cases where the original arrest charge is a rape charge and then it provides information
about what the overall conviction rate is, meaning an overall -- that person -- the person where an initial arrest charge was rape is ultimately convicted of any offense. And, it also includes a conviction rate for the underlying rape charge.

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

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

COLONEL GREEN: Fifty-one of the draft report.

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

COLONEL GREEN: Yes.

And so, the two numbers involved here are that the overall conviction rate for any offense is 68 percent and the conviction rate for a rape offense is 35 percent. And, just so that
that's absolutely clear.

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

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

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

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

And, it was pointed out that our -- the cases that we had identified that had been resolved by the Court of Appeals for the Armed Forces may have included cases that where the
underlying reason for appellate action on the case did not involve and adult sexual assault offense.

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

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

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

CHAIR HOLTZMAN: Can you give us a page reference?

MS. SAUNDERS: If you -- the data
itself begins on page 48 of your draft.

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

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

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

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

But, of the cases where they actually wrote opinions, there were 256 cases that
involved an adult sexual assault offense.

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

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

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

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

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

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

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

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

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

CHAIR HOLTZMAN: The one you just cited?

MS. SAUNDERS: Right.

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

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

CHAIR HOLTZMAN: Right.
MS. SAUNDERS: -- the methodology for arriving at that.

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

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

There was one jurisdictional --

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

MS. SAUNDERS: Correct.

The text is largely the same.

CHAIR HOLTZMAN: Oh, okay.

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

CHAIR HOLTZMAN: Okay.

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

CHAIR HOLTZMAN: Good, thank you.

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

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

So, not necessarily relating to the sexual assault offense.

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

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

CHAIR HOLTZMAN: Okay. Thank you.

Any other items?
COLONEL GREEN: No, ma'am, those are the two updates to the report that we made based on the inputs.

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

CHAIR HOLTZMAN: Sure, please.

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

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

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

The information that we could gather
on this involves cases that were heard by the
Appellate Courts in FY12 through FY14.

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

COLONEL GREEN: Yes, ma'am.

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

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

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

VADM(R) TRACEY: Correct.

MS. SAUNDERS: I think we kind of
generally say that, and perhaps we could be more
clear about it, I think we generally say that
these are -- that we could not use the same pool
of cases for which we took our court-martial data because of those cases have not yet reached the appellate stage.

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

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

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

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

CHAIR HOLTZMAN: -- Executive Summary, a paragraph.

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

VADM(R) TRACEY: And, importantly, cases that may actually have been tried well before the years that are being captured here,
right? Some cases take a long time to get --

MS. SAUNDERS: Absolutely.

COLONEL GREEN: Yes, ma'am.

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

COLONEL GREEN: Sure.

CHAIR HOLTZMAN: That would be really great.

COLONEL GREEN: Okay.

CHAIR HOLTZMAN: Does that satisfy you?

VADM(R) TRACEY: Great.

CHAIR HOLTZMAN: Okay.

Anybody else have any other issues? I want to go to the recommendations themselves then.

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

COLONEL GREEN: Yes, ma'am.

The Panel, through the course of its
deliberations, noted two recommendations.

Recommendation 37 reads, if Congress
--

CHAIR HOLTZMAN: What page are you on, please?

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

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

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

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

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

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

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

I'm trying to distinguish between these two proposals, the system that we're recommending.
Or, maybe you don't find as big a problem as I think there is in terms of how each of the Services labels different events.

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

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

JUDGE JONES: What the other proposal is? Right.

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

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

JUDGE JONES: So, you did your own standardization?
COLONEL GREEN: Correct. And, I think, in terms of going to a record of trial and looking for where that information resides within a record of trial, there were some differences, but, by and large, Stayce did the bulk of this work.

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

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

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

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

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

MS. ROZELL: Yes, ma'am.

JUDGE JONES: All right.

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

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

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

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

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

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

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

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

COLONEL GREEN: Yes, ma'am.

JUDGE JONES: And many fewer cases.

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

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

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

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

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

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

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

MR. TAYLOR: Well, I would just like to ask a question that maybe everyone else
understands and I'm just a little fuzzy about.

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

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

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

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

And, I would like, in the recommendation, just to add a few words to
clarify that because I think it's not uncommon that people, when they're faced with a lot of recommendations, don't spend a lot of time on the bullet points underneath because when you have a lot of recommendations.

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

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

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

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

So, including those suggestions, do we
have a -- how do we feel about this Recommendation 37? Should we -- anyone -- if we're in favor of it, should we say -- anybody opposed to it? No? Okay.

So, the recommendation is agreed to.

Thank you.

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

COLONEL GREEN: Yes, ma'am.

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

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

Again, this goes back to an issue that was identified by the RSP and you heard testimony about how these cases are resolved through the
FAP Program and both through SAPRO and are not included within SAPRO's purview and, therefore, are not uniformly included in the annual reports.

CHAIR HOLTZMAN: Any disagreement with this or any comment?

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

CHAIR HOLTZMAN: This has been our standard form.

MR. STONE: Okay, all right.

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

I mean, I would think we'd want to know that. I'm familiar with a case that
involved exactly that kind of thing. A military officer who ultimately pled guilty to sexual assaults against teenagers of the opposite sex on base.

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

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

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

COLONEL GREEN: The other part of
that, ma'am, in terms of the JPP's charter, but the other issue is the SAPRO reports do not include child-related offenses. And so, that's the other issue.

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

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

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

CHAIR HOLTZMAN: Well, I think there's a jurisdiction issue that Admiral Tracey pointed out. But, is there anything that's excluded from
adult sexual assault matters from this Recommendation 38? Who would be excluded? Who would be excluded now?

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

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

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

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

Okay, let's say you have an adult
child, for example, I don't know.

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

JUDGE JONES: It is with me, yes.

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

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

Is that okay with everyone?

MR. TAYLOR: It is.

JUDGE JONES: Fine with me.

CHAIR HOLTZMAN: You look unhappy, Mr.

Stone.

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

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

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

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

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

CHAIR HOLTZMAN: Any other comment
from any of the Members?

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

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

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

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

MR. STONE: Do you oppose a footnote that says we don't comment upon sexual assaults
upon -- similar sexual assaults upon children because they're not within the jurisdiction of the Panel? Just a sentence like that?

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

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

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

I just see it as different. We're not
there's no substantive recommendation here, it's a procedural one about the record keeping. I would like to see something that explains what you've just said on the record, however short it is.

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

MR. STONE: Okay.

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

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

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

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

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

MR. TAYLOR: I agree.

VADM(R) TRACEY: So do I.

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

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

MR. TAYLOR: I move we adopt it.

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

MR. TAYLOR: So moved.

CHAIR HOLTZMAN: Okay.

JUDGE JONES: Second. Are we seconding?

CHAIR HOLTZMAN: Sure.

JUDGE JONES: Okay.
CHAIR HOLTZMAN: And really --

Robert's Rules will govern.

Okay, all in favor?

(CHORUS OF AYES)

CHAIR HOLTZMAN: Anyone opposed?

Okay, thank you.

MR. STONE: I'll abstain.

CHAIR HOLTZMAN: Okay, that's noted.

So, are we --

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

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

CHAIR HOLTZMAN: So, how are we going to proceed with regard to the two changes that
have to be made in terms of this report? Are you
going to circulate the proposed language and
we'll approve this telephonically or by email or
how -- maybe you can even give us language before
the end of the day?

   COLONEL GREEN: Yes, ma'am.
The Staff can update that --
   CHAIR HOLTZMAN: Okay.
   COLONEL GREEN: -- and provide it
today or, if not, we can certainly circulate the
proposed final draft to you quickly and get your
approval, concurrence, whatever you wish to do.
   CHAIR HOLTZMAN: Is that okay, Ms.
   Fried?
   MS. FRIED: That would be fine if we
just had some lines open. If we did it by phone.
   CHAIR HOLTZMAN: Yes.
   MS. FRIED: We would just have to have
some lines open for the public if --
   CHAIR HOLTZMAN: Okay. But, if we
didn't do it by phone but did it by email, it
would be satisfactory?
MS. FRIED: That would not work.

CHAIR HOLTZMAN: That would not work?

Okay, so we need to have -- good, that's why I look to you because you're our expert.

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

COLONEL GREEN: Yes, ma'am.

JUDGE JONES: -- Panel session.

CHAIR HOLTZMAN: Okay, great.

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

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

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

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

COLONEL GREEN: Unless the Panel has
other issues regarding the report.

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

COLONEL GREEN: Yes, ma'am.

CHAIR HOLTZMAN: Okay, let's do that. Thank you. Thank you, Members of the Staff for your help on this. We really appreciate it.

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

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

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

Ms. Carson?

MS. CARSON: Good morning.

CHAIR HOLTZMAN: Good morning, welcome.
MS. CARSON: Thank you very much.

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

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

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

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

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

CHAIR HOLTZMAN: Just hold on one second.

MS. CARSON: -- a little bit rushed.

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

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

MS. CARSON: Yes.

CHAIR HOLTZMAN: -- to the Judicial Proceedings Panel.

MS. CARSON: Yes.

CHAIR HOLTZMAN: Excellent. Okay.

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

CHAIR HOLTZMAN: Right.

MS. CARSON: The next slide, okay.

December 19th is when the 2015 NDAA passed. It was just a month before the JPP report was released. So, technically, that NDAA didn't follow anything that was recommended by the JPP.
But, there are two provisions in that NDAA that did follow the JPP recommendations from the 2015 report and I'll get to those in just a minute.

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

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

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

Interestingly, the JPP recommendation was to make it more difficult to obtain the records from the MTF's medical providers.

There were other key provision in place --

CHAIR HOLTZMAN: So, that was recommended by the --
MS. CARSON: That was recommended by the JPP. And so --

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

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

CHAIR HOLTZMAN: Oh, I see.

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

CHAIR HOLTZMAN: Okay.

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

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

Also, the victim preference for civilian versus military court was required, clarified the victim's right be heard, meaning
through counsel as well as the victim.

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

MS. CARSON: Yes, it was.

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

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

MS. CARSON: Yes.

CHAIR HOLTZMAN: Right, great.

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

They added another provision in 2015 that, in cases where the senior trial counsel requested it through the chief of the trial counsel program, is another case where the
Secretary would review.

JUDGE JONES: We did not recommend that.

MS. CARSON: Recommended against that, right.

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

CHAIR HOLTZMAN: Did we recommend --

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

CHAIR HOLTZMAN: And RSP?

MS. CARSON: -- recommendation of the RSP.

CHAIR HOLTZMAN: RSP, great.

MS. CARSON: The confidential review of terms of discharge for sexual assault victims by BCMRs which would now require some of the records and the hearings to be confidential
where, currently, you can get them in the reading rooms before this provision. Now they're required to be confidential.

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

CHAIR HOLTZMAN: Do you mind if I just interrupt.

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

MS. CARSON: Not a lot.

CHAIR HOLTZMAN: Okay.

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

CHAIR HOLTZMAN: I see. And, it's
just reviewing cases as opposed to subject matter?

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

CHAIR HOLTZMAN: Okay.

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

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

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

It was discussed how the lengthy process, particularly around the Article 120
changes in 2012 that still, to this day, don't have an Executive Order implementing and providing elements and specifications.

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

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

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

It provides civilian access to SVCs and I think you'll hear from the SVC Program Managers about that and some complications that that may be causing for them.
The SVC authority was expanded to include IG, EO, congressional complaints and FOIA requests.

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

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

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

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

CHAIR HOLTZMAN: Oh, okay.

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

All right, so the 2014 -- actually,
that should be the 2015, right, yes, report recommendations.

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

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

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

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

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

And, the first one is Recommendation
Number 2 which is that the Services implement additional selection criteria for SVCs to have adequate criminal justice experience.

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

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

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

The last one is to remove the constitutionally required exception to MRE 412 in Article 13 -- at Article 32 hearings. And, that constitutionally required exception was removed from 513, the mental health records but it has not been removed from 412.
Then, the Military Justice Review Group, this was -- recommendation was based on the JPP and RSP difficulties in obtaining data that the two Panels had been looking for.

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

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

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

But, having both of those things happening would make much easier work for Panels like the JPP and the RSP are trying to do.
CHAIR HOLTZMAN: Great. Well, before we turn to the training course, do Members have any questions or issues they want to raise with Ms. Carson about this report?

MR. STONE: Yes, I do.

CHAIR HOLTZMAN: Yes, Mr. Stone?

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

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

MR. STONE: I see. So, that unless our recommendation for a uniform system, I guess
I should say not unless, but so our recommendation is not outdated even despite this because we're asking for something that does make it easy to understand all the numbers without having a kind of cross tabulate?

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

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

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

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

MR. STONE: So, our recommendation
adds a little bit to what's here, would you say? Or, do you think it's completely duplicative?

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

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

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

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

MS. CARSON: Well, this has all been delivered to Congress in time to be in the next NDAA, but that's the big question is how much of the Military Justice Act will actually be in it? If they'll approve it in its entirety, if they'll take pieces of it, I'm not aware of --
CHAIR HOLTZMAN: What's their timetable? What's the Congressional timetable on the next NDAA?

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

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

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

I personally have some concerns based on the publicly -- recently publically released Air Force Court of Appeals redraft of some of its rules that the Services have read our Recommendation 8 in a way that I think is inappropriately narrow in that the new Air Force rules appear, anyway, to recognize this particular language allowing for mandamus if a
court ruling violates the rights of a victim under these two provisions.

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

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

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

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

CHAIR HOLTZMAN: You mean Number 1?

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

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

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

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

MS. CARSON: Well, what the NDAA adopted is the ability to file writ of mandamus for 412 and 513 in the 2015 NDAA and then they
expanded it in the 2016 NDAA.

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

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

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

For any number of reasons, the prosecution might decide, well, they don't want the case reversed on that issue and might agree that, first of all, everybody including defense counsel can look at that sealed exhibit which has come to the appellate level.
And, that they don't -- if it's going
to be reversed anyway, they might not wish to
defend it, but even if they do and it's reversed
on a different ground, defense counsel, everybody
will perhaps have violated that person's
psychological privilege by that.

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

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

Otherwise, I guess we could do it, too.
JUDGE JONES: I would just say that, on one quick issue, and you may know more about this than I do, but I would think that the records themselves would be filed under seal.

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

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

MR. STONE: Well, you see --

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

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

JUDGE JONES: That's exactly right.

At the appellate level. I mean, the
prosecution won on these arguments below. They did their job in terms of protecting the victims' rights.

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

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

If the defense counsel did see the records, it would breach their privilege. It also means that there's a reason to disqualify that defense counsel in the event that there's a remand for a new trial.
In fact, I would think the whole defense service had to be disqualified.

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

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

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

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

MR. STONE: Well, that's my point. If the new appellate rules of the Air Force say that the sealed records come up and that the court decides, in its discretion, who gets to view the records, and there's no participation or pleading that the victim gets to say you shouldn't see
them for this reason or that reason, which they
got to see below, it's purely between the parties
and the court and the victim doesn't even get to
say anything about why the victim might think
their records should not be reviewed.

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

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

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

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

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

Just my gut reaction.

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

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

And, I don't know whether we can do this in a fast enough time frame to address the
NDAA that's coming out now.

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

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

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

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

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

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

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

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

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

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

JUDGE JONES: Oh, sure.

MR. STONE: It sounds like I would
also just ask the Staff, and if they have any
questions, I'm sure we can -- I, for one, can help them.

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

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

MR. TAYLOR: If I may, Madam Chair.

CHAIR HOLTZMAN: Sure.

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

MS. CARSON: Correct.

MR. TAYLOR: So, what process do we have in place, Staff to Staff, to track how they
are doing or the progress they're making on any of these recommendations so that recommendations, for example, don't end up in the dust bin during transitions?

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

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

MS. CARSON: It was done in November.

MR. TAYLOR: Quarterly? Annual basis?

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

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

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

MR. TAYLOR: Please?
CHAIR HOLTZMAN: -- interrupt on this point.

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

JUDGE JONES: Yes, I do.

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

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

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

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

CHAIR HOLTZMAN: Correct.
VADM(R) TRACEY: Have we been through the normal process that we submitted a report, the SecDef has commented on it back to the Panel?

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

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

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

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

MR. TAYLOR: What does that mean?

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

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

MS. FRIED: Correct.

CHAIR HOLTZMAN: So, they're in the process of being addressed?
MS. FRIED: Correct, correct.

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

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

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

CHAIR HOLTZMAN: Correct.

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

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

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

CHAIR HOLTZMAN: It's been a while.
Well, I think why don't we wait until the next meeting or the meeting thereafter and then figure out what we want to do beyond that.

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

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

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

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

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

CHAIR HOLTZMAN: Right.

MR. TAYLOR: So, that's my concern.
CHAIR HOLTZMAN: Okay. So, I think that would be another way of ensuring that full attention is paid to this and if they disagree, they can. But, those reasons ought to be out in the public.

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

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

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

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

MS. CARSON: Yes, they definitely could.

CHAIR HOLTZMAN: -- a Request for
Information.

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

MS. CARSON: Got it.

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

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

JUDGE JONES: Where to go from there?

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

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

And, the ones where they were -- that concurred or approved by DoD, they were staffed
to either the Services or the appropriate agency to take action.

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

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

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

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

JUDGE JONES: That would be great.

That would be great, thank you, Kyle.

CHAIR HOLTZMAN: Excellent.

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

Okay, Ms. Carson, would you address your experience at the training course?
MS. CARSON: Sure.

Since we're running so short on time --

CHAIR HOLTZMAN: Great, thank you.

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

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

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

And, I list on each of the slide who they brought in to teach each of the courses on
victim behavior, on the substantive matters of law, victim perspectives. They brought in a forensic examiner. They brought in an investigator.

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

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

CHAIR HOLTZMAN: Okay. Thank you for that.

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

I'm sorry?

VADM(R) TRACEY: Do we have any sense -- I'm sorry -- do we have any sense of why you would schedule a five-day course in a week that you know only has four days in it? That's not like the holiday's coming as a surprise.
MS. CARSON: Well, my sense is, there were -- these courses are 80 people flying in from all over the world. So, the circumstances, I don't know, but I think they have a lot of variables to take into account when they set the timing on these courses.

But, the program managers can address that for you.

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

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

And, they told me there was really not only no need, but the scenarios, some of them might be more candid if we didn't participate in the fifth -- parts of the fifth day and we didn't really participate in the fifth day.
So, I think five-day course is its nominal name, but I think they can actually do it and they have done it in three days here we heard.

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

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

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

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

MS. CARSON: Thank you.

CHAIR HOLTZMAN: And, I guess our next Panel will be Updates on the Special Victims Counsel, Victims Legal Counsel Program.
And, we have a number of very important presenters. Would you please come forward?

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

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

Colonel Marotta?

COLONEL MAROTTA: Good morning, ladies and gentlemen.

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

The Army currently has 75 SVCs, 50 full-time and 25 part-time SVCs serving at 43 installations.
SVC positions are primarily Captain positions, but beginning in Fiscal Year 2017, the Army will have three additional Major positions, one at each of our Corps, Fort Bragg, Fort Hood and Joint Base Lewis-McChord.

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

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

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

However, in some cases, it makes sense for the original SVC to continue representation, particularly if there's an upcoming trial.
Therefore, we developed a policy that informs the gaining SJA about the judge advocates continued representation and they would just find out the number of cases and the location so that they have oversight and can avoid conflicts of interest.

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

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

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

COLONEL MAROTTA: Yes, ma'am.

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

COLONEL MAROTTA: Of the judge
advocate being nominated --

CHAIR HOLTZMAN: I see, okay.

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

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

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

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

Feedback received from victims has been extremely positive. Victims indicate they
feel empowered and are better able to participate in the military justice process because of their SVC.

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

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

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

What we have noticed, though, is a significant change in the attitude of the parties
towards the SVC. Their role is now better understood and appreciated.

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

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

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

Victims also provide feedback by regularly participating in panel discussions at the twice annual SVC Certification Course and speaking opportunities at outside agencies.
We also conduct regular staff visits to installations Army-wide and meet with SVC Program stakeholders, including SHARP and VA personnel.

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

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

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

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

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

We utilize the Army's platform milSuite to collaborate.

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

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

In closing, each client is different and they often want very different things for SVC. Some want to be heard. Some do not.
Success is measured by whether the SVC zealously represents that client's interests, whatever they may be.

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

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

I'm happy to answer your questions.

CHAIR HOLTZMAN: Thank you very much, Colonel.

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

Captain, we appreciate your presence and you may proceed.

CAPTAIN FISCHER-ANDERSON: Thank you and good morning Members.
Thank you for the opportunity to re-
appear before this Panel.

The Navy --

CHAIR HOLTZMAN: Glutton for
punishment.

CAPTAIN FISCHER-ANDERSON: Yes, ma'am.

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

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

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

We're also working to add a second VLC
billet in Yokosuka, Japan and we expect that plan
will be approved shortly and the additional body
will be in place this summer.
Looking forward, we POMed for and will be placing another VLC, or excuse me, a VLC billet in Sigonella, Italy in FY17.

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

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

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

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

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

As to the second change, since November of 2014, a Navy Victims Legal Counsel
Program Manual was created which promulgates policy, prescribes procedures and assigns responsibility for execution of the program.

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

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

These three rules specifically pertain to our practice.

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

All parties to the court-martial must comply with these uniform rules. In the case of noncompliance, the military judge has enforcement mechanisms. He or she may issue an admonishment on the record, issue appropriate court orders, issue a report to the military counsel's
commanding officer or officer-in-charge, or forward information about the matter to a civilian or military counsel's bar.

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

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

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

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

Summaries of procedural rules for each
appellate court were created to provide easy access for VLC to negotiate the logistical hurdles associated with filing a brief with the court.

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

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

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

In 2015, Navy VLC assisted 826 new clients. Of those victims, 679 or 82 percent
were Navy, 735 or 89 percent were unrestricted
reporters, 82 or 10 percent were adult dependents
and 29 or 3.5 percent were minor dependents.

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

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

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

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

Additionally, our military judges are
ensuring protection and enforcement of Victim 60
rights.
From the victims point of view, well, we asked them to complete a voluntary anonymous survey when they terminate services. Of the clients who responded, 100 percent of them felt their VLC was working exclusively and specifically for them and their interests, including protection of their privacy.

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

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

The biggest challenge facing the victims --

CHAIR HOLTZMAN: You couldn't do better?

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

The biggest challenge facing the
Victims Legal Counsel Program today is Congress's desire to expand eligibility. It's both good and bad news.

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

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

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

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

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

As the chief of staff, I worry about empathy or compassion fatigue of my counsel. The number of clients and 36-month tour lengths can
be a bad combination.

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

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

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

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

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

For example, with regard to representation to administrative processes such
as the Merit System Protection Board and EEO and in preparation for litigation against the employer's employer, the United States, these services have not traditionally been provided by uniformed attorneys due to conflict and competency issues.

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

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

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

Program performance is being measured and we believe meeting the objective of the
program. Weekly reports are submitted by each of our VLC to the Deputy Chief of Staff and then forwarded to me as the Chief of Staff and then on to Command of the Naval Legal Service Command for review.

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

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

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

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

Navy victims' legal counsel are
performing beyond expectation. And, we believe part of the reason for the program success is because we're very selective in who gets to be a VLC.

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

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

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

As Chief of Staff, I am responsible for oversight and informal evaluation of each
Navy victims' legal counsel. I am their reporting senior.

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

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

They are evaluated on their client numbers, leadership, mission accomplishment, teamwork, programmatic contributions, continued military education and community volunteer activity.

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

Finally, no Navy VLC has reported being retaliated against professionally for doing
their job. In fact, I'm pleased to tell you it's been quite the opposite.

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

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

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

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

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

Colonel, welcome and thank you for being here.

COLONEL DECAMARA: Good morning, Madam Chairwoman, Panel Members, thank you for giving
me the opportunity to once again talk to you about the great strides the Air Force Special Victims Counsel --

CHAIR HOLTZMAN: Another glutton.

COLONEL DECAMARA: Another glutton.

-- over the past 18 months.

CHAIR HOLTZMAN: Welcome.

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

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

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

I am proud to say that as of this
coming summer, 2016, due to the recognition of our Air Force leadership of the value of this program, specifically, the victims and to the Air Force in general, we will have six senior SVCs in the grade of O4 or O5, 45 SVCs, 26 special victims' paralegals and a four-member leadership team at Headquarters.

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

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

Additionally, the creation of the Senior Special Victims Counsel position, in my opinion, is the biggest and most significant improvement to the Air Force's special victims'
During the summer of 2015, the Air Force reorganized its military justice capabilities to a circuit structure with five geographic circuits.

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

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

Personal relationships matter, period. And, this reorganization has ensured the integration of senior special victims’ counsel into the military justice leadership teams.

Further, Senior Special Victims
Counsel play a critical role in the professional development, mentoring and continuous realtime evaluation and assessment of the SVCs within their circuit.

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

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

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

They fairly evaluate the counsel and report directly to me several times per week informally and through a formal biweekly case
Senior SVCs provide their counsel formal and informal feedback and are their evaluators in accordance with the requirements of Air Force Instruction 36-2406.

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

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

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

The narrative comments also demonstrate profound and heartfelt gratitude of
our clients from the services they received.

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

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

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

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

Are these comments based on statistics
or hard data? No, but much of what our SVCs are expected to provide our clients are not easily measured through statistics like participation and conversion rates.

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

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

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

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

How extensively are SVCs supposed to engage with Unions if the member is a Union member?
Or, what does advise mean with regards to DoD civilians filing an EEO complaint? Some EEO complaints can end up in Federal Court. What is the line where the SVC has to tell the client they are no longer authorized to assist?

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

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

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

But, now, we have clients whose trials resulted in the accused being convicted and cases reached the appellate courts. In many such
cases, the victim's mental health records were at issue at trial and are potentially at issue on appeal.

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

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

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

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

As I close, I would be remiss if I did not recognize the phenomenal support and
collaboration routinely exhibited by the program managers in front of you including Lieutenant Colonel Tracianna Winston of the National Guard Bureau who is here in the audience but not testifying.

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

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

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

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

With one of the focus areas of the
most recent NDAA being on the establishment of standardized guiding principles to include training and performance measures, I submit the Service program managers have embodied these requirements since the Services were directed to stand up the SVC and VLC Programs.

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

I look forward to seeing what happens with this proposal.

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

Over the past two years, our program
saw an 18 percent rise in new clients, from taking in 694 new clients in 2014 to 819 new clients in 2015.

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

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

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

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

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

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

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

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

Since that time, since November 2014, the VLCO has continued to evolve and mature into a well-respected, incredible arm of the Military Justice system.
Our VLCs are distinguishing themselves in and out of the courtroom for their zealous and effective victim advocacy and innovative problem solving to achieve the victims' goals for justice.

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

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

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

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

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

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

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

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

In order to quickly stand up the VLCO during FY14, local Commands staffed the VLCO with Marine legal service specialists until civilian
paralegals could be hired.

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

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

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

During FY16, the newly hired civilian paralegals were also sent to the same certification courses at the Army and Air Force JAG Schools in an effort to equip all VLCO personnel counsel legal service specialists and
civilian paralegals with the most current information and skills to effectively serve sexual assault victims.

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

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

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

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

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

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

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

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

Victims have benefitted by having their own uniformed legal representative to
navigate and challenge a complicated legal system on their behalf, a system that may sometimes ignore or under appreciate the emotional, physical, personal and professional implications of associated with sexual assault.

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

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

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

And, I do echo what my fellow program managers talked about with regards to --
What are the biggest challenges facing the VLC Program today? Have these challenges changed?

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

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

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

And, again, I also echo that of the
other program managers that this demand signal has increased because we've also increased the aperture of who we represent.

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

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

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

I'm pleased to report that during last year's site visits, I was able to meet with a
significant number of commanders, convening authorities, staff judge advocates, NCIS and SAPRO personnel who overwhelmingly spoke favorably of their experiences with the VLC.

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

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

To promote and educate the military community with the VLCO program, our VLCs in each region are encouraged to seek out opportunities with local commanders, training and education sections and Marine and family support centers to provide outreach and training on the availability and role of the victims’ legal counsel and
providing victims of sexual assault legal consult
and representation.

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

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

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

How are VLC performing? Who are they
evaluated by?

Each Marine in the VLCO is making a
positive and professional impact in performing
their VLC responsibilities. They endeavor every
day to be the best advocate they can be on behalf
of their clients while at the same time, they are
leading the way in educating the commanders, the
Judge Advocates, the investigators, the Service Members and the rest of the military community on victims' rights and the role of the VLC in the military justice system.

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

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

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

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

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

And, the VLCs hold the rank of First
Lieutenant but more normally that of a Captain.

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

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

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

Chair and distinguished Panel, I again thank you for the opportunity to talk to you today.
CHAIR HOLTZMAN: Colonel, thank you very much for your testimony. We really appreciate it.

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

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

MS. COTHREL: Good morning Members of the Panel.

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

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

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

Since November 2014, the Coast Guard
SVC Program has expanded and formalized its process in addition to creating and hiring for my position, the Coast Guard added one additional experienced JAG as a full-time SVC in our East Coast office for a total of six full-time SVCs, three on the East Coast and three on the West Coast.

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

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

Each full-time and special duty SVC must attend one of the sister Service SVC Certification courses and must serve a short
probationary period with an experienced SVC before being detailed to a client.

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

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

The Coast Guard legal program recognized that personal representation of victims of sexual assault, while gratifying and enriching for attorneys, can also be terrifically draining. And, as such, determined two years in place was the appropriate length of time to ensure victims are provided the most effective representation possible.
Another noteworthy high point is the completion of our SVC Instruction. The instruction which we hope to promulgate soon formally lays out the program's operational framework and includes information on our organizational structure, questions of client eligibility and notification of SVC services and details the scope of a Coast Guard SVC's responsibilities.

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

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

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

Due to its small size of the Coast
Guard's court-martial docket has historically been modest. However, increased sexual assault prosecutions and the concurrent establishment of the SVC Program has had significantly focused the Coast Guard legal program's attention on Military Justice practice.

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

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

Now that I'm part of the Coast Guard, I'm fond of the aphorism that a rising tide raises all boats and having attorneys at administrative and military justice proceedings
that are trained on victims' issues has required all Coast Guard JAGs to get smart on the law. Victims' rights have been forever changed by the better by the introduction of Coast Guard SVCs into the military justice and legal assistance arena.

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

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

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

Moreover, in the past, when there was funding provided to help the military components meet newly created statutory obligations towards
victims of sexual assault, the money was
distributed to the Department of Defense which
does not include the Coast Guard.

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

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

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

To that end, as a program, we
constantly work toward ensuring SVCs are detailed
to make contact with their clients within 24
hours, that our rate of utilization for eligible clients continues to rise, that we conduct outreach both internally and externally at every opportunity so that all members of the Coast Guard and the public at large understand our mission, that our SVCs are as well trained as possible and that we continue to build trusting relationships with our stakeholders so that we can work together to better victims of sexual assault.

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

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

So, subject to your questions, that
concludes my remarks.

CHAIR HOLTZMAN: Thank you very much.

We'll start with questions.

Mr. Taylor.

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

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

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

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

COLONEL MAROTTA: It is truly by exception, that is -- the requirement is annotated in our new handbook as well as TJAG policy that the SVC must have military justice or prior criminal law experience.
And, she goes through each of the applications and if we know now well beforehand, if there is someone in that packet who doesn't have that experience, the SJA really needs to explain why this person doesn't have that experience, why this person is right for the job and how they are going to get that person smart on criminal law before they start taking on clients.

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

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

MR. TAYLOR: Well, I think most people on the Panel would agree with me that that's welcome news that you are moving in that direction. So, congratulations for doing that.
You also mentioned, if I understood you correctly, that you thought the atmosphere or the attitude had improved throughout the community in terms of the acceptance of the program.

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

So, are there still pockets of resistance to the SVC Program?

COLONEL MAROTTA: Sir, I'm not seeing it now. When I came into the job in the summer, I was still hearing that, you know, grumblings about, you know, as I was going into the role, you know, everybody will pull you aside and kind of give you their view on what, you know, what the program is.

But, I just met with the -- all the staff judge advocates last week. And, by and
large, all of them approached me at some point during my -- before and after my engagement and were telling me how wonderful their SVC was and raving about their program and telling me, you know, all the new things they're implementing.

So, it's almost become now the bragging rights, who's got the best programs. So, I really have seen since my eight months, a shift where it's now -- I just got an email yesterday from an SJA at Fort Drum telling me how fabulous his SVC is and all the wonderful things and that I should consider her for a panel.

So, I'm really seeing more and more of this -- the SJAs bragging about how wonderful the program.

MR. TAYLOR: Thank you.

COLONEL MAROTTA: So, there's really been a shift.

MR. TAYLOR: Thank you.

My last question I have for you has to do with the satisfaction rate of clients.

Is there any trend whatsoever for
those who are dissatisfied as to reasons why
clients feel that they might not be served
adequately or satisfactorily by their SVCs?

COLONEL MAROTTA: I can't say, sir, that I have seen a trend. I will say that I think when you're in a client services business that there will always be, you know, some people that you're just never going to satisfy.

Because this is the horrible experience that has happened to them and it's hard to put those pieces back together. And, some people are not ready for help yet or not ready to do -- to put those pieces back together.

So, I can't say that I've identified a trend.

MR. TAYLOR: Can you identify any factors that people point to that might indicate what some of the reasons are why people might be dissatisfied? Or is it to amorphous to generalize?

COLONEL MAROTTA: I really think it is, sir. I don't have any specifics that --
MR. TAYLOR: Well, all of us who have practiced law for a long time certainly understand your first point that you can't please all your clients all the time. We certainly understand that.

Again, welcome back to you, Captain Fischer-Anderson.

I was I would say just a little concerned about the comment that you and Colonel deCamara made, also welcome back, about the expansion of the program to include civilians and how you thought that that would create some stressors on the program that maybe you weren't quite prepared to handle, not to put words in your mouth.

But, would you elaborate on that a little bit? Is it primarily a capacity issue or is it a competency issue?

CAPTAIN FISCHER-ANDERSON: Well, sir, thank you for the question.

I would say it's both. Capacity in that, well, let me back off and say, even though
that has -- that expansion has come into being, we have had no DoD civilians, ironically.

But, I am concerned because we do not train our victims’ legal counsel in Merit System Protection Boards or EEOs. And, much of the time, the interests are against that of the United States and counsel and JAG Corps Officers don't represent clients who have interests against the United States.

So, I think it comes down to managing expectations. I think that it went out that DoD civilians would be eligible for our services and they're going to come in expecting a whole lot more than we're going to be able to deliver.

And, if the word gets out and if we do begin to see more DoD civilians, again, because the case to counsel ratio that we want to keep in check for our counsel, I do have some fear that it will have an impact on our current manning, sir.

MR. TAYLOR: Same question, please, Colonel deCamara.
COLONEL DECAMARA: We have already started representing DoD civilians. So, we currently have I believe six DoD civilians as clients currently.

And, we are seeing it -- we're concerned about capacity as the word gets out because I think the word is still not out to DoD civilians that this is something that would be available to them.

And so, I am concerned as to what will it do to our capacity as we continue on.

But, I am primarily concerned with competency. So, we have added, and we'll talk about this, I know the next JPP is about training, but -- and I did extend to you, Ms. Carson and your Staff, if they would like to come to our SVC course which is the week following the next JPP.

But, we've added to our SVC course not only a plenary session lecture block on labor law, but also a two hour seminar block to work on labor law issues so that they are aware.
For our clients, you know, by way of example, if you have -- in our -- at least in our rules, our DoD civilians are only going to be represented by an SVC if the subject is subject to the UCMJ and the accused is subject to the UCMJ.

And, where we have seen that with our civilian clients is workplace abusive sexual contact. That has so many different implications.

And, that SVC being an attorney would be expected to know filing deadlines. So, if a counsel is brand new and not knowing what they need to do for their client with regards to just making a complaint to EEO.

What if, you know, what do they need to do and when do they need to do it by? Because if they miss that deadline, they may have significantly impeded a right that a client may have.

They also need to know what can they do maybe for asking for a change in working
conditions? Maybe if they're a Union employee, what is the Union doing? What interaction should they be having with Union representation?

And, at what point do you cut it off? I don't think it's a simple question. You know, is it -- do they even sit with them when the client makes a statement?

You know, right now, for us, in our representation, our SVCs sit with our clients when they do make a statement. Well, in an EEO world, that first statement could be the basis for that federal court complaint.

And so, what does 18 USC 205 in the exceptions there within allow for an SVC to do? Just like a defense counsel represents back against the Government, I'm not suggesting that I think we should go that far, but we are seeing this.

We also have a client right now who is actually an active duty member who was assaulted by a civilian. And, while this might not be representing a DoD civilian, I think it's
illustrative of the point.

That DoD civilian was terminated for the sexual assault. That DoD civilian is now in the Merit System Protection Board and that SVC is being contacted by the Merit System Protection Board about depositions of their client.

How far along do we allow our SVC to represent in that capacity?

So, we are working very closely with our civil law directorate to not only come up with what we believe is the appropriate left and right limits and scopes of representation.

We are working very deliberately to come up with what is that scope of representation to, number one, manage expectations, but also to come up with check lists and training for our counsel so they don't miss filing deadlines which I believe falls within that assist gamut that is required also by this most recent NDAA.

And so, I am worried about our counsel. You know, we are doing a lot with our counsel and I think we -- all of the Services, as
you point out with the Army, but all of the Services are trying to get experienced counsel.

Experience in the military justice realm does not mean you're experience in labor law.

MR. TAYLOR: Thank you

COLONEL DECAMARA: And, you know, we are levying on these counsel very complex areas of very diverse nature.

So, from child representation and the complexities of child representation in the morning to the complexities of a DoD civilian in the afternoon. And, that doesn't even get to the military justice part that we've all been talking about and making sure that they are the experts in that courtroom on 513 and 412 issues.

So, that is what my concern is.

MR. TAYLOR: Well, thank you very much for that very comprehensive answer. And, I think what you're doing is commendable and I hope the lessons that you are learning certainly will be shared with the other Members so that they can
think about something like that for their own
program.

My second and final comment on this I
guess is that, at least within the Army legal
community, you do find people who are retired
JAGs working in civilian legal assistance
capacities as civilians. Many of them working in
labor and civilian personnel law.

So, it could be that there's a
resource out there that you could tap who at
least have some previous experience in both
worlds.

I thank you, Madam Chair.

CHAIR HOLTZMAN: You're very welcome.

All right, Judge Jones?

JUDGE JONES: I remember around three
years ago when we heard about the beginnings of
this idea about Victim Legal Counsel and I just
have to congratulate everyone because it's turned
into a very successful and effective reality very
quickly.

So, my thinking is advanced. Thanks
to Colonel deCamara and McDonald and all of your other comments about whether or not victims should also have a say in the appellate courts.

I do have a couple of questions, though, since there have been seven writs. The writ of mandamus, of course, is for a victim to take and goes to the appellate court. Is there one Judge who sits on that?

COLONEL MAROTTA: No, no, ma'am, it's

--

JUDGE JONES: It's a full panel?

COLONEL MAROTTA: Yes, and they will assign a panel if the panel has different branches and one of them will look at the writ and address it.

JUDGE JONES: Okay. And how's it been working? And how does it worked? I don't know if they're evolving in the Army or if there have been other writs.

I see Colonel deCamara, did you have experience or perhaps you had some as well, Colonel Marotta, but how's it going?
COLONEL MAROTTA: Well, we have a very successful writ recently in the case of U.S. v. Ducksworth and it was regarding 513 access to the victim's mental health records.

And, the court issued an opinion that we might call it a teaching opinion where it really just went through all of the analysis very thoroughly and put a guidance out to the field on SVCs authority.

So, we were very pleased to have --

JUDGE JONES: So, I gather the trial court ruled that the records should be turned over?

COLONEL MAROTTA: They said it needs to be -- they gave the framework for how it needs to be analysis.

JUDGE JONES: No, I'm saying how did you get to your mandamus? There was an adverse ruling in the trial court. And then, what did the SVC actually do? Write a brief? Argue?

COLONEL MAROTTA: Absolutely, yes. Asked for reconsideration, informed the judge
that they would be seeking a writ when the judge
said that -- it was directed that the records be
turned over and immediately filed a writ.

JUDGE JONES: And, what did the
Government counsel do?

COLONEL MAROTTA: The Government --

JUDGE JONES: It has no standing,
right?

COLONEL MAROTTA: Yes. Right. They
didn't -- they -- in this case, even the
Government Appellate Division didn't file
anything. So, it was really the SVC and defense
appellate.

JUDGE JONES: And so, that's when
where you got a really good opinion sort of
telling everybody how this is supposed to work?

COLONEL MAROTTA: Yes, ma'am.

JUDGE JONES: And, what about the
others?

COLONEL DECAMARA: Ma'am, we've filed
12 appellate motions, but not all writs, ma'am.

So, we have filed in the Air Force
Court two Motions to Intervene in a case where the issue was specifically the victim's mental health records and whether or not they were complete. We were rejected on both of those writs.

JUDGE JONES: So, those were writs?

COLONEL DECAMARA: No, they were Motions to Intervene. This is a post-trial. And so, the issue was the victim's -- the assignment of errors in that case was the victim's mental health records and whether or not they were complete and whether or not the victim was to be compelled to provide additional mental health records.

Our SVC moved to intervene --

JUDGE JONES: In the court -- trial court or --

COLONEL DECAMARA: In the appellate court.

JUDGE JONES: No, in the --

COLONEL DECAMARA: This is post-convictions.
JUDGE JONES: Oh, post-convictions, sorry.

COLONEL DECAMARA: So, this is in the appellate court where the assignment of errors was to turn over additional mental health records.

We moved to intervene and then moved for reconsideration. We were denied on both and invited to file an amicus brief instead.

JUDGE JONES: Okay.

COLONEL DECAMARA: We have filed three Motions to Compel Notice where the appellate defense counsel has on appeal moved to unseal victims' mental health records on appeal.

And so, to your question earlier, what does that mean? That means when a defense counsel moves to unseal that record --

JUDGE JONES: Because there's an issue on the lower court's ruling? Is that it?

COLONEL DECAMARA: They don't even have to state that they think there is an issue. They just say that they want to be able to review
the victim's mental health records, not only what
was provided to the defense counsel at the lower
court, but all of the victim's mental health
records, even those that were not turned over by
the military judge.

JUDGE JONES: Well, that would never
be allowed in a civilian appellate process.

COLONEL DECAMARA: So, we moved to
Compel Notice because the victims’ counsel was
not even provided notice. We found out through
casual conversation that this had been filed.

We made a Motion to Compel and a
Motion for Reconsideration in two separate cases.
Both cases at the Service court, we were denied.

We have filed amicus briefs at the
Court of Appeals for the -- well, we filed two
amicus briefs with the Army Court, both in
support of the case in which Colonel Marotta
spoke of as well as a previous case. Both of
those were accepted.

We currently have a writ of mandamus
that we filed at the Navy-Marine Corps Court
which was denied and is now at CAAF on an appeal of the Navy-Marine Corps Court's ruling.

JUDGE JONES: So, you took an appeal?

COLONEL DECAMARA: We've taken -- we have an Air Force -- we have an Air Force counsel for an Air Force victim --

JUDGE JONES: Right.

COLONEL DECAMARA: -- in the Marine Corps Court --

JUDGE JONES: Right.

COLONEL DECAMARA: -- who had an adverse ruling at the trial level --

JUDGE JONES: Right.

COLONEL DECAMARA: -- on a mental health. We took a writ of mandamus to the Navy-Marine Corps Court --

JUDGE JONES: Okay, so that's still writ of mandamus land, not appeal.

COLONEL DECAMARA: Yes, ma'am.

JUDGE JONES: Okay.

COLONEL DECAMARA: And, that was a writ of mandamus we took there but, we have now
appealed that writ of mandamus to CAAF.

MR. STONE: Because they denied your
mandamus?

COLONEL DECAMARA: Because they denied
--

MR. STONE: They permitted your
participate.

COLONEL DECAMARA: -- our writ at the
Navy-Marine Corps Court, so now we have gone to
CAAF.

JUDGE JONES: So, I don't -- I
obviously don't know this one provision that
permits the taking of a writ of mandamus very well.

If you're denied your writ of
mandamus, does that same piece of legislation
permit you to appeal that denial or is it
supposed to be over?

COLONEL DECAMARA: It's silent, ma'am.

JUDGE JONES: It's silent on that?

Okay.

COLONEL DECAMARA: So, we are seeing
what -- our brief has been accepted by CAAF and
responses were put into CAAF and now our response
brief is due on Monday.

JUDGE JONES: Right, okay.

COLONEL DECAMARA: And then, we have
filed -- have three cases, three separate cases
where we have filed -- we tried to file an amicus
brief at CAAF with regards to these rulings to
unseal mental health records because we were not
given notice of the lower court filings. And so,
we didn't know about it until after the rulings
by the Air Force court had been ruled upon.

JUDGE JONES: Right.

COLONEL DECAMARA: So, we filed at
CAAF as an amicus. Our amicus briefs were
rejected and we do not know what that means.
Does that mean that they think we should
intervene? But, we can't intervene because we
didn't participate in the court below, so the
victim is left without any voice whatsoever.

JUDGE JONES: Yes, you were denied
your writ even at that level.

Thank you.
The only other -- I had one other question unrelated to the appellate issue, and that is, I heard from I think it was -- yes, it was Captain Fischer-Anderson about surveys. Do all the Services do surveys?

CAPTAIN FISCHER-ANDERSON: You mean victim surveys?

JUDGE JONES: Yes, victim surveys. Yes, I know you all do surveys. We've heard a lot about all the military surveys. Are there anything interesting about any of the other survey results from any of the other Services?

COLONEL MCDONALD: Ma'am, we do not conduct an additional survey. We know the DoD also conducts a survey and we get that information.

Our concern is that there may be survey fatigue or it may be hey, we just --

JUDGE JONES: Right.

COLONEL MCDONALD: You know, we think we did a really good job for you, can you tell
everybody what a good job we did for you?

JUDGE JONES: Right.

COLONEL MCDONALD: So, you know, we
just -- we don't want to overdo it. Obviously,
if it's decided that it would be better for the
Services to conduct a survey, we're ready,
willing and able to do so. But, that's our
reason right now for not doing that.

JUDGE JONES: Fair enough.

COLONEL MAROTTA: And, ma'am, the Army
does it -- the Army SVC Program does not survey.

JUDGE JONES: I'm talking about a
satisfaction survey as they -- many of the
program.

COLONEL MAROTTA: Yes, ma'am. And,
the criminal law folks that do have the victim
witness liaisons do have a survey that they give
victims. And, what we're doing is we're working
on whether or not we can maybe put a section on
SVCs in there and send it to the victims more
anonymously rather than having somebody stand
there and say can you fill this survey out?
JUDGE JONES: Right.

COLONEL MAROTTA: Maybe use a platform where we can send it to them and they can fill it out. So, we're looking at that issue.

JUDGE JONES: Thanks.

CHAIR HOLTZMAN: Admiral?

VADM(R) TRACEY: Captain Fischer-Anderson spoke to your case-to-counsel ratio at about 30, did I get that right? Is that a common metric across all the Services? Is that about the ratio that you use, 30 cases per counsel?

CAPTAIN FISCHER-ANDERSON: That we think is ideal or that we -- we think 20. We believe 20, yes, ma'am.

MS. COTHREL: Coast Guard as well. We think 20 is ideal, that's what we're shooting for in particular because we don't have bricks and mortar SVC shops, so our counsel are constantly traveling. We think 20 and we don't have administrative support as the other branches do.

VADM(R) TRACEY: It was 30 for Navy, right?
CAPTAIN FISCHER-ANDERSON: That's the maximum.

VADM(R) TRACEY: Maximum, okay.

CAPTAIN FISCHER-ANDERSON: The optimal maximum, but we're at about 26 open cases per counsel.

VADM(R) TRACEY: Right, right. Do you have a target that's closer to 20?

CAPTAIN FISCHER-ANDERSON: We'd love to be closer to 20, ma'am.

COLONEL MCDONALD: So would the Marine Corps, we're about one to 30 as well.

COLONEL MAROTTA: And, the Army's about in the same position. We would -- we think that 20's ideal but it is definitely --

VADM(R) TRACEY: That's a staffing metric you're using for your POM justifications is 30? Is that what you're saying?

COLONEL DECAMARA: Yes, and that's what -- we're at almost 33 to one, but --

VADM(R) TRACEY: Okay.

COLONEL DECAMARA: -- we'd like 20.
VADM(R) TRACEY: I understand.

This is a question for all of you, though I don't want to march down the line here, but are there some most common SVP tasks, things they'd like to see different in policy, practice or procedure other than more staff?

And, the same question around convening authorities, are there things that those two populations would like to see even more improvement in for this program to work for their respective needs?

COLONEL MCDONALD: I'm just going to speak anecdotally, and again, based on those site visits, and it was the first round, but they -- I think they would like more, I mean just like we always want more of something.

I was expecting good feedback, but I wasn't -- I didn't -- but, I ended up receiving much more positive feedback in a lot of ways saying, gosh, if you had more, you know, we could do so much, we could do -- you could actually go out and train more.
You know, you only have X number of hours in the day and X number of VLCs and they were very -- they responded very favorably to the outreach, you know, that education piece, the ability, you know, to work with trial counsel, manage the complex cases as well as those cases that come in the door for the advice and consult.

So, in that regard, I would say that's the case.

VADM(R) TRACEY: Did convening authorities have a point of view?

COLONEL MCDONALD: I'm sorry, ma'am?

VADM(R) TRACEY: Did convening authorities have a point of view of things they'd like to see improved in the SVP?

CAPTAIN FISCHER-ANDERSON: Ma'am, a lot of the -- from the convening authority point of view, we have what are called SACMGs, Sexual Assault Case Management Groups. And, we will have -- that's turned out to be a great proceeding for a victims’ legal counsel to get a read on the Command to see how much they know
about the case.

Command climate, how receptive are they?

And, the VLC have also taken the opportunity during breaks to get to know the CO and potentially keep issues that could get out of hand very quickly to help get them resolved at the lowest level.

It could be something as simple as a young Sailor feeling like they're being retaliated against in their work center, more like ostracized by peers.

And so, being able to raise that to the level at that forum of the CO has been awesome. We've had great success in keeping things at the lower level.

I would echo Colonel McDonald's sentiment that once the -- once a commander gets a case where a VLC is involved, it's like PAOs and having lawyers on your staff, they love it. They want more of it.

COLONEL MCDONALD: And, ma'am, I would
say actually, just to cite kind of a funny example, but one, we had a call in from the field saying, a commanding officer wants to make sure that a victim has a VLC even though she doesn't want one.

We consider that a success story and, I would say that it's really the victim's choice in that, but I considered that a good day.

CHAIR HOLTZMAN: Admiral, could I just interrupt for one -- to follow up on one of your points?

Are the victims' legal counsel part of this management system? Is that what you're saying?

CAPTAIN FISCHER-ANDERSON: They are, ma'am. They are.

CHAIR HOLTZMAN: Okay.

CAPTAIN FISCHER-ANDERSON: They are one and they go in and listen to their client's case and they're in the receive mode.

CHAIR HOLTZMAN: Okay.

CAPTAIN FISCHER-ANDERSON: They don't
volunteer but they figure out where the -- the
SARC is there, the victim advocates, the
commanding officer and so they're part of that
process, yes, ma'am.

CHAIR HOLTZMAN: Great.

COLONEL MCDONALD: Ma'am, I would
point out, though, that one of the concerns that
my VLCs have expressed and we call it the CMG,
the Case Management Group, is when you start
getting into a little more details than you need
to to update someone on the case, hey, is the
victim getting the services? Good to go.

But then, you start getting into, hey,
is she seeing a psychologist regularly still?
And then, you start a cluster.

So, you know, we're still trying to
find the water level, kind of find the balance.
But, I think that's really part of the maturation
process.

I think people are well intentioned,
but good thing the VLCs are invited to attend
these because they can actually stand up and say,
hey, we're taking this a little bit too far.

And so, in that way, it has been beneficial to the Command as well and that's what needs to get out, but what doesn't need to get out remains.

VADM(R) TRACEY: Thank you.

CHAIR HOLTZMAN: Mr. Stone?

MR. STONE: Yes. One of the things I didn't hear from any of the panel members and I'd like you each to comment because it was a concern much earlier on.

And that was whether or not if the military court-martial trial level, which it sounds like a lot of progress has been made in the individual cases, whether or not your services are routinely now getting notices of all the docket filings and copies of the Motions so you can decide whether that motion implicates a victim's right.

And maybe you could each tell me if that's happening in a uniform manner?

I know, for example, I was counseling
a U.S. Ninth Circuit Court of Appeals case as a victim's counsel, and I routinely got the docket notices and was served copies of the documents so we could figure out if there was a victim's issue which it may or may not be. A majority of the time, there isn't.

But, we needed to get that in order for the victim to know if they wanted to raise their voice and be heard.

And so, maybe you can each tell me whether that's happening in each of your Services?

MS. COTHREL: I would say there isn't uniformity in the Coast Guard as it exists right now.

We have just recently changed some of our processes. It's literally going to be on Rear Admiral Poulin's desk on Monday.

Also, I did have an opportunity to speak to our new Chief Judge for the Coast Guard just yesterday and I do think we're going to be issuing some different rules that are going to
provide for that.

But, as it exists right now, there is not a uniform decision made by the Judges or trial counsel to allow for that.

COLONEL DECAMARA: I'd like to break your question up into two parts, one for trial court and one for appellate.

So, for the trial court, yes, it's been -- our Rules of Practice have been modified by our Chief Judge where it is required by the parties to serve on the victims' counsel any motions, any filings, any pleadings that are ongoing in the trial court.

MR. STONE: And, are you welcome to attend those?

COLONEL DECAMARA: Yes.

MR. STONE: Not necessarily participate but to attend?

COLONEL DECAMARA: Absolutely.

And then, in the appellate court, no. We do not get service of anything.

COLONEL MCDONALD: Sir, I would say
the same for the Marine Corps, that at the trial
level, it's become rather routine that they know
what's going on and they're provided that
opportunity to attend or participate in a 412 or
513.

We also have the Navy-Marine Corps
Court of Criminal Appeals, or I'm sorry, the
Navy-Marine Corps Trial Judiciary Rules which
also have gone into effect which Captain Fischer-
Anderson commented on.

So, the rules are in place, now it's
just a matter of, you know, the educating. And,
you know, our people will forget, but that's the
exception rather than the rule I would say at the
trial court level.

But, I would also echo what Colonel
deCamara said, and that is, at the appellate
level, we would have no idea.

You know, sometimes I'm only as good
as what's in the CAAF log as far as what's going
on, which I think is, you know, it'll probably
mature, but I think at this point, we don't -- we
just don't know.

MR. STONE: When you say the CAAF log, you mean after the court --

COLONEL MCDONALD: CAAF is an after the fact --

MR. STONE: CAAF court has actually --

COLONEL MCDONALD: Yes, sir.

MR. STONE: -- decided the case and you didn't hear about it at your Service's appellate level at all?

COLONEL MCDONALD: Yes, sir.

CAPTAIN FISCHER-ANDERSON: Sir, once a VLC has filed a Notice of Appearance in accordance with our uniform rules, we have seen success in getting copies of the motions and actually being part of the 802 conferences.

So, we're seeing a great change at the trial court level.

COLONEL MAROTTA: And, sir, the Army is also seeing great success with access to information.

Our TJAG issued a policy memorandum
just detailing disclosure of information and what
is to be provided to the victim and when. And,
we are seeing routine compliance with that.

MR. STONE: But, you're getting access
to the whole docket sheet?

COLONEL MAROTTA: If the -- all of the
access -- we have access to information, you
know, compliance. But, at the appellate level,
again, no -- we don't have any access at the
appellate court.

COLONEL DECAMARA: And, I'd like to
just bring up another issue with regard to
appellate when we talked about the 412 and 513.

In my view, the other area where I
have concerns is when a court exercises their
Article 66 factual and legal insufficiency review
on a case that includes a victim.

And, if they do a factual and legal
insufficiency, one of the Article 6(b) rights is
the victim's right to be heard on sentencing.

And, we are seeing where cases are --
maybe it's not a 412 or 513 issue that's on
trial, but a factual and legal insufficiency either lessens the degree of guilt or negates the degree of guilt in its entirety.

In cases where it lessens the degree of guilt, the Article 66 court is required to do a sentence reassessment.

If the victim has no notice of that determination, there is no language that I see in Article 6(b) that limits Article 6(b) to just trial courts.

So, I believe that the victim should have the right to be able to be heard on that sentence reassessment if we are looking at 6(b) since there are no limitations placed on how 6(b) is read.

And 6(b) explicitly states that a victim has a right to be heard on sentencing.

Thank you.

MR. STONE: As to the Air Force, because you've been giving us examples of just those problems on appeals, are you tracking the numbers of victim cases on appeals either where
they're allowing you to participate because the victim lost below or the number of appeals where you're not even given notice and you find out later because the victim maybe won partially or won completely below but now it's likely to be reversed?

Do you -- are you keeping track of numbers?

COLONEL DECAMARA: We have gone out to our counsel and so we know what cases are on appeal, but we don't get any notice.

I mean, the only time we have notice is if we see -- if we are -- we are in the distro list of opinions being published, but we do not have any pleadings and we are not notified that there is a filing.

MR. STONE: And, the courts are not routinely granting Motions to Participate as amicus or to intervene?

COLONEL DECAMARA: We have not been successful in any of our intervention motions to date and we have -- and so, and then the ones
where we know that the Government is taking a
writ to CAAF to challenge a lower court ruling on
a motion, since we did not participate in those,
we did try to file amicus and our amicus briefs
were rejected.

MR. STONE: Before I move on, well, I
guess I should ask if the other Services have
examples like that that they can tell us about
that they know offhand?

COLONEL MCDONALD: We don't have any
examples.

MR. STONE: Okay. Are any of the
other Services keeping appellate numbers like
that? I guess they're probably not if they don't
have the examples.

I guess I will just ask if the Air
Force subsequent to this would supply us with the
case names and numbers of the cases and maybe
even a copy of the pleadings where they tried to
intervene so that, if on a later Panel, we wanted
to find out what it means when you are denied
participation whether those, either the
intermediate or the high court thinks that there's a different route you should be taking or they don't think the victim should be allowed to have a voice and that they don't -- they think the case is over for purposes of 6(b) before it gets to the appellate level, we'll at least know what cases to ask the panelists before they show up to please comment on. So, a list would really be helpful.

COLONEL DECAMARA: We'll provide you with our pleadings, sir.

CHAIR HOLTZMAN: Okay, thank you.

Well, just on that point, if you could wave a magic wand, any one of you, what should we recommend or what would you recommend us be done with regard to this problem with appellate courts?

COLONEL MCDONALD: Ma'am, I think that, first of all, I think we're going to stagnate at the trial court level if we don't have access to the appellate level.

So, with that, what we really need are
processes and procedures in place that are readily accessible. And, I don't know if that's answering your question or not.

CHAIR HOLTZMAN: Well, being more specific, should we recommend, one is, if we were going to recommend to Congress, to the DoD, what should be done here, what should we recommend?

Should we recommend new Rules of Procedure for the appellate courts? Should we recommend statutory changes? Should we recommend other things?

I mean, this seems to be a serious problem and we'd like your help and guidance in this regard. I mean, I think probably we might be able to figure it out ourselves, but if you've already given it some thought, we would very much welcome that.

COLONEL MCDONALD: My recommendation would just be that, you know, it's that the 6(b) clearly states that it also includes --

CHAIR HOLTZMAN: So, we should revise 6(b)?
COLONEL MCDONALD: Yes, ma'am, to make it more clear --

CHAIR HOLTZMAN: Everybody agree with that?

COLONEL MCDONALD: -- beyond the trial level that --

COLONEL DECAMARA: I just, you know, like I said in my opening comments, I don't think there was ever an intention to deny it. I just don't think, you know, we're just at the point where our representation has matured so that the people who we represented and we thought, you know, a lot of times it might be that our counsel are the ones that are fighting for those rights at the trial court.

We're just now seeing that those are hitting the appellate court. So, I think this is where the light bulb, you know, has come on that there might be a gap.

And, I agree that 6(b) where it is explicit that it pertains to post-trial or post-conviction or that they apply equally to 1209.
I mean, I think we have a framework with RMC 1209 because we specifically say that's when a conviction is final. And so, I think that provides some framework as opposed to an arbitrary line in the sand that says the victim's 6(b) rights end in a certain place.

CHAIR HOLTZMAN: So, you're saying, let me boil that down to where it's a one syllable so I can get it.

6(b) should be changed and 1209 should be changed? What are you recommending?

COLONEL DECAMARA: 6b, ma'am.

CHAIR HOLTZMAN: That's all?

COLONEL DECAMARA: Yes, ma'am.

CHAIR HOLTZMAN: Okay. So everybody uniformly and, Ms. Cothrel, do you agree with that, too?

MS. COTHREL: Yes, ma'am. And, just to tack on, if there are any recommendations to make it clear that it applies to the Coast Guard as well.

CHAIR HOLTZMAN: Oh, okay, great. We
get that one, thank you very much.

Just a question, again, on the satisfaction issue. So, I know not everybody's a 100 percent, but do you have a feel for what the -- and maybe this is kind of asking the same question that Mr. Taylor asked in a different way -- do you have any feel for where the level of dissatisfaction is with regard to -- it's obviously not great, the number of people who are dissatisfied, but do you have a sense of where the dissatisfaction is?

Is it because they had greater expectations, the victim, of what was going to happen? Or is it because of failing with regard to training? Or other characteristics of the special victims' counsel?

Do you have -- if we were to dig down more deeply, would we have better sense of, I get it that this is a great and successful program and congratulations to all the Services on it, but if we dug down a little bit more deeply, could we get a sense of what's -- where it's
going wrong, if it is?

I mean, where there is this dissatisfaction? I mean, obviously, there are some people that, you know, haven't been fully satisfied and so, do you have a better sense, a way of getting at it?

CAPTAIN FISCHER-ANDERSON: Ma'am, I would tell you that I think the dissatisfaction sometimes comes just in the -- in the fact that the case doesn't get forwarded. And that's --

CHAIR HOLTZMAN: Okay.

CAPTAIN FISCHER-ANDERSON: -- you know, we inherit the facts we inherit. And, if we can help the victims understand the weakness in the case and manage expectations up front, and that's where I think the programs have been so wildly successful is being able to educate and explain to the victims up front, you know, here are your options and if you do this, this could happen. And, if you don't do this, it may not get prosecuted.

But, that's where it is. They still
don't understand sometimes why their case didn't see a courtroom.

CHAIR HOLTZMAN: Okay. So, that's what you're sense is of the biggest dissatisfaction that people have? It's not really with the program, it's with the criminal justice system?

CAPTAIN FISCHER-ANDERSON: Exactly.

CHAIR HOLTZMAN: Requires a certain level of evidence, we understand that.

I see other people nodding their heads.

COLONEL MCDONALD: I would agree with that, too, ma'am.

And, I would also say, you know, just based on the weekly feedback that we get, their satisfied with the military justice process and they say, by the way, can you help me with my divorce or can you help me with a civil suit?

So, I mean, you know, so those are things that, well, you can't? Well, I don't like that.
So, it's not a dissatisfaction with what we have in place, it's just when they want to go beyond that and we have to tell them that that's really beyond our charter. But, I'd consider that necessarily a negative.

CHAIR HOLTZMAN: Okay.

The other question I had is about the percentage of people who are not taking advantage of the Special Victims Counsel Program.

Do you have any statistics on that? Should you be keeping track of it? I mean, and how could you do that? I mean, there are people who are filing --

I take it of the unrestricted reports that are filed, are you getting a 100 percent participation in the Special Victims Program? No? Do you know why that's the case?

CAPTAIN FISCHER-ANDERSON: Or it may be for a shorter amount of time. The victim may simply be interested in an expedited transfer.

In other words --

CHAIR HOLTZMAN: Okay.
CAPTAIN FISCHER-ANDERSON: -- and so then that ends and they're satisfied, they wanted to go away there.

CHAIR HOLTZMAN: Right. But, of -- I'm not talking about the length of time, but what -- could you give a percentage of the people who are making -- of the reported cases where there's a refusal to ask for a special victims' counsel, do we have any figures on that?

COLONEL DECAMARA: We don't own those numbers. That's owned by the SARC and the SHARP Programs. And so, and then there's family advocacy. And now with the DoD civilians, there's not necessarily a -- you know, we don't -- I don't know that EEO is tracking those kind of numbers as well.

So, I think by us, you know, it's not a case where immediately upon a report, either restricted or unrestricted that we're just given that by the SARC and say this person might come to you.

The only time we know that a person
has made a report is when they do come and ask for an SVC is when we do come.

I would say, from the people who, or when we tried to find out from SARCs getting anecdotal is, you know, sexual assault covers the gamut from penetration to touching and sometimes in those touching cases, they don't feel like they need the representation for what -- there's some that do, but I think when you look at the spectrum of what 120 covers, that's what we see.

CHAIR HOLTZMAN: So, I guess my question is, should you be getting those numbers? You said the SARCs have them, but should you be getting the numbers about -- I mean, maybe we can separate out the non-penetration cases from penetration cases, but it would be interesting to know how many people are not taking advantage, victims are not taking advantage of this program with regard to the most serious sexual assault cases.

COLONEL DECAMARA: It would, but not everyone is eligible who go to a SARC. So, for
instance, at least in our program, we don't
represent for pre-Service sexual assault because
the military doesn't have any jurisdiction over
the accused.

And so, if members comes in and
requests SVC services for a sexual assault that
happened to them when they were six by an uncle,
but that's getting loaded into DSAID.

CHAIR HOLTZMAN: I see.

COLONEL DECAMARA: That's their
numbers. Additionally, maybe it is dependent
spouse on dependent spouse. We don't have
jurisdiction over the accused in that, but that
dependent spouse would still be loaded in DSAID.

So, to pair back the numbers becomes
more complicated than just numbers in DSAID
versus who has an SVC.

CHAIR HOLTZMAN: But I think somebody
should be looking at that because it'd be a good
idea to know, you know, what percentage of those
people who are eligible are refusing this.

And then, if there is a big number, do
we have enough outreach? Have we explained, are
those numbers getting better? Are more people
taking advantage of the program? That's my only
concern.

I don't think I have any other
questions at the moment. But, thank you again
very, very much. We really appreciate --

MR. STONE: I have a comment on your
last suggestion. I actually wonder, and I will
say this out loud so that maybe even our own
Staff can consider whether where we're involved
with numbers of defendants who are not Service
connected, maybe this should just be a category
of the numbers where they say, not Service
connected defendants is 20 or 30 or 50 so that
they capture -- they don't throw away that data,
they just qualify it so we can see that it's
going on perhaps even on base or on a ship.

So, I just think that -- I think it
was a very useful point and I just think it means
that maybe we should ask in considering how they
capture numbers simply to note that category.
I also have, very quickly, a semantic question for a minute on three words that I just wondered if the panel, any members of the panel, have any reaction to them.

The first is, I know some of you use VLCs and some use SVCs, is there any movement or thought about adopting one category across the Services that you'd like?

That's if you want to comment on that.

And, the other thing is, I have heard from the panel today two other terms, interveners and amicus parties used to describe what the SVCs and the victims are trying to do.

I, myself, don't think either of them are apropos. I don't think victims are a friend of the court and that's why they're involved.

And, I also don't think their intervenors, if not for them, there wouldn't have been a criminal case in the first place.

So, it seems to me, it's even possible that's the reason the courts don't want to give them that status because they don't exactly fit
into that status.

And, I wonder if any of you either agree with me, disagree, have your own thoughts and want to comment on either of those concerns I have about amicus and intervening.

COLONEL DECAMARA: We would agree with you that -- and we believe that we're not appropriate. There's actually federal case law that says that if a person is at issue of the subject of the appeal, that they, by virtue, cannot be amicus.

And, that was relied upon actually be appellate defense to get our amicus briefs denied, is because they actually said, well, they have an issue here. So, they really can't file an amicus.

However, you know, and we chose the word intervenor just from our old civ pro practices for lack of a better because in some of these cases, what is a real party in interest? We'd like to call ourselves a real party in interest, but there is no -- we found no
authority for that.

And so we, because we recognize that there are two parties as Judge Jones brought up earlier, the prosecution and defense, to recognize that we believe it's more significant than an amicus because it is our issue and it's our client's issue that is being debated, that amicus is not appropriate.

But, to come up with a real party in interest type filing, we just chose to use the Motion to Intervene for lack of any other guidance or authority.

MR. STONE: And, just a last thought, could you provide us with the briefing of -- that you had from both sides on that? That'd be very interesting for us.

COLONEL DECAMARA: Yes, definitely. I have that as a note to give you the filings.

CHAIR HOLTZMAN: May I ask just one final question about this? Has anybody drafted any language to change 6(b)? I'm into that big time, right now.
COLONEL DECAMARA: As I stated, ma'am, we all like to work together, so I'm sure that we can take that on.

COLONEL MCDONALD: We like to find reasons to get together.

CHAIR HOLTZMAN: Okay, great. Well, if you could do it really quickly -- yes, right -- because if, frankly, if this is something we could get some suggestion on, I don't know how the other Members of the Panel feel, but I could easily see sending this over to -- as a recommendation and maybe this could get into the next NDAA that's going to be voted on before the end of April.

So, this is our last meeting so if you get something to us, maybe we could consider it.

Thank you, again, very, very much for the wonderful work -- I'm sorry, Colonel, did you --

COLONEL MAROTTA: If I might, I did want to address why the Army's scheduled a five-day course in a four-day week.
It was not our normally scheduled course. So we, in the prior years, we had our certification course on either side of the PCS, one in May and one in August and our child course was, which is a four-day course was that week in January.

But, because of demand from the field for a certification course, the SJAs didn't want to wait until May and there were none scheduled, we decided to utilize that four-day and for the certification course there and slide our child course into earlier in the fall.

And then, what we did was we structured it so it was still the same number of training hours, we just made the days longer as we did working lunches and instead of a half day on Friday, we went all the way to the end of the day.

So, that was the thinking on that.

VADM(R) TRACEY: Thank you.

CHAIR HOLTZMAN: Thank you, Colonel.

Thanks everybody for the great job.
And, please, give us 6b language.

Thanks.

We're adjourned for an hour for lunch.

(Whereupon, the above-entitled matter went off the record at 12:23 p.m. and resumed at 1:36 p.m.)

CHAIR HOLTZMAN: Thank you very much, we're ready to proceed -- I'm sorry we're a little late -- with the MCIO overview and perspective of the SVIP policies, practices and procedures.

Because we're late and we want to -- some of us have a train to catch, I'm going to impose on everybody including the chair a five-minute rule for questions so that we can move this along.

We'll proceed in the order that is listed on my agenda which I have no idea how the staff compiled this, so please don't take it personally.

We'll begin with Mr. Guy Surian, U.S. Army Department Deputy Chief of Investigative
Operations, Investigative Policy and Criminal Intelligence. Mr. Surian, thank you for being here and we look forward to your testimony.

MR. SURIAN: Thank you, ma'am. Good afternoon. I am Guy Surian with the Army CID. I'd like to thank you for this opportunity to speak with you today on this very important topic.

I want to point out that I'm accompanied by a senior special agent T.L. Williams right behind me. She's my chief of policy, investigative policy.

CID takes sexual assaults extremely seriously and we have addressed the investigation of sexual assaults with enhanced training and investigative procedures.

In regards to your question about innovative steps, CID has taken steps to improve our response to sexual assault since 2005.

In 2009, CID and the U.S. Army Military Police School, developed an 80-hour special victims investigation course which implemented
the forensic experiential trauma interview technique when interviewing victims of sexual assault and other violent crimes.

It focuses on trauma-informed interviews based on developments in neurobiology and is the core for our trauma-informed investigative practices.

The course has continued to evolve over time and has input from all the services, DoD, IG and the SAPRO.

We have published and routinely update a sexual assault investigative pamphlet to assist agents with their investigations.

We have taken the mandate to have an SVIP capability teams to mean the fielding of trained and certified agents at every Army post where there is a CID office.

We now have over 600 certified and trained agents at all Army installations worldwide covered by CID.

CID has incorporated the GAO recommendation for early CID and prosecutor
coordination into our policy.

CID conducts frequent sexual assault awareness briefings to commanders identifying trends and patterns to assist in prevention.

CID has instituted an intensive case review and quality assurance program to ensure that cases are being thoroughly investigated.

And the CID has required their agents to update and brief the victims or their designated representatives on the status of an investigation at least every 30 days.

In regards to training, we feel our training of the right agents is adequate to fully prepare them to investigate sexual assault cases.

All CID agents attend 15-week basic CID course that focuses on felony-level investigations including all violent crime.

In that basic course the agents receive 16 hours of classroom instruction on sexual assault, as well as practical exercises concerning sexual assault investigations taught by the same instructors as our special victim
investigation course.

They get about 125 hours of crime scene instruction and another 200 hours in criminalistics which includes evidence identification, processing, crime scene processing, interviews and interrogations.

For CID agents to become selected for assignment to an SVIP capability team they must be fully accredited, have at least one year of investigative experience, be an agent in good standing, and complete the 80-hour special victim investigation course.

To be a senior certified investigator assigned to an SVIP capability team in addition to attending the special victim investigation course the agent must complete the DoD child abuse prevention, intervention and treatment course which includes child forensic interview training, the DoD domestic violence intervention training and the MP school's advanced forensic training.

For continuing education for our 30
civilian sexual assault investigators, we have
them attend the annual Ending Violence Against
Women International Conference.

All the agents receive annual sexual
assault refresher training. Last year it focused
on male sexual assault victims as highlighted in
the GAO report.

Since there had been increased
interest in retaliation and reprisal, this year's
annual refresher training is focused on that
topic in order to enhance our agents' knowledge
in the investigative approach to those crimes.

In regards to investigative
independence the Army has organized CID so that
it's a so-called stovepipe element that doesn't
report nor is subordinate to any local or
regional Army organization.

CID agents assigned to the SVIP report
directly to the CID supervisors up the chain of
command to the commanding general who reports to
the Chief of Staff of the Army and the Secretary
of the Army.
Because of public law resulting from DoD implementing instructions and policies, and inspections by GAO and DoD IG we are concerned that there are perceptions that CID agents assigned to the SVIP are working for the prosecution.

To counter that perception we emphasize at every opportunity and at every forum that CID is a neutral, fact-finding, investigative unit dedicated to the diligent pursuit of the truth no matter if the facts uncovered benefit the alleged victim or the alleged offender.

In regards to conflicts, there are on occasion conflicts or disagreements between the agents and the prosecutors.

The Office of the Staff Judge Advocate and CID have recently signed a memorandum of agreement that establishes procedures to process such disagreements.

The process starts with the supervisors at the lowest level and elevates if
needed to the convening authority's SJA.

In regards to special victim councils, we consider the introduction of the special victim council to still be a work in progress in some respects.

The agents have been provided extensive guidance on how to work with the SVC. The agent has the responsibility of notifying the victim of their right to an SVC representation.

The victim's SVC is allowed to be present during the interviews. The requirement to notify the SVC prior to interviewing the victim along with the SVC's primary duty to best represent their client's interests have on occasion been problematic.

We have an example recently in which two soldiers both arrived at a CID office and both claimed to have been sexually assaulted. So we had to notify two SVCs.

After the victims had talked to their SVCs they declined to make any statements to the CID which was problematic.
Thank you again for allowing me to speak to the panel. I stand ready to answer any of your questions, ma'am.

CHAIR HOLTZMAN: Thank you very much, sir. We very much appreciate your testimony.

Our next presenter is Mr. Jeremy Gauthier, U.S. Navy, Deputy Assistant Director, Criminal Investigations and Operations Directorate, NCIS Headquarters. I hope I pronounced your name correctly.

MR. GAUTHIER: Yes, ma'am.

CHAIR HOLTZMAN: Thank you. Welcome and we look forward to your testimony.

MR. GAUTHIER: Madam Chairwoman, distinguished members, thank you for the opportunity to address the SVIP and its relationship to NCIS and how we've incorporated.

Overall I would say the advent of the SVIP concept and protocol have been extremely positive for us as an organization.

NCIS has always maintained a positive working relationship with Navy and Marine Corps
trial counsel.

There are many nuances to the changes of Article 120 and, as such, maintaining close and collaborative working relationships is important to ensure that those nuances are understood by investigators and incorporated into our investigative process.

While we may experience differences of opinion on the need for certain investigative steps, we have always maintained our independence in ensuring we exploit all investigative techniques to seek the truth.

NCIS maintains a team of dedicated family and sexual violence billeted personnel in our fleet concentration areas.

In addition, we maintain a presence of specially trained investigators in all Navy and Marine Corps locations.

We train any agent or supervisor who could respond to, investigate, or supervise sexual assault investigations.

We're at approximately 50 percent of
our entire agent corps that's been trained. We naturally have it projected out through our FY '17 training cycle.

We previously established the family sexual violence program at our headquarters level, which is one of the portfolios that falls under the Criminal Investigations Directorate.

And the program is responsible for development and training, curriculum reviews and continued SVIP stakeholder engagement.

The program reviews investigations with a focus on trends as well, and allows us to engage early in terms of investigative trends that we're seeing both on the positive and on the negative side that we can address.

They also track all the changes in congressional mandates and develop policy to ensure all field elements are incorporating any changes into investigative protocol.

In collaboration with special victim prosecutors and all SVIP members we continuously evaluate our training curriculum and look for
ways to improve.

    Navy and Marine Corps special victim
prosecutors attend our advanced family training
courses which has been very beneficial for both
parties in working together. And part of that
involves the collaborative process of processing
scenes, conducting interviews, working through a
case, and having that knowledge together in many
instances and trying to focus on bringing those
special victim prosecutors and agents from those
offices together to attend the training together.

    All SVIP members also provide
instruction to each of our advanced sexual
assault courses to include the victim legal
counsel as well.

    While our investigators are adequately
trained to investigate sexual assault cases, we
continue to make adjustments as necessary.

    We are working to augment our courses
with specific interrogation training above and
beyond that obtained through basic investigator
training.
The special victim counsel program has come a long way since its inception. And the Navy and Marine Corps ladies that spoke earlier, we have an outstanding working relationship with them and I would certainly say that they've done a lot for moving the program where it is today.

The advent of this service has had an impact on our investigations.

The coordination required to ensure all victim service personnel can attend interviews oftentimes delays the interview process.

Collateral misconduct in service can impact victim disclosure and evidence collection concerns.

Often that creates a challenge to forming a trustful relationship with the victim throughout the course of the investigation.

In some instances the victim has elected not to meet with NCIS at all which negates our ability to explain the investigative process and ensure the victim is making a fully
informed decision as to their level of participation.

We have maintained positive relationships, engaged early and often, and in most instances can quickly address the issues.

And barring that I look forward to your question.

CHAIR HOLTZMAN: Thank you very much, Mr. Gauthier. Our next presenter will be Mr. Kevin Poorman, U.S. Air Force, Associate Director, Criminal Headquarters, Air Force Office of Special Victims Counsel Investigations. Mr. Poorman, welcome and we look forward to your testimony.

MR. POORMAN: Thank you, Madam Chairman and panel members.

As my colleagues have done in consideration of the time limit, I'll briefly provide a summary of over five topics that in consultation with staff we thought might be of particular interest to the panel.

Prosecution relationships, our
relationships with the attorneys, the integration of the SVC program into investigations, steps we've taken to improve our processes and some of the training our investigators are getting.

As to investigators maintaining independence from prosecution to ensure objective and thorough investigations, we don't see this as a problem for us.

We have a longstanding history of statutory authority pertaining to opening and conducting investigations independent of commands' involvement.

Certainly working closely with Air Force prosecutors there are occasions in investigations where there will be discussions and even debate about what investigative actions are needed, or perhaps the sequencing of those actions.

But in the end our investigators decide what the scope and duration of our investigations consist of.

While we are certainly attending to
those concerns, the prosecution, certainly as they relate to the legal aspects of investigations, we also hold firmly to our responsibility to collect information and report it that may serve in some cases to raise doubt or even to exonerate those accused.

As to relationships between OSI agents and government attorneys, we hear from our investigators working in the field that these relationships are in general collaborative and effective.

Our headquarters IG team regularly do field inspections and they report that our prosecutor and OSI relationships in the field are good.

Specific to sexual assault investigations, OSI has assigned a senior investigator to oversee and resolve issues related to special victim investigation and prosecution matters.

This agent has regular contact with Air Force senior trial counsel personnel who
prosecute sexual assault cases to help resolve any concerns or issues that involve ongoing investigations in the field.

We believe OSI agents and Air Force attorneys training together also help facilitate collaborative relationships and communication.

Our agents attend the Air Force judge advocates advanced sexual assault litigation course.

In turn, 6 - 20 percent of every class of OSI agents attending the special sex crimes investigations course that we offer, 6 - 20 percent are Air Force attorneys that participate in that two-week course with us.

As to the special victims counsel program, the Air Force's SVC pilot program rolled out in January of 2013. So we have a little over three years' experience working with our counterparts in the SVC community.

Certainly as with any new and evolving service similar to those provided by SVCS, there will be impact.
At rollout there was the impact to investigators and SVCs in trying to understand exactly what SVC services to provide.

There was the impact of investigators trying to understand how SVC services differ from ADC services, area defense counsel services.

There was some confusion about what protocol should be with regard to SVCs' involvement in the investigation phase such as, whether SVC should be allowed to sit in during victim interviews, which we do allow.

There has been impact from trying to adjust to the evolution of services SVCs provide from in the beginning advisory services pertaining to how the military justice system works to now client advocacy services.

Early in the rollout many investigators were frustrated with attempts to contact the few SVCs that we had, and in some instances obtaining timely responses.

This concern has largely waned with the arrival of more SVCs, the establishment of
intermediate SVC supervisors in the field, as well as SVCs getting cell phones so that we could contact them, facilitate exchanges of information during non-duty hours.

These issues were to be expected. We had similar challenges with the arrival of the sexual assault response coordinator program, the SARC program.

However, together the growth and maturing of the SVC program, as well as the arrival of specific guidance about when SVCs would be contacted, agents working relationships with SVCs have largely normalized.

Having senior members of the SVC program provide a two-hour block of training and our advanced course during our advanced training has been also very helpful just in understanding each other's roles and each other's positions on issues.

We have published policy about working with SVCs. We are revising our current policy in consult with the DoD IG as a result of the need...
to notify at the front end of an investigation and suspend interviews until such time as they have the opportunity to talk with an SVC.

We're still trying to resolve with DoD IG a definition for exigent circumstances so that we may understand when the exception may exist where an investigator may ask questions before an SVC consultation should occur.

Most of that is settling into a safety issue with safety to the community, safety to the victim would be -- in most instances we're going to defer and allow that consultation to occur because in many instances our reports are older and there is very little in the way of loss of perishable information or evidence that would occur in waiting.

Regarding innovative steps we've taken to improve our response and investigate sexual assault complaints, we have made many over the last years.

We record all subject interviews. We open on all sexual assaults falling within our
jurisdiction. We stood up an advanced sexual assault course which introduces a variety of advanced techniques such as cognitive interviewing and the need for investigators to better appreciate the cognitive biases they may have in investigations and attend to those.

In considering research indicating that a percentage of sexual assault perpetrators and acquaintance cases are serial offenders, we have moved to require investigators to look as a matter of routine protocol into whether the accused may have engaged in similar behaviors and crimes in the past with acquaintances or romantic partners.

More and more we are seeing cases now with multiple victims.

We've published policy on how and when to inform SVCs on information and investigation so that they can better do their jobs.

Our initiation of case quality reviews at headquarters has also helped us improve and sustain the quality of our cases.
As verified in the DoD IG 2015 assessment of the MCIO investigations in which 99 percent of our investigations collectively were found to be -- that the investigations were sufficient.

In the last two years we've also improved the median timeliness of our investigations from about 130 days on median to 75 days on median. And we've sustained that median 75-day turnaround time for over a year now.

As to the last issue I wanted to address regarding whether training provided to investigators is adequate, we believe that it very much is.

OSI agents receive extensive training in running a wide variety of criminal investigations during their 17 weeks of basic investigative training at the Federal Law Enforcement Training Center in Georgia.

In addition, through our eight-day sexual assault investigators training program,
which was stood up in 2012, we've trained over 300 investigators and 80 Air Force JAGs.

Finally, assuming that the quality of our sexual assault cases reflect the quality of training agents receive to conduct these cases, DoD IG had determined again in March of 2015 through a random selection of 550 MCIO cases collectively that 99 percent of these were conducted in investigative standards.

And this was an improvement over the 11 percent that we had as insufficient in the previous assessment done in 2013.

I thank the panel members for their time and attention and I look forward to answering your questions.

CHAIR HOLTZMAN: Thank you very much, Mr. Poorman. Our next presenter is Ms. Beverly Vogel.

MR. BUCHANAN: Actually, I'm the substantial equivalent.

CHAIR HOLTZMAN: I'm sorry. Great.

MR. BUCHANAN: My name's John
Buchanan, Madam Chairman. I'm the Deputy Director for Coast Guard Investigative Services.

CHAIR HOLTZMAN: Welcome.

MR. BUCHANAN: Thank you.

CHAIR HOLTZMAN: We look forward to your testimony.

MR. BUCHANAN: Thank you very much. Thanks for the opportunity to be here.

Instead of kind of running through a little more verbatim, I'm going to use my written comments as kind of an outline and just try to touch on some high points in the interest of time.

Starting with the independence question. CGIS special agents do confer with servicing legal officers as needed during the investigative process.

However, as we have heard from our other sister agencies CGIS special agents continue to maintain their independence from the prosecution while conducting their thorough investigations into sex assault and any other
crime for that matter.

CGIS focuses on following leads regardless of where they take us to their logical conclusion.

And we're committed to establishing the facts to the greatest extent possible.

Moving onto the impact that the SVC program may have had on investigations, on occasion as we have heard previously, our special agents who were investigating sex assaults have notified CGIS headquarters that there have been some conflicts with SVCs while attempting to interview victims, to contact victims, to arrange an interview or to gather potential evidence.

These conflicts have generally involved kind of the mechanics of the process if you will - timing, procedures during interviews and obtaining electronic evidence.

While the SVC program is relatively new to the Coast Guard, CGIS headquarters continues to work closely with the chief of the Office of Member Advocacy. I speak with Christa
Cothrel on a fairly regular basis to resolve any differences that we have.

Suffice it to say I think those are minimal in nature at this point certainly.

We also of course want to ensure policy and procedure related to victims' rights and the judicial process are addressed as appropriate.

Victims of sex assault have requested SVCs prior to investigative interviews, and agents have made accommodations to accomplish that.

The CGIS sex crimes program manager has also heard -- that is Ms. Vogel, by the way -- have heard from CGIS special agents who have reported very positive experiences working with SVCs during criminal investigations, and have seen value in the program.

We do recognize and appreciate the value added.

However, I would be remiss if I did not discuss what I view as a significant obstacle
presented to CGIS by the SVC program.

While the goals of the program are laudable, victims' rights are critical factor in the pursuit of justice, it has in my view created an extra barrier for criminal investigators.

As you know, victims of sex assault have suffered trauma. They are often fearful and may be understandably hesitant to relate what they have been through.

The investigator's primary tool in this difficult process is trust. The agent must establish a level of trust with the victim in order to be successful in obtaining all the relevant facts.

Some Coast Guard victims are quite young and may have been involved in collateral misconduct.

Being told by the CGIS agent or someone else at the very beginning of this painful process, quote, "you are entitled to an attorney to represent you" must have an ominous and even confusing impact on the victim.
We believe that developing the all-important trusting relationship between the agent and the victim can be hindered as a result.

After all, anyone that watches television knows that only those folks who are facing serious trouble need a lawyer to represent them.

Our agents make every effort to succeed in building trust, whether an SVC is requested or not.

And we do have a unique appreciation for the high price that all victims of violence pay.

We are not in a position to objectively measure what the effect of the SVC process as it is currently administered is.

Is there an effect on the reporting of sex crimes that could be measured perhaps?

Is there any effect on the victim's willingness to cooperate fully? Are victim's decisions about making restricted or unrestricted reports affected by the things that I've
discussed?

We don't know the answers to those questions, but we would certainly like to.

And we do of course recognize there's an overlap here between SVC and the collateral misconduct.

We're in a complicated business and we are constantly on the lookout for ways to improve what we do.

Answers to the questions that I mentioned above would help us understand reality and also help us become more effective.

I'll finally move onto a couple of comments about some things that we are doing relative to creating an even more capable agent cadre than we already have.

Many of the trainings that have been mentioned here already we participate in including the Army's special victims unit investigations course, which I think is now called the special victim capability course.

So, we believe we have shown our
commitment and continue to show our commitment in that regard.

We do have one program in particular that I wanted to highlight, however.

In 2013 we created the embedded agent program which allows CGIS agents to shadow sex crimes and family violence investigators from large metropolitan police departments across the country who have notable reputations for conducting thorough investigations.

Currently we're working with five agencies in that regard. These would be Austin, Boston, Philadelphia, Phoenix and Los Angeles PDs.

We've found that that's been a very successful program for us in raising the level of skill that our agents have.

We're always involved in looking for ways to improve what we do, provide even better service to our victims and to the Coast Guard. And that's just one example.

I think in the interest of time I'll
conclude my remarks there and welcome any questions. Thank you for your attention.

JUDGE JONES: Thank you very much. In the absence of the chair I'm going to ask you, Mr. Stone, if you would like to begin with any questions?

MR. STONE: Yes, I would. The first question I have, it's a comment and I'd appreciate a response from all of you.

It looks to me from your titles and your dress that you are all civilian employees. And I guess my question is I'm assuming -- maybe I'm wrong -- that a large percentage, if not all of the investigators in your services are also civilian employees.

Would you tell me what percentage there are among the different services if I'm right? Or if I'm taking the wrong approach?

MR. SURIAN: You're a bit incorrect, sir. For the Army, approximately probably 800 of our agents are military. The other 200 agents are civilian.
MR. GAUTHIER: So for NCIS we're all civilians. However, we do have a small cadre of Marines, active duty Marines that are assigned to NCIS on an operational basis at Navy Marine bases.

MR. POORMAN: About 20 percent of our investigators are civilian. The rest are military.

MR. BUCHANAN: We have actually four categories of agents, Mr. Stone. We have civilian agents. We have Reserve agents. We have enlisted and chief warrant officer agents. We have a small number of officer agents, and of course civilians.

Our percentages are -- and I'm guessing here. I can give you the absolute numbers later if you would like.

MR. STONE: Okay. Well, no, let me tell you why I asked the question and why I'd like a response. Maybe I should have said investigators of sexual assault cases.

You've all admirably told us how you
train your agents, and how this is -- and we believe it is a somewhat different field than investigating a burglary or a robbery, particularly because the victims often have an emotional reaction and it may be involving a person they're intimate with. There's any number of things that change it from the ordinary crime.

And I'm kind of concerned, frankly, and therefore I'd like your reactions to it about the fact that I have had the experience, and even I just heard that our staff director, his tour is up here and he's going to be rotated.

And I frankly know that in the private sector, because I'm a victims counsel in private sector, that the agents that we love to work with are people who have 5, 10, 15 years' worth of experience.

And they really, they get in a second what a new agent may walk around for three days thinking about before it clicks that gosh, why didn't I follow this up, why didn't I follow that up. I better run back there.
And so I guess I'm concerned about how
the rotation of military personnel impacts on
your organizations, and if mostly your sexual
assault investigators are randomly distributed
among the civilian and military employees, or if
they're not, if you think maybe it would be
better to have a larger percentage civilian
because they wouldn't have to be rotated.

MR. SURIAN: We've got 30 civilian
sexual assault investigators spread at the
largest Army bases. They function as the team
chief, teacher and mentor for the military agents
that are assigned there.

The agents that normally work the
sexual assault cases are all fairly senior
military members that have been around for a
while.

And the rotation doesn't seem to
affect the investigations at all, sir.

MR. STONE: How would they be seeing
it? Aren't they rotated out of your service in
three years or four years?
MR. SURIAN: No, sir. Once they're a CID agent they're a CID agent for their entire career.

MR. STONE: I see. So they're rotated within CID.

MR. SURIAN: They rotate within CID. So they may be working for three, four, five years at Fort Bragg, and then they'll be maybe transferred to Fort Hood and they'll work for three, four, five years at Fort Hood.

MR. GAUTHIER: Sir, we're civilian but we also at NCIS, have a mobility policy. So, much like the Navy and Marine Corps presence overseas that dictates our mobility policy as well.

But that's staying within the infrastructure of the family and sexual violence billeted personnel, or our active personnel agents.

We have not experienced a negative impact that we've seen.

We do have some 1810 investigators
that we've hired in major fleet concentration areas that were like former state troopers, things like that, that retire and were special victims crimes detectives. They don't move.

So, when we have new agents coming on and specifically into the family sexual violence program they'll often shadow those individuals and our senior agents to get that experience as well.

MR. POORMAN: So, once you become an OSI agent you're going to stay an OSI agent. You will rotate within OSI.

I think to your question, and it's a valid concern, is as a whole military is a fairly young population.

So we have young airplane mechanics, we have young attorneys, we have young investigators.

And I do agree that having some experience is important in this. So what we've done is at 17 of our main operating locations, main bases out there, they have large populations
and a fairly high sexual assault caseload.

We've placed a civilian investigator at each of those locations, and each of those investigators have 10 years plus experience.

So they serve to mentor the younger investigators and serve as the continuity at those locations to try to sustain and overcome some of the points you raised.

MR. BUCHANAN: Coast Guard is very similar. Our military folks will rotate geographically, but they do not leave the Coast Guard Investigating Service.

Our civilians typically stay at an assignment significantly longer than the two- to three-year standard rotation for our military folks.

And as has been mentioned they do kind of function as the institutional memory if you will and the experience base for those geographic areas.

MR. STONE: Do any of you think -- do you like the way that works, or do any of you
think it would be better to have more civilian or dedicated people who don't rotate, or you think that the rotation is not hurting your investigator service?

MR. BUCHANAN: I think as long as we keep a good civilian cadre there's a significant advantage to having, from my perspective, to having military personnel inside our organization as well.

Because they help us keep that understanding of the military perspective which is not exactly the same as the civilian world. I know that's a shock. So, we think there's a good balance there.

And a little more flexibility perhaps in managing this multidisciplinary workforce would be appreciated.

But I think in the main it has value in the way it's built.

MR. STONE: Let me go to a second area and that is you all spoke --

CHAIR HOLTZMAN: We have a five-minute
rule.

MR. STONE: I have to ask these questions. Do you want me to send them in writing to them?

CHAIR HOLTZMAN: I don't know what the answer is, but we're going to try to cut this down.

MR. STONE: Well, I can try and make it quick, but this is an important panel to me.

The second question has to do with the fact that all your presenters said you're neutral, which means to me you don't work for the defense or the prosecution service.

And my question is, what happens when one of those two services asks you to do additional investigation after you think the investigation file is closed and you've passed it on. Do you do it when you get a request like that?

MR. SURIAN: Yes, sir, we do.

MR. BUCHANAN: Yes, we do.

MR. SURIAN: We open the case if it's
been closed and do the extra work requested by either the prosecutor or if the defense has an alibi, or credible information of some nature that might affect the outcome of the case we'll reopen it.

MR. GAUTHIER: I would say, sir, depending on the context. Before adjudication is done, if in trial preparatory process they have additional stuff that they're looking at taking, we will certainly discuss that and do that.

Now, if their case is closed it would be dependent upon the information that came up. If it brought a new witness, new information to light we would base that decision on if there was more investigative steps to do.

MR. POORMAN: If it was significant and relevant we would. In most instances though, we haven't had to because right before a case is closed there's supposed to be a closing collaboration between our investigators and the prosecution to determine whether there's any outstanding leads still required in the case.
MR. STONE: So, that means you all, if I'm hearing you correctly, have the discretion to decline to do further prosecution or defense investigation even if they ask it because you don't serve either one, you serve the service, correct?

MR. POORMAN: We could decline, yes, correct.

MR. STONE: Okay. Do you think that it would be helpful if each of your services had a team that was an investigative team and a defense team the way in the civilian area the prosecution and the defense have their own investigators because they see the world a little bit differently and they want the investigators to follow up how they see it differently?

MR. POORMAN: I think that the defense community would appreciate having that. From our side I'm sure that it would in many ways cross check some of our approaches to cases, anticipating that they could be raised.

As to whether we should do that or not
I would have to defer to upper-level management on that.

MR. STONE: I guess the reason I'm asking that question is, because in your comments I just heard one other presenter say that two victims wouldn't speak to them, and he found that problematic.

And then another presenter said that except in exigent circumstances you will talk to the victim even if there's no special victims counsel who can get there.

And in the third case I heard one of you say that it presents an extra barrier and only a guilty person needs a lawyer to represent them, which sounds like, and maybe I'm wrong, but I don't think you would make any of those same statements if it was a defendant who said I don't want to talk to you right now. Am I correct?

MR. BUCHANAN: Sir, let me respond to that. One of those comments was mine.

And the point I was making was that in particular, a young person who has been already
traumatized and hears someone say that you need a lawyer, you should have a lawyer, it's possible for you to have a lawyer.

I was trying to explain the circumstances of how that person might react to that statement.

It was not a comment on a defense issue.

MR. STONE: Well, okay. Just for the record let me just state that I think the reason those upset me and you invited a response, you said you'd like an answer to the question to help you as to why the victim might not be speaking to you after the special victims counsel talked to you.

And the response is because it has nothing to do with your job. It has to do with the victim.

If the victim's behavior during that let's say it's a rape comes out, number one, that may be what the victim feels is gross invasion of their privacy, and they'll be so embarrassed that
they'd just as soon, when they understand the extent to which it comes out, not prosecute.

And I've had victims say if I have to go through the details, and then my associated records carry that forever, I don't want to go forward. It has nothing to do with you, it has to do with them.

And similarly in the military, even more than the civilian sector, they may well know as we've heard from other witnesses here that if they bring a charge, even if it's successful it may well negatively affect the rest of their career because people feel that they broke up a very well functioning unit, and they're not a team player, even if they were able to prove it.

So I think that I'm particularly concerned to hear comments like that because Miranda warnings and telling defendants they can have lawyers have been accepted for an awfully long time. And I think it lacks a certain sensitivity.

And that's why I ask the question
whether you should have defense investigative teams and prosecution investigative teams so they would see it that way.

CHAIR HOLTZMAN: Excuse me, Mr. Stone, I'm cutting this off now. You had 10 minutes of time. We're going to proceed to the next question on the chair now.

VADM(R) TRACEY: If I could ask just very briefly, how well are you able to apply the standards and the training to deployed forces both afloat and ashore? Can you talk a little bit about whether there are differences in your ability to do that?

MR. BUCHANAN: We have flown agents out to either meet ships at sea or meet them at their next port in an effort to respond as quickly as possible when there is a report of someone who is afloat.

Depending on the distances and the times we do our very best to be as responsive as we can in those circumstances. That's the primary Coast Guard relationship to your question.
MR. POORMAN: About one-third of our criminal investigators have been through the advanced training. I can't think of a situation where we haven't had one or more of those investigators in theater when we've had one of these cases come up.

Should we have that happen though, agents are trained to stabilize and then request backup assistance to come in and handle any advanced issues.

VADM(R) TRACEY: So, it may be that initial investigation is not done by somebody who's trained if they're in a forward deployed site.

MR. POORMAN: Specialized advanced training. All investigators are trained on how to handle crime scenes and handle immediate crimes of violence and to stabilize that. They're all trained to handle that.

VADM(R) TRACEY: But not special victims training. Is there special victims
training in their basic training?

MR. POORMAN: There is some limited, yes.

MR. GAUTHIER: Any of our agents that are assigned afloat have been to our advanced sexual violence courses.

Also in our forward deployed areas, Iraq, Afghanistan, historically we will have -- if limited resources, we may have one that's been through training and would certainly handle those types of cases, or bring others in as necessary.

MR. SURIAN: We make sure that we've always got specially trained sexual assault investigators deployed to the major hubs in any deployed environment, and try to get them out to almost all the CID offices that might be at more far-flung posts in wherever we're at.

The only real problem is the case of just getting from point A to point B in theater due -- for force protection reasons and what have you.

MR. POORMAN: Thank you.
CHAIR HOLTZMAN: Thank you, Admiral.
Judge Jones?

JUDGE JONES: Just one quick question.
Mr. Buchanan, I understand your comment about
advising a victim that they have a right to a
lawyer to be the problem. That with young people
if you tell somebody they have a right to a
lawyer that may heighten their anxiety and
concern that maybe they're under investigation.

So I assume that the way you and
everyone else tries to handle that is to explain
it in the best possible terms, which is there's a
special program now in the services. It's called
Special Victims Counsel. They're here and
available to you to help you through this
process.

And if done in terms like that, is it
helpful?

MR. BUCHANAN: Absolutely. There are
ways around this. I did not mean to imply this
was an insurmountable problem.

Certainly our agents are trained to be
sensitive. The SVCs of course are good at explaining their role. The SARCs as well. There's a number of people involved in sort of a support structure.

And one of the things that we would like to see in this trusting relationship is where the victim sees the agent as part of that effort to seek justice and also to support them to the extent that makes sense from a role as an investigator.

JUDGE JONES: Thanks. No other questions.

MR. TAYLOR: So, at least three of you mentioned the problem of having delays while you were awaiting the arrival of SVC counsel.

So I guess my question is, can you think of any instance in which you materially affected the outcome of an investigation because of any delay? Or is it just a matter of minor inconvenience in terms of wanting to do it faster? Anyone?

MR. GAUTHIER: I would say, I can't
necessarily give you a specific case other than to say that it's very hard to prove it had a material impact to the case in most instances.

And it's not even necessarily that we want to do it quicker. I think most would recognize that the quicker we get information, understand the breadth, the number of witnesses, potential evidence implications.

That being said there's certainly not necessarily a bad thing in giving a victim a few days to get through those other processes and to go through that.

So, I'd just say that we've seen a fairly -- in a number of our total cases we've seen an increase in the number of delayed reports.

I'm not suggesting that's attributed to the special victims counsel program. I think there's a lot of factors that play into that.

And just looking at cases in general you kind of want to be able to get on target as quickly as possible to maximize any evidence,
MR. TAYLOR: Anyone else have a comment on that?

MR. POORMAN: We had concerns, but ours have largely as I said waned with the ability just to reach out and contact and develop better relationships. So we're not seeing that problem.

MR. SURIAN: The delays were I think more when they first started the SVC program and there weren't many around and so there weren't enough to handle the workload at times.

Now that we've had more the response times are much better. And the telephones and other means of convo help a lot.

MR. TAYLOR: Just one final question. And perhaps, Mr. Poorman, you can answer this since you raised it.

You said there might be certain circumstances, exigent circumstances, under which you would consider not allowing an SVC counsel to arrive before you started questioning if I
understood you correctly. What might those be?

MR. POORMAN: Well, that's what the legislation, the NDAA says, unless exigent circumstances.

We're working with the DoD IG who write, if you will, the overarching policy that then we follow as to define exigent circumstances so we can avoid misunderstandings.

Our interim guidance to our investigators, it's going to be very rare where you're going to have a situation where you would not go ahead and allow a request to see an SVC.

Those circumstances we foresee maybe involve would be, say, a victim where it's fresh and we really do think we have a perpetrator, and that perpetrator may be a threat to society and our community out there, and trying to figure and balance the interests of the victim versus those of society in trying to identify this individual, and get a BOLO out, get him identified and get him apprehended.

But that would be the kind of
situation which we see as very rare, frankly.

    MR. TAYLOR: Thank you.

    MR. GAUTHIER: Mr. Taylor, if I might add to that too. For us that we've had maybe that type of situation where we have exigent concerns, if the -- we've interacted with the victim’s legal counsel and even put them on the phone with the victim to kind of say, hey, it's okay, talk to them, to work that through.

    We have no interest in undermining the victim's confidence in that, that we have appraised them of they have that option. So there's other workarounds too.

    MR. TAYLOR: Thank you.

    CHAIR HOLTZMAN: I don't have any questions. Mr. Stone has one question.

    MR. STONE: One further question, and this stems from the fact when I attended the SVC training conference last summer I heard the Army CID person at that conference give a very high number of the number of cases in which an offender had multiple victims.
And in fact, he said to the training conference, which was very large, that one of the first things he does is ask the victim, or try to find out other prior girlfriends of the same perpetrator to see if this is a serial victim.

Mr. Poorman mentioned that he's seeing more and more multiple victim cases. Can you from your knowledge and your training tell me the kinds of numbers you estimate that you see where there are multiple victims, serial perpetrators?

Because at the training conference my recollection is, it was way more than half. And I'd like to know what your answers are, if you know. Unless you think that you don't have the statistics or the basis to answer the question.

MR. POORMAN: We're working through that data right now. A 10-year look at cases, those before we started looking into the history and then those after we began looking into the history and then trying to determine which ones in fact had priors.

Right now the research or the data
that are coming in for us indicate somewhere around 15 to 20 percent may have multiple victims associated with them.

Those are cases we know about. Those are cases we actually have.

How many we should be getting that we don't know about, is what will always be the outlier to that.

But part of this assessment is determining of those that were serial, what were the methods of operation used by the individual. All of that will help inform, we think, a more sophisticated protocol and us asking the kind of questions that perhaps would lead to identification of even additional victims.

But this is all relatively new to us in trying to sort through and approach and appreciate.

So, I don't know where that data comes from on the Army side. I don't have that. We now have enough cases where we're going to actually be able to look at our own data.
MR. STONE: Well, I don't think he was talking about cases per se. I think he was talking about in each case he's following up leads that suggest even though it may never have been reduced to an actual prosecution recommendation that he's dealing with a serial violator.

MR. SURIAN: We do teach our agents just like the OSI teaches their agents to look for those former girlfriends or romantic interests, intimate partners that might have been violated.

I don't have the numbers, sir. I can't give you the numbers. I can -- we can try to sort that out if the panel wants it, sir.

MR. STONE: Does anybody else have any reaction to that?

MR. GAUTHIER: No, sir. I mean, I would say when we follow it if there's indications that that subject is involved in multiple offenses we're naturally going to follow that as well.
MR. BUCHANAN: We're concerned about it. We've got that on our list of analytical projects we'd like to undertake.

We have a brand new records management system and so it's going to be a little while before we can undertake something like that.

But I think it's a significant problem just anecdotally.

JUDGE JONES: Thank you very much, gentlemen, for taking the time to come and speak with us and for your testimony.

All right, the next panel will be JAG Prosecutor and Paralegal Overview and Perspective of the SVIP Policies, Practices and Procedures.

All right, good afternoon to everyone. And I would like to begin with Colonel Batdorff who happens to be first on our list as the chair has been pointing out. Go ahead.

LT COL BATDORFF: Ladies and gentlemen, distinguished chair, I am Lieutenant Colonel Bret Batdorff and I'm the chief of the Army's Trial Counsel Assistance Program.
As such I have the honor and privilege of leading 82 personnel, military and civilian, who are dedicated to training other prosecutors, as well as ensuring that every instance of sexual assault, child abuse, or domestic violence is properly investigated, properly charged and properly prosecuted when warranted.

The TCAP's mission is to provide support and resources to the prosecutorial function in the field. And we accomplish that mission in several different ways.

First, we provide approximately 30 different continuing legal education offerings to all of our prosecutors across the world.

And next, and probably more significant to this panel, the Army's TCAP manages the Army's Special Victim Prosecution program.

In 2009 the Army created the special victim prosecutor position. At that time we started with 15 authorizations for SVPs. Last year we had 23 SVPs spread across our 21 largest
Army installations. Right now we have 24 special victim prosecutors and starting this summer we will have 25 special victim prosecutors, again, spread across our 21 largest Army installations.

Per our policy of our judge advocate general, as well as the guidance that I provide to all of the SVPs as their immediate supervisor and rater, their primary mission again is to ensure that every case involving sexual assault, intimate partner violence and/or child abuse is properly investigated, properly charged and properly prosecuted when necessary.

The SVP's secondary mission is to ensure that all of the junior prosecutors within their area of responsibility are coached, trained and mentored so that we're growing the next crop of special victim prosecutors.

I'll talk a little bit about the selection of our 24, soon to be 25 SVPs in the Army. All of our SVPs are personnel who have been nominated either by our military judges, our staff judge advocates, our chiefs of justice, in
some cases our regional defense counsel as officers who have been identified for having a knack and ability for litigation and prosecuting and dealing with victims of serious crimes.

The training for our SVPs, in addition to the normal training that every judge advocate gets at the Judge Advocate General School in Charlottesville, there are four special requirements that all of our SVPs -- training requirements that they must fulfill either before they start being an SVP or soon after starting the job.

And those are they must attend the National District Attorneys Association's career prosecutor course.

They also must attend the SVP course which is the course that we put on twice every year, once in July, once in December.

They also are required to conduct a two-week on the job training with a civilian SVU unit and a district attorney's office. I do not require that they conduct it at an SVU office.
near where they are stationed, but that is what
we encourage them to do so that not only do they
get the benefit of seeing how those offices run
and how they prosecute their cases and
investigate their cases, but they also get to
build the relationships with the local district
and commonwealth's attorney in the area where
they'll be serving.

And then finally, they also have to
attend kind of our capstone course which is the
sexual assault trial advocacy course, or SATAC.

SATAC is a joint course that Army TCAP
puts on with the Army Defense Counsel Assistance
Program; it's two weeks every summer. This year
it will be held at the University of Utah Law
School.

And for the first time this year we're
also inviting some of our special victim counsel
to attend the training. So it will truly be a
joint training between our special victim
prosecutors trial counsel, as well as some of our
defense counsel and special victim counsel.
The reason why we made that change this year is because it's a practical exercise-based training.

And after attending it last year, some of the trainings are victim interviewing. We do a mock 412 hearing. We do a mock 513 hearing. We do a mock sentencing hearing.

And we all realized at the leadership that doing all of those exercises without the SVCs was really not realistic training. So for the first time this year, the Army special victim counsel will also be invited to our capstone training course that we do every summer.

Shortly after the Army created the SVP position we realized that they needed paralegal support. And so wherever there is an SVP located, there is also a special victim non-commissioned officer paralegal, or SVNCO paralegal who provides paralegal support to the SVP with whom they are collocated.

All of our special victim non-commissioned officer paralegals are either E5,
sergeants or E6, staff sergeants.

Last year we also began hiring 23 GS-11 special victim witness liaisons or SVWLs. Each of the SVWLs are also collocated with our SVPs and our SVNCOs at our 21 largest installations.

Later this afternoon you will hear from Ms. Christa Thompson, who is our new SVWL program manager, who works with me at Army TCAP down the road at Fort Belvoir.

These three individuals, the SVPs, the SVNCOs and the SVWLs work and train together alongside with CID's sexual assault investigators to ensure that every special victim case is properly investigated, charged and prosecuted when warranted.

The addition of the 24, soon to be 25 SVPs, 23 SVNCOs and 23 SVWLs as well as the SAIs have been extraordinarily beneficial to our survivors and the military justice system overall.

The most useful thing the SVIP
capability has done for our victims is ensure that the military investigators, paralegals and prosecutors are specifically trained on investigating special victim offenses and dealing with survivors of these crimes.

This affects everything from how well the crime is investigated, to how a survivor is treated during the interview, to making sure the survivor is offered the appropriate services at the appropriate time, making sure that the survivor is educated on the process, and made aware of developments in the investigation and the case.

In preparation for this meeting, members, I sent your questions to all of our SVPs and SVNCOs because they're the ones who are actually out there in the field working these issues every day.

I asked them to provide me with candid individual responses. And with the 23 litigators that I have getting candid responses is not difficult.
All of our criminal litigation experts love the law, they love litigating, they love pursuing justice. They're all type A personalities and I'm sure you know the type of person I am talking about.

And while they all share those aspects in common, getting a group of 24 lawyers to agree on anything is nearly impossible.

With that said, their responses regarding how beneficial the SVIP capability has been for their survivors and military justice were clear and unanimous. And if you would indulge me, I would like to share with you some of the comments that they shared with me regarding the benefits to the military justice system and the survivors since the advent from 2009, the advent of the SVP program to where we are today with 82 personnel dedicated to this.

I cannot imagine the current state of military justice without this capability. The SVP injects high levels of experience who can solely dedicate themselves to these types of
It has brought a level of competence that was not here before 2009. This has increased the competence of the individuals dealing with victims in a way to empower them, help them feel involved, and all the while showing an appropriate level of empathy that I think has allowed the victims to feel more comfortable throughout the process.

The biggest effect has been on the quality of the investigations. Having investigators dedicated solely to sexual assault cases has allowed the agents to hone their skills and do more complete quality work.

Having a quality investigation completed up front means less surprises at trial which increases our chances for conviction once we get to trial.

Having SVPs and SVNCOs who are singularly focused on special victim cases has given victims a higher degree of confidence in the government's commitment and competence
regarding the investigation and prosecution of these offenses.

Having the ability to tell the victims when I meet with them that their type of case is the only type of case that we manage encourages them.

We also bring a level of maturity, experience and empathy that junior captains working as trial counsel generally have not yet attained.

The SVIP capability has increased victim's confidence in the military justice system as a whole.

For example, I often meet with a survivor within days of an initial report side by side with the regular unit prosecutor.

When I tell him or her that I am specially trained in sexual assault, domestic violence and child abuse cases I always see their guard go down because then he or she knows from the outset that we are now taking this seriously.

In summary, the SVIP capability is
every day transforming our investigation and prosecution of special victim cases in a profoundly positive manner.

Thank you and I look forward to your questions.

CHAIR HOLTZMAN: Thank you.

Lieutenant Commander Ryan Stormer, you are -- I'm sorry, Ryan Stormer, U.S. Navy, Deputy Chief, Trial Counsel Assistance Program. Welcome. We look forward to your testimony.

LT CMDR STORMER: Thank you, ma'am.

Thank you members of the panel for the opportunity to talk to you this afternoon about the Navy's trial counsel organization and our SVIP training.

CHAIR HOLTZMAN: Can I also ask you if it's possible, to try to condense your testimony because we have limited time.

LT CMDR STORMER: Yes, I will. Again, my name is Lieutenant Commander Ryan Stormer. I am currently serving as the Assistant Director at Navy's Trial Counsel Assistance Program where I
have served in this capacity for the last three years.

In this capacity I've had the opportunity to talk, train and teach trial counsel of all levels in the Navy around the world in addition to observing litigation of special victim cases in all the Navy's regions around the world.

We at Navy TCAP are responsible for monitoring major cases in the courtrooms for the Navy around the world.

Currently the Navy Judge Advocate General's court has nine legal service commands called region legal service offices.

Within each of these offices there are trial departments that are responsible for prosecuting services to the fleet across the world.

Each of our trial departments are led by a senior trial counsel, either an O4 or an O5, a lieutenant commander or a commander.

Additionally, each department has a
core counsel detailed where a prosecutor with more than two years of military experience.

The number of core counsel will be contingent upon the size of the region in which the RLSO serves.

Our senior trial counsel will detail these prosecutors to cases based on the prosecutor's litigation skills, professionalism, experience, and leadership to make sure that we are providing the highest quality of legal representation for the United States Government in all cases.

And for special victim crimes, detailing focuses on the trial counsel's aptitude to prosecute the cases, and his or her ability to provide necessary support for victims.

As far as our manning, for each trial counsel they first must be in the pay grade of O4 or above.

Currently three of our senior trial counsel at our larger fleet concentration areas are O5 or O5-select officers.
This detailing policy was set to assure that our junior counsel are supervised by experienced military officers and convening authorities are provided legal advice with not just operational considerations, but with proper legal considerations about whether or not to bring forward charges.

Second, each of these senior trial counsels have been selected as a member of the Navy's military justice career litigation track.

To be selected on this track the Navy JAG Corps holds a non-statutory board to select amongst its candidates demonstrating military justice experience, training and focus.

Once selected, these officers detailing focuses on these billets relates to the military justice in courtroom and that will be their career path throughout their career.

The combination of our senior trial counsel's seniority and being part of our military justice litigation career track ensures every office is supervised by a senior prosecutor.
with the necessary qualifications to ensure special victims crimes are litigated competently and with expertise.

Specifically to our training, all counsel to litigate special victims crimes the Navy has several courses and programs the trial counsel attend.

One course is our special victims crime course at Naval Justice School. This course provides 32 hours of instruction on issues relating to prosecuting special victims crimes, and is taught by military and civilian experts in this field.

A core component of this course is a practical element, where prosecutors work hand in hand through practical exercises with actual experts in various scientific and legal fields to develop litigation skills to prosecute special victims crimes.

Two other courses involve training with NCIS. These are the NCIS advanced adult sexual assault investigations training program
and the NCIS advanced family and sexual violence training program.

At these courses Navy prosecutors not only get instruction on these types of cases from experts in psychology, medicine, law enforcement and litigation, but the courses are typically made up of NCIS special agents, Navy trial counsel and United States Marine Corps trial counsel.

This further enhances the learning experience of both the trial counsel and the special agents by allowing different perspectives to be shared throughout the course, and to allow collaboration on how to better investigate and prosecute these types of cases.

We have also found that by holding joint trainings with our agents, trial counsel and agents later work earlier and closer on cases.

Last, as far as training, Navy TCAP visits all nine RLSOs every year for training during what we call our TCAP targeted mobile
training team course.

These TMTTs focus on practical nuts and bolts litigating special victims crimes to include subjects such as charging decisions, evidentiary issues relating to MRE 412, 413, 414 and 513, as well as working with victims.

One example we have is a survivor of a sexual assault sits down with trial counsel and discusses her experience she had, and what things trial counsel should consider throughout their work on a case.

Our TMTTs are a critical asset to addition to TCAP's regular reach-back assistance that we provide on a daily basis.

In my personal opinion and not that of the United States Navy or TCAP, the Navy's overall ability to prosecute special victims crimes while helping victims has improved significantly since when I first came in in 2004, and especially over my last three years at TCAP.

I personally believe this is directly related to the courses and trainings that I
discussed.

The training our prosecutors have received is focused and from a variety of experts that talk to us and teach us how to work and help victims throughout these cases.

They are taught about the victim trauma, how to use the trauma -- to use informed techniques for interviewing and for better presenting their cases in court.

This not only helps TCs gather better evidence and present better cases in court, but it also helps victims in their healing process and making them whole again.

Since the SVIP capability was instituted it is also my opinion, that the relationship and effectiveness of trial counsel working with NCIS has also improved.

In the past, especially when I first started prosecuting cases in 2004, there were times when a prosecutor would not become involved in a case until months after it had been reported.
Now we are seeing that the Navy is adopting a multidisciplinary approach to cases from the very beginning.

NCIS special agents are reaching out to senior trial counsel and trial counsel early and often in most cases.

This approach has made the process much more effective and efficient, and has allowed Navy prosecutors to develop his or her case early on.

It also ensures victims are receiving the help and assistance that they need in a case of this matter.

This approach is taught at the two courses that I previously talked about. Thank you for your time and I look forward to answering any questions you may have.

CHAIR HOLTZMAN: Thank you, Commander. Our next presenter is Major Jesse Schweig, U.S. Marine Corps, Officer-in-Charge, Trial Counsel Assistance Program. Major, welcome, and we look forward to your testimony.
MAJOR SCHWEIG: Good afternoon, Madam Chairwoman, distinguished panelists. And Madam Chairwoman, thank you for getting my last name correct. I think that's the first time in my life that has ever happened. I owe you a great debt of personal gratitude.

This is my first time testifying before all of you. It cannot yet be said that I am a glutton for punishment, but if I appear again I will gladly claim that title.

As a direct consequence of the SVIP requirement, we've taken great strides in both improving our training and articulating the qualifications for our special victim prosecutors.

Today 46, or more than half of Marine prosecutors are deemed what we would call special victim qualified.

The special victim qualification in our service comprises a temporal, subjective and objective elements.

So you must serve a certain amount of
time in the billet, you must be nominated by an
officer in charge and you must also attend
training and have sat on a certain number of
special victim contested cases.

We qualify our counsel individually
and we specifically detail them to cases as those
cases arise.

Our structure is equally part of our
SVIP capability. It comprises a regional trial
counsel responsible for all cases within the
region and it's roughly analogous to a civilian
district attorney model.

In addition to our special victim
prosecutors, our SVIP capability includes a
regional trial investigator which is a trained,
credentialed CID agent that works in conjunction
with the special victim prosecutor to accomplish
any additional investigation that may be required
on the case.

We also have our civilian highly
qualified experts all of whom were selected for
their subject matter expertise and the number of
years they have spent prosecuting. And they again work in conjunction with our special victim prosecutors to form our SVIP capability.

We also have specially trained legal administrative support specialists that are part of that team.

This really means that any special victim prosecutor in the Marine Corps has access at a minimum to 20 years of prosecution experience, to that trained agent and specially trained admin support personnel.

If we're wrestling with anything right now it's really deciding what we turn over to victim counsel or victims and when we turn it over.

Discovery is the wrong word, but it's the right concept. And we're sort of trying to figure out what exactly we're going to turn over and when, and what the policy should look like with respect to that.

We're really on the right track; we feel we're on the right track. If we need
anything right now it's time. We need time to allow our newly instituted processes to sort of normalize and become ingrained within the culture.

And subject to your questions, that's all I have.

CHAIR HOLTZMAN: Thank you very much, Major. I appreciate your testimony.

We'll next hear from Captain Bradley Palmer, U.S. Air Force, Special Victims Unit Senior Trial Counsel. Captain, welcome, and we look forward to your testimony.

CAPT PALMER: Thank you, Madam Chair, members of the panel. Thank you for the opportunity to talk to you today about the Air Force's SVIP capability.

And I am a senior trial counsel with the special victims unit so I spend my days, weeks, months going around and pouring my blood and sweat and tears into these cases that these cases deserve.

And the Air Force has had some type of
SVIP capability really since 1972. In 1972 the Air Force started their senior trial counsel program which is a select group of experienced prosecutors who have demonstrated over at least two tours, so that generally means they've served in two different billets for five or six years and demonstrated an ability in the courtroom, and those prosecutors are then handpicked by the chief of the government trial and appellate division to fill these positions.

We've had that capability since 1972 and right now the way we're currently organized is, we are geographically located so that there's three CONUS geographic divisions and then two outside of the continental United States.

And we essentially travel all over the world and prosecute these cases. To give you an idea of our travel schedule, my first year as a senior trial counsel I spent over 200 days on the road just doing these types of cases.

Right now there are 16 of these senior trial counsel positions around the Air Force.
Within that unit there is a smaller subset that was -- and this unit was started in April of 2012 called the special victims unit.

And so from within our senior trial counsel ranks are hand selected, again by the division chief, 10 people who have been a senior trial counsel for at least a year, who have attended at least two specialized trainings on sexual assault prosecutions and who have demonstrated an ability to handle these types of cases.

To give you an idea of how involved senior trial counsel are in these types of cases, during the calendar year 2015, 90 percent of all sexual crimes of any nature that made it to a general court martial had a senior trial counsel assigned to them. And those include cases where there was a guilty plea or a pretrial agreement in place.

And so by and large almost all of our cases of this nature have a senior trial counsel assigned, and a large majority, I don't have a
number on this, but a large majority of our cases that involve penetrative offenses or sexual abuse of children have a member of the SVU assigned to them as well.

In addition to providing this expertise as we go around and prosecute these cases, we also provide training as we go.

So every time I go to a base to prosecute a case, I stay a little later afterwards or arrive a little early to provide training to the local prosecutors so that way we are providing in addition to the formal training they're receiving, they're receiving kind of one-on-one mentoring from the senior trial counsel who's there as well as some training on hot topics, things that are coming up, things that we see as we travel around and deal with these cases.

To give you an idea of how much training, last calendar year senior trial counsel provided over 2,100 hours, man hours of training around the Air Force.
One challenge that we face, and it's a challenge that we're improving on is just manning, is just having enough billets, enough bodies.

By the end of this summer our number of senior trial counsel will go from 16 to 24. And so that will significantly improve our ability to get involved in cases early.

And I've seen an improvement in that area already. We currently strongly recommend, my leadership currently strongly recommends, that any case that involves a crime of a sexual nature be sent to a senior trial counsel to review the charging decision before the charges are ever brought to make sure as we charge this we're charging it in the right way so that we can put our best foot forward from the get-go.

As we increase the number of senior trial counsel that's going to improve our ability to get out early on and get involved and build rapport with victims to that they can know who we are, so that they can trust us.
I always try personally, and I think this is a practice for a number of my coworkers, is I try to get involved early on with victims.

If I can't travel personally to meet them, early prior to trial, I'll do a Skype chat, or we'll have a telephone call.

I think that rapport building is important so, that they can understand what my role is and what I do. They can understand the Air Force thinks this case is important enough that they're going to assign someone with significant experience doing this type of work to their particular case.

I think with the increased numbers, that will allow us even more availability so that we can travel out and do these rapport-building interviews face to face. And I think that will help us as we move forward.

I've also seen, and I know this has been talked about already, but a huge benefit from the special victims counsel and working in coordination with special victims counsel.
Before the special victims counsel program it was always somewhat unsatisfying to me when a victim had a question that required the provision of legal advice which I couldn't give them.

I could explain to them how things worked and what their rights were, but I couldn't give them advice.

And it's so nice to be able to say here's how it works. If you want advice go talk to your attorney. So that's been a great thing I think for the military justice system in general.

And just the special victims prosecutor, the STC and SVU capability within the Air Force has been a benefit to victims.

And it's, like Lieutenant Colonel Batdorff mentioned, it's nice to be able to tell a victim the Air Force sent someone to this case who is specially trained, who does this all the time and has a lot of experience under their belt, so that they can understand that we take this seriously.
And I enjoy having those conversations with them so that they can understand that process.

One final question that I know you asked us to address was, how the policy to withhold disposition to an O6 has changed our practice.

And I will tell you the short answer is not very much in reality, because prior to that change if you had a rape or a sexual assault case that O6 was already involved in those cases. Those were serious enough cases that your wing commander, who is our disposition authority, is going to know about them, is going to be involved in the disposition already.

So the practical answer is, not a whole lot of change. There are some formalities now, forms have to be signed by the right people, but as a practical matter very little has changed in regards to that disposition withholding.

And that ends my remarks and I look forward to answering your questions.
CHAIR HOLTZMAN: Thank you very much. Judge Jones?

JUDGE JONES: I was just interested in your comment, Major Schweig, about how much discovery to give to victims.

We're all familiar with the defendant asking for discovery. What do victims ask for? Do they expect the same discovery you're giving the defendant?

And I think we all understand you don't always want your main witness to see everything.

MAJOR SCHWEIG: I'm sure they would like --

JUDGE JONES: Is that right?

MAJOR SCHWEIG: I've never been a special victims counsel myself but I would want everything, otherwise I don't know that I could adequately advise my client.

Our policy on this currently consists of a non-binding practice advisory, which has been provided to the JPP in response to your
question set number 6.

And what we really do, is we break it down into a post referral and pre-referral stages.

But what it comes down to is we are providing the victim or victim counsel with a copy of any statement the victim has made. That's the simple answer.

If they want additional portions of the investigation they can request it from the trial counsel and we are leaving it up to the discretion of the trial counsel as to whether to actually turn it over at that point.

And the obvious exception to that is anything that directly pertains to a 412 or 513 type motion.

LT COL BATDORFF: In the Army the Judge Advocate General signed a policy about a year and a half ago dictating to all the military prosecutors, trial counsel, senior trial counsel, special victims prosecutors, chiefs of justice of what will be provided to the victim and when.
And it's her statement of course, a redacted charge sheet in case there's other victims on there that that victim's privacy is protected and basic things like that, ma'am.

JUDGE JONES: Okay. Do you have any -- none of you have raised any criticisms or difficulties caused by having special victims counsel. Are there any? I know they've been around for a little while now, but there must have been some issues. Or if not, fine. But if there were, how have they been resolved?

LT CMDR STORMER: Ma'am, I would say not necessarily an issue, but just something I think possible, we tell our prosecutors something to be aware of is, we just want to push out to our prosecutors that we still feel it's very important that the prosecutor in the case develops that rapport with the victim.

With victims counsel there may be that particular relationship, but we want to make sure that when we talk to our prosecutors that it's important for our prosecutors to still maintain
that good rapport with the victim.

So while we have another counsel now involved who the victim may be going to for more of his or her problems in a case where in the past they may have come to, say for instance, me as the prosecutor they now go to their own counsel.

I wouldn't say that it's created barriers. I haven't seen any necessarily, problems that are consistent. But I think it's an issue that we want to highlight to our prosecutors that just because this person has a counsel, doesn't alleviate any of our responsibilities as a prosecutor to prep this witness for trial, develop the rapport for trial to make sure that we're doing everything that we can to present our case in court.

JUDGE JONES: Thank you.

LT COL BATDORFF: I think at first there definitely were issues. And I think any time you have change and people are used to doing things a certain way, there's going to be
resistance to that change.

And the way that we've overcome that is both formal and informal.

Formally we have things like TJAG's policy memo that dictates what you will provide to the victim through their victims' counsel.

Just signed this week, the TJAG signed a new SVC handbook, that Colonel Marotta referenced during her testimony, that says you should always zealously advocate for your client, but it provides guidance in there, understand the importance of your client also building that relationship and the rapport with the prosecuting attorney in the case.

And then informally, we've just tried to send the message that it's relationships, relationships, relationships.

Whether it's at our level, so Colonel Marotta and my team work together all the time. We send our people to go teach at their classes. They send people to come tell us about SVCs. We're building relationships at that strategic
level.

And the same thing is occurring at the base camps and installations too, where as people are more familiar with the program they build those relationships, the trust is built. And I think that's how we've overcome some of the initial problems, ma'am.

JUDGE JONES: One last quick question. You were talking about a training session on 412, 513 mock trial type. Do you also bring in special victims counsel to be trained along with the trial counsel?

LT COL BATDORFF: Yes, ma'am. Yes.

JUDGE JONES: It's not just teachers.

LT COL BATDORFF: No, ma'am. So the way that it works is we actually will have a class. So there's a plenary session where we learn the law, get refresher training on the law and then, there are breakout sessions where one of my training officers will actually play the role of the survivor.

And prior to that, he or she will have
met with the SVC --

    JUDGE JONES: Who's also in training?

    LT COL BATDORFF: In training, ma'am.

And then they'll go, the SVC will go, to the mock interview with the prosecutor and the mock interview with the defense counsel.

    And then they'll go have a 412 hearing after that, ma'am.

    JUDGE JONES: Thank you very much.

    CHAIR HOLTZMAN: Admiral Tracey.

    VADM(R) TRACEY: So, Commander, did I understand correctly, the other services seem to have carved out a subset of their senior trial counsels and designated them as special victim prosecutors.

    And Navy has trained everybody and doesn't have that special cadre, special designation? Did I understand that right?

    LT CMDR STORMER: Yes, ma'am. There's no special SVIP prosecutor only.

    The way that the Navy is currently doing it, is we have SVIP certified offices. So
while we have senior trial counsel, who I said are 04 or 05 military justice career litigation track individuals we are certifying or trying to certify, all trial counsel to go through our training pipeline to get what we call SVIP certified.

So yes, ma'am, we do not have a specific SVIP cadre. Our offices as a whole are certified to handle these cases.

VADM(R) TRACEY: Okay, thank you.

CHAIR HOLTZMAN: Mr. Stone?

MR. STONE: Yes. We've got -- earlier in this meeting we looked at a draft report we're doing and it doesn't show -- well, what it does show is that the conviction rate in sexual assault cases is -- it's certainly not very far off. About half of the cases.

I gather that -- I hear and I agree that your services are doing a lot of training.

But in the civilian area, civilian arena, what they call an experienced prosecutor has about twice as much time before he's going to
get a serious rape case on his own to try as compared to the military because you have tours and you move people around.

They may do burglary trials. They may do other trials. But there's only so much time that they're doing the sexual assault trials.

Now, I just heard the last panel of investigators say that one way that it seems to me they address that is they have at least one military civilian experienced investigator, and often more, in each the equivalent of I'll just say regional office. Somebody who doesn't rotate and has been there probably a decade who they can go to.

And I guess my question to each of you, and I'd like your reaction, is why shouldn't we be recommending that in each regional office you have one military civilian employee who's a lawyer, might have been a retired military lawyer, but someone who's done 10 years of sexual assault prosecutions?

Because I don't think training is ever
a substitute for actually doing the cases. And
I'd like to know if you think that will help
raise this level of conviction.

CAPT PALMER: Sir, I'll I guess start
out by saying some base legal offices, and I'm
not just speaking about the regional areas that
the senior trial counsel are located in, but the
base legal offices do have such a civilian.

For example, Lackland Air Force Base
which has traditionally been the busiest military
justice base in the Air Force has a senior
civilian who works on military justice issues,
and advises, and teaches, and trains and provides
assistance with those cases.

MR. STONE: A senior civilian
attorney.

CAPT PALMER: Correct. Yes, sir. And
then we also have reach-back support within --
we, as far as the senior trial counsel cadre in
the SVU, have reach-back support within the
Government Trial and Appellate Division. We have
senior civilians who work in there, as well as
our military leadership who have been doing this for a very long time.

MAJOR SCHWEIG: Sir, the Marine Corps assigns civilian prosecutors as highly qualified experts by region. And they have between 15 and 25 years' experience.

LT CMDR STORMER: Sir, we have something similar to the Marine Corps. We have two highly qualified experts. Most of those individuals work with me at Navy TCAP and provide reach-back assistance.

One of our highly qualified experts is a very experienced former prosecutor for adult sexual assault and domestic violence.

And then we have another what we call HQE for child abuse, child molestation cases.

LT COL BATDORFF: We have -- at TCAP we have three HQEs, each of whom -- highly qualified expert attorneys, each of whom have 20-plus years prosecuting primarily sexual assault, sexual violence cases.

One was 20 years in the Chicago Cook
County DA's office. Another one in Connecticut. And another one who was when she joined us a year and a half ago was the head of crimes against women and children in Cobb County, Georgia.

What they do is -- the reason they're not here today is because I think all of them are on the road actually sitting behind the bar at courts martial going on at various camps, stations and posts across the world right now.

They'll go out there a week before the trial, and sometimes earlier than that, and they'll sit there and help them with their opening statement.

They'll go out there and help them interview the victim, sir.

MR. STONE: I'm delighted to hear that. Do you think particularly where you have two you could use a few more? I guess that's my question. It sounds like CID has quite a few more. Do you think it would help if we recommended that you had more than two, that you had, I don't know, a half dozen throughout each
LT COL BATDORFF: So far the three that we've had have been meeting our demand, sir. And I should -- the three that we have, the three HQEs that work at TCAP go out and assist on cases. They're providing direct assistance to cases in the preparation of cases and preparation of survivors for their testimony and things like that.

We also have other civilian HQEs, one who is the head of our advocacy who works in the Pentagon who was a longtime prosecutor and civilian defense counsel before joining us. And another HQE -- so we actually have five -- who works full-time at our JAG school helping develop curriculum, sir.

CHAIR HOLTZMAN: I just have at the moment one question, which is all of you seem to be talking about how the number of your prosecutors is increasing. And why is that? The number of cases going up?

LT COL BATDORFF: So, the genesis of
it, ma'am, was in 2009 we decided there was a problem and we needed to fix it.

The Judge Advocate General at the time went to the Secretary of the Army and he said you have 15 additional authorizations.

So these special victim prosecutors were not taken out of hide as we say. So they weren't other jobs that we had within the JAG Corps. They were new positions that were grown in response to the fact that we wanted to provide people who solely focused on the investigation, charging and prosecution of special victim cases.

CHAIR HOLTZMAN: Right, but what I'm seeing though is that the number keeps going up. One, two, a year, whatever. I mean, is it a situation where you have a number in your mind that you're reaching out to, one a year? Or do you find that the workload is just increasing that much so you need one more each year?

What I'm trying to arrive at is what is your ideal number? Are you there?

LT COL BATDORFF: I think we are,
ma'am. And it's not the cases are rising. If I had a map I could show you where they're located.

It's that some of my SVPs cover multiple installations. So the travel that's involved.

So, for example, I have two special victim prosecutors who are at Fort Bragg. One of them also covers Fort Jackson, South Carolina. And so it's the geographic travel that is why we've grown the numbers, ma'am, to cut that down.

CHAIR HOLTZMAN: Anybody else have any comment? Similar problems?

CAPT PALMER: Ma'am, I think by the end of this summer as I mentioned we'll have 24 senior trial counsel which will be more than I have seen in I think --

CHAIR HOLTZMAN: I understand that, but is that the number you need?

CAPT PALMER: Yes, ma'am, I believe that's the number we need.

CHAIR HOLTZMAN: Okay. Major Schweig?

MAJOR SCHWEIG: Ma'am, we have not
increased our numbers. We simply qualify people at the existing bases once they meet the prerequisite criteria.

CHAIR HOLTZMAN: I'm sorry, yes.

MR. TAYLOR: So, a couple of you mentioned that you had earlier coordination with your respective MCIOs in order to make a determination about whether to proceed, I suppose to put someone's name in the subject block. Is that the idea? Of a report. That is, to continue the investigation.

So, my question is what standard do you use when you're at that stage of an investigator.

One of our concerns is that we need to know how cases get washed out, or not get into the system.

So, for you people who are on the front lines working with the MCIOs what standard do you use when you're sitting down with the investigator to say, okay, we're going to go forward with this. This is an appropriate case
to send to a commander for a charge.

LT COL BATDORFF: There are two gates, sir, for us.

Initially, pretty early on there's just a probable cause determination. It's the standard probable cause determination that we always make in coordination with our CID. Whether it's just a regular case or a special victim case we're working with the SIA, sir. So that's early on.

And then there's a second consultation that occurs where we determine whether there's enough evidence for it to go to court.

So there's two times -- well, much more than two, but there are two required points where there has to be coordination between the prosecutor and the CID.

MR. TAYLOR: And just comment if you will, on that second stage. Enough evidence to go to court.

How would you describe that? Clear and convincing? More likely than not?
LT COL BATDORFF: I don't think we have it in our policy. There's just a required meeting that has to occur.

LT CMDR STORMER: Sir, we have something very similar. We are meeting with investigators more with a probable cause standard.

In the Navy we are -- all prosecutors are, especially in special victims crimes are doing what we call prosecutorial merits memo.

And within that memo the prosecutor will go through, they'll list the charges, they'll list the elements, they'll list the evidence that support, don't support.

And then we use that merits memo to kind of make a determination of whether or not the case should go forward, whether there should be a referral, whether it should go to an Article 32.

And then ultimately if there is an Article 32, should the case go to trial and the case be referred.
So we use -- the standards are pretty similar to what the colonel just said as well.

MR. TAYLOR: So, on the second stage decision that was described do you have anything more definitive, or is it just the combination of all the circumstances and the factors that you described?

LT CMDR STORMER: It's all the combination of the factors described, sir. Under RCM 306 there's a list of disposition factors that a commanding officer or convening authority can consider.

So what we try to do is we take the elements, we take all those things, and we make our recommendation based on those standards that are laid out in 306.

MAJOR SCHWEIG: Sir, actually I've got a copy of the circuit diagram that shows how the case gets from report to the commander's initial disposition decision.

What we do is similar to the Navy. And Agent Gauthier I'm sure we, correct me
mercilessly if I get this wrong, but provided there has been a subject title, an investigation subject title, it's going to go to a commander for disposition.

Along the way a special victim prosecutor will provide a merits memorandum to that commander's SJA as part of the decision-making process. But ultimately it's up to the commander.

CAPT PALMER: In the Air Force, as Major Schweig just mentioned, if there is a subject in the investigation there will be an investigation.

And the next stage in that again, is the commander making the decision.

But prior to the commander making that decision whether there's enough evidence to go to trial, using the factors in RCM 306 there is draft charges done by the legal office with a proof analysis showing each element under that specific charge.

The government has to prove what
evidence you have for each element. And then that proof analysis is then -- and the draft charges are sent to a senior trial counsel member of the SVU who has a chance to look at them, provide additional inputs.

Then that goes to the commander, who's given advice from his local SJA with input from the senior trial counsel who did the charging review. And then the commander makes that decision.

MR. STONE: Is that just on penetrative offenses, or contact offenses too?

CAPT PALMER: Contact offenses as well, sir.

MR. STONE: Thank you.

CHAIR HOLTZMAN: Okay, I think -- are you finished? Great. Thank you very much, members of the panel, for coming in and enlightening us about what's happening in your service. And thank you so much for the benefit of your testimony.

I think we will take -- we're almost
catching up to where we should be. We'll take a five-minute break at this point. No more. Please be back so we can get started.

(Whereupon, the above-entitled matter went off the record at 3:13 p.m. and resumed at 3:20 p.m.)

CHAIR HOLTZMAN: Kyle, are we ready to move with this right away or should we take the panel first?

COL GREEN: Ms. Holtzman, based on this morning's deliberation session the staff went back and made revisions to recommendations 37 and 38. Each of you have a copy at your seat.

And you approved these recommendations subject to your revisions and so we just wanted to get your approval that these revisions in recommendations.

I understand there may be language in the draft of the report that we can continue to revise just to reflect the language in the recommendations.

But I wanted to make sure
recommendations 37 and 38 as restructured or revised are accurate and appropriate.

CHAIR HOLTZMAN: Just having looked at the recommendation 37 don't you need on line 2 the word "in?" You have "Department of Defense collect and analyze case adjudication data." Shouldn't it be "in a standardized collection model?"

COL GREEN: Using a standardized document-based collection model.

CHAIR HOLTZMAN: Okay. Using, okay. You can't really see. Can you just read it to us?

COL GREEN: Sure. "The Department of Defense collect and analyze case adjudication data using a standardized document-based collection model similar to systems used by the Judicial Proceedings Panel or Sentencing Commission that incorporates uniform definitions and categories."

CHAIR HOLTZMAN: Is there any objection to this recommendation as revised?
Okay, without objection it's accepted.

Now, recommendation 38. Do we need that read to us too?

COL GREEN: "The Department of Defense change its policy that excludes adult victim cases that are handled by the Family Advocacy Program from Sexual Assault Prevention and Response Office reports and include legal disposition information related to all adult sexual assault complaints in one annual DoD report."

CHAIR HOLTZMAN: Is that correct? Okay, do we have any objections to this revised recommendation?

MR. STONE: Just my standing objection that I would have footnoted that it's only limited to adult because we don't have jurisdiction over the juvenile.

CHAIR HOLTZMAN: Okay, noting that objection, any other objection to this? Then this is accepted.

Colonel Green, do we have to accept
the changes that were made and read in the report?

VADM(R) TRACEY: So those were the revisions that I had asked for just because it was -- it's not that we didn't include the data. The data is not available yet for the post-2012 prosecutions.

And I did ask for a modification on the first page just so that it was a little bit clearer that it's not that we didn't choose to do it.

I think this last page is quite -- I just rewrote the last sentence to say that the proportion of appellate data covering offenses adjudicated under the 2012 statute will increase in future JPP reports.

I think the longer paragraph that you're looking at, Madam Chair, is very clear. I think the front page was not.

CHAIR HOLTZMAN: Front page, you mean page 3.

VADM(R) TRACEY: Page 3, correct.
CHAIR HOLTZMAN: Okay.

VADM(R) TRACEY: So I propose to rewrite the second sentence.

CHAIR HOLTZMAN: Is everyone satisfied with this? Are you satisfied with this as it's written on page 3?

MR. STONE: You want increase, right? You want to add the words "will increase?"

VADM(R) TRACEY: "The proportion of appellate data covering offenses adjudicated under the 2012 statute will increase in future JPP reports."

I think that's accurate. Not -- this sentence is not accurate.

And I think the longer paragraph that is on the last page of this is very clear.

CHAIR HOLTZMAN: On page 48.

VADM(R) TRACEY: Yes. I'm sorry, I don't have my copy.

CHAIR HOLTZMAN: So, what is going to change now? What's your proposal, Admiral?

VADM(R) TRACEY: My proposal is that
on page 3 the second sentence reads as follows:
"The proportion of appellate data covering offenses adjudicated under the 2012 statute will increase in future JPP reports."

CHAIR HOLTZMAN: Any objection to that? Staff agree that that's an accurate statement. Yes, okay. Without objection that's going to be accepted. Okay.

Then we're up to -- any problem with page 6, the changes on page 6? Not hearing any objection that change is accepted.

And then on page 48 there's a change in red. Sorry to be nitpicky here, but shouldn't it say "will likely more?" In the second to last line shouldn't it be that appellate decisions from Fiscal Year 2015 and beyond will likely cover more courts martial adjudicated under the 2012 statute? Okay, great.

So with that correction is there any objection to the changes on page 48? Okay, hearing none, accepted.

Okay, now we're up to our next panel.
Thank you for your patience.

This panel addresses Victim Witness Liaison Overview and Perspective of the SVIP Policies, Practices and Procedures.

We'll begin with Ms. Christa Thompson, U.S. Army, special victim witness liaison program manager. Ms. Thompson, welcome and we look forward to your testimony.

MS. THOMPSON: Thank you. Honorable Holtzman and members of the panel, thank you for the opportunity to address you today.

My name is Christa Thompson and I serve as the program manager for the Army special victim witness liaisons.

I work at the Trial Counsel Assistance Program, Fort Belvoir, Virginia.

First, my background. I served as a victim witness liaison for 20 years at Fort Carson, Colorado, and I am a subject matter expert in the area of victim witness assistance.

Like many of the Army's victim witness liaisons I wore two hats. I was a paralegal and
my secondary duty was as a VWL.

Over time the duties of the VWL became a full-time requirement and I performed less and less of the paralegal duties.

The Army recognized that many of the VWLs that were wearing two hats were not able to perform the duties of the VWL to the standard necessary to properly assist victims and witnesses.

One of the innovative steps that the Army has taken is to create the unique position titled special victim witness liaison, or SVWL.

In Fiscal Year '15, the Army received authorization and funding to pay for 23 full-time special victim witness liaisons and one program manager.

This is the Army's innovative approach to now have full-time special victim witness liaisons who work for the special victim prosecutor and are a member of the special victim capability team.

The SVWL's mission is to focus on the
special victims and witnesses associated with special cases.

The term "special" refers to cases involving sex assault, domestic violence and child abuse.

The SVWL position is somewhat different than the installation VWL because the SVWLs work exclusively with victims and witnesses involved in special cases.

The installation VWL position is still required to handle non-special victims and to back up the SVWL when necessary.

This is making a significant positive change in how special victims are treated since they now have an SVWL dedicated to keeping them informed and up-to-date on their cases.

It is also helping the way non-special victims are treated because the VWL isn't seeing as many victims, so the VWL can devote more time to other victims while performing their other assigned duties.

The response from the installation,
staff judge advocate and special victim
prosecutors has been very positive.

Another innovative step is my
position. I relocated to Fort Belvoir last
December and began my new position as the program
manager for the special victim witness liaison.

As the Army's subject matter expert on
victim witness issues I provide policy guidance
to the SVWLs.

I am responsible for overseeing the
hiring of the SVWLs assigned to the SV capability
team at the identified installations.

I am also responsible for managing the
SVWL program and training the SVWLs.

Regarding the training, we have been
providing as much as possible in different forms.
All have been offered training online and some
have been able to attend TCAP-sponsored
conferences.

Others have attended local conferences
specific to the state in which they reside.

We will offer another innovative
training session in July. It is innovative because it will be the first time TCAP has brought together the SVP, the SVNCO and the SVWL to the same training.

The goal is to have all of the SVWLs trained in the VWAP program by 1 August of this year.

The SVWLs will all be trained to be trainers, in order to educate the personnel on their installations regarding their role as an SVWL and the VWAP program.

I have asked for feedback from the installations regarding conflicts in the SV capability team and have not received any negative comments.

However, there are times when there are issues about how best to provide services to a victim who has an SVC.

The guidance I'm providing to the SVWLs is to work with the SVCs to build trust and confidence to make sure the SVCs know that they are not there to question the victim about the
case, but to provide information to the victim.

The SVWLs are working with the SVCs to determine when it is appropriate for the SVWL, the SVP and the victim to meet in order for the SVWL to provide information in proper necessary forms.

We are now seeing more access to victims because the SVWLs are now part of the prosecution team.

The key is for the SVWL not to question the victim about their testimony or about any mental health issues.

Recently an SVWL told me the success of the new program has been lauded by the trial counsel, the SVP and the witnesses and victims involved in the military justice process.

With the creation of the new SVWLs, the Army has provided a professional team that is now an integral part of the OSJA and the Army's future.

Thank you. I welcome your questions.

CHAIR HOLTZMAN: Thank you very much.
Our next presenter will be Mr. John Hartsell, U.S. Air Force, Associate Chief, Military Justice Division. Welcome, Mr. Hartsell, and we look forward to your testimony.

MR. HARTSELL: Thank you, Madam, members of the panel.

In response to your request to discuss victim support innovations and training I'd like to talk about the Air Force's establishment of the victim rights and special crimes instructor position at our JAG school.

And that position was filled approximately 18 months ago. What that position allows us to do is to rapidly implement all the changes in statutes, regulation and policy into our training curriculum there at the JAG school.

But he does far more than that. One of the other aspects that he provides is part of that instructional feedback that's out there.

And let me pause momentarily and step back and talk about that feedback piece, that inspection piece.
As you're probably aware under Article 6b of the UCMJ the judge advocate generals have a requirement to go out and inspect the field, or have their staff to inspect the field with respect to military justice.

Now, approximately five years ago our Judge Advocate General stood up an inspection directorate consisting of senior folks who have lots of experience to go out and inspect the field.

When they go out and inspect the field they have a standardized checklist, and they go out, and they comb through files, and they comb through records, and they interview folks within the legal office and the clientele around the installation.

And the folks who run those legal offices are graded. And there are lessons learned that are collected, best practices that are collected, and there are deficiencies that are collected.

Those folks live out of a suitcase and
they go from installation to installation.

When they get back to Washington, D.C.
they go through their notes. What they do, is
they have a centralized website that's internal
to the JAG Corps that they post up there for
everybody all of these lessons learned and best
practices and deficiencies so folks can learn
from there.

So whether you're a paralegal in the
field, a staff judge advocate, a trial counsel,
or whomever, you can access this to figure out
what folks have done right and folks have done
wrong.

Well, one of the folks who obviously
reaches that is that new instructor who can go
out there and complete that educational cycle.
We call it an OODA loop in the Air Force. And
what that essentially is -- observe, orient,
describe and then act. And it's a cycle.

And what they're able to do with that
inspection process, this instructor, is look out
to the field, look out what the results are of
those inspections and how is our training working.

There is a lag time to that, but what it allows you to do is to complete that instruction.

Now, this instructor position is not just limited to implementing updates and going out and making sure everything is getting out to the field, this kind of push-pull education process.

He is actually providing training as well. He's injected victim-centric training into 12 of our courses where he participates directly in training. Whether it's defense counsel, whether it's SVCs, whether it's our field grade officers who are there for air command and staff college, our junior paralegals, our senior paralegals, he is providing training to all of them.

What he also runs is our five-week VWAP program. It's a five-module program and it's a distance education program.
And it's not simply accessing YouTube videos online. What this involves, there are five instructors. And SJAs nominate their staff and they go in and they train. There are graded assignments, and there are graded exams, and there are discussion forums once those videotapes are completed. So, thorough training that goes in there as well.

What the instructor position also provides is an educational ombudsman. Now, we talked earlier amongst the panel and amongst other members about conflict, conflict that can occur between various divergent interests that are involved in advocacy and litigation.

And what he provides, he's the honest broker, as he moves from interest group to interest group training them on other things. What he does is he provides the perspectives.

As we try to essentially get comfort with our new normal of dealing with all the new players, all the new rules, all the new laws so that there is somebody who is ensuring that any
conflicts with a little "c" don't turn into acrimony and ultimately to harm to either victims or processes. So, he provides that role as well.

So, he certainly is not making the process or the overall system perfect, but he's accelerating us towards that direction.

So, with that I look forward to any of your specific questions.

CHAIR HOLTZMAN: Thank you very much, Mr. Hartsell. Our next presenter is Mr. William Yables, Jr., U.S. Marine Corps Paralegal Specialist, Installation Victim Witness Liaison Officer. Welcome, Mr. Yables, and we look forward to your testimony.

MR. YABLES: Thank you, ma'am. And like you did last time with the major, you said my time properly. About the first time, so I appreciate that as well.

CHAIR HOLTZMAN: I better quit while I'm ahead. Thank you.

MR. YABLES: Well, good afternoon. My name is William Yables and I am the installation
victim witness liaison officer stationed at Marine Corps Air Station New River in Jacksonville, North Carolina.

First of all, I'd like to say thank you for the opportunity to come brief this panel today on the special victims capability from the perspective of the victim witness assistance personnel.

One of the things you have not read in my bio is I've been a part of the victim witness assistance program since 2006.

I was a military justice chief and I was also assigned as a victim witness liaison officer.

I attended the Department of Defense's Victim and Witness Liaison Conference and since that time, I've had the desire and the goal to have one of the best VWAP programs in the Marine Corps. And this past year I've obtained that.

I enjoy sharing my knowledge of the VWAP program and experiences with others wherever I go during inspections or during my training.
Please understand that the victim witness assistance program is responsible for all victims of crime, but we do pay special attention to those victims of sexual assault.

I need to state that the VLOs in the Marine Corps are a collateral duty and as a result I've seen VLOs serve as short as six months, and I've seen unit victim coordinators serve as short as three months.

Over the past few years the VWAP program has grown extremely fast with the creation of the special victims investigation and prosecution team, and the victim legal counsel, with little to no training to the VWAP program.

I'm fortunate that headquarters Marine Corps seeks out my opinion regarding the drafting of new orders and inspection questions. So therefore, I have a lot more knowledge than most other VLOs in the Marine Corps.

Some of the innovative steps to improve support to the victims of sexual assault is the VWAP quarterly counsel meetings that we
have where we discuss any issues that any victim shall have. And we have all the key personnel there at that counsel to take care of those needs.

Additionally, at my installation, at New River I've created an air station order which requires all new personnel to check in with their unit, the unit's victim witness assistance coordinator.

I've created a VWAP pamphlet and a VWAP intake form.

The VWAP intake form which can be accessed by anyone, go onto Navy forms, or go on Google and Google "VWAP intake form."

It can be utilized by VWACs, UVAs, VAs, SARCs to gather relative information to be passed on, so we know what information has been passed on and what needs to be passed on to the victim so we don't violate anybody's rights.

I've also conducted courtesy inspections at my installation to ensure regulations are being taken care of.
Headquarters Marine Corps provides annual VWAP training and it's open to anyone in the victim witness assistance personnel to include the VLOs, the VWACs, UVAs, VAs, SVIP and SARCs to ensure that adequate assistance is available to victims, both all victims and special victims of sexual assault.

During this training we have -- we're going to include all special victims capabilities so, we all know what all that they all do and also how to assist victims of sexual assault better.

Also during this training we have members from the SVIP actually conduct those briefs. We ensure that we pass, during all annual training, the importance of communicating with victim advocates and the VLC.

I believe that additional training is needed for VLOs to allow or require them to attend all training given to SARCs, UVAs, victim advocates, or the SVIP personnel.

If I do not know what they know, then
how am I to know what they are providing to the victim for support under the VWAP program.

There have not been any conflicts working with the SVIP, victim advocates or the VLC. I believe the creation of the VLC has a positive impact as all victims, eligible victims are provided that VLC upon initial contact.

Like I stated before this is a collateral duty. Most other civilian VLOs do not have prior military justice experience. Most military VLOs and VWACs only stay for a short period of time before they rotate to a new position or a new duty station.

I appreciate the opportunity to come here today and give you my views and the status of the VWAP program in the Marine Corps, and I welcome any and all your questions you have. Thank you.

CHAIR HOLTZMAN: Thank you very much, sir. Admiral?

VADM(R) TRACEY: Mr. Yables, how does the fact that it's a collateral duty, how is that
affecting effectiveness?

MR. YABLES: Well, I'm a paralegal at the SJA's office so I have all my other duties. And then as this comes up I have shorter time to work with something, or I have to put something else off to focus strictly on the VWAP program.

VADM(R) TRACEY: But are you at risk of leaving this role in the middle of an engagement with a victim witness?

MR. YABLES: No. I have the luxury of managing my time. So if I'm working the VWAP program, all the other stuff gets pushed back to the SJA and his deputy to get that work done. So I do have that luxury.

But if I've got something crunched on the left side, I know I'm going to have to do it. So it's time management.

VADM(R) TRACEY: Just one more question. I thought I understood you to say that people stay in this role only for a few months and then they roll onto something else.

MR. YABLES: Correct. That's the
military folks, the people that are wearing the uniform.

There's only certain jobs that they can do, and if they get the transfer -- so they have a short in defense, then they'll transfer them over to defense, or to trial counsel, or legal assistance.

SJAs, all those people are not allowed to be a VLO. So there's a couple of jobs that attorneys can actually be, and usually that's who they assign is attorneys to be VLOs at other installations.

At the unit level is the unit, it's the victim witness assistance coordinators. And they have their primary job as a whole. And those folks, if they said they can't handle it, they give up, and then they tell the CO that they can't handle that because it's interfering with their other job. And mission comes first so then they move it on to somebody else.

Does that answer your question, ma'am?

VADM(R) TRACEY: Yes.
MR. YABLES: Okay.

CHAIR HOLTZMAN: Mr. Stone?

MR. STONE: I want to follow up on that last response. I had asked the last panel whether having at least one civilian military person in that particular role either regionally or at each location would help alleviate that rotational problem that people need to rotate to get promoted in the military.

Do you think so? It sounds like from your testimony, just logically, that it would be good to have at least one civilian military person in that victim witness liaison role who doesn't rotate. What's your reaction?

MR. YABLES: Well, it certainly would be beneficial. However, that would be creating a lot of civilian positions, and there's a lot of other areas where what would our collateral duty be.

I think the better thing would be is to once you're assigned to be a VLO that you have a minimum of 12 or 18 months minimum. Like
defense counsel, they have a minimum where they're for 18 to 2 years. So I think if we put some criteria to make it to where they have to be 18 months then that would help.

MR. STONE: Do the other services have a minimum period, or can a person get transferred if he's needed elsewhere in three to six months?

MS. THOMPSON: Well, the SVWLs are all civilian positions. Those are GS-11 positions. They're not going anywhere. And we do think that that adds a level of continuity with the victims. So that even if the special victim prosecutor moves on, that victim can always call back to that office and they're hearing that one voice that they've heard before.

And that does make them feel very comfortable knowing that that person is still there to answer questions.

MR. HARTSELL: Yes, sir. In the Air Force we have a number of full-time civilian VWAP coordinators and a small number of installations.

For the most part it's run by
paralegals and attorneys at the installation level.

With respect to whether or not it's beneficial to have a civilian to provide that continuity, I would agree with that as long as a civilian is located in a strategic place so that that individual has a full plate of responsibilities and can provide that information.

But what we don't want to lose is that ability to cross-pollinate our talent, to move around and get more experiences, and become better. Otherwise we keep eating our own seed corn.

So, not only that, but we also need to be able to make sure we've got the assets to deploy them down range to where civilians aren't necessarily there.

So we deploy our paralegals with those VWAP skills.

But absolutely, civilians at the right strategic location is definitely helpful. But
there is a LIMFAC there.

Now, the LIMFAC is we always assume that the civilian will be there forever. And having supervised a number of civilians who you think you've found the right person who will be there forever, and then they take the next higher paying job, or they move because of a better location or what have you, and you lose them. Then you lose all that continuity as well.

So it's not the holy grail. There are some limitations.

MR. STONE: Just one other fast question. And correct me if I'm wrong. When we started to hold hearings we heard that it was hard to staff liaison positions in a lot of different places particularly with the Air Force, and that some victim witness liaisons were not located, and there weren't enough to locate them in every base that needed them.

And some of them were doing two bases and flying back and forth, or only using Skype or something because they couldn't get to different
places.

Are we at the point now where pretty much every location has at least one collateral duty person, so that there isn't as much of this flying around stuff that there was at the beginning of the program?

MR. HARTSELL: Yes, sir. I wasn't there, but I'm going to assume based upon the details of your question, that that was probably in reference to the SVC program itself.

Because we had a lot of folks with a lot of pans on the stove trying to take care of a lot of clients. And that was with the SVC program.

But with this recent surge in manpower with our SVCs, the goal is to try to make sure we've got an SVC available at every significant installation that's out there.

With respect to our VWAP liaisons they're at every installation. Back in 1995, the Air Force, we came up with what's called Air Force Manpower Standard 102a.
We identified 71 core tasks that every single legal office had to do. And then you looked at those core tasks, and then you looked at how many people were on the installation, and then you figured out how much manpower you've got.

One of those core tasks was VWAP. So we were able to determine how much of an FTE, full-time employee, we received for the victim services at that particular installation.

MS. THOMPSON: Every installation has a victim witness liaison. But that's a dual-hatted person. So they might be a claims examiner and also be a VWL.

In 21 of the installations are now also having the SVWL. So they're having actually those two at those installations.

MR. YABLES: For the Marine Corps we have an installation VLO at every installation. When the new orders come out, after the new billet comes out, we'll have a special victims coordinator which will be another collateral duty
that the VLO will have.

So they'll be able to go out and assist the victims, civilian victims out in town, and getting them their proper services.

CHAIR HOLTZMAN: Mr. Taylor?

MR. TAYLOR: Yes, thank you. First of all, thanks to all of you for your longtime service in a very important mission.

Ms. Thompson mentioned that the relationships working with SVCs is really important.

And my question for all three of you just briefly is this, because the SVCs establish these trusting relationships, these close relationships with the victims, how has that program changed in any way what the special victims witness liaison brings to the table? Has it made it more difficult? Has it made it easier? Has it changed the way you think about your services? Start with you, Ms. Thompson.

MS. THOMPSON: Well, it's pretty new for us, but I think that it's making a big
difference in the way that, you know, when the victim first found out there was a special victim prosecutor and that made them think, wow, they actually have a trained prosecutor ready to prosecute my case. That made them feel more at ease and better.

And I think the same is with the special victim witness liaison, that they're seeing that we're taking this seriously, that we intend to give them the best service we possibly can. And so I think that makes a huge difference to them.

The SVWLs being part of the prosecution team, I think it makes the SVC see them as part of the process instead of that person that's down the hall in claims, maybe they don't know everything that they want them to know, maybe they're not as trained as they'd like them to be.

Where they know they're taking them to the SVWLs, they're professionals, they have the training, they have the tools to speak to people.
So we think that that's going to make a significant difference in how the SVCs are going to see them and how the victims are going to see them.

MR. HARTSELL: Yes, sir. I think it's a paradigm shift for folks. I think initially when the SVC program first came out people's immediate reaction, many of them who were parochial thought but I'm the knight in shining armor. I'm the one who works with the victim.

MR. TAYLOR: Right. That's exactly my point, right.

MR. HARTSELL: And so, but as you adjust to it and adjust the paradigm and realize that that protection or that service is not distinct but actually complementary. If you approach it from that perspective it actually does what it's supposed to do.

And it's supposed to essentially try to educate whether they're victims or witnesses on the military justice process to ensure all victim rights are protected and answer those
questions, and try to mitigate whatever additional harm may occur as a result of an investigation and prosecution.

And if done correctly it does that. Our SVCs work very well with the VWAP who is assigned, the VWAP liaison who is assigned to the case.

They coordinate all the way down to things like travel vouchers for a victim who may have to travel, where they're trying to reconcile, okay, now who's making the travel arrangements. Is the SVC going into DTS to help the victim or is it the victim liaison.

Many times the reconciliation of the travel voucher money, a lot of times our VWAP liaison will be able to take care of that because they've done it far more frequently with lots of witnesses.

But the idea is they've got to work together and that's what we train them. We train them that if you do not work together, you're going to lose your victim. And that makes the
harm that much worse. So it's got to matter to everybody.

So these protections and this interoperability is not exclusive.

MR. YABLES: The Marine Corps, we don't have a special victim liaison or anything like that.

We have the victim witness liaison officers, we have the special victim legal counsel, we have unit victim witness coordinators. So we're set up a little bit different than everybody else. So I really can't answer your question, sir.

MR. TAYLOR: Thank you.

CHAIR HOLTZMAN: Okay, well maybe last and most confused. So what's the difference between the victim witness liaison person and special victims counsel? What services does the victim witness liaison offer that the special victims counsel doesn't? Can we start with you, Ms. Thompson?

MS. THOMPSON: Well, first of all, the
special victims counsel can't take care of every victim that comes in that door, because they have to be an ID cardholder. So there are certain criteria --

CHAIR HOLTZMAN: What's that mean?

MS. THOMPSON: Well, if they're not military --

CHAIR HOLTZMAN: I see, okay.

MS. THOMPSON: -- then they're not going to -- or a dependent of a military they're not going to be able to get that service.

So we have a lot of civilian victims who come through that door and that are going to get the SVWL to help them.

CHAIR HOLTZMAN: Okay, but let's talk about a military victim.

MS. THOMPSON: Okay. For a military victim, the SVWL is still going to be the one to provide them with the required DD forms. There's a 2701, 2702. The 2701 talks about the initial information that a victim needs. The 2702 talks about the court martial process. And the 2703
talks about the post-trial matters. And then they have to fill out a 2704 that goes to the confinement facility if the individual is found guilty and receives confinement. So all of those forms have to be provided by the SVWL, or by the VWL whichever is handling the case.

And so those forms are a requirement under AR 27-10 Chapter 17. And so we make sure that the SVC knows that and that they -- so that the SVWL can provide that information along the way.

It's kind of a way to guide that victim through the military justice process, here's the initial information, and usually CID gives that to them.

And then when we decide that there's going to be charges preferred, then the 2702 is provided to that victim.

And that gives that VWL or SVWL an opportunity to tell that victim, here's how the court martial process works.

Would the SVC do that as well? He
may, or she may, but hearing it more than once has never been a problem for our victims because they don't retain a lot of information.

When you're in traumatic situations like that you tend to forget a lot of information. So, we don't feel like it's overwhelming them with too much information. We feel like they need that.

And then it also kind of confirms with them, oh, the SVC is giving me everything I need because the SVWL is saying the same thing, that we're not providing different information about the same thing. So that they see that we really are working as a team, that we all have the same goal in mind and that is to take care of her or him, and get them through that process.

Plus the SVWL will take care of witnesses as well. So witnesses often times, are very traumatized by the situation and are very afraid to go through a court martial process and also need someone to help guide them through it and make sure that they understand what's
happening.

So again, the SVWL is providing that information where the SVC would not.

CHAIR HOLTZMAN: Mr. Hartsell?

MR. HARTSELL: Yes, ma'am. Referring back to what Captain Palmer talked about earlier when he mentioned prior to the SVC program he would work with a Victim, and one of his frustrations would be if the victim needed legal advice. And that is probably the most critical distinction between the two, the SVCs provide privileged legal counsel to those victims and that's a critical aspect.

Now, separate and distinct from that, what the VWAP provides -- the VWAP provides -- advises them of their Article 6b rights. The SVC does that as well.

Advise them on the legal military justice system. The SVC provides that as well.

But the VWAP also needs to do the DD form 2701, 2702, 2704 as discussed, but also ensures that there's a separate waiting room.
area, ensures that the facilities for the victim are set up in advance prior to trial because the SVC may not necessarily be doing that because they're working with their counsel.

So in effect what the VWAP liaison is, is really the proverbial liaison within the legal office assisting or providing the assistance to the SVC who may need some interactive heavy lifting there within the legal office to help better support their client.

CHAIR HOLTZMAN: Mr. Yables?

MR. YABLES: Very similar with both of them, but a little bit of a mix. I'm a hybrid.

We have the special victims witness assistance coordinator which will be coming out with the new VWAP order which will talk about assisting the victims, getting services and different things, where the VLC or the SVCs as my counterparts talked about is strictly there for giving the legal advice, making sure that everything is taken care of at the court martial side.
If it's not dealing with court, then it's back down to the VWAP.

Same thing with the forms. Either the trial counsel is giving them out if it's going through the court martial, if it's a summary court martial, or a different situation then it's going to be the VWAP or the special victims witness assistance coordinator taking care of that situation.

So, we're just a little hybrid, a little bit of terminology difference between the two branches here.

JUDGE JONES: I have one quick question. At what point is a victim witness liaison appointed? You don't start the moment a victim makes a complaint and gets an SVC, or do you?

MS. THOMPSON: We do. So, first they go to CID and they make their complaint.

They might get an SVC right then, or they might wait. It depends on the circumstances.
But we want them to meet with that victim within two weeks of them making that complaint. They are not going to the hospital with them where the SVC, I guess could. So they are going to follow up after the complaint has been made to make sure that victim knows that they are there, and if they have any questions they can ask.

But if they have an SVC, then they will go through the SVC to do that. They can't go directly to the victim.

JUDGE JONES: Once a process has started, charges have been referred I assume that -- because this is something that I remember were part of the duties I thought of victim witness liaisons, you are an arm of the prosecution.

MS. THOMPSON: We are now.

JUDGE JONES: You are now.

MS. THOMPSON: If you're an SVWL.

JUDGE JONES: And so part of what you do as well, is make sure that the victim witness knows the schedule, is alerted to all those sorts
of things, in addition to all the other things you've talked about.

MS. THOMPSON: That's correct.

JUDGE JONES: Do you also though, get involved in -- because I remember at the beginning it seemed like there were an awful lot of people helping the victim witness out. You've talked about a bunch of them.

Do you also get involved in saying, oh by the way, you might want to use this service?

MS. THOMPSON: That's one of the most important things I think --

JUDGE JONES: So you repeat, perhaps, what they've already been told by someone who would recommend that they go to the hospital for a SANE exam, or they maybe want to get some mental health?

MS. THOMPSON: We try to stay away from the mental health issue now as much as possible. But we might say something like, it is not uncommon for someone to need mental health advice or help. And if that's something you
choose to do, and you're not comfortable with who
you go to see you can always go to somebody else.

We try to make sure that they
understand that they don't have to necessarily go
to the first one. Maybe when they go see a
counselor the first time they're like I don't
like this person. This person's not helping me,
or they're not the right fit for me.

So instead of talking to them maybe
about whether or not they need mental health, is
that if they decide to go to mental health that
they might not like the mental health advisor
that they get, they can always try to get another
one. And that is not an uncommon thing, and that
they should be comfortable with that.

But we don't go into details about
things like that.

JUDGE JONES: But you're fully
conversant about all the services available to
them.

MS. THOMPSON: Absolutely.

JUDGE JONES: You'll remind them of
that.

MS. THOMPSON: Absolutely.

JUDGE JONES: As well as the administrative details. Telling them what time they may have to show up for court, that sort of thing.

MS. THOMPSON: Absolutely. What to wear when they're going to court. What the uniform, if it's an active duty person. And if they want to bring a support person with them, we now are able to pay for a support person to fly with them. If they've moved from one installation to another and we're bringing them back, they can now bring this support person with them on the government's dime. So, that's been a big help for us.

You know, we want to make sure when they're walking into court they're not by themselves. Whether I meet them at the front door, or one of the attorneys is meeting them at the front door, or meeting them in another building and walking them over, we discuss all
that before they get to court so that they aren't surprised by the accused being there or anything like that at the front door.

JUDGE JONES: So you sort of look at the totality of needs, and I mean totality.

MS. THOMPSON: yes, ma'am.

JUDGE JONES: To make sure that this victim witness is in the right place, at the right time and the right frame of mind if you will, and has had all the services?

MS. THOMPSON: Yes, ma'am. We try to predict all the things that can go wrong, and try to prepare them for things.

JUDGE JONES: So you're a little bit like a controller and a concierge.

MS. THOMPSON: A coordinator I suppose, yes.

JUDGE JONES: Yes, thank you.

CHAIR HOLTZMAN: Okay. Well, I don't think there are any other questions so I want to thank all the members of the panel, again, compliment you on the important work you've done
Thank you very much for your time and for your presentations here today. You've been very helpful to us.

And I think now we have time for public comment. So we'd like to recognize some of our people who are gluttons for punishment.

COL GREEN: Ma'am, we didn't receive requests for public comment.

CHAIR HOLTZMAN: It's not a public comment, but this is -- oh, this is the comment we're receiving. Whatever you want to call it. Helpful comment. Critical comment. Wise comment.

COL DECAMARA: Your glutton on behalf of the SVC program managers is reporting as ordered, ma'am.

I've made copies if the panel would like.

CHAIR HOLTZMAN: Great. Excuse me, for the record would you mind introducing yourself?

COL DECAMARA: Yes, ma'am, sorry.
This is Colonel Andrea deCamara on the record, again from the Air Force Special Victims Counsel Program, on behalf of the six program managers to include Lieutenant Colonel Winston of the National Guard.

Per your request we got together in the lunchtime hour, as well as following -- during some of the presentations earlier this afternoon and crafted a few amendments to Article 6b as well as Article 70.

And I tried to conserve Holiday Inn's paper so I did it double-sided.

CHAIR HOLTZMAN: That's fine, thank you.

COL DECAMARA: And I apologize for the quality of the copy.

CHAIR HOLTZMAN: Nothing to apologize for. We are amazed and in wonder, in awe of the amazing job you've done.

COL DECAMARA: So, the changes that we are requesting is that in subparagraph (a) subsection (2) of 6b to add "all pleadings filed
by all parties."

Now there is some -- that would be the only paragraph that there was some concern by some of the program managers, specifically the Army that it says "all pleadings" and not "pleadings arising from the offense" or involving a statutory, constitutional, or regulatory right of the victim, that the SVC would be receiving too many pleadings.

However, there are other people that voiced if we had that, if we qualified it too much, then we would have to fight for pleadings. So, we'll leave that to your wise discretion.

So, changing subsection (2) and then coming down to subsection (C) of subsection (2).

CHAIR HOLTZMAN: Excuse me. Would a change such as -- you had all pleadings except those specifically rejected, or a notice of some kind of rejection was given by the special victims counsel.

COL DECAMARA: I'm sorry, I don't understand. I'm trying to follow.
CHAIR HOLTZMAN: Okay. You've said that the problem with all pleadings filed by all parties is, that the special victims counsel could get overwhelmed.

COL DECAMARA: Well, or pleadings that don't -- if it's at the trial level, maybe it's a motion that has nothing to do with the victim at all. And so that was the concern.

So they had suggested all pleadings involving a statutory, regulatory or constitutional right of the victim filed by any party, instead of all pleadings by all parties.

CHAIR HOLTZMAN: I see, okay. So there's some concern about that language. I mean, my suggestion was --

COL DECAMARA: On the flip side, the concern is that --

CHAIR HOLTZMAN: You wouldn't get what you need.

COL DECAMARA: Too qualified then we'd have to fight each time we want if there was a pleading.
CHAIR HOLTZMAN: All right. So that's one. And then you have a change under (C).

COL DECAMARA: Under subsection (C) to say at the following this is the timely notice of any of the following, a court martial or any appellate matters to include post trial review relating to the offense, to address getting the notice of those filings with regards to a victim's case.

CHAIR HOLTZMAN: All right. Then you're up to (4).

COL DECAMARA: And then under subsection (4) sub (B) is a sentencing hearing to include sentence reassessment in accordance with the review under Article 66 UCMJ to address when a lesser guilt.

CHAIR HOLTZMAN: Right, and the right of the victim at that point to be heard on that issue.

COL DECAMARA: Yes, ma'am.

CHAIR HOLTZMAN: Okay.

COL DECAMARA: Adding a new subsection
(D) any and all appellate matters and hearings arising out of the offense.

And because one of the things that we didn't bring up here, but it's something that we have talked about regularly within the SVC, VLC program managers, is there are varying degrees of what is allowed in administrative boards.

And we're talking about if there's an alternate disposition for an accused to say non-judicial punishment, but then an administrative separation board.

Some services as a matter of practice, the SVC can be present to represent the victim's rights which are becoming many hearings involving 513, or 412 and 513 issues.

Other services, the SVC is not allowed in at all. And so we took the liberty to add in any and all administrative boards and other adverse administrative proceedings arising out of the offense.

MR. TAYLOR: Could I just ask a clarifying point? Did you mean by this to
include non-judicial punishment proceedings?

COL DECAMARA: We discussed that, sir. And we know that there are different standards at each of the -- in each of the different services.

So, captain's mast is handled differently for Navy, say, if you're deployed and afloat, in that the accused might not even have a counsel. So we are mindful that the service cultures might dictate differences with regards to NJP specifically.

So we didn't want to put in definitively non-judicial punishment or not. We just decided on "other administrative proceedings."

MR. TAYLOR: To be determined.

COL DECAMARA: It could be to be determined by service regulation.

MR. STONE: So it would include Article 15's.

COL DECAMARA: If that's what the service --

MR. STONE: Well, I'm asking your
intent. Do you mean to cover Article 15's?

COL DECAMARA: I think for most of --
yes. We are concerned about GOMORs in the Army,
where it's the general officer memorandum of
reprimand, is where I think we were getting into
the privacy of the accused.

CHAIR HOLTZMAN: So what is the
language you're suggesting? Mr. Taylor, did you
have an amendment that you're suggesting to (E)?

MR. TAYLOR: Well, not necessarily. I
was just trying to understand what it meant and
what it included and what it didn't include.

And I do think the point is well taken
that if you're talking about a captain's mast,
where you don't have necessarily the right to
counsel, then it's very hard to argue that you
would expand it to an SVC, right? Isn't that the
argument?

COL DECAMARA: That was exactly the
concern, sir. For specifically putting in there
non-judicial proceedings.

MR. STONE: So, should the end of it
say -- just add onto the end there "arising out of the offense where counsel are present?" Would that do it?

COL DECAMARA: I'm turning to my colleagues.

My service friends who are afloat, they say yes.

JUDGE JONES: Can I just go back one minute? So if I could just go back to (D) for a minute.

COL DECAMARA: Yes, ma'am.

JUDGE JONES: So, this would mean that you would have the right to be reasonably heard at any and all appellate matters and hearings arising out of the offense, regardless of the issue?

You're not, you know, sort of focused on 513, 412.

COL DECAMARA: We were concerned that there could be other issues that would cause for a sentence reassessment.

So we are concerned about the sentence
reassessment. I realize this is addressed in other -- up in (C), in 2(C).

JUDGE JONES: Right.

COL DECAMARA: But we tried to be broad since we don't know -- because we're faced with a gap, we wanted to actually err on the side of being a little bit more broad than too narrowly scoping it, which seems to have put us maybe in the quandary that we're in right now.

JUDGE JONES: Yes.

MR. TAYLOR: So, just back to (E) for a second. Can you think of any other instance -- I'm not an expert on the UCMJ, but can you think of any other instance where in a change to the UCMJ you create a right in an administrative board that's unrelated to the UCMJ?

For example, administrative separation boards aren't governed by the UCMJ. They're governed by a completely different set of regulations.

So of all the military justice experts in here do you know of one? Because I think if
so -- I mean, if not, then this creates a precedent that would be troubling which is to use the UCMJ as a vehicle to create some sort of right in an administrative board that is not covered by the UCMJ.

COL DECAMARA: I think Article 31 would always apply.

MR. STONE: And I think that the phrase "arising out of the offense" qualifies it. Because, for example, if a person decided to go to the board you just mentioned because he was charged with a sexual assault offense as a way to avoid the prosecution, I think that the victim should have a voice there.

In other words, it's limited to arising out of the offense.

CHAIR HOLTZMAN: Okay, let's go to the -- before we decide on all of these points. I guess you have a point if we turn the page, right?

COL DECAMARA: So if we turn the page in subsection (E) we have added a new subsection
(4) and renumbered subsection (4) to subsection (5) to include, and this is for the standing aspect of it, the counsel of the accused and the government file appellate proceedings in a matter arising out of the offense the victim shall be served notice of the pleadings in accordance with paragraph (a)(2) and may file pleadings as a real party in interest when a victim's statutory right or constitutional right is implicated.

And then we added in that subparagraph (4) into the new sub (5) to say what those rights would be.

CHAIR HOLTZMAN: Okay. And then 870?

COL DECAMARA: And then 870 deals with appellate counsel. There is a specific provision regarding appellate counsel and who the Judge Advocate General can appoint, and right now it only states appellate government counsel and appellate defense counsel.

And so, we're recommending to add in sub (a) the phrase "and one or more commissioned officers as appellate victims counsel," and then
adding in a new sub (e) that states "Appellate victim’s counsel shall represent the victim before the Court of Military Review."

It's basically taking the language from the sub (c) for defense counsel.

And instead of having "when the United States is represented by counsel" we have added in "when any Article 6b right is implicated during trial, or in any appellate pleading or matter."

And then we renumbered subsection -- the original subsection (e) to subsection (f).

CHAIR HOLTZMAN: Okay. So, I just wanted to raise a few points with you.

Do we solve the point in (a)(2) by saying a right to reasonable, accurate and timely notice in all relevant pleadings? If we were to put the word "relevant?"

MR. STONE: The problem with that is going to be that the defense counsel is going to tell you it's not relevant.

CHAIR HOLTZMAN: Yes, but at least you
have an opportunity to -- you're not going to be inundated with every single pleading, and at least there's a signal to the appellate courts as to what's meant here.

MR. STONE: This is in the trial court.

CHAIR HOLTZMAN: No, no, no, this is not just for the trial court. This is for the -- am I wrong?

COL DECAMARA: It's for both trial -- (a) sub (2) is for trial and appellate. Because we're adding in appellate because it's all been assumed to be trial at this point.

CHAIR HOLTZMAN: Oh, okay.

COL DECAMARA: And so it would be applicable to both trial and appellate.

CHAIR HOLTZMAN: Well, I still think that that might help solve the problem because of this.

COL DECAMARA: The compromise language.

CHAIR HOLTZMAN: Yes. I don't know
that -- learned counsel in the back, do you have any comments about that?

MS. FRIED: Madam Chair, it might be appropriate, and I defer to you on that, but this is going to be posted on the website.

We probably should give an opportunity for the service reps to comment on how this -- any recommendations or suggestions that they would have with respect to the proposal. Submit that for the panel's consideration.

CHAIR HOLTZMAN: I just wanted to make two other suggestions.

One is from a drafting point of view I don't like the term "to include" when it means "including." So you don't have any objection to using the word "including" instead of "to include?" "To include" is military kind of jargon.

And I am concerned about 4(E) for the points that you've raised, Mr. Taylor. So I don't know whether that's something that maybe should -- at this point if we got everything else
and we didn't have 4(E) we might be very happy.

   So I just leave to people's consideration as to whether that should be removed.

   Also on 4, on the back side of this, point 4, if counsel for the accused or the government -- it should be files appellate pleadings instead of file because it's singular.

      Okay, those are my comments. Judge Jones?

      JUDGE JONES: I would like time to consider this. To me it strikes me as broader than what we were talking about earlier.

      I certainly like the idea and approve the idea that with respect to two different things at least, and maybe there are more.

      The notion that there's a real issue, or an issue as to 412 or 513 that you can't be stopped with just a writ of mandamus.

      And I can see and making amendments that would make sure that you knew, that the appeals courts knew, that you would be considered
either a party in interest, or someone who not
only got notice, but should be permitted to argue
and file a brief.

I'm a little worried about the breadth
of some of the rest of it, because it seems to
make you a party in interest for purposes of the
appeal period.

And I'm sorry, I just go back to who I
think the parties are. That's all.

So I would just like the time to look
at this. I think it's a little too broad for me.

And I don't understand the point you
made at all, so I need to think about that. I
have to confess.

CHAIR HOLTZMAN: Right, that's the
point (E).

JUDGE JONES: I'm sure you're right,
whatever you're saying.

MR. TAYLOR: Thank you, but you have
more confidence in my assessment than I do.

But I would like to go back to a
process issue. And I think that, again, I think
the gravamen of what we're trying to do here is definitely in the right direction.

But as a process matter I would feel better about this if we took it up at our next meeting, perhaps at the very beginning at the JAG school, and gave the services time to comment on their views and perhaps the staff to develop something that addresses some of the concerns that we've expressed here today.

COL GREEN: Yesterday, just the way we've done that in the past when the panel received recommendations regarding Article 120 from the subcommittee, we submitted that out through our public notice that we provide at meetings and asked for public comments from everybody on our distribution lists.

And we received comments that then the panel could consider in the course of its recommendations.

CHAIR HOLTZMAN: So my thought about that is, so we could post this on our website, correct?
COL GREEN: That's correct, ma'am.

CHAIR HOLTZMAN: And indicate why we're posting it, and the concerns that it's designed to address that the panel has raised. Namely, the rights of a victim at the appellate level that had come to our attention. And they were very concerned about vindicating those rights.

This is a proposal to address them and we'd like comment on that.

COL GREEN: Yes, ma'am, we can do that.

CHAIR HOLTZMAN: And that would give people an opportunity to know that this was a problem, might address it if they wanted on their own. How do the rest of you feel about that?

JUDGE JONES: I think that's right.

MR. TAYLOR: I think that's the right way to go. I agree.

JUDGE JONES: And I think it's our sense that something needs to be done under 6b.

MR. STONE: I agree, and I'd just like
to add for the record, that before my service here I was on the receiving end of situations just like they were explaining before where we weren't given status in some appellate venues.

And then the Supreme Court decided the Paroline case, and the Seventh Circuit decided the Larrimore case. And they used language just like is being used here, in that 4 paragraph on page 2, real party in interest when a victim's statutory, regulatory or constitutional right is implicated.

That's exactly what they are. They're a real party in interest for that victim's issue. That's the proper description.

And I think those two cases, particularly the Paroline case in the Supreme Court makes that point.

I would also just like to say for the record as to the (E) provision, the 4(A), 4(E), I think at a minimum -- if you think any and all administrative boards and other adverse administrative proceedings arising out of the
offense is too broad, then I think it at least should say under (E) Article 15 and other adverse administrative proceedings arising out of the offense.

Because I think we know from all the testimony we've heard over our existence, that many of these offenses get dropped down to an Article 15. So we know that that's a proceeding that needs to be covered.

CHAIR HOLTZMAN: But I think without objection from anybody here, we should have -- the statement should reflect the panel's concern about the need to have victims' rights vindicated at the appellate level.

And the testimony that we've heard that that's not happening now. And this is a proposal that addresses it. And we would welcome comment.

So that it's quite clear to the world that we have a concern, that the issue has been brought to our attention and we have a concern about it.
Any disagreement with that? Okay.

And I want to thank you very much, Colonel, for this remarkable job that you've done. And who knows what could happen.

Thank you very, very much. And to your colleagues in the back of the room, thank you too for your wonderful assistance here and assistance to the panel. We really appreciate it.

MS. FRIED: Madam Chair, are we done?

CHAIR HOLTZMAN: I think so.

MS. FRIED: Thank you, this meeting is closed.

(Whereupon, the above-entitled matter went off the record at 4:26 p.m.)