

UNITED STATES DEPARTMENT OF DEFENSE

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JUDICIAL PROCEEDINGS PANEL

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PUBLIC MEETING

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FRIDAY
APRIL 7, 2017

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The Panel met in Suite 1432, One
Liberty Center, 875 N. Randolph Street, at 9:30
a.m., Hon. Elizabeth Holtzman, Chair, presiding.

PRESENT

Hon. Elizabeth Holtzman
Hon. Barbara Jones (via teleconference)
Mr. Victor Stone
Mr. Tom Taylor
VADM(R) Patricia Tracey

PRESENTERS

Dr. Cassia Spohn, Professor and Director, School
of Criminology and Criminal Justice,
Arizona State University
Dr. Nathan Galbreath, Deputy Director, Sexual
Assault Prevention and Response Office,
U.S. Department of Defense
Ms. Kathy Robertson, LCSW, Family Advocacy
Program Manager, Office of the Deputy
Assistant Secretary, Military Community and
Family Policy, U.S. Department of Defense

STAFF:

Captain Tammy Tideswell, Staff Director

Mr. Bill Sprance, Designated Federal Official

Ms. Theresa Gallagher, Attorney Advisor

Ms. Nalini Gupta, Attorney Advisor

Ms. Meghan Peters, JPP Staff Attorney

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

2 (9:31 a.m.)

3 MR. SPRANCE: Good morning, everyone.

4 My name is Bill Sprance. I'm the Designated
5 Federal Official for this meeting and the meeting
6 of the Judicial Proceedings Panel is now open.

7 At this time, I will now turn the
8 meeting over to the chairwoman, the Honorable
9 Elizabeth Holtzman. Good morning, Madam Chair.

10 CHAIR HOLTZMAN: Good morning, Mr.
11 Sprance and thank you. I would like to welcome
12 the participants and everyone in attendance today
13 to the 29th meeting of the Judicial Proceedings
14 Panel. All five of the Panel Members are
15 participating today; four of the Panel Members
16 are physically present and Judge Jones is
17 participating via telephone. We hope it will
18 work and we appreciate, Judge Jones, that you are
19 making this effort to be in communication with us
20 and participate in this process.

21 JUDGE JONES: Thanks, Liz.

22 CHAIR HOLTZMAN: Today's meeting is

1 being transcribed and the full written transcript
2 will be posted on the JPP website.

3 The Judicial Proceedings Panel was
4 created by the National Defense Authorization Act
5 for Fiscal Year 2013, as amended by the National
6 Defense Authorization Act for Fiscal Years 2014
7 and 2015. Our mandate is to conduct an
8 independent review and assessment of judicial
9 proceeds conducted under the Uniform Code of
10 Military Justice involving adult sexual assault
11 and related offenses since the most recent
12 amendment to Article 120 of the UCMJ in 2012.

13 Today's meeting will begin with
14 deliberations on the JPP Victims' Appellate
15 Rights Report. The deliberations will be
16 followed by a presentation of Fiscal Year 2015
17 Military Sexual Assault Adjudication Data by Dr.
18 Cassia Spohn, Director of the School of
19 Criminology and Criminal Justice at Arizona State
20 University and JPP Staff Attorney, Ms. Meghan
21 Peters.

22 In today's last session, the Panel

1 will receive presentations from Dr. Nathan
2 Galbreath, Deputy Director of the Department of
3 Defense Sexual Assault Prevention and Response
4 Office on DoD Statistical Data Regarding Military
5 Adjudication of Sexual Assault Offenses and from
6 Ms. Kathy Robertson, the Department of Defense
7 Family Advocacy Program Manager regarding that
8 program's collection of spousal and intimate
9 partner sexual assault data.

10 Each public meeting of the Judicial
11 Proceedings Panel includes time to receive input
12 from the public. The JPP received no requests
13 for public comment at today's meeting.

14 Thank you very much for joining us
15 today. We're ready to begin deliberations on
16 victim's appellate rights.

17 Ms. Gupta, thank you for being here.
18 Please proceed.

19 MS. GUPTA: Good morning, Panel
20 Members. I would like to begin with a --

21 CHAIR HOLTZMAN: Can you speak a
22 little louder?

1 MS. GUPTA: I would like to begin with
2 a brief overview --

3 CHAIR HOLTZMAN: Do you have a mike?

4 MS. GUPTA: I would like to begin with
5 a brief overview of Recommendation 39. The Panel
6 voted on Recommendation 39 at its last meeting,
7 which would address the Joint Service Committee's
8 proposal to amend Rule for Courts-martial 1103A
9 on appellate counsel access to sealed materials.

10 The recommendation discussed by the
11 Panel stated the Joint Service Committee on
12 Military Justice revise its proposed amendment to
13 Rule for Courts-martial 1103A(b)(4)(B)(ii) to
14 include the following language: "Prior to a
15 decision to permit examination of material
16 described in the subparagraph, notice and an
17 opportunity to be heard shall be given to any
18 person whose records are about to be examined or
19 to be examined and to appellate counsel."

20 This recommendation reflects a four-
21 one vote, with Judge Jones dissenting.

22 Upon further review and in

1 consultation with the Chair, the Staff drafted a
2 list of additional options for Recommendation 39,
3 which is available in your folder.

4 Mr. Stone also submitted a proposed
5 revised Recommendation 39.

6 Both sets of proposals were circulated
7 to the individual Panel Members via email for
8 discussion and deliberation today.

9 CHAIR HOLTZMAN: Judge Jones, can you
10 hear?

11 JUDGE JONES: It's very difficult to
12 hear our Staff Member. I can hear you perfectly.

13 CHAIR HOLTZMAN: We'll try to have the
14 Staff speak more loudly. I think the Staff was
15 just summarizing where we stand.

16 JUDGE JONES: All right. All right.
17 Yes, absolutely. Okay, thank you.

18 CHAIR HOLTZMAN: So what's next is for
19 us to --

20 MS. GUPTA: If the Panel would like to
21 consider --

22 CHAIR HOLTZMAN: Could you pull the

1 mike right up to you, really right up close?

2 MS. GUPTA: Okay. If the Panel would
3 like to consider --

4 CHAIR HOLTZMAN: Is that better?
5 Excuse me. Is that better?

6 JUDGE JONES: Yes.

7 CHAIR HOLTZMAN: Okay.

8 MS. GUPTA: In the folder, if the
9 Panel would like to consider additional options,
10 there are two documents relating to
11 Recommendation 39. There is one prepared by the
12 Staff per the -- in consultation with the Chair
13 and then there's a proposal by Mr. Stone.

14 CHAIR HOLTZMAN: Okay, do you want to
15 summarize the proposals? You know if you pull
16 your notebook and pull the microphone closer to
17 you, I think it's going to work.

18 MS. GUPTA: Okay. So, Mr. Stone,
19 would you like to begin with your proposal?

20 MR. STONE: I can do that. That's
21 fine.

22 I've had a chance to look at the

1 various proposals and I have also submitted my
2 own proposal.

3 CHAIR HOLTZMAN: If you would also try
4 to speak into the mike so Barbara can hear.

5 MR. STONE: I'll try to get as close
6 as I can. Okay.

7 But what I would like to say is that
8 I think the original language that we agreed on
9 at the last meeting is the correct language and
10 I'll explain why briefly.

11 There are several proposals to try and
12 limit what was said about giving -- not giving a
13 person notice, giving a victim or a witness
14 notice but it's not always clear exactly what
15 status a person will have whose records are
16 there. And if you say victim or witness, you
17 impose a burden on the clerk or whoever it is in
18 the appellate court to figure out -- do they
19 figure out if they fit into that category. If
20 you say person, there is no question.

21 The same issue arises with respect to
22 some of these examples, in particular 39D and 39C

1 that says -- 39C talks about victims with a
2 privilege; 39D talks about victims and witnesses
3 with privilege and then it names one privilege.
4 The problem with that is, in addition to a clerk
5 figuring out whether or not the person is a
6 person whose records are at issue is going to
7 fall under that rubric. And I gave an example at
8 the last meeting where the records of a chain of
9 command officer who made a decision about whether
10 to prosecute might be involved and he might be
11 neither a victim nor a witness. He may just be a
12 person in the chain of command who made the
13 prosecutor decision. But labeling a particular
14 privilege like this does not work either because
15 we know, at a minimum, that in addition to 513,
16 there is a privilege under Rule 514, which we
17 have discussed time again, which is also covered.
18 And I looked at the Military Rules of Evidence
19 because I was concerned other privileges that we
20 have heard about if there is means that could
21 come up and they include the lawyer-client
22 privilege. They include especially Rule --

1 that's 502 -- Rule 503, which is communications
2 to clergy. There's a privilege if a victim were
3 to talk to clergy instead of a medical officer.
4 There's Rule 504, husband and wife privilege. We
5 heard testimony from one young lady at one of our
6 meetings that her sexual assault was committed by
7 her husband. There is, in addition to some of
8 these others, I could go down the whole list but
9 there are actually 13 privileges. There is the
10 classified information privilege in Rule 505.
11 There is the government information other than
12 classified information but detrimental to public
13 interest, which is a privilege under Rule 506 and
14 in the General Petraeus's case, some of that was
15 involved.

16 It is impossible to determine in
17 advance that in a sexual assault case the only
18 privilege that is at issue is going to be 514.
19 And again, we don't want to say, just say when
20 there's a privilege involved because that puts
21 the burden on whoever it is in the appellate
22 court to decide initially whether or not what

1 they have and they are about to unseal is a
2 privilege. So the original language took care of
3 those problems, in effect, by saying anything
4 that is sealed by the original trial court and
5 not seen by the parties, that meant -- and any
6 person whose records those are, that would mean
7 it would not apply if it is an organization's
8 records but not a person because the organization
9 wouldn't be able to raise the privilege.

10 So the language at issue seemed to
11 take care of all these issues about which
12 privilege. Is it a privilege? Is the person --
13 were they called as a witness? It also, the way
14 it is currently phrased, leaves out an even more
15 important privilege that is recognized, which is
16 the privilege concerning compulsory self-
17 incrimination.

18 We have heard time and again that
19 sometimes in these cases, the person who is the
20 victim of a sexual assault has been involved,
21 let's say, in drug use at the time of the sexual
22 assault and they don't want that to come out

1 because of their self-incrimination privilege.
2 They may have raised that privilege for that
3 information not to come in. Or it could be any
4 number of permutations that will also, by the
5 way, provide a benefit, which we don't want to
6 overlook, to a defendant who wants to raise their
7 self-incrimination privilege and their material
8 is sealed by the judge or the defendant's
9 attorney-client privilege when there is a
10 question about whether there was a crime fraud
11 exception.

12 So given that there are about 13
13 privileges in the Military Rules of Evidence and
14 there are permutations that one or more can be
15 involved and they don't always involve persons,
16 named persons like defendants, witnesses,
17 victims, the language that we adopted on the
18 first go around that they are the records of a
19 person, that person gets notice and a chance to
20 be heard with respect to anything that was sealed
21 by the lower court judge and not shared seems to
22 me to be the correct phraseology and it doesn't

1 have the problems of 39C, 39D, and, therefore, I
2 would go with our original language.

3 And to the extent that even I have
4 thought about whether or not, in my own proposed
5 recommendation, I guess we could call it 39E for
6 the moment but it was different, whether to add
7 in the words in sexual assault cases, I realize
8 that even that is too limiting because some cases
9 start out as sexual assault cases and then the
10 count of conviction is plain assault, or conduct
11 unbecoming an officer, or some other permutation
12 and we've heard that as well. And the same issue
13 will happen with let's say the psychotherapist
14 privilege when that woman's records and that
15 conduct unbecoming case goes up on appeal or the
16 plain assault case, the lesser included assault
17 goes up on appeal. So I realize even that turns
18 out to be too limiting and that the language, the
19 simple straightforward language that we approved
20 last time will cover all the situations because
21 we're trying -- sexual assault as fact is one
22 variety of a greater number of similar type

1 assaults that go on and get prosecuted in the
2 military. Some might even be attempted murder
3 but it's one variety and that language covers
4 those cases. And I don't have any trouble if in
5 the prefatory language, the introductory language
6 we said something like recognizing that the JPP's
7 scope is limited to sexual assault cases;
8 nonetheless, the JPP recommends that -- and then
9 we say what the original recommendation was
10 because I see no point in us coming up with a
11 recommendation that, frankly, creates loopholes.
12 We're trying to close them. Thank you.

13 CHAIR HOLTZMAN: Thank you. Can I
14 just I summarize where we are please, before we
15 get into the detail of every amendment?

16 We have four -- how many choices do we
17 have in front of us -- six choices, okay, as I
18 get it. And I don't want to be incorrect here.
19 I'm trying just to make it clear for everybody.

20 Barbara, can you hear us? Judge
21 Jones?

22 JUDGE JONES: I can and it's crystal

1 clear now.

2 CHAIR HOLTZMAN: Wow, great. Thank
3 you.

4 Okay, so recommendation 39A and 39B
5 are basically identical, with the exception that
6 39B also says that -- also includes appellate
7 counsel. So basically what 39A and B say is that
8 prior to a decision to permit examination of
9 materials described in this subparagraph -- and
10 the material described in this subparagraph is
11 material that has been sealed below and it is
12 unsealed in the appellate court --

13 MS. GUPTA: Has not been reviewed by
14 counsel, actually.

15 CHAIR HOLTZMAN: Okay. Prior to a
16 decision for examination of this material, an
17 opportunity -- notice and an opportunity to be
18 heard shall be given to any person whose records
19 are about to be examined or to be examined and to
20 appellate counsel.

21 The second recommendation that is
22 similar but not exactly the same removes the

1 words appellate counsel. So no notice is to be
2 given to appellate counsel. Is that correct?

3 MS. GALLAGHER: Yes, ma'am.

4 CHAIR HOLTZMAN: And what's the reason
5 for that?

6 MS. GALLAGHER: It is difficult to
7 envision a scenario in which appellate counsel
8 who are parties to the case would not have an
9 opportunity to brief an issue. Either the issues
10 is going to be raised by them --

11 CHAIR HOLTZMAN: Pull the mike closer
12 to you so she can hear you. Is your mike on?
13 Tap the mike to see if it's on. It's not on.
14 Okay.

15 MS. GALLAGHER: Yes, it's difficult to
16 envision a scenario in which appellate counsel
17 who are parties to the case won't have an
18 opportunity to file a brief. Either they
19 originate the motion in the first place to
20 examine the records and have the opportunity to
21 file a brief --

22 CHAIR HOLTZMAN: So in other words,

1 its superfluous. I want to try and get this
2 really short.

3 MS. GALLAGHER: Yes, that's exactly
4 correct.

5 CHAIR HOLTZMAN: Okay, so what you are
6 saying is that the second version, 39B,
7 eliminates the words and to appellate counsel
8 because it's superfluous.

9 MS. GALLAGHER: Yes, ma'am.

10 CHAIR HOLTZMAN: Is that correct, it's
11 not supposed to make --

12 MS. GALLAGHER: Yes, ma'am.

13 CHAIR HOLTZMAN: -- substantive
14 difference?

15 MS. GALLAGHER: It is not.

16 CHAIR HOLTZMAN: Okay. And that is
17 the recommendation that we adopted at our last
18 meeting.

19 MS. GALLAGHER: It is. That is the
20 language before.

21 CHAIR HOLTZMAN: Okay.

22 MR. STONE: I would like to interject.

1 I don't understand why it is different than what
2 I was given when I asked the staff to provide me
3 our recommendation, which is listed under
4 paragraph 1 of my note, which is materially
5 different. It doesn't appear in any A, B, C or D
6 because it says or to be examined and to
7 appellate counsel. It includes appellate counsel
8 and has the person whose records would be
9 examined. It doesn't have the words or to be
10 examined or about to be examined. And I was told
11 that that was the recommendation language.

12 So I think that there is a missing
13 version here, which is the one that we did
14 approve, which is in bold letters. It is the
15 second paragraph of what I distributed.

16 I guess I can pull up the email. I
17 communicated with the Executive Director and I
18 was told that was what the language was.

19 CHAIR HOLTZMAN: Okay, what was it
20 that we approved at the last session? Which of
21 these? Mine isn't working either.

22 MS. GUPTA: Our understanding was that

1 it was 39A. Mr. Stone, we apologize if there was
2 any mistake. So 39A was what was approved by the
3 Panel.

4 MR. STONE: See, we never used the
5 words about to be examined or to be examined. I
6 mean that's something new. We just had or to be
7 examined. So I don't know where the about to be
8 examined came in.

9 So really, there's another option that
10 is a little similar.

11 MS. GALLAGHER: Yes, we did try to
12 take it from the transcript.

13 CHAIR HOLTZMAN: Okay.

14 MS. GALLAGHER: I think that's where
15 it came from but --

16 CHAIR HOLTZMAN: All right, there is
17 no -- Mr. Stone, for present purposes, there is
18 no substantive difference between with the adding
19 of those words about to be examined or are to be
20 examined. It is pretty much --

21 MR. STONE: Okay, it's just extra
22 words.

1 CHAIR HOLTZMAN: Yes, we can go over
2 the wordsmithing in a minute.

3 MR. STONE: Okay.

4 CHAIR HOLTZMAN: But I'm just trying
5 to get the substance of what --

6 MR. STONE: Okay. Okay, I was just
7 confused because I didn't see what I got sent to
8 me as the original.

9 CHAIR HOLTZMAN: Right. The only
10 substantive difference between A and B, which are
11 the original recommendations on which we voted
12 last time is that B includes appellate counsel --
13 or excludes appellate counsel on the grounds that
14 that's superfluous.

15 MS. GALLAGHER: Correct, ma'am.

16 CHAIR HOLTZMAN: And it also excludes
17 about to be examined or to be examined on the
18 grounds -- also wordsmithing are we talking?

19 MS. GALLAGHER: Yes.

20 CHAIR HOLTZMAN: Okay so basically 39A
21 and B are essentially similar, although there is
22 some slight verbiage difference. Is that

1 correct?

2 MS. GALLAGHER: Right. There was --

3 CHAIR HOLTZMAN: Okay, there's no
4 substantive difference.

5 MS. GALLAGHER: I don't believe so.

6 CHAIR HOLTZMAN: All right.

7 MR. STONE: Well, let's --

8 CHAIR HOLTZMAN: For the moment -- no,
9 Mr. Stone. I am the chair.

10 MR. STONE: There is a substantive
11 difference, if you would like to hear it.

12 CHAIR HOLTZMAN: Excuse me. I have
13 not recognized you.

14 MR. STONE: Okay.

15 CHAIR HOLTZMAN: I'm just trying at
16 the moment to outline where we are. Then, we can
17 go into depth about each proposal. If I'm not
18 being exact -- I'm not trying to be inexact. I'm
19 just trying to get us to a place where can make a
20 decision about this.

21 Proposed recommendation 39C varies
22 from the proposal on what grounds? Can you just

1 really summarize it?

2 MS. GUPTA: Yes, ma'am. It limits the
3 recommendation to victims with a privilege under
4 M.R.E. 513, which would be mental health records.

5 CHAIR HOLTZMAN: Okay, so that's 39C.

6 MS. GUPTA: That's correct.

7 CHAIR HOLTZMAN: And then we have 39D,
8 which includes victims and witnesses with a
9 mental health privilege. Okay.

10 And then 39E.

11 MS. GUPTA: 39E limits the
12 recommendation to victims for the privilege under
13 M.R.E. 513 who elect to be notified.

14 CHAIR HOLTZMAN: Okay.

15 JUDGE JONES: I'm sorry, who what?

16 CHAIR HOLTZMAN: Elect to be notified.

17 JUDGE JONES: Thank you.

18 CHAIR HOLTZMAN: And 39F is victims
19 and witnesses who elect to be notified.

20 MS. GUPTA: Yes.

21 CHAIR HOLTZMAN: Okay. So we have,
22 basically, the original proposal. We can argue

1 as to whether it was original but more or less
2 what we adopted the last time.

3 And then we have two alternatives to
4 that -- essential alternative. One is limiting
5 the recommendation to victims who have a
6 privilege under 513 and the second one is
7 limiting it to victims -- expanding that and
8 limiting it to victims and witnesses under 513.

9 And E and F are a little bit more
10 restrictive because it requires people, victims
11 and witnesses, or victims or witnesses, or just
12 victims alone to be covered only if they have
13 elected to be notified.

14 So, if it is possible, I would like to
15 -- is there any further discussion about this so
16 that we could just -- does anybody want to
17 further discuss the two options C and D and E and
18 F, so we can decide what we want to do about
19 those? And then we can get these or reject them
20 and then we can go back to 39A and, in any case,
21 look at the verbiage issue that Mr. Stone raises.

22 I'm not going to exclude that, Mr.

1 Stone. I just want to get us to a point where we
2 deal with these other issues.

3 So, any other comment? Judge Jones,
4 do you have a comment about 39 C, D, E, or F?

5 JUDGE JONES: Not really, at this
6 point.

7 CHAIR HOLTZMAN: Mr. Taylor?

8 MR. TAYLOR: No, thank you.

9 CHAIR HOLTZMAN: Admiral Tracey?

10 VADM TRACEY: I have a question with
11 regard to E and F, which requires that the victim
12 or the witness have elected to be notified. Now,
13 the victim gets to make that election at the end
14 of trial, right? They get to say they do or
15 don't want to be kept informed of post-trial
16 actions. Is that right?

17 MS. GUPTA: That's certainly an option
18 for the Panel to consider.

19 CHAIR HOLTZMAN: No, no, the question
20 is do they, today.

21 VADM TRACEY: Doesn't the victim have
22 the opportunity to leave their contact

1 information available to the Government for any
2 further actions?

3 MS. GALLAGHER: I believe they do.
4 I'm not certain that all the Services have
5 uniform procedures of how they do it.

6 VADM TRACEY: Agreed but witnesses
7 probably don't get asked that question.

8 MS. GALLAGHER: That's correct.

9 VADM TRACEY: So implementing E and F
10 represents another layer of complexity, compared
11 to everything else because now we have to figure
12 out how the Government is going to locate
13 witnesses many months, perhaps, after the fact of
14 the trial.

15 MS. GALLAGHER: Yes, if that
16 information is not captured at the time of trial
17 or the witnesses and victims don't continue to
18 provide new addresses --

19 VADM TRACEY: People who remain on
20 active duty are probably locatable. People who
21 are not or are not any longer on active duty
22 creates a science project that has to be taken

1 care of in a timely fashion or we otherwise go
2 down the line that Services are concerned about
3 an untimely handling of the appeals.

4 MS. GALLAGHER: I believe so, ma'am.

5 CHAIR HOLTZMAN: I think, though, in
6 the fairness, the point you raise, which is an
7 important point, Admiral, is a problem with
8 regard to our original proposal as well. So that
9 I mean I think the notice requirement here is
10 actually broadest in A and B. And what we are
11 saying there, basically, is okay, Services, you
12 figure this one out. But I think the point you
13 raised is totally appropriate and worth noticing.

14 And perhaps that was the reason for
15 the narrowing the scope of 39A and B in
16 recommendations 39C and D. I don't know.

17 Mr. Stone, did you have a point you
18 wanted to make about that?

19 MR. STONE: With respect to saying
20 that a victim or a witness first have to pass
21 through sort of make the first objection, in
22 other words, say they want to be notified, it

1 seems to me that what that's going to do is, as a
2 matter of preventive action in every case where
3 material is sealed, their counsel is going to say
4 we want to be notified. So you are going to have
5 that complexity in 100 percent of the case.

6 Whereas, if you wait until the
7 appellate court is faced with a decision, after
8 getting a request, either its own sua sponte or
9 somebody else's, you probably don't even open
10 this issue up, well certainly to less than 100
11 percent of the cases where there's sealed
12 material, and more likely to some smaller
13 fraction because it may not be an issue on
14 appeal. It may never be relevant to what's
15 raised on the appeal. It might not even be that
16 ultimately that that count or that issue is what
17 goes up.

18 So this goes back to the Admiral's
19 question. If the victim or the witness has to
20 put in their contact data at the trial court
21 level, which could change if they retire, we are
22 complicating -- we are getting our hands in to

1 the trial court's handling of this, which doesn't
2 have a permanent clerk, and then complicating
3 their business.

4 Instead, if we wait until the issue is
5 raised, we could simply append to the end of
6 whichever other 39 we choose the language that I
7 put in my proposed recommendation 40, which said
8 shall be given to any person whose records are
9 about to be examined and then we would just say
10 and whose point of contact is reasonably
11 available.

12 That's all we have to say, that their
13 point of contact is reasonably available. That
14 way, if they didn't choose to leave a point of
15 contact, the clerk's office at the appellate
16 level is not obligated to do something. If they
17 have a reasonable point of contact, whether it's
18 an SVC, a private attorney, or themselves, a
19 phone number or an address because it is
20 reasonably available, then if the issue comes up,
21 they will get notice.

22 So it seems to me we don't want to

1 complicate every single case. I mean that's what
2 would happen on the E and F. You are just going
3 to cause those attorneys, as a preventative
4 matter, in every case, to say okay and here's my
5 data and we want to be notified if anything comes
6 up later. And you are requiring that to get
7 passed along to somebody at the appellate office,
8 who may not have access, ready access even to
9 that trial level information.

10 So by saying to whose point of contact
11 is reasonably available, we leave it to the
12 Services how a person who was involved we might
13 want to let them know. It may be a letter. It
14 may be entering an appearance. It may be by
15 simply letting Government counsel know but each
16 Service can do it in a way that works out for
17 them whether they have electronic systems or they
18 don't have electronic systems yet operating.

19 And I will just throw in one other
20 item and I think that this is relevant in this
21 context about notice, too. I think the reason
22 that the 39A says and to appellate counsel and

1 that that is way preferable to not putting it in,
2 which is in 39B, is because we want to be sure
3 that the appellate counsel get notice. There are
4 plenty of circumstances where a defense counsel
5 -- I have seen this in private practice -- a
6 defense counsel may move for particular
7 privileged material and the prosecution tells
8 them, we are not interested in this issue. They
9 don't want to be served. They don't get service.
10 They don't respond. They say that's between you
11 and the witness whose stuff is privileged. And
12 they don't file any pleading at all.

13 In fact, the Hoile case which I cited
14 in an earlier document that was included in our
15 materials, which talks about appellate standing
16 for victims, in that very case, the Maryland high
17 court states in the opinion Government counsel
18 didn't want to be involved; didn't show up for
19 the hearing that they had on standing; and didn't
20 file any pleadings. They really said this is not
21 our issue; we're not interested.

22 And so by saying and to appellate

1 counsel, we just make sure that all the appellate
2 counsel have copies and I think that is a good
3 idea, whether it is a defense counsel or the
4 Government counsel. And especially since many
5 times they may be the person, according to the
6 Service, that should give notice to the victim
7 because the prosecution probably has the contact
8 data or they can say should keep the contact data
9 and make the notice. The clerk of the court
10 doesn't have to do it. He could instruct
11 appellate counsel to do it within five days or
12 something.

13 So it is better to say and to
14 appellate counsel and that is a real difference.
15 It is not superfluous because it relates to this
16 notice issue as a way of giving notice.

17 CHAIR HOLTZMAN: Okay. So let's try
18 and narrow down what our choices are here.

19 The first -- I think, by the way, if
20 I recall correctly, the issue wasn't so much
21 about notice, wasn't so much about whether the
22 people could be tracked down, although that is a

1 very important point, but was whether people
2 wanted to be even bothered with receiving some of
3 this notice. Sometimes people just wanted to end
4 their involvement with the matter altogether and
5 so didn't want to get notice.

6 So it seems to me we could break this
7 down. There are really a couple of issues here.
8 One, do we want to limit the applicability of our
9 recommendation to victims or witnesses who have
10 military -- with 513 privilege? We get past
11 that, we can decide whether we want to include
12 witnesses. And then we can decide include or
13 whether or not whether we want those who elect to
14 be notified.

15 Does anybody disagree with going
16 through it that way? Okay.

17 MR. STONE: Can we talk to that for a
18 minute?

19 CHAIR HOLTZMAN: The procedure?

20 MR. STONE: About whether or not they
21 want to be notified, your last point?

22 CHAIR HOLTZMAN: Why don't we get to

1 that? We may not even get to that.

2 MR. STONE: Well, okay. I'll point
3 out that that implicates another of the Military
4 Rules of Evidence when we get to it.

5 CHAIR HOLTZMAN: Okay. No, no, I'm
6 not trying to preclude.

7 MR. STONE: Okay.

8 CHAIR HOLTZMAN: I'm just trying to
9 figure out how we can get going on this. Okay.

10 So, our first question is do we want
11 to limit our recommendation to victims and/or
12 witnesses -- or I should say victims and maybe
13 witnesses who have a 513 privilege?

14 Barbara are you with me?

15 JUDGE JONES: Yes, I'm with you.

16 CHAIR HOLTZMAN: Okay. So all in
17 favor of limiting the 513 -- does anyone want to
18 speak on that? Okay.

19 All in favor of limiting the 513 --
20 I'm sorry -- the recommendation 39 to people with
21 513 privilege say aye.

22 JUDGE JONES: Aye.

1 CHAIR HOLTZMAN: Aye.

2 No?

3 MR. STONE: No.

4 VADM TRACEY: No.

5 MR. TAYLOR: No.

6 CHAIR HOLTZMAN: Okay, three to two,
7 it's not carried.

8 So then I guess we don't have to do
9 the witnesses because we may not be limiting it
10 to witnesses. Well, let's just vote on that,
11 too.

12 Do we want to include witnesses in our
13 recommendation? All in favor say aye.

14 VADM TRACEY: May I ask a question?

15 CHAIR HOLTZMAN: Yes.

16 VADM TRACEY: There is two ways in
17 which we have tried to address this. One, we
18 used the word person.

19 CHAIR HOLTZMAN: Right.

20 VADM TRACEY: And the other, we
21 discussed --

22 JUDGE JONES: I'm having a little

1 trouble hearing you.

2 VADM TRACEY: I'm sorry. There are
3 two ways in which we have attempted to address
4 this issue. One, we have used the word person
5 and in the other case, we have specified victims
6 and witnesses. Is there a material difference?

7 CHAIR HOLTZMAN: Not really because I
8 think right now we don't even probably have --
9 I'm not sure we have to vote on this issue. If
10 we use the language, the original language or the
11 language in blue, I think person includes --

12 VADM TRACEY: I agree. It is a bigger
13 sect than victims and witnesses.

14 CHAIR HOLTZMAN: It is. It is a
15 bigger sect.

16 MR. TAYLOR: That's my interpretation
17 of it.

18 CHAIR HOLTZMAN: Right. So we just
19 decided we weren't -- our first decision was we
20 are not limiting to people who are just have
21 Military Rule Evidence 513 privileges.

22 Okay, I guess the second question is

1 are we limiting it to victims and witnesses or
2 are we not limiting it and having it all persons.

3 Okay, so let's just have that vote.

4 Are we limiting this to -- all in favor of
5 limiting this to victims and -- I don't know how
6 to say that because this is complicated now.

7 Maybe we won't vote on this at all
8 because if we adopt 39A, then that would cover
9 this.

10 So I am just going to go to elect to
11 be notified point, which I think is a material
12 difference between 39A and B and 39E and F.

13 Without worrying about the language
14 exactly, are we all -- I think we should vote on
15 whether we want to limit the applicability of our
16 recommendation to people who elect to be
17 notified.

18 MR. STONE: Okay, that I need to talk
19 to.

20 CHAIR HOLTZMAN: Okay.

21 MR. STONE: Okay. I saw that in E and
22 F, when that was distributed to the panel members

1 before this hearing and I need to point out that
2 current Military Rule of Evidence 511, which is
3 called Privilege Matter Disclosed under
4 Compulsion or Without Opportunity to Claim
5 Privilege, and subsection of (a) of that current
6 rule says that such privileged material is not
7 admissible against the holder of the privilege if
8 disclosure is made without an opportunity for the
9 holder of the privilege to claim the privilege.

10 So if we don't give the holder an
11 opportunity to claim it, then should the case be
12 reversed and go back, the material will not be
13 admissible. And frankly, from a defendant's
14 point of view, they wouldn't want that because it
15 meant that if they won on appeal, they still
16 couldn't use the material when they got back to a
17 new trial.

18 So, not giving them the opportunity by
19 giving them notice is potentially going to run
20 into conflict with current Rule 511 of the
21 Military Rules of Evidence. If they don't want
22 to get involved, then they simply don't get

1 involved. They don't respond by whatever the
2 deadline is that the court has given them notice
3 it wants to hear from them if they have something
4 to say by whatever amount of days that Service
5 decides. If they do want to respond, then they
6 do.

7 This also raises the issue that they
8 may have, for the first time after the
9 conviction, counsel, a special victims' counsel,
10 which they may not have thought was necessary
11 before or they may have a different counsel. And
12 if they don't get counsel, then they have not had
13 the opportunity to discuss with their counsel
14 whether they care enough to want to file a
15 pleading and be heard or whether they don't.

16 So the way they can effectuate not
17 wanting to get the notice is simply by not making
18 their point of contact reasonably available. If
19 they make the point of contact reasonably
20 available, then they get the opportunity to file
21 it and that would satisfy Rule 511. So that is
22 reasonable. I don't think we want to --

1 I think the discussion that we had
2 previously about them opting out was in the
3 context of our Recommendation 40, it was not in
4 context of Recommendation 39.

5 CHAIR HOLTZMAN: Barbara -- Judge
6 Jones?

7 JUDGE JONES: Yes, I'm just a little
8 confused. The rule you are talking about
9 basically says that if the victim or witness does
10 not have the opportunity to contest, then the
11 information cannot be used against them. Is that
12 right?

13 MR. STONE: That's what it is, Rule --

14 JUDGE JONES: That would seem to me to
15 be irrelevant because we are talking about
16 evidence that comes against a defendant.

17 MR. STONE: But this all arises on a
18 defendant's appeal. The victim is not appealing.
19 The Government is not appealing.

20 CHAIR HOLTZMAN: What happens on an
21 interlocutory appeal. Do we have one?

22 JUDGE JONES: Well I'm just saying

1 that I don't understand this in the context of
2 protecting them or it being used against them.

3 When a victim/witness' information is
4 disclosed after a judge rules for it to be
5 disclosed or it isn't, it is not about it being
6 used against them. It is being used against the
7 defendant.

8 MR. STONE: That's correct.

9 JUDGE JONES: They are not in a
10 position where anything is being used against
11 them.

12 I know this may not matter in the
13 context of this conversation. I just don't know
14 what the relevance is and I don't have the text
15 in front of me. So, I apologize.

16 CHAIR HOLTZMAN: None of us has the
17 text in front of us and I think my concern is
18 that that rule 11 -- was it the number?

19 MR. STONE: It's 511, Military Rule of
20 Evidence 511.

21 CHAIR HOLTZMAN: We haven't even
22 looked at it. The Panel hasn't looked at it. So

1 to make a decision based on it, I think is
2 inappropriate.

3 MR. STONE: Well, we're raising a
4 question which didn't come up in the Joint
5 Service Committee's proposal and I think that is
6 why it didn't come up.

7 I'm just bringing out that if we add
8 this new consideration, which the Joint Service
9 Committee didn't add, we are going to create a
10 complexity in administration of the Military
11 Rules of Evidence that is not meant to be there.

12 CHAIR HOLTZMAN: Is there any further
13 discussion of this proposal?

14 Okay, so we will vote on whether the
15 notice provision should be limited to those
16 persons or however we determine it, victims or
17 witnesses who elect -- what's the language?

18 VADM TRACEY: Who elect to be
19 notified.

20 CHAIR HOLTZMAN: -- who elect to be
21 notified. Who elect to be notified. Okay.

22 Everyone in favor of limiting the

1 applicability of the rule to -- the
2 recommendation to those who elect to be notified
3 say aye.

4 CHAIR HOLTZMAN: Aye.

5 JUDGE JONES: Aye.

6 CHAIR HOLTZMAN: Those opposed?

7 MR. TAYLOR: No.

8 VADM TRACEY: No.

9 MR. STONE: No.

10 CHAIR HOLTZMAN: Okay, three to two,
11 it's not carried.

12 Okay, now I guess we just have two
13 more changes or three, possibly. So we are back
14 to I think the recommendation 39A or B. And
15 there are two issues, three issues here,
16 possibly.

17 One is do we want the language of 39A
18 excludes -- 39B excludes appellate counsel. The
19 question is do we want to include appellate
20 counsel? That is one decision.

21 The two -- this is just wordsmithing
22 stuff.

1 The second one is the language in one
2 is person whose records are about to be examined
3 or to be examined, the other one says just whose
4 records are about to be examined.

5 I would make a suggestion whose
6 records are being sought, which eliminates the
7 need to say both the other things. I don't know
8 how you feel about that because it seems to me
9 that eliminates about seven or eight words.
10 That's one.

11 And then we have to go the final point
12 about that Mr. Stone mentioned in his proposal
13 about point of contact.

14 So, let's go through this in order.
15 One, in favor of having appellate counsel
16 explicitly named in our recommendation. Those in
17 favor say aye.

18 MR. STONE: Aye.

19 CHAIR HOLTZMAN: Aye.

20 VADM TRACEY: Aye.

21 MR. TAYLOR: Aye.

22 CHAIR HOLTZMAN: Opposed?

1 JUDGE JONES: No.

2 CHAIR HOLTZMAN: Okay, so the ayes
3 have it.

4 The second one is do we want to have
5 the version suggested in A, or the version
6 suggested in B, or my proposal -- I don't know
7 how we get three in -- three options.

8 Is anyone in favor of A, which is
9 about to be examined or to be examined say aye.

10 (No audible response.)

11 CHAIR HOLTZMAN: The second one is
12 just whose records are about to be examined, say
13 aye.

14 MR. STONE: Aye.

15 VADM TRACEY: Aye.

16 MR. TAYLOR: Aye.

17 CHAIR HOLTZMAN: The third is whose
18 records are being sought. I say aye to that.

19 JUDGE JONES: Aye.

20 CHAIR HOLTZMAN: All right, so anyway,
21 the second one is carried, whose records are
22 about to be examined.

1 Okay and then we have number three,
2 the issues is on point of contact. I have a
3 problem with that, Mr. Stone, not the concept of
4 it but the language. I don't know what a point
5 of contact is. And so I think we need to have a
6 better statement of what we are looking for
7 there.

8 MR. TAYLOR: Can I weigh in on that
9 one, please?

10 CHAIR HOLTZMAN: Yes.

11 MR. TAYLOR: It seems to me that we
12 need to give the Services enough latitude and use
13 of common sense just for the notice and we don't
14 really need to go beyond that. They will figure
15 out how to do that in a way that works for each
16 Service and their procedures.

17 So, I would suggest that notice works
18 fine for me, with all due respect, Mr. Stone.

19 MR. STONE: That's fine and I will
20 withdraw my suggestion, because I basically
21 agree. I was just saying that was language I had
22 thrown out if people were troubled. But I want

1 to give the Services as much leeway as well.

2 CHAIR HOLTZMAN: Okay. Admiral, how
3 do you feel about that?

4 VADM TRACEY: I will agree with it.

5 CHAIR HOLTZMAN: Me, too.

6 Judge Jones?

7 JUDGE JONES: Me, too.

8 CHAIR HOLTZMAN: Okay, so that's
9 unanimous.

10 All right, so I think we are finished
11 with the Appellate Rights Report.

12 MS. GUPTA: So I think where we
13 landed, if I may, is 39B with the words and
14 appellate counsel added. Is that it?

15 CHAIR HOLTZMAN: Correct.

16 The problem I see, I just want to say
17 it again, if you look at the recommendation, of
18 course it's not in legislation, but whose records
19 are about to be examined suggests that there has
20 been a decision already to examine them and they
21 are about to be examined, as opposed to a prior
22 process in which you are trying to get those.

1 So I mean I just wanted to point that
2 out. There is a deficiency if what you -- in how
3 the language is worded in 39B. However, we are
4 done with that.

5 Let's go to --

6 MS. GUPTA: We actually have a couple
7 more issues on victims' appellate rights.

8 CHAIR HOLTZMAN: Oh, we do?

9 MS. GUPTA: Yes.

10 CHAIR HOLTZMAN: How did that happen?

11 MS. GUPTA: The next recommendation is
12 Recommendation 40. At the last meeting, the
13 panel approved by a five-zero vote Recommendation
14 40 on notice. The recommendation stated the
15 Services formalize procedures to (1) provide
16 victims with a means to receive notice of
17 significant appellate matters, including but not
18 limited to the date and time of any appellate
19 courtroom proceedings and the final decision of
20 any appellate court, if requested, and (2)
21 provide victims with a means to receive appellate
22 pleadings and briefs, if requested.

1 Mr. Stone has since proposed alternate
2 language for the Panel's consideration, which is
3 included in your folder. Mr. Stone's proposal
4 was circulated to the individual Panel members
5 via email this past week for discussion.

6 CHAIR HOLTZMAN: Where is
7 Recommendation 40 in our materials? I don't see
8 it. I just have 39.

9 MS. GUPTA: There should have been two
10 loose papers.

11 CHAIR HOLTZMAN: Oh, here it is, 40.
12 Oh, okay, on the bottom.

13 Mr. Taylor, how does this
14 recommendation comport with the issue you just or
15 the point you just made.

16 MR. TAYLOR: Well again, with great
17 respect, Mr. Stone, it seems to me that it's not
18 really necessary, although it is possible that we
19 could provide more detailed guidance to the
20 Services about how to do this. So, I would just
21 ask if that generally comports with what just
22 discussed --

1 MR. STONE: Well, again, I'm fine with
2 taking out the words whose point of contact is
3 reasonably available but I just wanted to make
4 the point, as we were looking these over since
5 the last meeting, that we had actually, as a
6 Panel here, while we were deliberating went from
7 providing victims with notice to the words
8 provide victims with a means to receive notice.
9 And what concerned me was that I didn't want that
10 to include the means being a totally passive
11 means, namely, that something gets posted on a
12 public website and a victim or witness has to
13 check it every single day.

14 Because for example, in the federal
15 PACER system, while stuff is posted, people who
16 have an interest in the case and they have
17 registered, and that even includes intervenors,
18 they get an email that says to them and entry has
19 made today in your case. Then, they go look it
20 up.

21 But I was a little concerned just
22 saying and has notice. And that is what the

1 federal analogue to this, 18 U.S.C. 3771 requires
2 and that's how they meet it. That is the federal
3 analogue to 6b. I was a little worried that mine
4 just says provide victims with a means to receive
5 notice of appellate matters. I didn't want to
6 suggest that you can just post it on the website
7 and that anybody who is interested has to look at
8 it every day because for some of these people, it
9 is kind of painful to have to go look up the case
10 name every single day, assuming that they are not
11 on vacation and they have access to an electronic
12 database.

13 So I just wanted to say to provide
14 them with timely notice and not only taking it
15 now towards whether or not they wanted to decline
16 it and I wrote, unless declined, of significant
17 matters, including. And I thought these were the
18 minimum ones which we noted above.

19 And then on the bottom, I actually
20 tried to make it, my item number two was to make
21 it easier for the appellate courts because we had
22 said provide victims with a means to receive

1 appellate pleadings and briefs if requested. And
2 again, that is the past and I wasn't sure what
3 that meant and I just wanted to say with
4 convenient access to any unsealed document filed
5 in the case they have requested. The court could
6 just simply instruct the other counsel please
7 make sure to serve the victim. And then the
8 court wouldn't have to do anything about
9 providing documents.

10 Now it's true that is included in the
11 language of 2 above, provide victims with a means
12 to receive but I thought that that phrase was,
13 again, passive and it might suggest that the
14 means to receive was if you are on the web, go to
15 the web, download this document, and print it.
16 Not every person in a military zone who may be,
17 by the time this gets to the appeal court is
18 going to have access on a daily basis to the
19 internet and a printer to go print it down.

20 So I just thought that the words with
21 the means to receive was just -- it was too
22 vague. It didn't convey what we wanted. I just

1 wanted them to make sure that people got notice
2 and convenient access. And again, let the
3 Services figure out how it best works for them.

4 I frankly think that most of these
5 cases, if given the choice, they are going to say
6 the counsel of one side or the other, please just
7 serve the victims and that will take care of it.
8 But I was trying to get language that wasn't so
9 vague.

10 CHAIR HOLTZMAN: Okay, so we have the
11 current recommendation. Has that been voted on,
12 Ms. Gupta, by the Panel?

13 MS. GUPTA: Yes, it was approved by
14 the Panel.

15 CHAIR HOLTZMAN: So we have a proposed
16 amendment by Mr. Stone to that language.

17 MS. GUPTA: Yes.

18 CHAIR HOLTZMAN: Why don't we vote on
19 the proposal?

20 MR. STONE: And but I do want to lift
21 whose point of contact is reasonably available.
22 And Professor Taylor, as you suggested, that

1 might be too prescriptive. That's fine. I'm
2 trying not to be prescriptive.

3 CHAIR HOLTZMAN: So provide victims in
4 sexual assault cases and you struck out whose
5 point of contact is reasonably available?

6 MR. STONE: Yes.

7 CHAIR HOLTZMAN: Is that your
8 proposal?

9 MR. STONE: Yes, and I put in sexual
10 assault cases --

11 CHAIR HOLTZMAN: Yes, we got that. So
12 the only change in your amendment to the
13 currently voted on proposal is to strike in line
14 two the words "whose point of contact is
15 reasonably available." So it is basically: The
16 Services formalize procedures to provide victims
17 in sexual assault cases (1) with timely notice,
18 et cetera; and (2) with convenient access. Okay.

19 Those in favor of Mr. Stone's
20 proposal, as amended, say aye.

21 MR. TAYLOR: Aye.

22 MR. STONE: Aye.

1 JUDGE JONES: Aye.

2 CHAIR HOLTZMAN: Those opposed?

3 No.

4 CHAIR HOLTZMAN: They ayes have it.

5 Okay, so we're finished with that.

6 What else do we have?

7 MS. GUPTA: That last recommendation
8 is Recommendation 41. At the last meeting, the
9 Panel decided to wait until today's meeting to
10 finalize its recommendation regarding Section 547
11 of Senate Bill S2943, which would allow victims
12 to file appellate pleadings as a quote "real
13 party in interest."

14 Mr. Stone has proposed language for
15 the Panel's consideration. His proposal was
16 given to individual members of the Panel.

17 CHAIR HOLTZMAN: Haven't we dealt with
18 this already?

19 MS. GUPTA: There was no vote last
20 month and the Panel decided to wait until today
21 to decide.

22 CHAIR HOLTZMAN: On this?

1 MS. GUPTA: Section 547 of
2 Recommendation 41.

3 CHAIR HOLTZMAN: Sorry. I didn't mean
4 to interrupt you.

5 MS. GUPTA: Oh, that's it. It is
6 available in everyone's folder. I think everyone
7 has it.

8 MR. STONE: And I might add, I dropped
9 all references to real party in interest, I
10 dropped the definition of victim, simply
11 referring to if they were a victim below. I
12 dropped all references to what issue it had to
13 be, as opposed to the victim's issue below.

14 And I just said the operative language
15 was that the same victim, so we didn't have to
16 redefine it, may respond in the same manner as a
17 party, it makes it clear they are not a party,
18 regarding that same issue, meaning the one they
19 participated in below. And it says may respond,
20 which means they don't have to respond.

21 CHAIR HOLTZMAN: And what's the
22 language that this is trying to amend?

1 MR. STONE: Okay, that we have.

2 MS. GUPTA: That's available in your
3 booklet at Tab 9.

4 CHAIR HOLTZMAN: Tab 9, okay.

5 MR. TAYLOR: So may I speak to this,
6 Madam Chair?

7 CHAIR HOLTZMAN: Yes, just a moment.
8 Can I just get oriented first, Mr. Taylor?

9 MR. TAYLOR: Of course.

10 CHAIR HOLTZMAN: I'm sorry. What is
11 the existing language that we are dealing with?
12 It's the Senate version. Is it subparagraph (f)
13 or is it subparagraph (a) and (f)? What is it
14 that we are looking at here?

15 MS. GUPTA: (f).

16 CHAIR HOLTZMAN: Well (a) also says
17 victim as a real party in interest.

18 MR. STONE: Yes.

19 CHAIR HOLTZMAN: So I'm just trying to
20 understand where we are.

21 MR. STONE: Yes, I struck that, yes.

22 CHAIR HOLTZMAN: Okay, so your

1 proposal, I'm trying to understand it, is to tell
2 the Senate that we don't like their -- is to tell
3 them that we don't like their proposed Section
4 547 and we want to amend it in what way? We want
5 to take out (a)?

6 MR. STONE: We would replace (a) with
7 a much more simplified version and that's what I
8 included. We would suggest that they not
9 complicate matters and add all kinds of
10 determinations that have to be made but to simply
11 replace their (a) with our (a), much shorter.

12 CHAIR HOLTZMAN: Excuse me. Let me
13 just see what it is but what is the necessity for
14 this if we have just voted on our Recommendation
15 39?

16 MS. GUPTA: Ma'am, I think this would
17 be broader than Recommendation 39. This would
18 allow victims of an offense to file pleadings in
19 an appellate matter. So it wouldn't just be
20 related to when their sealed materials are being
21 disclosed to counsel.

22 MR. STONE: 39, if I may add, just has

1 to do with whether or not defense counsel gets
2 the material that was sealed. If they get the
3 material because the court thinks they should
4 have it, I presume they are going to write an
5 argument about why that material is relevant and
6 requires a new trial. And as we have discussed
7 earlier and as I explained in the Maryland Hoile
8 case that I cited, sometimes the Government sits
9 on the sideline and says well, it's not my
10 material. I don't really have an oar in this
11 fight. I don't really care. If I have to retry
12 the case because you think it is relevant, I will
13 retry it with the material. If you don't think
14 it made a difference in the outcome, I won't retry
15 it.

16 So it is typically the victim who has
17 an issue with whether it's relevant. And again,
18 this only applies if they got to argue this below
19 on this issue. It is not allowing them to raise
20 any new issues. It's not allowing them to bring
21 to the court an issue that didn't come up. It
22 says may respond in the same manner regarding

1 that same issue, the substantive issue which they
2 got to litigate under 513 or 514, or whatever,
3 before. They get to defend their win. That's
4 the due process issue.

5 When a litigant is allowed to argue
6 for anything, and this even applies -- I mean the
7 Supreme Court Goldberg vs. Kelly case goes back
8 to the 1960s where people who had housing, low-
9 income housing benefits were losing them. And
10 they said wait a second, if we had the benefit
11 and you are taking it away, don't we get to be
12 heard before you take it away on appeal? And the
13 Supreme Court said yes, that's a matter of due
14 process.

15 This is the same thing. The victim
16 litigated something below. They won. And they
17 are just simply saying before you take it away on
18 that same issue, I am the same victim; I would
19 like to be heard.

20 CHAIR HOLTZMAN: Mr. Stone --

21 MR. STONE: In fact, they could
22 litigate this, even if they didn't object to the

1 material coming out.

2 If you go back to Rule 39 for a minute
3 or Recommendation 39, they may not object to it
4 being released but they still might object on the
5 ground that it shouldn't come in and cause a new
6 trial.

7 CHAIR HOLTZMAN: Mr. Taylor, I think
8 you wanted to be heard on this.

9 MR. TAYLOR: Yes, just briefly. My
10 recollection, which may not be precise, about
11 this issue when it came up last time was that
12 this proposal to adopt 547 was a 2-2 vote and you
13 asked me do I have an opinion. And I said well,
14 I do, there are some things I like about 547 and
15 some things I don't like, including the whole
16 issue about what is a real party in interest and
17 what does it have to do. I thought it was too
18 broad, as constructed by the Senate version. And
19 at that point, Mr. Stone said that he would seek
20 to limit it to address some of the objections
21 that I had.

22 So it is my fault that we have to look

1 at this again. For that, I apologize. But I
2 will say that I think that Mr. Stone has done a
3 good job of taking into account the
4 considerations and objections I had to more
5 narrowly limit this to a class of individuals
6 who, in my opinion, should have these appellate
7 rights. Obviously, somebody on the Senate
8 Drafting Committee, on the Senate Armed Services
9 Committee thought so as well.

10 CHAIR HOLTZMAN: Why do you say that?

11 MR. TAYLOR: Well because they put it
12 in, we had this. I mean this was, at some point,
13 proposed by somebody. That's why we have it.

14 CHAIR HOLTZMAN: Oh, yes, right but
15 Mr. Stone's -- I thought you were saying Mr.
16 Stone's --

17 MR. TAYLOR: No, no, I mean that as to
18 Section 547. I apologize.

19 CHAIR HOLTZMAN: Okay, I just want to
20 ask a few questions about this. I mean I have
21 serious concerns about victim as a real party in
22 interest and the term real party in interest

1 seems to me just confusing and problematic in a
2 variety of ways.

3 But what happens with (2)? Is that
4 out or in?

5 MR. TAYLOR: It's out.

6 MR. STONE: Yes, subparagraph (2) is
7 out. Those are definitions. You don't need them
8 anymore.

9 CHAIR HOLTZMAN: Any why is that?

10 MR. STONE: Because we are saying that
11 where we have regarding that same issue takes
12 care of that. Nobody has to look at it and say
13 oh, is this a 412, or 513, or 514 issue? They
14 knew this was communications with clergy, I don't
15 know but the point is it has to be regarding the
16 same issue that the victim got to litigate below.
17 The trial judge decided whether they had an
18 interest and that they were not.

19 In theory -- in theory under the
20 Senate's version any issue with regards to 412,
21 513, and 514, even though they didn't raise or
22 they didn't win on it, again, that is kind of

1 broader than what I tried to craft. I tried to
2 keep it as narrow as possible to what they
3 already litigated and was decided and only they
4 can raise it, only that victim, the same victim.

5 CHAIR HOLTZMAN: Yes, but you see your
6 language doesn't say that they previously had to
7 have raised it. You say they previously had
8 standing to file pleadings and be heard. It
9 doesn't say that they raised the issue. So
10 that's not -- I mean --

11 MR. STONE: Well the reason that it
12 says that is because a judge might cut them off
13 and say I don't need to hear you; I can see on
14 its face that you stood up, you have standing on
15 that issue. I don't need to hear you. I'm not
16 releasing this, just in like an attorney-client
17 context. I mean the judges have a certain amount
18 of experience and they're trying to save time.
19 So that's the only reason it doesn't say that.

20 CHAIR HOLTZMAN: Yes, well, but to me
21 --

22 MR. STONE: But it has to be the same

1 issue that they had standing.

2 CHAIR HOLTZMAN: You wouldn't know
3 what issue it is because if the person hasn't
4 talked, how would you know what issue it is?

5 MR. STONE: Well you know the issue
6 because it's being raised on appeal and it is one
7 they --

8 CHAIR HOLTZMAN: But now your notice
9 is saying that the person had standing below if
10 it never was resolved below.

11 MR. STONE: Then it wouldn't be --
12 this is only if it is called into question.
13 That's the second line.

14 CHAIR HOLTZMAN: No, it says calling
15 into question --

16 MR. STONE: A prior judicial ruling.

17 CHAIR HOLTZMAN: Right. Counsel for
18 the accused files appellate brief calling into
19 question. That's calling into question on the
20 appeal.

21 MR. STONE: Yes.

22 CHAIR HOLTZMAN: Right.

1 MR. STONE: A prior judicial ruling,
2 meaning the trial court decision --

3 CHAIR HOLTZMAN: Right.

4 MR. STONE: -- on an issue --

5 CHAIR HOLTZMAN: Right.

6 MR. STONE: -- as to which the victim
7 previously had standing to file pleadings and be
8 heard.

9 CHAIR HOLTZMAN: Right but that's
10 saying that they did.

11 MR. STONE: That's all admitted by 513
12 and other rules. We don't even have to cite 513
13 because that is all what goes on in the trial
14 court.

15 CHAIR HOLTZMAN: So what you're saying
16 is that even though a victim did not raise -- what
17 this allows is if a victim or a witness did not
18 raise the issue below, they can raise it for the
19 first time now on appeal.

20 MR. STONE: No, they would need a prior
21 judicial ruling. And the victim is never able
22 here to raise the issue. It says may respond. It

1 doesn't say may raise an issue. It says the same
2 victim may respond --

3 CHAIR HOLTZMAN: No, respond --

4 MR. STONE: -- regarding the same
5 issue.

6 CHAIR HOLTZMAN: Yes, but respond
7 doesn't -- just means -- so I just think you have
8 a little ambiguity here. I'm not going to the
9 merits. I'm just going to what this raises. So
10 I have some questions about it. That's all.

11 Because it allows first for -- it seems
12 to me, for these issues to be raised for the first
13 time on appeal. Maybe I'm wrong in my reading of
14 it.

15 MR. STONE: Well, that was attempted to
16 be eliminated in the second half of --

17 CHAIR HOLTZMAN: But do I understand
18 you correctly --

19 MR. STONE: Now they can't raise a new
20 issue on appeal. I totally agree.

21 CHAIR HOLTZMAN: All right.

22 MR. STONE: The question do you think

1 this language does it. I think it does.

2 CHAIR HOLTZMAN: Okay. And then let me
3 just go to --

4 MR. STONE: Do you want to say that
5 same issue previously decided? That means it
6 can't be a new issue.

7 It is a previously decided issue.

8 CHAIR HOLTZMAN: Judge Jones?

9 JUDGE JONES: No, I was just saying a
10 prior judicial ruling is a previously decided
11 issue.

12 CHAIR HOLTZMAN: Yes, right, but it may
13 not be one that the victim was heard on in any
14 way. That's all.

15 JUDGE JONES: Right.

16 MR. STONE: But then we wouldn't have
17 standing to file pleadings below.

18 CHAIR HOLTZMAN: They might have but
19 they decided -- exercised their judgment not to do
20 that. Now, they're doing it for the first time on
21 appeal. That's all I'm saying.

22 VADM TRACEY: So if you said a victim

1 previously had standing and filed pleadings to be
2 heard.

3 CHAIR HOLTZMAN: Had standing. You
4 don't need to file pleadings to be heard. Maybe
5 it is just enough to be heard.

6 VADM TRACEY: I'm sorry, doesn't that
7 --

8 CHAIR HOLTZMAN: Have standing and was
9 heard.

10 VADM TRACEY: And was heard.

11 CHAIR HOLTZMAN: Yes. Right in which
12 a victim previously had standing and was heard.

13 MR. STONE: Okay. That's even more
14 limiting but that's okay.

15 CHAIR HOLTZMAN: Previously was heard
16 or had standing and was heard during -- okay, so
17 we narrowed that or made it clear of the point
18 that I was concerned about.

19 Now, during the appellate review, that
20 same victim may respond in the same manner as a
21 party.

22 MR. STONE: That language is drawn from

1 Maryland Rules of Court approved by the high court
2 and Maryland decisions. When they don't want to
3 call somebody a party they say as a party. It
4 makes clear they are not a party but whatever the
5 rules are that apply to a party as to that issue
6 apply to them.

7 Actually in Maryland they call them
8 victim. They don't want to call them appellant or
9 appellee they say an issue for quote victim
10 unquote. I don't think we have to go that far.

11 CHAIR HOLTZMAN: Okay. My concern
12 about this is the respond is a little bit narrow
13 because it means that you are responding to -- it
14 sounds like you may need to be responding to
15 somebody else. Suppose the victim is just raising
16 the issue, nobody else has raised it, they are not
17 responding to somebody. They are just responding.
18 So maybe just victim may raise the issue in the
19 same manner as a party. Is that better?

20 MR. STONE: I think it's broad. If you
21 want, put raise the issue, be my guest.

22 CHAIR HOLTZMAN: Yes, I think it's --

1 well, I don't know.

2 MR. STONE: I asked Professor Taylor
3 whether he likes raise better than respond. I was
4 trying to be as narrow as I possibly could to
5 address his thoughts.

6 CHAIR HOLTZMAN: Okay. Anybody have
7 any other thoughts on that subject?

8 JUDGE JONES: So I mean I'm in favor of
9 -- I've been thinking about what to say when you
10 do this because I was against this, I believe, we
11 talked on the phone about it. Respond I agree
12 with instead of raise. And I guess in the same
13 manner as a party, I guess that means that they
14 get the briefing and argument rights. Is that
15 what you would contemplate, Mr. Stone?

16 MR. STONE: Well, in theory yes, but we
17 know that the Military Courts of Appeals almost
18 never grant argument to anybody. What it means is
19 they know what their deadlines are. They know
20 what their documenting in the files looks like.
21 They know what the type size is, all those rules
22 that apply to a party when you file a pleading.

1 You have to know what they were. We don't want to
2 make them to have to issue brand new rules that
3 you have got to use like you normally have: you
4 got to use type size 13, you have got to have word
5 limits on pleadings, you have so many days to file
6 a response. All of that is taken care of by
7 saying in the same manner as a party.

8 JUDGE JONES: Okay.

9 CHAIR HOLTZMAN: Any further discussion
10 on this? Okay, let's vote on it, as amended.

11 All in favor say aye.

12 MR. STONE: Aye.

13 CHAIR HOLTZMAN: Aye.

14 MR. TAYLOR: Aye.

15 VADM TRACEY: Aye.

16 CHAIR HOLTZMAN: Opposed?

17 JUDGE JONES: I'm opposed, period.

18 This language is better, I agree.

19 CHAIR HOLTZMAN: Right, I agree, too,
20 that it's better but I'm voting in favor for that
21 reason but I don't favor it.

22 Okay, the proposal is carried.

1 Are we now finished, Ms. Gupta, with
2 this subject?

3 MS. GUPTA: Yes, I have one
4 clarification question.

5 So, Mr. Stone, from Section 547,
6 everything else would be eliminated except for
7 what you proposed?

8 MR. STONE: Well, I didn't even address
9 subsection (b). In other words, this was a
10 proposal to replace subsection (a).

11 Subsection (b) had to do with their
12 notice concerns and we didn't really address it
13 last time. And I don't think it was even
14 controversial. I thought that that was what it
15 was. So we would just say we're just addressing
16 subsection (a) of 547, that we would prefer, you
17 know we recommend that it be simplified as
18 follows. I wouldn't even address (b).

19 VADM TRACEY: So does subparagraph
20 (f)(3), does that go away?

21 MR. STONE: Yes, (f)(3) goes away.

22 CHAIR HOLTZMAN: All done?

1 MS. GUPTA: We're all done.

2 CHAIR HOLTZMAN: Great. Thank you very
3 much. We will take a break now before we hear
4 from Professor Spohn and start on the data.

5 Thank you.

6 (Whereupon, the above-entitled matter
7 went off the record at 10:42 a.m. and resumed at
8 10:51 a.m.)

9 CHAIR HOLTZMAN: Now we're up to Dr.
10 Spohn. And do we have a tab number that we're
11 focusing on?

12 MS. PETERS: Yes, ma'am. This block
13 will begin with an overview I can provide the
14 Staff about the tasks that relate to Dr. Spohn's
15 data and you can -- I will walk those through on
16 the slides but you can refer to Tab 2, which have
17 the prior report's recommendations, and I believe
18 you received Dr. Spohn's narrative report, to
19 which her presentation will correspond. And that
20 is in Tab 6 of your read ahead materials.

21 CHAIR HOLTZMAN: Okay, so what are we
22 starting with?

1 MS. PETERS: Ma'am, I'd like to give
2 the Members of the Panel a brief overview of the
3 statutory tasks and the information that the Staff
4 collected this year that supports the data
5 project.

6 Because all the information you are
7 about to hear is tied to three specific JPP
8 statutory tasks, I would like to start with an
9 overview of those tasks and then describe the
10 information that the Staff collected in order to
11 enable the panel to address those tasks.

12 The first task that is addressed by the
13 data that has been collected is to review and
14 evaluate current trends in response to sexual
15 assault crimes, whether by courts-martial
16 proceedings, nonjudicial punishment, and
17 administrative actions, including the number of
18 punishments by type and the consistency and
19 appropriateness of the decisions, punishments, and
20 administrative actions based on the facts of
21 individual cases.

22 If I may, the second task addressed by

1 the data and that the Panel has to address with
2 regards to the data that has been collected is to
3 identify any trends in punishments rendered by
4 military courts-martial, including general,
5 special, and summary courts-martial in response to
6 sexual assault, including the number of
7 punishments by type and the consistency of the
8 punishments, based on the facts of each case,
9 compared to the punishments rendered by federal
10 and state criminal courts.

11 Finally, the Panel is to review and
12 evaluate court-martial convictions for sexual
13 assault in the year covered by the most recent
14 report of the Judicial Proceedings Panel and the
15 number and description of instances when
16 punishments were reduced or set aside on appeal in
17 instances in which the defendant appealed
18 following a plea agreement, if such information is
19 available.

20 Now, the Panel has addressed these
21 tasks in its April 2016 Report on Statistical Data
22 Regarding Military Adjudication of Sex Assault

1 Offenses. At this time, the Panel is revisiting
2 some of these issues with new data collected
3 representing courts-martial tried in Fiscal Year
4 '15. Previously, the Panel examined data from
5 courts-martial in cases that arose in Fiscal Years
6 '12 through '14.

7 And what the Staff collected, again,
8 are cases that were tried, dismissed, or resulted
9 in alternate forum in Fiscal Year '14. So you are
10 getting a snapshot of judicial proceedings,
11 mainly, that took place in FY15.

12 And for our purposes, a case was tried
13 when findings or sentence was adjudged. That's
14 when we considered a case ripe for assessment in
15 our database and by Dr. Spohn.

16 All of the cases that we collected
17 involved one preferred charge of sexual assault,
18 some type of sexual assault offense. We know that
19 preferral can happen long before trial. If the
20 trial takes a long time to happen, it could have
21 been preferred in a previous Fiscal Year but if
22 that charge was tried or dismissed in Fiscal Year

1 '15, we counted it. But all of these cases were
2 considered for prosecution and we know that
3 because we collected a charge sheet that included
4 at least one charge of sexual assault.

5 Our approach, similar to last time, was
6 to request specific case documents that would help
7 us chart out the procedural history of each case.
8 And it is roughly similar to the cases or the
9 documents we collected last time, such as the
10 charge sheet, documents that record the result of
11 trial, the Article 32 hearing, the SJA's advice
12 and any post-trial issues identified by the SJA or
13 the convening authority.

14 The major difference in this year's
15 data set is that we requested all sexual assault
16 cases from the Services and that includes cases
17 involving spouses or intimate partners.

18 Last year -- last time, when we
19 collected data for '12 through '14, those cases
20 were limited to cases covered by DoD SAPRO's
21 policies and were recorded in the DoD SAPRO
22 report. The cases that DoD SAPRO does not cover

1 are spouse and intimate partner cases. And
2 because last time we asked the Services, Services
3 give us the cases that you listed in your SAPRO
4 report because it is this massive compilation of
5 data, we only got the SAPRO policy-covered cases.
6 This year, we said give us all of your cases no
7 matter what you call it, no matter who reports it.
8 And so the Services used SAPRO-reported cases and
9 then had to independently identify spouse and
10 intimate partner cases and bring them all to us
11 this year.

12 And then what we did is we looked for
13 a document in every file that had the date that
14 the trial or the findings were adjudged, or the
15 sentence was adjudged, or the date of dismissal,
16 or the date that the case was resolved by ultimate
17 resolution. So we can say that every case we have
18 was resolved in Fiscal Year '15 and that's an
19 improvement I think over some of the issues we had
20 run into last time.

21 Here's the number of cases that we have
22 for you. When we went to the Services and

1 requested data, overall, they identified 963
2 cases. And ultimately, we were able to get a full
3 record of documents of cases meeting our criteria
4 for 738 cases across all of the military Services,
5 including the Coast Guard.

6 CHAIR HOLTZMAN: What page on this
7 document?

8 MS. PETERS: In our slides, we are on
9 slide 7.

10 CHAIR HOLTZMAN: Slide 7, is that this
11 one, the courts-martial statistics?

12 MS. PETERS: It says courts-martial
13 data collection at the top.

14 CHAIR HOLTZMAN: Okay, I found it.
15 Great. So just before you get to that, you said
16 that the total number of cases was 963?

17 MS. PETERS: Yes, ma'am.

18 CHAIR HOLTZMAN: But we only found 738?

19 MS. PETERS: Yes, ma'am.

20 CHAIR HOLTZMAN: Can you account for
21 the disparity?

22 MS. PETERS: Yes. The way we got from

1 963 to 738 was that if the Services gave us two
2 lists, a list of cases reported to SAPRO and then
3 everything else that involves spouses or intimate
4 partners, the cases that were reported to SAPRO
5 tended to included -- first of all they tended to
6 be listed multiple times because SAPRO requests
7 that you list every case by victim. In a multi-
8 victim case, the same case is going to be listed
9 two or three times.

10 CHAIR HOLTZMAN: Oh, okay.

11 MS. PETERS: We had to take the list
12 and sift out duplicates.

13 And then where we found that the
14 Services were quoted in FY15 a case that had
15 actually been tried in '12, '13, '14, of FY16, we
16 also took that case out as well because we had a
17 document to verify when the trial date or the
18 resolution occurred.

19 And after we conducted that weeding out
20 process and said also, do you have a complete set
21 of documents, if they couldn't locate the
22 documents, and that's included in the delta here,

1 they couldn't locate the documents, then we did
2 not enter the case.

3 CHAIR HOLTZMAN: Do you have a number
4 next to the instances in which they couldn't
5 locate the documents?

6 MS. PETERS: I could get that for you,
7 ma'am. I didn't prepare that for today.

8 Some of the cases that they did not
9 provide it turned out also fell into the category
10 of cases that were tried in prior Fiscal Years.
11 So I could cross-reference our previous list of
12 cases from '12 through '14, ran the name, and if
13 it came up as a case from the previous report, we
14 didn't count that as a case not delivered because
15 it wouldn't count anyways.

16 CHAIR HOLTZMAN: Okay, right.

17 MR. STONE: Can you give us even an
18 guesstimate of the Fiscal Year '15 cases, how many
19 cases you wouldn't have had documents in? Was it
20 really exceptionally small?

21 MS. PETERS: It is relatively small,
22 relative to the other categories like cases that

1 were previously reported or were tried in other
2 years, it is a relatively small number. It's just
3 a handful in some of the Services. And I think
4 because the Army has almost half of the overall
5 cases, that's where we see the largest number of
6 cases not provided or cases really that fell into
7 the category of they belonged in another fiscal
8 year group.

9 MR. STONE: Okay. If you -- and I
10 don't know, maybe you'll get to this, if anybody
11 tried -- and this follows up on the Chair's
12 question, if anybody's tried to look and see if
13 those all come from a particular military judge or
14 a particular military base that needs a few more
15 resources because it is skewing the data, while
16 everybody else is managing to give you documents.

17 MS. PETERS: We can do -- we can
18 easily, for you, sir, go back and do a Service by
19 Service analysis. We don't have a reason,
20 necessarily. We could go back to the Services and
21 ask why it was difficult to locate.

22 MR. STONE: No, I mean in your most

1 recent full Fiscal Year --

2 MS. PETERS: Okay.

3 MR. STONE: -- to see if it comes from
4 -- and maybe it is telling us that there's a
5 problem, a particular location doesn't have enough
6 services.

7 MS. PETERS: Yes, sir, we can do that.

8 MR. STONE: And you know that may be
9 something that is worth addressing.

10 MS. PETERS: Okay.

11 MR. STONE: You know I mean it's
12 possible it is a location on the front lines,
13 somewhere, and that's understandable. But I think
14 it would be useful to know if it is something that
15 can be readily addressed, that is worth a
16 recommendation to others for us to help them fix
17 that little problem that maybe is overlooked,
18 except by somebody like you who is looking at do
19 we have -- did we get the right paperwork done.

20 MS. PETERS: Okay, we can definitely do
21 that for you, sir.

22 I will comment that from the Staff's

1 perspective, the document production has improved
2 for the Fiscal Year '15 data set over what we were
3 able to retrieve for the '12 through '14 cases.
4 And on the next slide, I can give you a Service by
5 Service breakdown. Again, it doesn't get to any
6 particular specific circumstances but this will
7 tell you specifically how many cases were
8 identified by Service and then how many ended up
9 on our data base, according to each Service.

10 CHAIR HOLTZMAN: Okay.

11 MS. PETERS: In the Staff's research,
12 we did find that some of the reasons for the cases
13 from other Fiscal Years were done so
14 systematically in that there is an annual
15 requirement or there is a little requirement from
16 Congress to report on every case. If a Service
17 missed a case from a prior Fiscal Year, they
18 included it in the 2015 report. In the previous
19 years' reporting, in '12 and '13, Congress had
20 less stringent reporting requirements. Each year
21 they added more. So their approach was also to
22 say if in '12, and '13, and '14 you reported a

1 case that was pending or you didn't include the
2 full information about the case's resolution, it
3 was re-reported. So what we found is that
4 Services aren't just catching up, they are re-
5 reporting the same case in 2015 that was tried or
6 resolved in a prior Fiscal Year because there is
7 less robust information provided in that report.

8 Now, again, all these cases had a '15
9 label on them when they came to us. We had to do
10 our own research to find all of this out.

11 And lastly, there is some bleed over
12 from one Fiscal Year to the next. By 30
13 September, they don't have every case tried into
14 the SAPRO database. And everyone has agreed that
15 there is going to be bleed-over from one year to
16 the next and that is sort of a Service practice.
17 And I think there is a continual improvement in
18 database entry and Service collaboration in
19 uniformity but we are still running into some of
20 the same issues we ran into in previous data
21 collection years.

22 I would also just note that the Coast

1 Guard's case data are not reported in the SAPRO
2 report because they are not within DoD for the
3 purposes of DoD SAPRO reporting. So we were able
4 to retrieve some information that is not available
5 through the SAPRO reports that way.

6 CHAIR HOLTZMAN: So our report includes
7 the Coast Guard.

8 MS. PETERS: Yes, ma'am.

9 CHAIR HOLTZMAN: Okay.

10 MS. PETERS: And this is a brief
11 overview of our process. Once again, we took all
12 of the case documents and the Staff entered
13 information in those documents into an electronic
14 database. We then uploaded the documents into
15 that database to retain them for reference. And
16 we provided the aggregate data, an output file in
17 a Microsoft Excel format, to Dr. Spohn and she was
18 able to analyze data for 738 cases.

19 CHAIR HOLTZMAN: So it sounds like it
20 is a huge job that the Staff undertook to take all
21 these numbers then massage them to come up with
22 the accurate number of cases where there was a

1 final disposition, in essence, in 2015, Fiscal
2 Year for that.

3 MS. PETERS: Yes, ma'am. It was an
4 extensive amount of work to come up with an FY15
5 only dataset.

6 CHAIR HOLTZMAN: I know this is an
7 extraneous question in a way but if JPP is not
8 here, who will do this in the future if DoD needs
9 to get this information? Do they have the
10 capability? Or maybe I should ask that of Mr.
11 Galbreath.

12 MS. PETERS: I think he can elaborate
13 on that.

14 CHAIR HOLTZMAN: Okay.

15 MS. PETERS: My understanding is they
16 are making improvements towards that every year.
17 It doesn't appear for the cases listed in the
18 SAPRO report, for a variety of ostensibly
19 legitimate reasons, that it is purely annual data.

20 We had to divorce ourselves from the
21 SAPRO report in order to come up with annual data
22 for you all.

1 CHAIR HOLTZMAN: Okay, thank you.

2 MR. STONE: Do you know if the follow-
3 on panel after us will at least quarterly be
4 tracking some of these same numbers that you have
5 looked at? I don't know if you know the answer,
6 but if you do.

7 CAPT TIDESWELL: Well, Mr. Stone, they
8 have only met once back in January. They have
9 another meeting on the 28th of April. What I did
10 learn during the January meeting is they are very,
11 very interested in the Panel and data. Every
12 question that was raised was what does the data
13 tell us on X.

14 So, Dr. Spohn is actually a member of
15 the DAC-IPAD --

16 MR. STONE: Oh, great.

17 CAPT TIDESWELL: -- which is the
18 acronym for the new Panel. So I suspect they will
19 make a decision to keep up the database.

20 MR. STONE: Great.

21 CAPT TIDESWELL: But that is up to
22 them, sir.

1 MR. STONE: Sure.

2 CHAIR HOLTZMAN: But they are not
3 mandated by Congress, as we were to get this
4 information.

5 CAPT TIDESWELL: No, sir -- no, ma'am.
6 I'm sorry.

7 What they are mandated to do, though,
8 is to do case reviews and to look at basically
9 from start to finish. And I think what they see
10 the data will do is help them inform so they --

11 CHAIR HOLTZMAN: Right but nobody has
12 the mandate we have.

13 CAPT TIDESWELL: No, ma'am, they do
14 not.

15 CHAIR HOLTZMAN: Okay, thanks.

16 Okay, Dr. Spohn, are we ready for you
17 now or Ms. Peters, you still have more?

18 MS. PETERS: I have one more bit of
19 information for you.

20 CHAIR HOLTZMAN: Okay.

21 MS. PETERS: And that is outside of our
22 statistical data, the Staff has requested

1 information from the Department of Defense.

2 Because the Panel issued two recommendations in
3 its last report, we have requested a written and
4 oral response from DoD in regards to the
5 implementation status of those recommendations.

6 We did not receive a written response
7 from DoD. My understanding is the afternoon's
8 speakers will address this issue for you.

9 Separately, in the Staff's work with
10 data collection, we have become aware of a Sexual
11 Assault Data Initiative the Secretary of Defense
12 initiated the middle of last year in May of 2016.
13 They wanted to harness the Defense Digital
14 Service, which are private sector technology
15 experts hired from Google and other software
16 companies to work temporarily in the federal
17 government throughout the federal agencies and
18 enhance the technological capabilities and enhance
19 functioning, basically.

20 The Secretary of Defense issued a memo
21 saying Defense Digital Services please look at the
22 SAPRO data or our sexual assault data more

1 broadly. And we just know that the initiative
2 began in May of last year and we have just asked
3 for any substantive results, policy changes, or
4 anything that might have come from their look at
5 their own data collection.

6 CHAIR HOLTZMAN: And we haven't heard
7 back.

8 MS. PETERS: No, ma'am. And I believe
9 it should be addressed by the afternoon session
10 speaker.

11 CHAIR HOLTZMAN: Oh, okay.

12 MS. PETERS: We did request a written
13 response on that as well.

14 CHAIR HOLTZMAN: Thank you.

15 MS. PETERS: But we did not receive one
16 yet so I think it will have to be addressed in the
17 comments today.

18 And lastly, just to remind the Panel
19 that in the FY17 of NDAA, it contained Military
20 Justice Act provisions that are broad sweeping
21 reforms to the entire UCMJ. And you did hear on
22 one of them, which is Article 140(a). I think

1 Judge Effron might have briefed that for you but,
2 even so, I wanted to remind you that this new
3 article, which would take effect in four years on
4 case management data collection and accessibility
5 is new and relevant in that one of its intended
6 purposes is to provide uniform standards and
7 criteria for military justice data collection
8 across all stages of the military justice process.

9 And I think the language of this
10 article is written broadly so the Services and DoD
11 can collaborate to come up with the contours of
12 that system. But this is something new that there
13 will be uniform across the Service, data
14 collection mandated in the NDAA. It does have an
15 implementation date of four years from now and it
16 doesn't just pertain to sexual assault but I
17 wanted to make the Panel aware of that upcoming
18 change.

19 And that is all I have for you today,
20 subject to your questions.

21 CHAIR HOLTZMAN: Thank you very much.

22 Dr. Spohn, are we ready for you? Thank

1 you.

2 DR. SPOHN: So, as Ms. Peters
3 indicated, they provided me with an Excel
4 spreadsheet containing the 738 cases.

5 CHAIR HOLTZMAN: Is this our document?
6 It's called Adjudication of Sexual Offences
7 Reported to the Military Services in 2015 data.

8 DR. SPOHN: Yes.

9 CHAIR HOLTZMAN: It's in our packets,
10 everyone. Okay, thank you.

11 DR. SPOHN: So they provided me with an
12 Excel spreadsheet containing the 738 cases and all
13 of the relevant data on those cases, which I then
14 entered into a statistical analysis package and
15 produced the results that I'm going to be talking
16 about today.

17 I'm going to start by talking about
18 just descriptive data. What were the
19 characteristics of the accused, the victim, the
20 case, the outcomes? And then talk more about the
21 factors that affected dispositions and outcomes,
22 ending with a discussion of what predicted those

1 outcomes.

2 So, as Ms. Peters pointed out, the data
3 includes all cases in which there was at least one
4 count of either a penetrative or a contact
5 offense. And 530 were penetrative offenses and
6 208 were contact cases in which the most serious
7 charge was a contact offense. Two thirds of these
8 cases were from the Army or the Air Force.

9 In terms of the accused, the typical
10 accused was an enlisted Servicemember.

11 MR. STONE: In looking at your numbers,
12 before we skip to that, in that last slide data
13 where you said two-third were from the Army or Air
14 Force, did you try to compare numbers versus the
15 size of that Military service so we know whether
16 -- because looking at this data, it sounds like
17 wow, the Army far and away has got the most number
18 of sexual assaults but maybe the answer is that
19 the Army is five times larger, so in terms of
20 which Service has seen the most problems by virtue
21 of its size.

22 Is that in here somewhere?

1 DR. SPOHN: It is not and I did not
2 have that data.

3 MR. STONE: Can you -- is there --

4 DR. SPOHN: We can certainly calculate
5 that.

6 MR. STONE: Okay, that would be really
7 helpful because I don't want to give a misleading
8 notion that --

9 DR. SPOHN: Right, right.

10 MR. STONE: -- you know -- okay.

11 DR. SPOHN: Exactly.

12 CHAIR HOLTZMAN: How does this compare
13 with the numbers last year, the total number?

14 DR. SPOHN: It's very similar --

15 CHAIR HOLTZMAN: In 2014.

16 DR. SPOHN: -- in '12 to '14. Do you
17 mean just in terms of the breakdown from the
18 various Services?

19 CHAIR HOLTZMAN: The breakdown and the
20 total number of cases.

21 DR. SPOHN: We did 1761 for '12, '13,
22 and '14. So we have slightly more cases in terms

1 of proportion but then we do have the family
2 cases, which are 130 cases of the total of the 738
3 are cases that involve spouses or intimate
4 partners. So it's roughly comparable, then. If
5 we had three years before with 1761 and this time
6 you take out the 130, we've got 608. So, it's
7 roughly comparable.

8 MS. PETERS: Ma'am, we did also find
9 that in FY14 there were over 100 cases that were
10 actually tried in '15. So the reason these
11 datasets are not directly comparable is 100 cases
12 are repeated in terms of analysis.

13 CHAIR HOLTZMAN: I got that. Okay,
14 thank you.

15 DR. SPOHN: So, again, the typical --

16 VADM TRACEY: May I ask -- I'm sorry.
17 I think you said they are duplicative but are
18 there cases that were reported in the '15 data
19 that had not been previously reported?

20 MS. PETERS: A few, yes.

21 VADM TRACEY: And did we go back and
22 amend the data for those few?

1 MS. PETERS: No, we did not. In an
2 ideal world, we would regroup all years. We would
3 need to take the time to regroup all '12, '13,
4 '14, and '15 sets and we haven't done that yet,
5 ma'am.

6 VADM TRACEY: We have to report on
7 trends, right? So at some point we are going to
8 need to do something.

9 MS. PETERS: Yes, ma'am. We are in the
10 process. We have gotten through a few of the
11 Services already in re-inputting their data.

12 VADM TRACEY: Okay.

13 DR. SPOHN: So in terms of the accused
14 in the data file, the typical accused was an
15 enlisted Servicemember with about just under eight
16 percent being officers. Most were male. And data
17 that we did not have in the previous study but
18 which someone had asked for, we looked at where
19 the accused was assigned when charges were
20 preferred. And you can see that about just over
21 80 percent were in units in the United States or
22 its territories when charges were preferred.

1 This, of course, does not necessarily indicate
2 that that's where the incident occurred but it is
3 where the accused was stationed when charges were
4 preferred. That is where data was recorded.

5 MR. STONE: I guess that leads me to
6 ask another question, which maybe would have been
7 nice to have asked you before this, which was what
8 percentage of the one overseas do we think are in
9 -- and I'm not sure I know the right term for this
10 -- in the old days I would have said combat zones.
11 But I mean it may be some kind of zones where they
12 get a higher pay because they are at risk. In
13 other words, not including let's say Japan, where
14 the officers in Japan don't feel a threat but
15 would include officers in Afghanistan or
16 something.

17 So I don't know if there is a way for
18 that 18.7 percent to be broken down but I think
19 that is a real difference. Some are facing real
20 stress every day and others are in a situation
21 that is more or less comparable to being in the
22 U.S. or a territory.

1 MS. PETERS: Sir, the information we
2 available is that one location on the charge
3 sheet, unless we wanted to go back and look at the
4 incident location for each and every
5 specification. So we can't determine necessarily.
6 The unit doesn't determine whether necessarily
7 they are in Afghanistan, or in Germany, or on a
8 ship out at sea. It is difficult from that piece
9 of information to determine where the case
10 necessarily was prosecuted in terms of being
11 deployed or being in garrison stateside.

12 MR. STONE: Can we tell from that
13 Member's pay? Do they get a bump up in pay when
14 they are in an active zone?

15 MS. PETERS: We don't have that
16 information. We only have their base pay
17 available on the charge sheet and so we wouldn't
18 have any supplemental pay available to us.

19 CHAIR HOLTZMAN: Plus we don't have any
20 figures showing the proportion of troops that are
21 in the U.S. and its territories versus those that
22 are not. So, the figures are pretty --

1 MS. PETERS: Yes, ma'am.

2 CHAIR HOLTZMAN: I don't know what
3 significance these have at all. In fact, it is
4 misleading, in a way, to have them here because
5 they don't even shown where the alleged crime took
6 place.

7 MR. STONE: Well, I don't know. I
8 think they are of some value because certainly in
9 the U.S. and its territories we would hope, for
10 example, that we would get all the paperwork. I
11 mean in other words, I think to some extent we
12 would hope there is a more regularized procedure.
13 I just don't know what to say about the other 18.5
14 percent, whether those are in situations where
15 everybody is on call and on alert most of the
16 time, as opposed to not on alert most of the time
17 and, therefore, paperwork is not as important as
18 keeping yourself in readiness for immediate
19 combat.

20 CHAIR HOLTZMAN: Well do you have any
21 information here on the relative ranks of the --
22 is that someplace else we are going to see?

1 DR. SPOHN: It's not in the
2 presentation but in terms of pay grade or in terms
3 of rank?

4 CHAIR HOLTZMAN: Rank.

5 DR. SPOHN: Oh, okay.

6 CHAIR HOLTZMAN: Do you have that
7 information someplace?

8 DR. SPOHN: Yes. So, more than two-
9 thirds of the accused who were enlisted
10 Servicemembers were E3, E4, or E5. Two-thirds of
11 the enlisted fell in the E3, E4, and E5. And 40
12 of the 54 officers were O2, O3, or O4. So they
13 are in that midrange.

14 CHAIR HOLTZMAN: And what about the
15 relationship to the victim in terms of rank?

16 MS. PETERS: We didn't collect rank on
17 the victim, due to the mix of civilian and
18 military victims. We would have to go back and
19 try to collect that for you. We did not provide
20 that data to Dr. Spohn.

21 CHAIR HOLTZMAN: Okay.

22 DR. SPOHN: So moving on to the

1 victims, the number of victims ranged from 1 to 15
2 but most cases involved only one or two victims.
3 So about 95 percent of the cases involved one or
4 two victims.

5 The typical victim was female but there
6 was a fairly substantial number of cases involving
7 male victims. The typical victim was a member of
8 Military services, about two-thirds, and was not
9 the spouse or intimate partner of the accused.

10 Of the victims who were spouses or
11 intimate partners, 82 of the 130 were civilians.
12 The remaining 48 were members of the Military.

13 So in terms of case dispositions, 526
14 of the 738 cases were referred to a court-martial;
15 16.4 percent received an alternative disposition;
16 and 12.3 percent were dismissed without further
17 action.

18 And of those cases that were referred
19 to court-martial, most went to a general court-
20 martial with the remainder going to either a
21 special court-martial or a summary court-martial.

22 And again, of the 526 cases, that were

1 referred to a court-martial, just over half were
2 decided by a military judge; 40 percent were
3 decided by a panel of military members; and then
4 the 39 cases that went to a summary court-martial
5 were decided by a summary court-martial officer.

6 CHAIR HOLTZMAN: Well, one other
7 question about the accused. In how many cases was
8 there more than one accused?

9 DR. SPOHN: They are all a single
10 accused. I mean it is based on the --

11 CHAIR HOLTZMAN: Can that be if you
12 have 15 victims?

13 DR. SPOHN: Pardon me?

14 CHAIR HOLTZMAN: When you have 15
15 victims, just one defendant?

16 MR. STONE: I'm guessing the cases get
17 sentenced. In other words, that you might have
18 more than one accused but for trial they ask for
19 severance so it appears to be even if the victims
20 are the same in 10 or 15 of those trials because
21 of the party got out of hand, everybody got drunk,
22 you would still have one defendant and the same

1 group of victims testifying about what was going
2 on in those cases and that's why it is one
3 defendant cases.

4 DR. SPOHN: So I didn't have any
5 information on the names because names of victims
6 and defendants were all redacted. But the data
7 file is based on a single offender. So we can't
8 --

9 CHAIR HOLTZMAN: Yes, but that might be
10 something that is important to know. I mean how
11 many cases are we talking about in which people
12 are acting in pairs or in groups of defendants?

13 MS. PETERS: We can look at the
14 conspiracy charges and cases that involved those
15 type of offenses.

16 CHAIR HOLTZMAN: Would there be a
17 conspiracy charge in those cases?

18 MS. PETERS: Potentially, yes, ma'am,
19 and we have seen instances of that in our
20 database.

21 We could go back and look at ways to
22 provide that information.

1 CHAIR HOLTZMAN: You probably need to
2 do that just in terms of understanding the picture
3 that we're seeing.

4 MR. TAYLOR: I have a couple of
5 questions, if I may, about the case dispositions.

6 CHAIR HOLTZMAN: Yes, Mr. Taylor.

7 MR. TAYLOR: Did you break this down as
8 to the numbers and percentages by Service, in
9 terms of whether one Service is typically using
10 more courts-martial than others?

11 DR. SPOHN: That will be coming on --

12 MR. TAYLOR: Okay.

13 DR. SPOHN: -- in a later slide.

14 MR. TAYLOR: Okay, thank you. And the
15 second one may be in that same category and that
16 is do you have a breakdown as to the alternative
17 dispositions and how they pair out as to the
18 Services -- what some of the alternative
19 dispositions are and if there is any pattern or
20 trend among the Services that one is doing things
21 significantly different from the other.

22 DR. SPOHN: Can you speak to the

1 alternative dispositions?

2 MS. PETERS: We did break down the
3 number of courts-martial, alternative
4 dispositions, or case dismissals by Services.
5 Yes, sir, so that's in the data report and I
6 believe it is in a later slide.

7 MR. TAYLOR: Okay, thank you.

8 MS. PETERS: Yes.

9 DR. SPOHN: So the next slide looks at
10 the penetrative offenses and looks at the outcomes
11 of these offenses. And you can see that about a
12 quarter of the accused who were charged with a
13 penetrative offense were convicted of a
14 penetrative offense. Very few were convicted of
15 a contact offense but about 20 percent, just over
16 20 percent were convicted of a non-sex offense; 21
17 percent were acquitted; 14 percent received some
18 sort of alternative disposition; and 14.7 percent
19 were dismissed, all charges were dismissed without
20 further action.

21 CHAIR HOLTZMAN: How does this compare
22 to the prior -- I mean I know that the comparison

1 isn't great but to '12, '13, and '14?

2 DR. SPOHN: I believe it's very
3 similar.

4 So in the 2012-2014 data, 24.5 percent
5 of those charged with a penetrative offense were
6 convicted, so almost identical. More were
7 convicted were of a sexual contact offense, 16.7
8 and fewer were convicted of a non-sex offense, 10
9 percent.

10 So the overall conviction rate for the
11 penetrative offenses is just under 50 percent and
12 these are of all cases that were preferred and in
13 a later slide I will talk about cases that were
14 referred to trial and the conviction rate for
15 those.

16 CHAIR HOLTZMAN: So when you say
17 overall conviction rate, you mean convicted of --

18 DR. SPOHN: Of something.

19 CHAIR HOLTZMAN: -- something.

20 DR. SPOHN: Something.

21 If you look at the contact offenses,
22 you will see that the pattern is somewhat

1 different. We find that most of those who were
2 charged at least one contact offense were
3 convicted of a non-sex offense, with 17.8 percent
4 convicted of a contact offense. The overall
5 conviction rate, then, adding those two figures
6 together is 58.7 percent.

7 Dismissals were less likely in contact
8 offenses than they were in the penetrative
9 offenses and alternative dispositions were
10 somewhat more likely to be used in the sexual
11 contact offenses.

12 So this presents the data of cases that
13 were actually referred to trial. And so it takes
14 out those cases where charges were dismissed with
15 no further action and those cases that received an
16 alternative disposition. So the cases that went
17 to court-martial of some type, you can see for the
18 penetrative offenses, just over a third of them
19 were convicted of penetrative offenses with just
20 under a third convicted of a non-sex offense and
21 then a very small percentage convicted of a
22 contact offense.

1 But if you look at the cases that were
2 referred to trial, the overall conviction rate is
3 70 percent. And for the contact offenses, the
4 overall conviction rate, adding together of the
5 convicted for a contact offense and the convicted
6 for a non-sex offense, it was 81.9 percent.

7 And I know we are reluctant to make any
8 comparisons to the civilian world but the data
9 that was provided by the Bureau of Justice
10 Statistics shows that sexual assaults in the 75
11 largest counties in the United States in 2009 had
12 a conviction rate of 68 percent.

13 So it's --

14 CHAIR HOLTZMAN: Excuse me. Can you
15 explain the difference between case outcomes,
16 cases referred to trial, and the prior slide?
17 What's being omitted in the cases referred to
18 trial?

19 DR. SPOHN: Those cases were all
20 charges were dismissed without further action and
21 most --

22 CHAIR HOLTZMAN: Okay and

1 adjudications, different kind of adjudication.

2 DR. SPOHN: I'm sorry.

3 CHAIR HOLTZMAN: What's it called?

4 Alternative adjudications.

5 DR. SPOHN: Right, yes.

6 CHAIR HOLTZMAN: Okay, so those are not
7 included.

8 DR. SPOHN: Those are not included. So
9 these are only the cases that were referred to
10 some sort of court-martial, general, special, or
11 summary. And so the conviction rate is obviously
12 going to be higher because those dismissals and
13 alternative dispositions are taken out.

14 MR. STONE: Will this include, though,
15 pleas, if somebody wants to plead guilty?

16 DR. SPOHN: Yes.

17 MR. STONE: Okay, so it includes pleas.

18 DR. SPOHN: Pleas and trials.

19 MR. STONE: Okay. So it would be nice
20 to separate out the ones that when they go to
21 trial but there is no plea of guilty because that
22 skews the data some.

1 CHAIR HOLTZMAN: Do you have a trial
2 conviction -- in other words, a trial conviction
3 rate?

4 MS. PETERS: No, we do not. We just
5 separately, the Staff looked at how many cases
6 overall involved a guilty plea to a sex assault
7 offense but we did not parse out guilty pleas
8 versus contested trials for this data or in the
9 data that we provided to Dr. Spohn.

10 DR. SPOHN: But you can see that of the
11 cases that went to trial, 30 percent of the
12 penetrative offenses resulted in an acquittal at
13 trial and 18.1 percent of the cases of the contact
14 offenses resulted in an acquittal at trial.

15 So we're moving on now to the sentence
16 type.

17 MR. STONE: I guess the trouble with
18 that data, the reason that it leaves me a little
19 confused is for example, if 30 percent resulted in
20 acquittal, we don't know if only 50 percent from
21 those other two categories went to trial and the
22 30 percent is way more than half or way less than

1 half of the contested cases because the rest all
2 pled out. So that's why I think that is a little
3 confusing, at least to me, not to know which
4 percentage of these are guilty pleas and which are
5 literally contested trials.

6 MS. PETERS: Yes, sir. Overall, only
7 55 cases, total, involved a guilty plea to a
8 sexual assault offense. We were able to parse
9 that out. And the number of cases involving a
10 plea to other offenses I think numbered 190.

11 So in 190 cases, they might have pled
12 and it might still be a contested case. It may
13 have been a mixed plea but there was at least one
14 plea to a non-sex offense in 190 cases; 55 cases
15 only out of our total data set involved a guilty
16 plea to a sexual assault offense and that includes
17 both penetrative and contact offenses.

18 But we didn't parse it out percentage-
19 wise for this information.

20 MR. STONE: It sounds like, though, you
21 might be able to do it, though, if you know those
22 numbers.

1 MS. PETERS: Yes, sir.

2 DR. SPOHN: So moving on to sentences,
3 we looked at whether the accused with a conviction
4 received a confinement sentence, a punitive
5 separation, or confinement plus punitive
6 separation and as you can see, about just under
7 three-quarters of the convictions resulted in some
8 sort of confinement sentence; 60 percent resulted
9 in a punitive separation; and just over half
10 received both confinement and separation.

11 CHAIR HOLTZMAN: What's an approved
12 sentence?

13 DR. SPOHN: As opposed to the adjudged
14 sentence. The approved sentence is the sentence
15 that is actually imposed by the judge.

16 MS. PETERS: It would reflect any
17 clemency matters or pretrial agreement terms that
18 cap a sentence.

19 CHAIR HOLTZMAN: Okay and what about
20 the alternative adjudications? Are those included
21 in the confinement? Have you analyzed what the
22 alternative adjudications consisted of?

1 MS. PETERS: The vast majority, meaning
2 all but a handful, were discharges in lieu of
3 trial, which is a request by an accused officer or
4 enlisted facing trial to be dismissed or
5 discharged in lieu of facing court-martial.

6 CHAIR HOLTZMAN: Okay.

7 MR. STONE: Does the fact that these
8 totals are more than 100 in the first two
9 categories mean that some people who were
10 punitively separated -- no, if they also had
11 confinement, they would have been in the third
12 category. I'm confused as to why don't equal 100.
13 I don't understand columns one and two equaling
14 more than 100.

15 DR. SPOHN: Because some people got
16 punitive separation but not confinement.

17 MR. STONE: But how could that be 59
18 percent?

19 DR. SPOHN: And some got both. So, the
20 52.1 percent is captured in both of those columns.

21 MR. STONE: It's from both of those
22 columns.

1 DR. SPOHN: Right.

2 MR. STONE: But don't the other two
3 columns need to add up to 100 percent?

4 DR. SPOHN: No because included in one
5 of those --

6 MR. STONE: No, then they would have
7 been in this one.

8 CHAIR HOLTZMAN: They are in this one
9 but they are also in that one.

10 MR. STONE: Oh, I see. So there are
11 people in column one who are also in column two
12 and column three.

13 DR. SPOHN: Yes. So just looking at
14 these sentences separately.

15 MR. STONE: Okay.

16 DR. SPOHN: Moving on to the length of
17 the sentence, in terms of the adjudged sentence,
18 it ranged from less than six months to life in
19 prison. The approved sentence was similar, the
20 range was six months to life in prison. The mean
21 was 43 for the adjudge sentence and 36 for the
22 approved sentence, meaning that there was only a

1 reduction, an average reduction of seven months,
2 about seven months between the adjudged and the
3 approved sentence.

4 For penetrative offenses, the mean
5 sentence was 66 months and for contact offenses it
6 was ten months and we will get to that. I thought
7 that might come up now but we will get to that a
8 little bit later.

9 So the next part of the analysis is
10 just looking at the relationships between two
11 variables, type of disposition or type of outcome
12 and one other factor.

13 So for example, is the accused's
14 military Service a statistically significant
15 predictor of the type of disposition, that is, the
16 type of court-martial or is the relationship
17 between the victim and the accused a statistically
18 significant predictor of the case outcome?

19 And so here we are just looking at the
20 relationship between one factor and the type of
21 disposition or the outcome.

22 So if we look at the significant

1 predictors of the type of disposition, that is
2 whether the case when to a general, a special, or
3 a summary court-martial, the significant
4 predictors were the type of charge so that
5 penetrative offenses were much more likely to go
6 to a general court-martial than were contact
7 offenses. And by juxtaposition, the contact
8 offenses were more likely to be disposed at either
9 a special or a summary court-martial.

10 Military service of the accused was
11 also related to the type of disposition, with
12 cases from the Army and Air Force more likely than
13 cases from the Coast Guard, Navy, or Marine Corps
14 to be disposed at a general court-martial.

15 All 43 cases involving officers were
16 disposed at general courts-martial, which my
17 understanding is that is required by Statute. So
18 it's nice to see the data confirming it.

19 And the type of disposition was more
20 varied for cases involving enlisted Members but
21 even there, 77 percent of those cases were
22 disposed at a general court-martial.

1 VADM TRACEY: Are you able to tell
2 whether the 23 or 22 percent that were not, were
3 they more senior or junior enlisted personnel?
4 Are you able to tell that?

5 DR. SPOHN: We didn't break it down
6 that way but we could. We could break it down the
7 rank or the pay grade first by disposition. Is
8 that what you are asking?

9 Last year in the analysis or in the
10 data file we did not include the pay grade of the
11 accused but we did have that this time.

12 In terms of the case outcomes, those
13 were broken down by penetrative and contact
14 offenses, since outcome was significantly related
15 to the type of offense that was charged. The only
16 significant predictor was the Military service of
17 the accused and this was penetrative offenses
18 only. And I will show you some of the differences
19 there, which was a question that was asked just a
20 moment ago.

21 Outcomes in this bivariate analysis
22 were not affected by the variables that are listed

1 here.

2 So moving on to looking at case
3 outcomes by military Service, for the penetrative
4 offenses these outcomes, Mr. Stone, do add up to
5 100 percent.

6 MR. STONE: Thank you. I was not a
7 math major. I defer to you on that stuff.

8 DR. SPOHN: Looking at whether the case
9 resulted in a conviction, which is the lowest bar
10 and acquittal, which is the sort of light blue
11 bar, and alternative disposition, which is the
12 mustard-colored bar, and then a dismissal at the
13 top. And you can see -- I'm not going to put much
14 emphasis on the Coast Guard, given that there were
15 so few cases from the Coast Guard. The pattern is
16 different but I'm not sure what to make of it,
17 just given the small number of cases there.

18 But if you look at the Army, you can
19 see that the likelihood of conviction for accused
20 who were from the Army is greater than it is from
21 the Air Force and the Marine Corps and the Navy
22 are just somewhat less than that.

1 We also see that the likelihood of the
2 case being dismissed is smaller for the Army,
3 larger for the Air Force, the Marine Corps, and
4 the Navy. And although this is purely
5 speculative, this could reflect the fact that
6 cases are screened out differently in the Army
7 than in the other Services, so that cases with
8 weaker evidence or with reluctant victims might be
9 screened out earlier in some Services than in
10 others. So, you would get a lower dismissal rate
11 and a higher conviction rate if that were in fact
12 the case, if the charges were simply not preferred
13 in those cases.

14 But again, that is pure speculation
15 because we don't have data on what happened prior
16 or the kinds of cases that were in the system
17 prior to charges being preferred. That is where
18 the data starts with this project.

19 MR. STONE: Do you know if we have
20 asked anybody just on a subjective basis to ask
21 some of the prosecutors in the various Services
22 whether that's --

1 DR. SPOHN: That would be interesting.

2 MR. STONE: Just a subjective basis to
3 see if they think that's the solution. Perhaps
4 the Staff can ask some representative prosecutors
5 if they agree with that. It's an interesting
6 supposition.

7 DR. SPOHN: Yes. So this is just a
8 slightly different way of presenting the data.
9 This looks at the conviction charge. The previous
10 chart combined all convictions together in the
11 lower bar. This breaks it out by the type of
12 conviction charge. Again, this is only those who
13 were initially charged with penetrative offense.
14 And you can see that the likelihood of being
15 convicted of a penetrative offense varies pretty
16 dramatically across the Services with the Army
17 having a higher conviction rate for the most
18 serious offense than the Navy, which is higher
19 than the Air Force, with the Marine Corps having
20 the lowest conviction rate for penetrative
21 offenses.

22 None of the Services has a particularly

1 high rate of conviction for contact offenses but
2 the likelihood of being convicted of a non-sex
3 offense also varies with the highest rate value in
4 the Marine Corps and lower rates in the other
5 Services.

6 So, here we break it down in the same
7 way that I did earlier, that is, let's just look
8 at the cases that went to trial. And this
9 presents the conviction and acquittal rates across
10 the Services. Again, we see -- and just help me
11 for a moment -- the Coast Guard we see that
12 acquittal is more likely in the Air Force and the
13 Navy than it is in the Army and the Marine Corps.

14 So moving on to sentences. The
15 significant predictors of whether the convicted
16 accused was confined, were the status of the
17 victim. Confinement was more likely if the victim
18 was a civilian. The type of conviction charged,
19 not surprisingly, confinement was more likely if
20 the -- that should say if the accused was
21 convicted of a penetrative offense, not charged.
22 Confinement more likely if the offender was

1 convicted by general court-martial, as opposed to
2 special or summary. And confinement was more
3 likely if the conviction was by a military judge
4 or a panel of Military Members, rather than by
5 summary court-martial.

6 We will skip over the factors that did
7 not affect confinement and just go on and I will
8 illustrate with some charts the likelihood of
9 confinement. This breaks it down by the status of
10 the victim. And you can see that confinement was
11 more likely if the victim was a civilian than if
12 the victim was in the military. It was also
13 fairly high if there were both military and
14 civilian victims. There were very few cases in
15 which -- I think there were eight cases involving
16 both military and civilian victims.

17 Confinement and the conviction charge,
18 again, it is not surprising that those convicted
19 of the more serious penetrative offenses were
20 substantially more likely to be given a sentence
21 of confinement than those convicted of either non-
22 sex offenses or sexual contact offenses. But 90

1 percent of those who were convicted of penetrative
2 offenses received at least some term of
3 confinement.

4 MR. STONE: Do you have a theory about
5 the prior chart, why the status of the victim in
6 civilian cases was so much higher resulting in
7 confinement than the status of military cases? I
8 would have thought -- I mean without knowing any
9 of the data, I would have thought they would have
10 been roughly equal and I'm sort of surprised by
11 that. Did you have any theory about that
12 yourself?

13 DR. SPOHN: I don't have any theory
14 about that but it could be that cases involving
15 civilians might involve more victims. I mean it's
16 possible.

17 Meghan and I talked about this a little
18 bit yesterday. It could be that there are -- if
19 some of those civilian cases are the spouse or
20 intimate partner of the accused and in many of
21 those cases there are collateral charges involving
22 child abuse --

1 MS. PETERS: Domestic violence.

2 DR. SPOHN: -- domestic violence. And
3 so I mean there could be something going on there
4 in those civilian cases involving other behavior,
5 especially in the partner and family -- or spouse
6 and intimate partner cases.

7 And as we will see as we move forward,
8 cases involving spouses and intimate partners
9 resulted in longer sentences.

10 Again, the type of court-martial was a
11 significant predictor of whether the offender
12 would receive confinement and the difference
13 there, not surprisingly, is the summary courts-
14 martial versus the general and special courts-
15 martial. There is no difference between those in
16 terms of the odds of confinement.

17 And finally, trial forum. Cases that
18 were decided by a military judge had the highest
19 likelihood of confinement followed by those cases
20 that were disposed of by a Panel of Military
21 Members and then, again, that 26.3 is the summary
22 court-martial.

1 So moving on to the --

2 CHAIR HOLTZMAN: Who is the officer in
3 a summary court-martial? What is the rank?

4 MS. PETERS: It can be a captain or a
5 major that is an O-3 or an O-4, typically.

6 MR. TAYLOR: I was just going ask a
7 further question about that. I know at one point
8 there was a question about whether certain summary
9 courts-martial were even authorized to adjudicate
10 confinement. So might some of that result from
11 the fact that there are summary courts-martial
12 existing that actually do not have the authority
13 to issue confinement?

14 MS. PETERS: I don't have any
15 information on that. My understanding is most
16 still have the authority to issue up to 30 days.

17 MR. TAYLOR: Okay.

18 MS. PETERS: I'm not aware of any other
19 alternate rules for summary courts.

20 MR. TAYLOR: Thank you.

21 DR. SPOHN: So in terms of the length
22 of the confinement sentence, this was affected by

1 the status of the victim, the relationship between
2 the accused and the victim, the type of conviction
3 charge, type of court-martial, and type of trial
4 forum.

5 So we see the same pattern that we saw
6 -- well actually it is a little bit different
7 pattern than we saw with whether it was a
8 confinement sentence or not with sentence length
9 being shorter if the victim was in the military
10 than if the victim was a civilian, and then being
11 substantially higher if they were both military
12 and civilian victims. And I suspect that that is
13 more a function of the fact that if there were
14 military and civilian victims, by definition,
15 there was more than one victim. And so that may
16 reflect that more than anything else for that
17 particular --

18 But again, it is interesting that cases
19 involving civilians received longer sentences than
20 those involving victims who are in the military
21 Services.

22 CHAIR HOLTZMAN: And how do we -- what

1 information would we need to understand that
2 better?

3 DR. SPOHN: I think we would want to
4 look at the nature of the charges and the
5 collateral charges in those cases. That might
6 help explain that.

7 Again, this is just looking at Military
8 service and sentence length. It is not
9 controlling for anything else, which we will do in
10 a little bit. We will move to that next stage.

11 CHAIR HOLTZMAN: Okay.

12 DR. SPOHN: So here is -- I referred to
13 this just a moment ago that cases involving
14 spouses or intimate partners, the sentences were
15 longer in those cases than cases in which the
16 victim was not the spouse or intimate partner of
17 the accused. And keep in mind that in the spouse
18 or intimate partner cases 82 of the 130 were
19 civilians. And so we are kind of -- we have to
20 disentangle those things as we go forward.

21 MR. STONE: And your earlier number
22 showed that that was a very small percentage, the

1 intimate partner and spouse sexual assault cases.
2 It's less than 20 percent.

3 DR. SPOHN: A hundred and thirty --

4 MR. STONE: Right. So more than 80
5 percent. This is looking at a little piece of it.

6 DR. SPOHN: It is.

7 MR. STONE: Okay.

8 DR. SPOHN: And then type of conviction
9 charge, again, not surprising that cases involving
10 penetrative offense convictions received
11 substantially longer sentences, 66 months as
12 opposed to, it's 9.45 months for the contact
13 offenses and 12 and a half months for the non-sex
14 offenses.

15 So the final analysis is a multivariate
16 analysis that is used to identify the
17 statistically-significant predictors of outcomes,
18 and the analysis simultaneously controls for all
19 of the variables that are in the analysis so that,
20 if a variable has a statistically-significant
21 effect on an outcome, it does so while holding all
22 of the other variables in the model constant. And

1 so this is an attempt to sort of disentangle some
2 of those interactions between things like the
3 seriousness of the charge and the status of the
4 victim and the relationship between the victim and
5 the accused.

6 So if, for example, we do find that the
7 number of victims is a statistically-significant
8 predictor of conviction for a penetrative offense,
9 and this is net of the effects of all of the other
10 variables included in the model. So we start with
11 the likelihood of conviction, and here we're
12 looking at both conviction for a penetrative
13 offense, and this includes, of course, only those
14 offenders who were charged with a penetrative
15 offense; and then conviction for any offense, and
16 this will include those who were charged with both
17 penetrative and contact offenses.

18 In terms of conviction for a
19 penetrative offense, the military service of the
20 accused was a predictor. Conviction for a
21 penetrative offense was about three times more
22 likely if the accused was in the Army rather than

1 the Marine Corps. The Marine Corps was the
2 comparison group here. And that really showed up
3 on the earlier chart that we looked at.

4 The number of victims, more victims
5 equals a greater likelihood of conviction for a
6 penetrative offense, and the number of counts
7 preferred were the three variables that determined
8 whether someone would be convicted of a
9 penetrative offense.

10 A different pattern results if we look
11 at conviction for any offense. Again, military
12 service of the accused, the difference here was
13 between the Coast Guard and the Marine Corps. I
14 don't know how much credence I put on that, given
15 the small number of cases.

16 CHAIR HOLTZMAN: Suppose you used
17 another Service, like the Army or the Navy or the
18 Marine Corps --

19 DR. SPOHN: I could do that. I could
20 run it with every Service --

21 CHAIR HOLTZMAN: Yes, I think that
22 would be better because the Coast Guard numbers

1 are so small. It's just not really terribly
2 meaningful but --

3 DR. SPOHN: Well, the Marine Corps is
4 the comparison group, and the only difference on
5 conviction for any offense was between the Marine
6 Corps and the Coast Guard. The differences
7 between the Marine Corps and the Army, the Air
8 Force, and the Navy were not significant.

9 CHAIR HOLTZMAN: I see. But they were
10 significant with regard to penetrative offenses.
11 How do you explain that or what information would
12 we need to understand that disparity better?

13 DR. SPOHN: Again, it could be that the
14 cases that are coming from the Army where it's
15 three times more likely to be a penetrative
16 offenses are different in unmeasured ways than the
17 cases from the other Services.

18 CHAIR HOLTZMAN: What about the other
19 Services? What's the relationship between the
20 Marine Corps to the Navy to the Air Force?

21 DR. SPOHN: No difference.

22 CHAIR HOLTZMAN: No difference.

1 DR. SPOHN: On conviction for a
2 penetrative offense between the Marine Corps and
3 the Coast Guard, the Navy, or the Air Force.

4 CHAIR HOLTZMAN: Right. So in other
5 words, so in other words, the Army, it's about 3
6 and a half, 3.2 times more likely to have a
7 conviction in the Army than any of the other
8 Services, except maybe the Coast Guard; is that
9 what you're saying?

10 DR. SPOHN: I would have to run the
11 analysis with the Army as the comparison category,
12 and I could do that. And that would tell us
13 whether that was, in fact, the case.

14 MR. STONE: I wonder if I could throw
15 out something that I have no basis in fact but, as
16 a theory maybe, that goes back to something I
17 asked before. Is it more likely that the Marine
18 Corps has more troops in a theater of operations
19 that's on high alert than the other Services; and,
20 therefore, there's just more stress on all
21 parties, and sometimes that relates to more
22 drinking, too, that could be a reason why there's

1 a lower rate of conviction because both the
2 military judge or a panel is aware of that and
3 they get a little more weight in deciding how to
4 decide the case?

5 That's sort of why I asked before
6 whether in some way, either through corroborating
7 the date or the time of the alleged offense and
8 the persons pay status or location or something,
9 to see if -- because, I mean, I think that would
10 be really relevant if we could see whether the
11 stress of the particular operation they were in at
12 the time of the offense has an effect on the
13 conviction rate. I mean, it might be useful for
14 us to know. It might tell us things that we're
15 not so worried about, that we realize a high-
16 stress environment is something that, you know, is
17 going to lead to more problems. And I don't know
18 what the preventative steps might be to take, but
19 it certainly, it would tell us a lot of data.

20 I mean, in a sense, when you look at
21 different states, you might say, for example,
22 there's more stress in Alaska because they're in

1 darkness half the year, and so people up there
2 have a higher alcoholism rate, and so they might
3 wind up having more of these types of assaults, as
4 compared with a state, I don't know, in the middle
5 of the country where there's an equal balance of
6 day and night most of the year.

7 So I'm just wondering if that's
8 something we can figure out because I think sort
9 of at a gut level -- again, I have no independent
10 data to confirm it -- I think that's a really
11 useful consideration that I would really like to
12 know about the data. I mean, it may be true for
13 some of the other Services, too, being able to
14 separate out the number of cases in an -- I don't
15 know if active theater of operation is the right
16 term but --

17 DR. SPOHN: But, again, the data that
18 I had did not include that. And, again, part of
19 the problem here is that we don't have data on
20 intoxication of the victim or the accused or
21 whether that was an element of, you know,
22 something that was taken into consideration in

1 deciding whether to convict for a penetrative
2 offense or convict for any --

3 MR. STONE: Is that in the files,
4 though?

5 MS. PETERS: Right, yes. The type of
6 penetrative offense, whether it was rape or -- by
7 intoxication, a select group of offenses, as you
8 know, where intoxication would have to be proven
9 if it had to be established that that person was
10 incapable of consenting due to intoxication.
11 Since we have the charge sheet, those charges, if
12 they were present in the case, are identifiable.
13 We did not code each specific type of penetrative
14 -- well, we would have to go back and just do
15 further research for you, but we have information
16 on the type of offense and, of course, the
17 location where it occurred.

18 CHAIR HOLTZMAN: Yes. I think also
19 there's a very real question as to whether there's
20 any relationship between, quote/unquote, stress
21 and sexual assault. You could just as easily
22 argue that it's the hyper-macho image in the

1 Marine Corps that produces these results, so I
2 think we need to be really careful if we're
3 speculating on reasons. What I would like to know
4 is what other kind of information we would need to
5 understand the difference between this.

6 When you start talking about stress and you start
7 talking, it sounds like you're giving excuses to
8 people for engaging in this conduct.

9 MR. TAYLOR: It seems like there are --
10 I totally agree with the Chair. I mean, I'm
11 familiar with the studies that have been done over
12 the last five or six years about the relationship
13 between deployments and suicides, and the bottom
14 line to most of those studies is that there is no
15 correlation between deployments to Iraq and
16 Afghanistan and suicides, which often is related
17 to stress in one way or the other. So that's one
18 point.

19 But the second is, when you're looking
20 at the Army numbers and where the forces had been
21 deployed over time, back to Mr. Stone's point,
22 it's clear that the Army has really carried most

1 of the burden, along with the Marines from time to
2 time, in deployments over the last several years.
3 So there might be something there; I'm not sure
4 what.

5 CHAIR HOLTZMAN: But maybe you could
6 start thinking about what additional information
7 we would need to understand this difference. And
8 I think that would be helped if you could look at
9 the comparison between the Army and the other
10 Services here, too, so that we can see if this is
11 just the Army or if it's just -- who's the
12 outlier? Is it the Marine Corps or is it the
13 Army, and then what's the difference?

14 VADM TRACEY: If a case went to Article
15 32 and then did not get tried, that's in this
16 data, right?

17 MS. PETERS: Yes, ma'am.

18 VADM TRACEY: But if it never got to an
19 Article 32, it's not in there?

20 MS. PETERS: If a charge was preferred
21 and it fell out any time after that, it's captured
22 in the data.

1 MR. STONE: And an Article 32 would
2 mean an alternative disposition mostly?

3 MS. PETERS: Not necessarily, sir. I
4 don't know that we identified a correlation. It's
5 not like you need to have a 32 before you go to an
6 alternate disposition.

7 MR. STONE: Oh, an Article 15 would be
8 an alternative disposition, right?

9 MS. PETERS: It was, but in relatively
10 few of the cases was that the alternate
11 disposition. If a case was dismissed outright, we
12 consider that the end of the judicial proceedings,
13 and that individual, where it says cases were
14 dismissed, may have had an Article 15 or an
15 administrative separation in their future. We
16 didn't capture that information because we don't
17 have the documents and for a host of other
18 logistical reasons really.

19 VADM TRACEY: You were hypothesizing,
20 not suggesting that they told you this, that it
21 might be that one Service is producing better
22 cases to trial than the others are? I think

1 that's one of the Chair's question: what would we
2 need to see to enable us to strengthen our
3 understanding of whether that's the case or not?

4 CHAIR HOLTZMAN: Or what additional
5 information should we be asking from the Services
6 in the future to be able to understand this kind
7 of discrepancy?

8 DR. SPOHN: Well, something like the
9 promptness of the report, whether there was a
10 forensic medical exam conducted, and what kind of
11 evidence was produced? I mean, there are ways
12 that one can capture strength of evidence
13 directly.

14 CHAIR HOLTZMAN: But then how would
15 that explain the disparity? See, that's what
16 we're trying to figure out here is what accounts
17 for this difference? And I don't know what
18 information you would need to help understand
19 that.

20 VADM TRACEY: Well, you would be a
21 little informed if, in fact, you saw data that
22 suggested that the Marine Corps produced less

1 complete cases than the Army cases.

2 DR. SPOHN: And the promptness of the
3 report. If it was a delayed report, it was more
4 likely in those cases, if victims were more
5 reluctant to go forward and we had nothing on the
6 victim's willingness to cooperate as the case
7 moves forward. It could be, there could be a
8 number of factors that could account for these
9 differences that we don't capture in the data.

10 CHAIR HOLTZMAN: Okay. Do you want to
11 continue, please?

12 DR. SPOHN: So moving on to whether the
13 -- well, if you just go back, Stayce -- whether
14 the offender was convicted for any offense, I just
15 want to point out that conviction was less likely
16 if the victim was a spouse or intimate partner or
17 if the victim was a member of the military
18 Services. And it was, conviction was also less
19 likely if the accused was charged with a
20 penetrative offense, and Meghan and I were talking
21 about that yesterday. Obviously, a penetrative
22 offense is a more difficult crime to prove. The

1 elements of the crime are going to be different,
2 and it's going to take more evidence to prove
3 that. So that's not particularly surprising.

4 So I also looked at --

5 CHAIR HOLTZMAN: But it should be
6 surprising in a way if the defendant is accused,
7 is charged with several counts, one is a
8 penetrative offense and the other is not, and
9 there's not a conviction, so why should the
10 conviction be less likely when you have a variety
11 of charges? Is that, or am I assuming something
12 in my question?

13 MR. STONE: This says dismissal, not
14 acquittal, on that count. Is that intentional?

15 CHAIR HOLTZMAN: No, I'm back under
16 conviction for any offense.

17 DR. SPOHN: So in the data --

18 CHAIR HOLTZMAN: So this doesn't say
19 that the person was charged with several offenses,
20 including penetrative offenses.

21 DR. SPOHN: No.

22 CHAIR HOLTZMAN: Okay. So we just --

1 DR. SPOHN: It's just whether the most
2 serious charge was a penetrative offense versus
3 the most serious charge was a contact offense.

4 CHAIR HOLTZMAN: Okay.

5 DR. SPOHN: And the number of counts is
6 a predictor of whether they would be convicted of
7 something.

8 CHAIR HOLTZMAN: Okay.

9 VADM TRACEY: Back on your first
10 finding, it's the Army that's the outlier by this
11 analysis, right?

12 DR. SPOHN: Compared to the Marine
13 Corps, but I will run the analysis with the Army
14 as the comparison group to see if there are any
15 differences between the Army and any of the
16 Services other than the Marine Corps. I can tell
17 --

18 VADM TRACEY: But you compared
19 everybody else to the Marine Corps?

20 DR. SPOHN: To the Marine Corps.

21 VADM TRACEY: And you found no
22 statistical differences?

1 DR. SPOHN: Between the Marine Corps
2 and the Air Force, right. That's correct. So
3 moving on to --

4 VADM TRACEY: It may be important to
5 communicate whether the Marine Corps is an outlier
6 or not because that data looks so . . .

7 DR. SPOHN: So looking at the
8 likelihood of acquittal and dismissal of all
9 charges, acquittal at trial, the number of counts,
10 more counts equals a smaller likelihood of
11 acquittal. And if the accused was charged with a
12 penetrative offense as the most serious offense,
13 acquittal was more likely.

14 Dismissal of all charges, those in the
15 Army and Air Force were less likely than those in
16 the Marine Corps to have all charges dismissed.
17 If the victim was a spouse or intimate partner,
18 dismissal was more likely. Number of counts, more
19 counts equals a smaller likelihood of dismissal.
20 And if the accused was charged with penetrative
21 offense, dismissal was more likely.

22 CHAIR HOLTZMAN: And when you say

1 dismissal, is this dismissal at trial or dismissal
2 at any step in the process? So it could be
3 dismissed by --

4 MS. PETERS: It has to be before trial
5 the way we segregated the data. If we say
6 dismissal, it means it happened before a trial
7 happened.

8 CHAIR HOLTZMAN: Does dismissal mean,
9 for example, that there's an Article 32, then,
10 after the 32, the convening authority decides not
11 to prefer charges?

12 MS. PETERS: Yes, ma'am, that would be
13 a dismissal.

14 CHAIR HOLTZMAN: That would be a
15 dismissal under this. Oh, okay.

16 DR. SPOHN: So let's see. Just a
17 couple more here.

18 CHAIR HOLTZMAN: So it seems to me,
19 also, when you prepare this chart, that you should
20 describe what the term dismissal means so that
21 people reading it would understand that.

22 DR. SPOHN: So looking at confinement

1 and punitive separation sentences, whether the
2 accused was sentenced to confinement, those in the
3 Air Force were more likely than those in the
4 Marine Corps to receive confinement. Those
5 convicted of penetrative offenses were, of all the
6 factors in the model, more likely to be confined.
7 And the confinement was less likely if the victim
8 was a member of the military Services, rather than
9 a civilian.

10 Looking at the length of the
11 confinement sentence, this type of analysis allows
12 you to identify the difference between the
13 sentence lengths, and I'll explain that here, so
14 that, if the accused was convicted of a
15 penetrative offense, they received sentences that
16 were 55.16 months longer compared to accused who
17 were convicted of non-sex offenses, which was the
18 reference category. Again, that controls for the
19 number of counts, the status of the victim, the
20 relationship, and so on.

21 If the victim was a spouse or intimate
22 partner, the sentences averaged 31 months longer

1 than if the victim was a stranger or had some
2 other kind of relationship to the suspect. And
3 the number of counts preferred, each additional
4 count resulted in about two and a quarter-months
5 longer sentences.

6 Terms of punitive separation. Those
7 who were convicted of penetrative offenses were
8 more likely to get a punitive separation.

9 Punitive separation was less likely for those in
10 the Coast Guard compared to those in the Army.

11 Punitive separation was less likely for those
12 convicted of crimes against military victims, and,
13 the more victims there were, the greater the
14 likelihood of a punitive separation.

15 So let me just sort of sum this all up
16 in terms of the multivariate analysis. In all of
17 the analyses, the strongest predictor of outcomes
18 was whether the accused was charged with or
19 convicted of a penetrative offense. It predicated
20 every outcome so that, compared to those charged
21 with a contact offense, those charged with
22 penetrative offenses were less likely to be

1 convicted, more likely to be acquitted, and more
2 likely to have all charges dismissed. And then
3 compared to those convicted of non-sex offenses,
4 those convicted of penetrative offenses were more
5 likely to be sentenced to confinement, to receive
6 a punitive separation, and they faced longer
7 confinement sentences.

8 Two variables that had no effect on any
9 of the outcomes were the rank of the accused,
10 whether it was an officer or an enlisted man, or
11 the gender of the victim. So outcomes did not
12 vary depending on whether the victim was a male or
13 a female or whether the accused was an officer or
14 an enlisted man. It did not affect any of the
15 outcomes.

16 MR. STONE: On the last category that
17 you say compared to those convicted of non-sex
18 offenses and they're more likely to be sentenced
19 and receive a separation more than confinement
20 sentences, do you think some of that difference
21 between the contact and punitive offenses and the
22 non-sex offenses could relate to the reluctance to

1 have to require that convicted person to be on the
2 sex offender registry forever? Is there any
3 intimation of that -- that it results in people
4 wanting to both plead to and people sentencing,
5 wanting to give a sentence that doesn't require
6 lifetime registration? I don't know how we would
7 measure it. Again, I'm throwing that out for
8 discussion as to whether that may be playing some
9 role in what's happening.

10 DR. SPOHN: So are those convicted of
11 penetrative offenses required to register as sex
12 offenses, sex offenders?

13 MS. PETERS: And some contact.

14 MR. TAYLOR: Well, when you've got this
15 category of convicted of non-sex offenses, this is
16 when you are convicted of non-sex offenses but on
17 the same charge sheet you are charged with sexual
18 offenses? Is that what this category is?

19 DR. SPOHN: Yes.

20 MR. TAYLOR: Okay. It's not the
21 universe of people?

22 MS. PETERS: Yes, sir, that's correct.

1 DR. SPOHN: So in terms of the other
2 variables that were included in the models, they
3 had less consistent effects. That is, they
4 affected some of the outcomes but not others.

5 And let me just skip to the last slide
6 and talk about the status of the victim and the
7 relationship between the accused and the victim.
8 So if the victim was military rather than
9 civilian, and, again, this controls for the
10 relationship between the accused and the victim,
11 so this is taking into consideration the fact that
12 some of the civilian and military victims were
13 spouses or intimate partners, but, if the victim
14 was in the military rather than a civilian, the
15 likelihood of the conviction was lower, the
16 likelihood of acquittal was higher, the likelihood
17 of a confinement sentence was lower, and the
18 likelihood punitive separation was lower.

19 In terms of the relationship between
20 the accused and the victim, if the victim was a
21 spouse or intimate partner, the likelihood of
22 conviction was lower, the likelihood of dismissal

1 was higher, but the confinement sentence was
2 longer. So those cases involving spouses and
3 intimate partners are more likely to be, case
4 attrition was higher, but those that survived and
5 resulted in a conviction did receive longer,
6 harsher sentences.

7 CHAIR HOLTZMAN: What more would we
8 need to know to understand why there's a higher
9 conviction, acquittal rate or lower conviction
10 rate with respect to an accused, I mean the victim
11 who's in a military? Is it because there's some
12 kind of a standard that's being imposed on on the
13 behavior of the victim? Is it because they should
14 be able to defend themselves? I mean, what's
15 going on here? What do we need to know to
16 understand what's going on?

17 DR. SPOHN: I think we need qualitative
18 data.

19 CHAIR HOLTZMAN: And how do we get
20 that?

21 DR. SPOHN: We talk to the people who
22 make these decisions. So we ask them, you know,

1 do you have a --

2 CHAIR HOLTZMAN: Oh, okay. So let me
3 ask you did you separate it out by judge versus
4 panel in terms of the status of the victim? I
5 mean, does it make a difference when there's a
6 judge, as opposed to a panel member?

7 DR. SPOHN: I did not look at that, but
8 we could look at that.

9 CHAIR HOLTZMAN: Okay. Maybe that
10 would help.

11 DR. SPOHN: That might help explain
12 that.

13 CHAIR HOLTZMAN: Sort something out.

14 VADM TRACEY: Could it also be the
15 extent, as you said earlier, maybe the extent, the
16 nature of the charges?

17 MR. STONE: I have the same thought.
18 I wonder whether you could, in running your data,
19 drop all cases that also involve domestic violence
20 and/or child abuse, so we were looking at civilian
21 and military cases that were a little more alike,
22 because, typically, in the military cases, it's

1 probably a much lower number that involve those
2 domestic violence and those child abuse charges,
3 so we would have, maybe the numbers --

4 DR. SPOHN: One thing that occurred to
5 me in going back through this is that one could
6 look at cases involving one victim only and cases
7 involving, most cases had more than one charge,
8 but I think the number of charges was from one to
9 43. But one could try to come up with a group of
10 cases that, on its face, involves more
11 similarities than differences and then try to see
12 if some of these factors still influence. I mean,
13 I could certainly look at single victim cases and
14 see if that is perhaps -- and judge versus jury.

15 MR. STONE: But those, too, would have
16 the domestic violence ones in there. In other
17 words, I think you would need to drop to see if
18 you can, you know, compare this and this but not
19 cases with domestic violence and child abuse
20 charges.

21 MR. TAYLOR: Is it possible to come up
22 with a survey instrument that you could send to

1 collect some of the qualitative data that you're
2 referring to, or would it require personal
3 interviews or phone interviews to get that kind of
4 data?

5 DR. SPOHN: Personal or phone
6 interviews would be better in that you could
7 follow up on questions that you ask, but survey
8 data would be better than what we have now. And
9 I know this is something that the next committee
10 has talked about doing is doing some surveys of
11 individuals in the military justice system.

12 CHAIR HOLTZMAN: Well, I think it would
13 be really good, before we get to the survey, I
14 agree, the survey or the interviews, get a little
15 bit of a better handle on what we think is
16 happening here because, if it's a judge versus
17 panel situation, it's easier also to interview
18 judges than it may be to interview panel members.
19 That's all I'm just thinking of. I don't know.

20 DR. SPOHN: And the other thing that I
21 could do is look at the cases involving spouses or
22 intimate partners that are kind of the outliers in

1 terms of sentences --

2 CHAIR HOLTZMAN: Right.

3 DR. SPOHN: -- and look at what those
4 cases look like.

5 CHAIR HOLTZMAN: Okay.

6 DR. SPOHN: And that, I think, might
7 provide us with some additional information if
8 those are cases with lots of charges, including
9 domestic violence and child abuse.

10 MR. STONE: If you dropped all the
11 intimate partner cases entirely, that would get
12 rid of the domestic violence and the child abuse,
13 wouldn't it?

14 DR. SPOHN: Well, yes, I guess it
15 would.

16 MS. PETERS: Theoretically, yes, sir,
17 because --

18 MR. STONE: And they're 20 percent, so
19 that might be an interesting subset to compare.

20 VADM TRACEY: This data, including the
21 previous data set, includes cases that were tried
22 under almost all provisions of Article 120, right?

1 MS. PETERS: The latter two, most
2 likely, ma'am. The 2007 and the 2012 version
3 would be most common.

4 VADM TRACEY: And the sex offender
5 registration became effective when?

6 MS. PETERS: It has been effective for
7 all Article 120 offenses, broadly speaking I
8 think, at least under DoD policy for the last few
9 years. And that would capture most of these
10 cases, I would think. So --

11 VADM TRACEY: And it didn't matter
12 which version the case was being tried under?

13 MS. PETERS: I don't think so, ma'am.
14 The only exception that's clear, without doing
15 further research on sex offenders, is wrongful
16 sexual conduct was an offense under the 2007
17 version of the statute. That went away and became
18 abusive sexual contact with a max punishment of
19 seven years, and there's some sort of bodily harm
20 involved in it. So I think that those contact
21 cases almost invariably could be subject to sex
22 offender registration. The federal and state

1 differences would apply there, but, largely
2 speaking, we assume abusive sexual contact in the
3 2012 version is going to be a registrable offense.

4 CHAIR HOLTZMAN: Well, how do we get,
5 I mean, I think your question is an important one:
6 how do we get at whether the imposition of a
7 sentence or a conviction is going to produce a
8 lifetime consequence? How do we get at that, how
9 that factors into the decision-making on the
10 sentence? How do we get at that issue? Is that
11 sort of what you're asking?

12 MS. PETERS: I could speak to that in
13 a little bit more detail. Broadly speaking, and
14 you might want to talk to service military justice
15 experts for further information, but sex offender
16 registry is not a factor, it is not to be brought
17 up in sentencing hearings, meaning the panel and
18 the judge can't consider that as a factor in
19 sentencing.

20 CHAIR HOLTZMAN: Yes, but they know
21 about it, they know about it.

22 MR. STONE: They sure know about it.

1 CHAIR HOLTZMAN: So how does that
2 factor in? I mean, that's what I'm trying to,
3 that's what I think the Admiral was trying to get
4 at and what I'm trying to get at, too. Is that a
5 factor in the back of people's minds when they
6 make a decision, whether the judge's mind or the
7 panel members' minds? I just don't know. How do
8 we get at that? I mean, if we're suggesting a
9 survey or a personal interview -- and are you
10 allowed, by the way, even to interview members of
11 panels afterwards? Is that permissible?

12 MR. STONE: Well, maybe not as to a
13 particular case, but you could certainly go back
14 to a large select sample of judges and say we're
15 just doing an evaluative survey. Military judges.

16 CHAIR HOLTZMAN: But I'm talking about
17 members. I'm talking about members of the panel.
18 Are we allowed to question them? I don't know.

19 MS. PETERS: Service members, members
20 of the JAG Corps, after a trial, due to a limited
21 voir dire of the panel, panel members, you could
22 go back to the Services and see if we have leeway

1 there.

2 CHAIR HOLTZMAN: Oh, yes, that would be
3 useful. I mean, at least whatever their
4 information is, it would be helpful. I mean, you
5 know, there's some big questions that are raised
6 here that the military, you know, that military
7 members are more vulnerable in the military
8 justice system. What needs to be done -- I mean,
9 is that the right outcome, is there some problem,
10 is something wrong going on here, and then
11 question about is the Marine Corps an outlier or
12 not and then these disparity issues.

13 DR. SPOHN: So someone who is charged
14 with an Article 120 offense but convicted of a
15 non-sex offense would not have to --

16 MS. PETERS: Register.

17 DR. SPOHN: Only upon conviction.

18 CHAIR HOLTZMAN: Right. And people
19 know that, so how does that factor into their
20 decision-making?

21 MR. STONE: And one other question is
22 whether we simply want to pose those questions or

1 whether we can get even a little pilot data
2 feedback before we have to write a final report on
3 the data because we can't wait until August to
4 write it, so we'll have to, you know, see what you
5 think is plausible in a quick turnaround or maybe
6 even from your current data in response to some of
7 these questions so that -- I mean, some of these
8 things I think we're just going to be able to pose
9 some questions that maybe the follow-on panel
10 would want to consider and we just leave it that
11 way.

12 MS. PETERS: If I could add, with
13 respect to talking with panel members, I don't
14 want to over-promise because there's a number of
15 logistical hurdles and there might be legal
16 hurdles, as well, the signals I'm getting over my
17 shoulder from some of our helpful service
18 representatives are that there may be a --

19 CHAIR HOLTZMAN: It's not permissible,
20 right?

21 MS. PETERS: -- are that it may be a
22 difficult bridge to cross, yes.

1 CHAIR HOLTZMAN: Okay. So that's not
2 permissible, but there may be, if they're doing
3 voir dire, maybe some of that information could be
4 something you could begin to look at and see
5 whether that information is something you want to
6 factor into any kind of future examinations. But
7 think hard about the military status and the
8 outlier status of the Marine Corps.

9 MR. TAYLOR: One reason that I
10 mentioned the possibility of some sort of survey
11 document or instrument together with qualitative
12 data from military judges is because this might be
13 something the military judges themselves are
14 unaware of.

15 CHAIR HOLTZMAN: Right.

16 MR. TAYLOR: So it may be that, as part
17 of simply asking the question and having them
18 think about it, you'll improve the process.

19 CHAIR HOLTZMAN: Right. So that may be
20 something, that might be another thing, what kind
21 of a survey could we send out, could it be done
22 quickly, and how much time could that take?

1 How should we proceed? Should we take
2 our lunch break now and maybe come back afterwards
3 and see whether we have any further questions, or
4 are we finished with our panel?

5 MS. PETERS: We have appellate data for
6 you, as well.

7 CHAIR HOLTZMAN: Oh, okay. So then we
8 should take a lunch break now. Thank you. What
9 is it, a half-hour? Okay, 45 minutes. Okay,
10 thank you.

11 (Whereupon, the foregoing matter went
12 off the record at 12:29 p.m. and resumed at 1:28
13 p.m.)

14 CHAIR HOLTZMAN: Okay. Dr. Spohn, are
15 you ready to get back into the hot seat? Are we
16 going to need you for the second part of this?

17 MS. PETERS: It's me, ma'am.

18 CHAIR HOLTZMAN: Oh, okay. So Ms.
19 Peters.

20 MS. PETERS: Thank you, members.
21 Before we begin, we just received a written
22 response from the Department of Defense in regards

1 to those questions I referenced that we had asked
2 them about the JPP recommendations, and so there's
3 a two-page letter from the Undersecretary of
4 Defense for Personnel and Readiness or the person
5 performing the duties of, and that two-page letter
6 was just placed in front of you for reference.

7 CHAIR HOLTZMAN: What else is it that
8 has to be presented?

9 MS. PETERS: The appellate data, ma'am.

10 CHAIR HOLTZMAN: Oh, okay. So are you
11 ready to do that?

12 MS. PETERS: Yes, ma'am.

13 CHAIR HOLTZMAN: Great. Where is that?

14 MS. PETERS: In front of you -- well,
15 I'm sorry. Within the same slide presentation
16 that I began originally, we were at slide 12.

17 CHAIR HOLTZMAN: And that's called the
18 court-martial statistics?

19 MS. PETERS: Yes, ma'am.

20 CHAIR HOLTZMAN: Okay. This is page
21 what?

22 MS. PETERS: Twelve.

1 CHAIR HOLTZMAN: Okay.

2 MS. PETERS: And the reason we're
3 bringing you appellate decision data was because
4 the statutory asks, again, asks for the number and
5 description of incidences when punishments were
6 reduced or set aside on appeal and the incidences
7 in which the defendants appealed following a plea
8 agreement, if such information is available.

9 CHAIR HOLTZMAN: Okay.

10 MS. PETERS: And I just put a slide in
11 here to note that the Service Courts of Criminal
12 Appeals have jurisdiction over cases in which the
13 sentence included either a bad conduct discharge
14 or a dismissal or a dishonorable discharge or one
15 year or more of confinement. So those are the,
16 that's the jurisdictional threshold to get to a
17 criminal court of appeals, unless the Service TJAG
18 otherwise wanted to refer the case to the CCA.

19 So what we did for the panel is we
20 gathered cases reviewed by the Criminal Courts of
21 Appeals that involved a conviction under Article
22 120 or Article 125 that involved adult victims or

1 attempts to commit those offenses. And we looked
2 at all types of issuances from the Service Courts
3 of Criminal Appeals, so that includes cases
4 whether or not an opinion was issued or it was a
5 summary disposition, it was maybe affirmed without
6 an opinion. We were able to look at all of that
7 information.

8 MR. STONE: About your first comment,
9 if the sentence includes confinement for more than
10 one year as a result of a guilty plea, does it
11 still go up to the military Courts of Appeal?

12 MS. PETERS: Yes, sir. We were able to
13 look at those types of cases, and so I will have
14 information on that for you.

15 So we did two things. We looked at the
16 opinions that were publicly available on the
17 Service courts' websites separately. Cases that
18 were summarily affirmed are not necessarily hung
19 on the website. The Services had to provide that
20 to us.

21 And so here is a breakout of the
22 decisions of the court by Service. The first

1 column is the military Service court that issued,
2 or the Service of the court that issued the
3 decision. Please note that the Marine Corps and
4 the Navy both fall under the Navy and Marine Corps
5 Court of Criminal Appeals. Their numbers, in
6 particular, I'm going to go back and talk to each
7 of the Services about because a Navy convening
8 authority and a Navy JAG can try a Marine, just as
9 a Marine prosecutor and a Marine convening
10 authority can try a sailor, and that blending does
11 happen in these cases. So how you attribute a
12 case to what Service, we're going to go back and
13 verify that.

14 Nonetheless, the first column that you
15 see with the numbers in bold contain cases in
16 which a sex assault conviction was reviewed and
17 relief was granted, meaning either the sex assault
18 conviction was set aside or there was some type of
19 sentence relief. The second column will show you
20 all of the sex assault convictions reviewed in
21 which no relief was granted related to the
22 findings of guilt of sexual assault or the

1 sentence that resulted from the case. And in the
2 third column, we just tallied the body of work
3 that each Service corps had in terms of review of
4 sexual assault cases.

5 CHAIR HOLTZMAN: Do you have a
6 percentage? I know it's easy to calculate but .
7 . .

8 MS. PETERS: Yes, ma'am, we can work on
9 that. I just didn't include that in here.

10 CHAIR HOLTZMAN: Yes, okay.

11 MS. PETERS: Where relief was granted,
12 most of those cases involved the setting aside of
13 a charge or specification. And the most typical
14 reason, in fact in the majority of the cases in
15 which a conviction for a sex assault offense was
16 set aside involved an unreasonable multiplication
17 of charges, meaning the same conduct was charged
18 multiple ways resulting in these duplicative
19 findings of guilt. And so in most cases, there
20 was a finding of guilt to a sex assault offense
21 that survived appellate review, but one of the
22 second or third versions of that same charge were

1 dismissed, and that often did not, in and of
2 itself, result in a reduction in the sentence.

3 There were a few cases in which the
4 cases were found to be factually insufficient and
5 a handful in which the post-trial processing of
6 the case was so delayed that the CCA granted
7 sentencing relief. And, again, that had nothing
8 to do with the sex assault offense per se, but we
9 have a unitary sentence. It does mean that the
10 sentence of confinement that the person is serving
11 is going to be reduced. So we thought we should
12 reflect that in the data we provide you. But,
13 again, it had nothing to do with the sex assault
14 offense itself. It was a separate issue that
15 affected the whole case.

16 CHAIR HOLTZMAN: Could you explain the
17 improper admission of MRE 413 evidence? Why would
18 that cause a reduction in sentence?

19 MS. PETERS: I'm sorry. That was for,
20 that caused a conviction to be set aside.

21 CHAIR HOLTZMAN: Oh, okay.

22 MS. PETERS: I may have presented that

1 out of order and it seemed unclear, but, in that
2 particular case, the conviction was set aside.

3 CHAIR HOLTZMAN: Just one case?

4 MS. PETERS: Yes, ma'am, there was only
5 one case out of all the cases reviewed.

6 CHAIR HOLTZMAN: I got confused. This
7 is not 412?

8 MS. PETERS: No, this is another,
9 evidence of another sex assault offense that was
10 uncharged.

11 CHAIR HOLTZMAN: Okay.

12 MR. STONE: Isn't there a fairly
13 standard body of law, talking about the
14 unreasonable multiplication of charges, about
15 which offenses merge into what offenses? In the
16 non-military context, it's fairly standard.
17 Everybody knows, after they get the verdict, well,
18 wait, this has to merge into that, judge, and this
19 merge into that. The judges actually know.
20 Something like that is not in the judge's
21 handbook?

22 MS. PETERS: Without undertaking a

1 really detailed analysis, at least a portion of
2 those cases, the judge at the trial level had
3 merged the offenses for sentencing purposes,
4 meaning there were two findings of guilt but you
5 said you were only going to sentence as if it was
6 one conviction and the appellate court said that
7 was an inadequate remedy. So that's one way that
8 this could happen.

9 VADM TRACEY: What's a UCI?

10 MS. PETERS: Unlawful command
11 influence. And that's the appearance of unlawful
12 command influence.

13 MR. STONE: Well, it says in counsel's
14 argument, you mean it was an improper argument?

15 MS. PETERS: Yes, sir.

16 MR. STONE: Okay.

17 MS. PETERS: Closing argument.

18 CHAIR HOLTZMAN: Okay. Do you want to
19 proceed?

20 MS. PETERS: Okay. The other portion
21 of the task actually asks, in the cases in which
22 an accused pled guilty, they said, pursuant to a

1 plea agreement, if that was reviewed on appeal, in
2 how many of those cases was relief granted? We
3 didn't find any cases, except for two in the Army
4 in which someone pled guilty but, afterwards, due
5 to, again, lengthy post-trial processing, they
6 were just granted a small amount of sentencing
7 relief. And so I noted those two cases occurred
8 in the Army, and they were decided in the Army in
9 2015, and that's really the only time that's
10 occurred. So, in essence, guilty pleas are not
11 being granted relief on appeal.

12 MR. STONE: I'm not sure I get,
13 following up on the last question, I'm not sure
14 that I get how unlawful command influence in
15 counsel's arguments ought to work. In a closing
16 argument, the prosecutor would have said this
17 conviction needs to be found because of the --

18 MS. PETERS: Service's law on sexual
19 assault, for example, something that --

20 MR. STONE: So a prosecutor going too
21 far --

22 MS. PETERS: Yes, sir. And I don't

1 want to be over-inclusive. There were other
2 errors in the argument. That might have been one
3 of the primary ones that drew the court's
4 attention. But it is possible to convey the
5 command's prerogative in a trial counsel's
6 argument in an improper way that would convey that
7 the commander wants you to find a certain way
8 because his priority is to do X. And I'm not
9 saying that that's, per se, what this person said.
10 That's theoretically how an argument could amount
11 to the appearance, and only the appearance, of an
12 unlawful command influence from a public
13 perception standpoint.

14 MR. TAYLOR: Yes, I'm somewhat familiar
15 with that case, having read about it. But I think
16 it was a situation where counsel argued that
17 because of a larger problem that the military was
18 having. So as Ms. Peters said, it was sort of
19 appealing to a problem in general. That's what
20 led to the --

21 MR. STONE: Okay. It wasn't a specific
22 --

1 MR. TAYLOR: I don't think it was a
2 specific, no.

3 MR. STONE: Okay.

4 MS. PETERS: And I've given you, this
5 is the guilty plea data. And that really is the
6 extent of the appellate data and, before moving on
7 to the next topic, I should note that when we
8 reviewed the decisions from the Court of Appeals
9 for the Armed Forces, the military's highest
10 court, there was only one case issued in 2015 that
11 we found where there was relief granted in a sex
12 assault case, and it was for an unrelated reason.
13 There was an improper denial of a panel member
14 challenge by the defense, and the Court of Appeals
15 for the Armed Forces found that that denial was
16 improper and it warranted setting aside the
17 conviction.

18 There are just a few items to wrap up
19 beyond appellate data, and that is one of the
20 tasks asked you to reflect on punishments rendered
21 in the military compared to punishments rendered
22 in federal and civilian, federal, civilian, and

1 state civilian courts. We did not provide you any
2 new federal or state data in this presentation.
3 And the reasons are sort of highlighted on these
4 slides, but we found, and it's in your data report
5 from last year, relatively few federal sex abuse
6 cases had enough similarities to really warrant
7 comparison with the military. The numbers were
8 very few and had a number of other differences.

9 There have been no new state-level
10 studies on a nationwide basis. So what we brought
11 you last year was one study from the Bureau of
12 Justice Statistics. We contacted them again, is
13 this being updated, have you updated your study in
14 any regard, and the answer was no. And so I think
15 the best nationally-representative information is
16 the information you considered in your last data
17 project.

18 Finally, because the first task said
19 we'll get case dispositions to include courts-
20 martial, non-judicial punishment, and the adverse
21 administrative actions, again, based on the staff
22 and the panel's experience last year, we did not,

1 at least for this presentation, bring you any
2 information to review. We do not have records of
3 non-judicial punishment or administrative actions,
4 and our system is a document-based system so that
5 we can verify whether a sex offense was involved
6 and what happened to it.

7 These records, for a host of reasons on
8 the slide, are just very difficult, if not
9 impossible, to obtain on a systemic reliable
10 basis, and so we did not bring those to you for
11 today.

12 And last year, we looked at the SAPR
13 annual report. We found it difficult to take the
14 information from the SAPR report and really
15 address your tasks, so we declined. We have not
16 done the same review of the SAPR report for you
17 this year.

18 CHAIR HOLTZMAN: And that question, I
19 mean, is there some reason that we couldn't ask
20 DoD to try to create better records with regard to
21 alternative administrative action? Is that an
22 inappropriate request?

1 MS. PETERS: No, if what you want is
2 the way they're willing to provide the
3 information. If they, if we want to accept raw
4 numbers and summaries that they provide us that we
5 don't have the documents for, that's one approach.
6 But it is, each year, I think, the Services'
7 systems are more accustomed to these types of
8 requests for information, and so they adjust
9 appropriately. But generally speaking, we're not
10 familiar, from our research last year, we're not
11 familiar with a very accessible system that the
12 Services have for readily pushing or pulling those
13 numbers for us and finding the cases and giving
14 you the level of detail that you might need. That
15 would be my concern.

16 We can always ask, but the answer lies
17 in the difficulty that they will have in pulling
18 the information. And from our experience, I think
19 it would be very difficult to find, again, in a
20 sufficient level of detail, that you would have
21 something to analyze.

22 I should note that last year nearly

1 all, 99 ½ percent probably, of the non-judicial
2 punishment cases involved contact offenses. So we
3 were able last year to determine that these
4 alternate, these lower forms of disciplinary
5 action did not involve the more serious rape or
6 sex assault allegations.

7 MR. STONE: I might ask whether you
8 might find out whether you could get this data if
9 you first asked or suggested application of a
10 program of the type that I know the District of
11 Columbia now is talking about using where, when
12 that program is run on data such as Privacy Act
13 data, it automatically strips out -- they use a
14 very sophisticated program. It strips out all
15 names, all the addresses, all the Social Security
16 numbers, and it sort of does the redacting on its
17 own, so you're left with data but data that can't
18 be attributed to an individual. And I think it's
19 called the Criminal Coordinating Committee of the
20 District of Columbia was looking at these programs
21 because they want to put more of their victim data
22 online, but they want to be sure the victim's name

1 is not in there, the victim's address, phone
2 number, you know, and not just victim data but a
3 lot of their court data, they want to make it
4 available without violating the Privacy Act.

5 And until recently, they said these
6 programs have been getting more sophisticated
7 almost by the, you know, even less often than
8 every year. They keep coming out with new
9 versions because there's a big demand for them as
10 things get to be electronic.

11 So maybe you could find out whether
12 either we could supply or they could get a program
13 like that to anonymize the personnel records, and
14 then they would be in a position not to violate
15 the Privacy Act by giving you, you know, lots more
16 data and numbers. I know most people aren't
17 thinking about that, but that's the newest
18 technology out there.

19 CHAIR HOLTZMAN: But, Mr. Stone, I
20 think the issue is not just that they're worried
21 about the Privacy Act. I think it's more
22 fundamental, which is the records aren't centrally

1 maintained. And who knows what records they
2 maintain, and who knows what their destruction
3 document management system. So it's really kind
4 of fundamental, which is what about getting a data
5 system in place to record the non-judicial
6 punishments? Is that a recommendation we could
7 make? Would it make sense to make?

8 MS. PETERS: Yes, ma'am, absolutely.
9 Yes, I mean, there's no reason, I see no
10 organization-related reason why you couldn't ask
11 if they maintain that data. They just simply
12 don't right now.

13 CHAIR HOLTZMAN: Collect it and
14 maintain it and maintain it in a form that's
15 easily accessible and that may --

16 MS. PETERS: So that it would --

17 CHAIR HOLTZMAN: Because, otherwise,
18 what do we say to Congress? I mean, we have a
19 task that says, you know, tell us about what's
20 going on with non-judicial punishments, and we
21 can't answer it. I mean, I think the reason we
22 can't answer it is because they don't have the

1 data.

2 MS. PETERS: Because DoD's SAPR program
3 collects this information in one form, maybe the
4 DoD speaker could address this in more detail
5 about ways that they could adjust or expand their
6 information collection because they're doing it
7 very close to realtime, and they could possibly do
8 it differently in such a way that actually gives
9 you comprehensive data.

10 Right now, when someone is disciplined,
11 they only allow the Services to log in, it says
12 this in the text of the SAPR report, one action.
13 Any time someone gets a non-judicial punishment
14 and it's separated, which is a very common
15 pattern, they will only allow the Services to call
16 that one thing or another. So it's either going
17 to be a non-judicial punishment most likely, and
18 the separation then won't be recorded in the case
19 outcome.

20 And the DoD may be able to provide
21 further detail on that, but those were the
22 limitations we encountered last year. But could

1 adjustments be made to that system? Very
2 possibly.

3 CHAIR HOLTZMAN: How do you all feel
4 about making some kind of a recommendation?
5 Should we wait to hear from the DoD people first?

6 MR. STONE: I guess I'd first like to
7 see a request that, if we were able to employ one
8 of these particularity-stripping programs, do they
9 have a system in SAPR or the others that we could
10 use for the query. If they say no, then yes, then
11 we recognize that they do it. But they may be
12 saying no because they don't think that their big
13 systems can give us stuff without violating
14 Privacy Act, and that stuff is out there now.

15 CHAIR HOLTZMAN: I don't think that's
16 the issue. I think she just said that they're
17 not, they only collect data, they don't collect
18 full data on a case. So if somebody is both
19 separated and given some non-judicial adverse
20 administrative action, in addition to separate,
21 they don't collect both items, they only collect
22 one item. So we're not getting a complete

1 understanding of what happens in that --

2 MR. STONE: Oh, I thought they weren't
3 sharing --

4 CHAIR HOLTZMAN: No, no, no, no,
5 they're not collecting.

6 MR. STONE: They're not collecting it,
7 or they're not sharing it?

8 MS. PETERS: For every case, DoD SAPR
9 requests that the Services provide one
10 disciplinary action, whether it be court-martial,
11 non-judicial --

12 CHAIR HOLTZMAN: And no matter how many
13 disciplinary actions they've taken. So this is a
14 bigger issue.

15 MS. PETERS: And they take a summary.
16 They do not take the copy of the documented action
17 itself. Not to mention, they do not have control,
18 should that Service member leave the Service, his
19 records may not rest with the unit or with the
20 Service any longer. There are personnel record
21 centers scattered throughout the country for the
22 various Services, but you need a name and a social

1 typically to request a record and that person's
2 permission. So there's a host of issues in doing
3 it in a document-based way when you look at the
4 full scope of the project if you wanted to do it
5 consistently.

6 MR. STONE: Do you think they could
7 review all disciplinary personnel records for
8 other than honorable discharges with a program
9 that stripped out names and --

10 MS. PETERS: I can't speak to that,
11 sir. I don't know --

12 MR. STONE: Okay. It just may be a
13 question just before we make our recommendation.
14 I mean, if the answer is no the answer is no. but
15 it would be nice, I guess, to know that.

16 CHAIR HOLTZMAN: So then we will
17 reconsider this issue about how to deal with DoD's
18 record collection on these kinds of cases after we
19 hear from our next panel. Well, thank you very
20 much, Ms. Peters.

21 MS. PETERS: Yes, ma'am.

22 CHAIR HOLTZMAN: We really appreciate

1 your helping us here. And our next presenter is
2 Dr. Nathan Galbreath.

3 CAPT TIDESWELL: We're about 40 minutes
4 ahead of schedule. Dr. Galbreath is en route. He
5 should literally be here any minute.

6 CHAIR HOLTZMAN: So who else is here?

7 CAPT TIDESWELL: The other speaker is
8 Kathy Robertson.

9 CHAIR HOLTZMAN: Is she here?

10 CAPT TIDESWELL: I think she's with him
11 so . . .

12 CHAIR HOLTZMAN: Oh. So we have, I
13 guess, a 40-minute break, a half-hour break?

14 CAPT TIDESWELL: They should be here
15 any minute so . . .

16 CHAIR HOLTZMAN: Oh, so --

17 CAPT TIDESWELL: They're en route.

18 MR. TAYLOR: Could I just ask a
19 question --

20 CHAIR HOLTZMAN: Yes, sir.

21 MR. TAYLOR: -- while Ms. Peters is
22 still here and since we have time? It appeared to

1 me that part of the purpose in having or asking
2 our Chair to provide additional people who were
3 going to testify today was basically get an update
4 on what happened to our recommendation last year
5 in which we recommended basically the same thing
6 we're talking about now, pointing out that DoD
7 does not collect sufficient adjudication data to
8 fully assess and then recommending that they go
9 ahead and develop some kind of process to do this.
10 And it appeared to me that the answer, just on
11 quick read, is really no answer at all, except to
12 a couple of specific sub-bullets having to do with
13 the timing of the report from the FAP, the Family
14 Advocacy Program or whatever it stands for, and
15 the SAPR.

16 So maybe you could just help us, as a
17 staff member, Ms. Peters, understand what you
18 think is happening here. I mean, why aren't we
19 getting the answer to the question, if you have
20 any idea?

21 MS. PETERS: I think, because the RSP
22 and the JPP have highlighted, both highlighted the

1 issue of the FAP and SAPRO data, basically, that
2 there are cases missing from the SAPR report, it's
3 been on their radar screen, and I know that it was
4 addressed, I know that, sadly more than what's in
5 their answer, that it was addressed in the FY 17
6 NDAA that FAP and SAPR were just now going to
7 issue their reports simultaneously. One of those
8 reports, the Family Advocacy Program report, will
9 still not contain legal disposition information.

10 I'm not sure I can provide you anymore
11 insights.

12 CAPT TIDESWELL: That would be an
13 excellent question for Dr. Galbreath.

14 CHAIR HOLTZMAN: Well, the other point
15 is do they have the capacity to collect this
16 information now; and, if not, why haven't they
17 been able to do it?

18 Well, as long as we're waiting here,
19 are there any further questions we want or any
20 further determinations we want to make with regard
21 to the testimony that Dr. Spohn gave us before in
22 terms of information that they might have, she

1 might prepare for us for our next meeting so that
2 we could determine whether we want to make a
3 recommendation? Panel members, do you have any
4 thoughts about that?

5 VADM TRACEY: Since we asked about a
6 number of things, some of which we thought might
7 be able to be determined and others we weren't
8 sure, are we going to address all of those, or
9 what's the plan?

10 CHAIR HOLTZMAN: Yes. Well, Dr. Spohn,
11 what do you think you can do, like, tomorrow?
12 Just joking. I mean, how quickly do you think you
13 could provide us with any of this information or
14 any of the responses to our questions, if you've
15 had a chance to think about --

16 DR. SPOHN: Yes, I can certainly parse
17 out some of the questions or answer some of the
18 questions you had about whether the Army is an
19 outlier. I can run the analysis different ways
20 and answer that question.

21 You had asked about the pay grade by
22 disposition. That I can easily do and add to the

1 narrative report.

2 I think the problem with the guilty
3 pleas is that, when I looked at the data, they
4 would plead to some things but not others. And so
5 the question then is is that a guilty plea or not?
6 If they go to court-martial on some of the
7 charges, but they plead to others, how does one
8 categorize that kind of a case?

9 VADM TRACEY: I think, though, that we
10 would benefit in that case, I think we'd benefit
11 from picking out of analysis those cases that
12 actually never went to a trial because of the way
13 the plea was done and understand what happens for
14 those cases that go to trial differently from
15 those -- because right now I think the numbers are
16 confounded by cases that never went to trial,
17 right?

18 For instance, the Marine Corps numbers
19 really stick out as different. And if you assume
20 that there's some number of cases that were pled
21 in the convictions, then the number of cases that
22 they actually went to trial and the cases were won

1 at trial becomes quite small.

2 CHAIR HOLTZMAN: Yes. Maybe you can
3 get a trial conviction rate for us, too.

4 DR. SPOHN: Okay.

5 CHAIR HOLTZMAN: I don't know if that's
6 of any interest to anybody else, but it might be
7 useful.

8 DR. SPOHN: I think that's a little
9 more difficult but doable.

10 CHAIR HOLTZMAN: All right. Whatever
11 is not -- I mean, I think, obviously, we have very
12 serious time constraints. So it seems to be
13 doable from your point of view would be great.

14 DR. SPOHN: You also asked about the
15 judge versus the panel.

16 CHAIR HOLTZMAN: Right.

17 DR. SPOHN: And in terms of outcomes,
18 particularly sentences, that's easy to do.

19 CHAIR HOLTZMAN: Okay. That would be
20 great.

21 VADM TRACEY: All that data so far only
22 characterizes the FY 15 data, right?

1 CHAIR HOLTZMAN: Right.

2 VADM TRACEY: And our task is to
3 actually talk about trends?

4 MS. PETERS: Yes, ma'am.

5 VADM TRACEY: Do we have a plan of
6 attack to talk about trends?

7 MS. PETERS: Our limitation was the
8 information available beyond the year 2012. The
9 information available was so slim and difficult to
10 come by, we might not have enough cases to make
11 the analysis meaningful. Therefore, I defer to
12 Dr. Spohn on whether three or four years with what
13 we have now is adequate or what she would
14 recommend.

15 I mean, I don't believe that we could
16 collect any more than we did.

17 VADM TRACEY: Agreed. Can you parse
18 the '12 to '14 data into '12, '13, '14, and then
19 you have four data points?

20 DR. SPOHN: Except there's the overlap.
21 Some of these cases are in both data sets.

22 MS. PETERS: It will take several weeks

1 more to parse things out by a concrete year '12,
2 '13, and '14, and '15 final disposition date. So
3 we are, I'm not sure when we, if we'd be able to
4 accomplish that in time for you to look --

5 MR. STONE: Maybe you could, even with
6 the overlap, just write on the name in the table
7 this includes overlap. In other words, these are
8 numbers we have for this year, but it includes
9 overlap from the prior year, this one includes
10 overlap -- in other words, if they all include
11 overlap, I think it would still show something of
12 a trend.

13 CHAIR HOLTZMAN: Would it? Well,
14 you're the expert statistician. Would it, can we
15 make a trend out of the numbers we have?

16 DR. SPOHN: Based on four years? Well,
17 a short trend. You're just talking about outcome
18 data, right? Convictions, acquittals, dismissals
19 by year, or are you talking about something more
20 complicated where it's by military Service by
21 year?

22 VADM TRACEY: It would certainly be

1 interesting to understand whether the Army's
2 results in '15, which are substantially different
3 from others, were also substantially different in
4 '14, '13, and '12, or is the Army doing something
5 differently now based on the changes to the
6 judicial proceedings and ending up in a higher
7 conviction rate? I mean, I think that's the
8 question that the people who formulated the panel
9 would like to get their arms around. Maybe we
10 can't. Have things changed, and did they change
11 in a direction you would have wanted them to
12 change?

13 MR. TAYLOR: I guess one of the
14 questions that we talked about, I think, in the
15 first couple of meetings of this panel was, even
16 if they did, what would you be able to conclude
17 from it, given the different standards used for
18 the criminal offenses at different points in time?
19 So I think that's what makes this so difficult is
20 you have so many variables that it's very
21 difficult to say that, even if you can show, and
22 I've got some of my statistician friends that do,

1 what does it take to make a trend, and it was
2 pretty much your answer. Are you talking about a
3 short term or a long term, you know?

4 So I think all we're going to be able
5 to say is this is what we could find, without
6 characterizing it one way or the other, is much of
7 a trend and subject to all the limitations that
8 we've discussed here today.

9 MR. STONE: And the two things that I
10 would ask, if you can do it quickly with the data
11 you have, is, one, on some of that data about
12 civilian and military victims, if you can drop out
13 all of the intimate partner ones and give us a
14 good, I mean, and see if that changes the result.
15 And the other thing that somebody sort of refined
16 for me, maybe I was using the wrong language,
17 during the lunch break was whether or not we could
18 compare some of these outcomes by deployment
19 versus non-deployment location of offense because
20 they said they thought maybe you had the location
21 of the offense in each one and would help the
22 Committee just say, okay, these are all deployment

1 locations, these are non-deployment locations, do
2 we see a difference? Maybe we'll see none, maybe
3 we'll see a huge difference. But I think that
4 would be an interesting comparison, too.

5 MS. PETERS: Dr. Spohn doesn't have
6 that particular data because we retain, the staff
7 retains the charge sheets, and we did not record
8 the location for each offense from the charge
9 sheet into the database. In other words, in order
10 to find out where each offense was located, we
11 probably have to build a new framework into the
12 database and pull all that information one by one
13 in each case --

14 MR. STONE: It can't be queried from
15 what's in there now, the data in there?

16 MS. PETERS: Correct. We cannot look
17 at offenses deployed and offenses not deployed
18 right now.

19 CHAIR HOLTZMAN: And the other thing
20 that I think would be really helpful to have from
21 you is what additional information we need to
22 understand the issue of why military victims are,

1 I mean, cases involving military victims have
2 worse outcomes from the point of view of higher
3 acquittal rates, and was it the sentences, too?

4 Yes. Why are those cases, in a way, being
5 apparently treated less seriously by the military
6 justice system? What else needs to be looked at
7 so that we could help provide a roadmap both to
8 Congress, the Secretary of Defense, and others to
9 understand and try to get a better handle on this
10 issue because this is really, it seems, the first
11 time that we're identifying something that could
12 be worth looking at.

13 Although, the other question comes
14 about, and this, of course, thanks to the
15 Admiral's concern about trends, I mean, was this
16 the case, is this the first time we've noticed
17 this? I mean, have we looked at this before? Was
18 this a problem in 2012, '13, '14, or we just
19 didn't have enough data or -- but, anyway,
20 whatever the story is, I think that if you could
21 help us think through what additional information
22 we need, how we might get it, I think that would

1 be a useful, very helpful to us, so that we could
2 then begin to pass that on to people who might be
3 able to do something about it.

4 MR. STONE: What did we use to find
5 those offenses in the 48, the 50 states and
6 territories? We must have had some data point
7 when we had that table about offenses in the 48
8 states and territories. I don't know if that can
9 be tweaked to help with deployments. It may not
10 even be that compared to all others; I don't know.
11 But maybe there's something there you could use.
12 I just throw it out for you guys to think about.

13 MS. PETERS: Okay. Thank you, sir.

14 CHAIR HOLTZMAN: Okay. I think I saw
15 Dr. Galbreath here. So is there something else
16 you want to suggest to us, Dr. Spohn, that we can
17 look at?

18 DR. SPOHN: No, I think I have all I
19 can do tomorrow.

20 CHAIR HOLTZMAN: Okay. So thank you
21 both very, very much for your help on this and for
22 the good important work you did on this issue.

1 Okay. Should we take a two-minute
2 break, or is Dr. Galbreath ready to go? Oh, okay.
3 Yes, we're ready. Thank you.

4 Welcome, Dr. Galbreath. This is,
5 you're a glutton for punishment. As I say, you've
6 been here many times, and we appreciate it every
7 time you've been here. Thank you, Ms. Robertson,
8 for your presence here, and we welcome your
9 testimony.

10 I just want to say my own personal time
11 frame has changed a little bit. I've got to
12 catch, I've got to leave here by 3:30. So if you
13 could compress and --

14 DR. GALBREATH: Happy to compress.

15 CHAIR HOLTZMAN: Thank you. I'd be
16 grateful. Of course, I have my colleagues who
17 could continue without me. So please proceed. I
18 don't know who wants to go first.

19 DR. GALBREATH: Kathy, would you like
20 to go first?

21 MS. ROBERTSON: I have one slide.

22 CHAIR HOLTZMAN: Okay.

1 MS. ROBERTSON: Good afternoon. Thank
2 you for this opportunity. Kathy Robertson. I'm
3 the OSD Family Advocacy Program Manager, and I was
4 here previously to talk about the Central
5 Registry. And I feel better than I look, so, if
6 you look at my face at all, I think the sidewalk
7 won and I lost in Quantico. But other than that,
8 I'm ready to start.

9 Okay. Next slide is -- I've got one
10 whole slide. I really do appreciate the
11 opportunity to be here. I'm just here to talk to
12 you about domestic abuse-related sexual assaults,
13 which is the sexual abuse of military spouses and
14 intimate partners. And I know that that is your
15 purview and what you're looking at.

16 So we included domestic abuse-related
17 sexual assaults, and they're covered in the
18 advocacy program. In the SAPRO report last year,
19 we had just included preliminary data, FY 15,
20 because the time lines were different. And so
21 then we also included them in our annual report,
22 which came out later in the summer.

1 So after that time, we did a memo
2 informing the military departments we need to
3 adjust our time line for all of our data to be
4 released at the same time as SAPRO from now on.
5 So we did our report on time this year, and it
6 will be released simultaneously with the Sexual
7 Assault Prevention and Response Office. So we
8 worked closely on this together.

9 I talked to you before when I was here
10 previously that all of our FAP data is captured by
11 the military Services and clinical case management
12 systems, and then 46 discrete elements are sent to
13 DMDC, which houses our FAP Central Registry, our
14 DoD FAP Central Registry. And to give you a
15 little background, the FAP Central Registry is not
16 a live database, like DSAID. It is really a
17 repository, it's a static repository that's not --
18 so we pull it to do our annual report, we pull it
19 to do media queries, but we don't have it in our
20 office. We don't have any assistive data in our
21 office. It's only maintained at DMDC.

22 The Family Advocacy Program has been

1 here since 1981, and so we're really a treatment
2 rehabilitation program. So we do not collect, nor
3 have we recorded, any rule adjudication or
4 investigations. Those are separate and parallel
5 processes from the Family Advocacy Program, and
6 those processes still go on. We just don't have
7 that data in our report.

8 Just basic background, FAP is
9 responsible for the prevention, identification,
10 reporting, and treatment of both victims and
11 offenders. So, again, our main goal is prevention
12 and rehabilitation and helping military families
13 and Service members, if they've had an incident,
14 get the treatment that they need so they don't
15 have a further incident in the future.

16 And every one of our cases is
17 immediately referred to law enforcement. We
18 determine whether it's reviewed by military
19 criminal investigators, if it rises to the federal
20 level, or it's kept at the local law enforcement
21 level. And then, of course, commanders consult
22 with legal. So those processes still go on,

1 there's still command actions, there's still legal
2 adjudication for domestic abuse-related sexual
3 assaults and other FAP incidents. We just don't
4 report it as a part of the Family Advocacy
5 Program.

6 CHAIR HOLTZMAN: Okay. Any questions?

7 MR. STONE: Is your data Privacy Act-
8 protected data; do you know? I mean, when they
9 make a request, do you say, under the Privacy Act,
10 we can't release anything?

11 MS. ROBERTSON: We do have some PII,
12 but DMDC houses it. And we have a lot of media
13 inquiries. We've had quite a few, and so we've
14 worked with them to give them what they need
15 without the parameters that we're releasing any
16 confidential PII information, so they can't
17 identify the victim, the location, or the
18 offender.

19 MR. STONE: Do you have any statistical
20 tools internally that you use to see how many
21 people came in and how many complaints there were
22 and how many were resolved?

1 MS. ROBERTSON: Yes, that's all in our
2 Central Registry. So in our FAP data reports, we
3 show that we have like 15,000 reports of domestic
4 abuse, and domestic abuse-related sexual assaults
5 are four percent of that total number, out of
6 those 15,000, we have what we call an incident
7 determination committee, which is about the
8 clinical disposition, whether or not it meets the
9 standardized definition of maltreatment. We use
10 a decision tree algorithm that's standardized
11 across the Services. And so out of those, like,
12 15,000 in 2015, I think it was like 7900 met
13 criteria to go in our Central Registry and met
14 criteria for maltreatment.

15 We brief Congress every year on the
16 public domain, and so we do the whole breakout
17 with how many offenders are Service members, how
18 many are family members or civilians, how many of
19 these cases are domestic abuse or domestic abuse-
20 related sexual assault, how many were physical
21 abuse, how many were emotional abuse. So we do a
22 lot of the statistical information you're asking

1 for that annual report.

2 MR. STONE: But am I guessing that you
3 only see people who come to you, so you might well
4 only have half of the total number of cases if the
5 other half didn't come to your program? Is that
6 right? In other words, they're not obligated to
7 come to your program?

8 MS. ROBERTSON: Correct, sir. We know
9 what is reported to FAP, and it's either reported
10 to us from command or medical, law enforcement,
11 or, if the incident happens in the local civilian
12 community, we have MOUs with the local civilian
13 services in between military and civilian law
14 enforcement. And so if the civilian law
15 enforcement notifies military law enforcement and
16 notifies command, then it's reported to FAP and we
17 do a clinical assessment with both the offender
18 and the victim.

19 So you're correct we know what's
20 reported to FAP, but we think we're getting quite
21 a few of them because we have a real good
22 relationship with the civilian communities with

1 the MOUs and to the civilian court system because,
2 if someone is connected to domestic abuse and are
3 in the civilian community, they would go to a
4 family court that we would also know about that
5 that was a military member.

6 MR. STONE: So would you get in your
7 database not only the cases where the people
8 wanted to go forward but also the ones who made a
9 restricted report? Do you think you have a mix in
10 there with restricted and unrestricted, or do you
11 just have unrestricted?

12 MS. ROBERTSON: We do unrestricted.
13 Thank you for the question. We have a similar
14 form, same thing as SAPRO, where victims of
15 domestic abuse are given the opportunity to do
16 restricted or unrestricted reports of sexual
17 assault or domestic abuse. But we are different
18 from SAPRO in the way that the majority of our
19 victims come in and really want to stay in that
20 relationship and they want their offender, who
21 they're living with, to get treatment and to get
22 command support for treatment. So we have a very

1 small percentage of restricted cases in our
2 domestic abuse.

3 MR. STONE: And the data you have, I
4 don't know if you already have or you could make
5 it available for the statistical people on our
6 staff to see if there's any way they could de-
7 conflict to see, to the extent that it makes any
8 sense, that it matches? They may well recognize
9 you have a subset, but then there may be areas
10 where you have more numbers than them, which would
11 cause us to want to be more, take a second look at
12 our own data. In other words, you may have more
13 ideas than they have been able to find by the
14 other reporting services which they look at. Is
15 it possible to share data?

16 MS. ROBERTSON: Oh, certainly. We can
17 release our FY 2015 report, and then, as soon as
18 our FY 2016 report is released, that will be in
19 early May --

20 MR. STONE: Well, actually, I meant
21 sort of the electronic files, not just reports, so
22 they could see if they could do matching or --

1 MS. ROBERTSON: We do an aggregate
2 report. We don't do it by Service and we don't do
3 it by -- ours doesn't have the legal adjudication
4 data, so it's not showing the incident information
5 that you're used to seeing in the SAPRO report.

6 MR. STONE: No, I understand that. But
7 it has defendants, it has, you know, people, the
8 victims.

9 MS. ROBERTSON: Yes, we roll it all up
10 in an aggregate. So we say how many victims and
11 how many offenders do we have, and, of those
12 victims, how many were family members, how many
13 were active duty. I'm not sure what we have,
14 given what you're looking for, but I'd be happy to
15 forward you our report.

16 CHAIR HOLTZMAN: Can I just follow-up
17 a little bit on this? I think one of the things
18 that we're trying to understand is is the data
19 that we're getting about your system as
20 comprehensive as the data that we're getting from
21 SAPRO? In other words, if we look at all of the
22 sexual assaults in the military, whether they are

1 intimate partners or whether they've never seen
2 each other before, are we going to get the same
3 information written up in some form, you know,
4 where the trial took place, what happened at the
5 trial, what happened in the, what the sentence
6 was, and all the rest of that? Where is that
7 information located?

8 MS. ROBERTSON: Ma'am, no, we don't
9 have that.

10 CHAIR HOLTZMAN: You don't have that.

11 MS. ROBERTSON: We never --

12 CHAIR HOLTZMAN: Do you have that?

13 DR. GALBREATH: Not for domestic, not
14 for intimate partner.

15 CHAIR HOLTZMAN: Okay. So we have a
16 big gap still with regard to the legal
17 surroundings of the domestic violence cases or
18 sexual assault of intimate partners.

19 MS. ROBERTSON: Yes, ma'am --

20 CHAIR HOLTZMAN: So how are we going to
21 get --

22 MS. ROBERTSON: -- Services have it,

1 but it's collected by each Service and there's no
2 one --

3 CHAIR HOLTZMAN: There's no standard?
4 Okay. So somehow I think we talked about this
5 before, but when it is ever going to happen that
6 we're just going to have, if I want to find out
7 how many sexual assaults took place in the
8 military, regardless of whether it was an intimate
9 partner or a non-intimate partner, how do I get an
10 answer to that very question? Can I get an answer
11 to that question, or do I have to look in one
12 place for one thing and then add it up to another
13 thing?

14 DR. GALBREATH: With your
15 recommendation last year, you have a very good
16 number. With the number that we report and then
17 in the appendix of the SAPR report, you have the
18 number of reports involving intimate partner.
19 That's about 250.

20 CHAIR HOLTZMAN: Okay.

21 DR. GALBREATH: So you add that 250 to
22 my number --

1 CHAIR HOLTZMAN: Okay. So we'll have
2 to add that. But is there any other information
3 that you have in your report about not intimate
4 partners, Dr. Galbreath, that is not contained
5 about intimate partners? So is the intimate
6 partner, I know the total number might be there,
7 but what else, but is there anything there that we
8 should be having that's not there now with regard
9 to intimate partners? I mean, in other words,
10 will we get a report that's comparable to your
11 report about intimate partners?

12 DR. GALBREATH: We've talked to Mr.
13 Kurta about that, performing the duties of the
14 Undersecretary of Defense Personnel and Readiness,
15 and his response to us is that, yes, we're looking
16 at that, but how we might view that is still pre-
17 decisional for the department.

18 CHAIR HOLTZMAN: What does pre-
19 decisional mean?

20 DR. GALBREATH: It means that we're
21 still --

22 CHAIR HOLTZMAN: Thinking about it.

1 DR. GALBREATH: -- thinking about how
2 we'll best do that.

3 CHAIR HOLTZMAN: And do you know how
4 long it takes to think about such a subject?

5 DR. GALBREATH: I do not.

6 CHAIR HOLTZMAN: You do not. Okay. Do
7 we have to make another recommendation about this
8 subject?

9 DR. GALBREATH: I don't think you need
10 to make another one. They have the
11 recommendation, and they're looking at a number of
12 ways to do this.

13 MR. STONE: But the way you think,
14 today, we can get the best number would be, can
15 you just sort of --

16 CHAIR HOLTZMAN: The number they have,
17 the only number that you can get is the total
18 number, the total number of cases in the FAP
19 system and total number of cases in the non-FAP
20 system. Anything else that you want about the FAP
21 system is not, there's no number there, so you
22 can't add it to their number. Is that a fair

1 statement?

2 DR. GALBREATH: So if you want the
3 disposition information --

4 CHAIR HOLTZMAN: Yes.

5 DR. GALBREATH: -- you're correct.

6 CHAIR HOLTZMAN: Okay. So, I mean,
7 that's the problem.

8 MR. STONE: With disposition, you mean
9 sentence, or do you just mean even guilty/not
10 guilty?

11 DR. GALBREATH: All the above.

12 CHAIR HOLTZMAN: We don't have any of
13 that. That's the point.

14 DR. GALBREATH: I don't have that in my
15 data. She does not have that in her data.

16 MR. STONE: But what I was asking
17 before was, in each of your datas, are there
18 proper names that could be run against the other
19 data we have in like a de-confliction? When you
20 have a two mailing lists, you can run a de-
21 confliction program and come out with one and get
22 rid of all the duplicates.

1 DR. GALBREATH: Right. So I read Dr.
2 Spohn's analysis, and so bottom line is you have
3 a different bucket of cases from the Services than
4 what I do because they included FAP cases in Dr.
5 Spohn's analysis. But, yes, if Dr. Spohn has a
6 subject name and a social that we can run, then we
7 can line up our data with the analysis that you've
8 done and so you can see where it's overlapped and
9 --

10 MR. STONE: Or at least be able to say
11 we have no cases that you don't have or, yes, we
12 do, we've got 100 cases you don't have.

13 DR. GALBREATH: You give me the names
14 and the Socials, and I can do that.

15 MS. ROBERTSON: And we'd have to put in
16 a request to DMDC and get the Service central
17 registries.

18 MR. STONE: Maybe all -- at a first
19 step, I think that's terrific because, if we have
20 all those cases, then we don't have to make
21 anybody jump through hoops in their organizations
22 to give us more. If we find there's a difference,

1 then I think, certainly, that raises a question
2 that we would want to say, okay, somebody
3 somewhere figured out how to solve the difference.

4 CHAIR HOLTZMAN: Why aren't the
5 Services giving you that information? I mean,
6 where did we get the information from? We got the
7 information because the Services gave it to us.
8 Why aren't they giving that to you?

9 DR. GALBREATH: Our data collection
10 mandate from Congress is sexual assault by and
11 against Service members under the SAPRO program.

12 CHAIR HOLTZMAN: Oh, I see. So you're
13 not allowed to ask them for that information. It
14 exceeds your jurisdiction.

15 DR. GALBREATH: That's correct.

16 CHAIR HOLTZMAN: But we could because
17 --

18 DR. GALBREATH: Yes, ma'am.

19 CHAIR HOLTZMAN: I see. Okay. But the
20 point is, after we go out of existence, like in
21 September, there isn't going to be any way to
22 match up this information, okay? So that's a

1 problem here. We have a systemic fundamental
2 problem which we identified the last time, which
3 is that there's no database for the FAP cases
4 similar to the database that you have for the non-
5 FAP cases.

6 DR. GALBREATH: Yes, ma'am, correct.

7 CHAIR HOLTZMAN: I'm trying to
8 articulate it --

9 DR. GALBREATH: You got it right.

10 CHAIR HOLTZMAN: It took a few hours to
11 get there. Sorry about that. And you say that,
12 and the answer from the military is they're
13 working on it, they're thinking about it. It's
14 still pre-decisional --

15 DR. GALBREATH: It is.

16 CHAIR HOLTZMAN: -- which is quite a
17 wonderful phrase, yes.

18 MS. ROBERTSON: But they definitely
19 know you have the recommendation. It's definitely
20 in discussion. We're not trying to hold back
21 information.

22 CHAIR HOLTZMAN: No, no, no, no, we're

1 not, no one is accusing you of --

2 MS. ROBERTSON: It's just the structure
3 of how our program is focused on rehabilitation,
4 and we've never imported it.

5 CHAIR HOLTZMAN: Right. And so nobody
6 is really focused on how do you get a
7 comprehensive report of all of this stuff, which
8 I understand is fair. Nobody focused on it
9 before, but we did focus on it -- when was it? A
10 year ago?

11 DR. GALBREATH: And there was action
12 taken to --

13 CHAIR HOLTZMAN: Right. So we've moved
14 a little bit.

15 DR. GALBREATH: We have.

16 CHAIR HOLTZMAN: But we haven't moved
17 --

18 DR. GALBREATH: Haven't gotten there
19 yet.

20 CHAIR HOLTZMAN: No. I mean, you might
21 even say we're only 25 percent of the way there.

22 Okay. I'm sorry. I'm taking --

1 anybody else have any questions for Ms. Robertson?
2 Otherwise, we'll go to Dr. Galbreath.

3 MR. STONE: I would just ask if they
4 and the staff can coordinate to do that kind of a
5 run because if it turns out every Social and name
6 that they have is stuff that we already have, I am
7 a lot less concerned about them being pre-
8 decisional. If there's a lot of non-overlap, then
9 I think it's a bigger concern. Maybe --

10 CHAIR HOLTZMAN: There is no overlap.
11 There can't be any overlap in the end because they
12 don't collect the data. That's the point. Yes,
13 they don't have the names and Socials. We're
14 giving them the names and Socials. That's the
15 point. They don't collect it. They're not
16 allowed to collect it. That's what the
17 conversation we just had --

18 MR. STONE: Then do a match then.

19 CHAIR HOLTZMAN: I would imagine if --

20 DR. GALBREATH: If you give me Dr.
21 Spohn's data system or at least names, subject
22 names and Socials, yes, I can tell you the extent

1 to which her database will overlap with mine. But
2 I will tell you right now that if it's a Family
3 Advocacy intimate partner sexual assault,
4 automatically my system will not have that
5 information. We only capture sexual assault cases
6 and case dispositions taken in under the Sexual
7 Assault Prevention Response program on each
8 installation.

9 MR. STONE: I understand that. I guess
10 I just still want to see the overlap, to the
11 extent, to the extent that you can say something
12 intelligible to us about the overlap. If you say,
13 no, we can't match them up, that's fine and you'll
14 tell me that. If you say we can only match up
15 this or that or we would need this or that, that
16 would be fine. But, you know --

17 DR. GALBREATH: We can do that. If I
18 can resort to a psychological explanation and say,
19 if I have Venn diagrams, I can tell you the degree
20 to which your system overlaps with mine. And so
21 there will be quite a bit of overlap with what Dr.
22 Spohn did. But I can already tell you that the

1 part of the Venn diagrams that aren't overlapping
2 will be those FAP cases in Dr. Spohn's analysis.

3 CHAIR HOLTZMAN: You won't have them.
4 You can't have them.

5 DR. GALBREATH: I don't have them. So
6 I can tell you I've got 89 percent or 84 percent
7 of everything that Dr. Spohn looked at, and that
8 piece that didn't, we'll have to figure out why.

9 CHAIR HOLTZMAN: But we know what's not
10 in your system because --

11 DR. GALBREATH: You do.

12 CHAIR HOLTZMAN: -- we know what we got
13 from you and we know what we got from the
14 Services. So we don't need you to tell us what we
15 didn't get from you. We know that already.

16 DR. GALBREATH: Okay.

17 CHAIR HOLTZMAN: I think Meghan's
18 shaking her head.

19 MS. PETERS: Yes. Each one of our
20 cases ties to a line number in the FY 15 SAPRO
21 report. The other cases were coded specifically
22 to distinguish them as the Family Advocacy cases.

1 DR. GALBREATH: I didn't know you guys
2 did that. Okay.

3 CHAIR HOLTZMAN: So, we know that
4 already. So the only thing we need is a system
5 that's somehow going to get the same kind of
6 information you get for SAPRO about the family
7 assistance program cases.

8 And that we can't get from you right
9 now because you don't have the authority to do it.

10 DR. GALBREATH: That's correct.

11 CHAIR HOLTZMAN: Unfortunately. I
12 know, as Dickens said, Barkis is willing. In
13 other words, SAPRO is willing to do that if it had
14 the authority to do it.

15 Okay. Dr. Galbreath, can you -- I'm
16 sorry, we kind of stole your thunder. I'm sure
17 you have some other information to give us so
18 please proceed.

19 DR. GALBREATH: Yes, ma'am. So, if you
20 want to put up my waterfall chart. Just to step
21 through that very quickly.

22 And just to kind of remind you what's

1 in each of our buckets as we're going forward.

2 We did make a couple of changes. As
3 you all know, up until FY '13 we in the SAPRO
4 office were largely at the mercy of the Services
5 to report out the case dispositions that they had
6 on sexual assaults every year.

7 This was a process that in the Air
8 Force, in my 21 years in the Air Force we have a
9 phrase that we're building the plane as we fly it,
10 and that's exactly the kind of process that
11 happens.

12 So, just briefly to remind you, in 2004
13 SAPRO's annual reports only captured the number of
14 reports that were made.

15 And then we didn't have restricted
16 reporting in those years.

17 And in addition to that we only had
18 very high-level numbers about so many cases
19 referred to court-martial, or to non-judicial
20 punishment, or other adverse actions.

21 Over that time -- I got to SAPRO in
22 2007 and so we started to try to kind of make

1 sense of chaos with regard to -- I tried to use my
2 criminal investigative background to understand
3 all the outcomes.

4 And so with the assistance of the DoD
5 Inspector General and the DoD Office of General
6 Counsel I constructed the waterfalls that you have
7 in front of you.

8 Now, these have changed over time quite
9 a bit since when we first tried to do this in
10 about 2009-2010. Actually, I think the first time
11 we did this was about 2011.

12 But nonetheless these have really kind
13 of changed because now that we've automated this
14 with DSAID we've been able to make this -- have
15 greater visibility over the data.

16 And up until 2013 we relied on the
17 Services to report out their information.

18 In years 2013 and before I don't
19 necessarily know. I have great confidence that
20 what was reported to us was as accurate as it
21 could be at the time, but we didn't have any way
22 to kind of dig into the data, and clean it, and

1 make sure that it was being reported in a
2 standardized way across all four Services.

3 So, now with the advent of DSAID we
4 can. And we have -- 2016 will be the third year
5 that we have data in DSAID.

6 Now that I have trend data for three
7 years I am slowing the wheels of progress so that
8 we can stop and look at what we have and
9 understand how we're counting all of the data.

10 And so that's I think an important
11 thing from your perspective because what you all
12 want to know is what's the validity of the data
13 that we have in the system. So, yes, working on
14 that now.

15 So, what you see in front of you is
16 essentially the number of reports that we got in
17 '15. Again, 6,083 reports is substantively the
18 level of reporting that we saw in years prior to
19 2012.

20 And the reason we strongly believe that
21 we had an increase in the reporting is largely
22 because the Secretaries of Defense, the

1 Secretaries of the military departments and the
2 Joint Chiefs all got together, this went onto
3 their radar and they really started to put the
4 heat on this problem to get some solutions in
5 place.

6 So between 2012 and 2013 we saw a 54
7 percent increase in reporting. And then this
8 number here 6,083 is well above, almost 72 percent
9 above what we saw in 2012.

10 So, again, a sustained high level of
11 reports and our number of reports actually for '16
12 -- I'm not supposed to say but it is going to be
13 above this number even more.

14 So, we're very pleased because of the
15 connection between making a report and giving
16 access to care and Services provided by the
17 department.

18 Whether it's an unrestricted report
19 where you're going to participate in the justice
20 system, or whether it's a restricted report where
21 you're going to confidentially access care and
22 Services in order to put your life back together

1 after the devastating event.

2 So as you see out of our 6,000 some
3 reports we had about 4,600 some unrestricted
4 reports and about 1,500 some restricted reports.

5 As you know there will be no
6 adjudication of those restricted reports unless
7 people choose to convert.

8 Here's some new and interesting
9 information about restricted reporting. Everybody
10 wants to know how long does it take on average for
11 someone to convert their report from restricted to
12 unrestricted, and the answer is between 30 and 45
13 days.

14 The vast majority of people that are
15 going to convert do it within the first month and
16 a half of making their report.

17 We've gone back and we've taken a look
18 to see, well, after I snap the chalk line on
19 September 30 for this data how many more
20 percentage points of people will convert after
21 that date? And the answer is only about 2 or 3
22 percent.

1 So, again, most people if they're going
2 to convert do it within the first 30 to 45 days,
3 and then after that very, very small numbers of
4 people convert after that point in time.

5 CHAIR HOLTZMAN: Where do I see the --
6 this is your material, right?

7 DR. GALBREATH: Yes, ma'am.

8 CHAIR HOLTZMAN: Where do I see the
9 comparative numbers year by year? Do you have
10 that in here?

11 DR. GALBREATH: Yes. Well, the
12 comparative numbers year by year is actually in
13 the -- are in the figures that the staff wanted me
14 to talk about. But I kind of presumed that they
15 would have those here since they asked me.

16 CHAIR HOLTZMAN: Okay. But they're not
17 in your --

18 DR. GALBREATH: They're not there.

19 CHAIR HOLTZMAN: Okay.

20 DR. GALBREATH: I'm sorry.

21 MR. STONE: Before you leave the
22 restricted reports, if you had to guesstimate just

1 based on prior years and what data you see of
2 these roughly 1,500 reports how many would you on
3 average pretty much turn out converted? Is it 1
4 percent, 2 percent? Overall. Of the 1,500.

5 DR. GALBREATH: So, this is actually
6 post-conversion for most people.

7 MR. STONE: Okay.

8 DR. GALBREATH: So that year about 20
9 percent of folks converted. So we started out the
10 year with probably closer to about 1,700 some
11 restricted reports and on average people are
12 converting at a much higher rate than they ever
13 used to.

14 Early years of SAPRO program was about
15 13-14 percent a year. Now we're at a good 20
16 percent. And so that we think is good progress.

17 We're continuing to watch that to kind
18 of see how quickly.

19 What we're finding is that over the
20 three years of data I have in DSAID I'm finding
21 that people are converting more quickly.

22 In other words, '14 took about -- a

1 little bit longer than '15, and '16 is taking even
2 less time than '15 and '14.

3 MR. STONE: So that's a trend.

4 DR. GALBREATH: It's a bit of a trend,
5 yes, it is exactly what it is. My folks are still
6 working on it, but the average has come down by
7 about a day on average. So it's moving.

8 Anything else about restricted reports?

9 Okay.

10 So, what you have -- something else
11 that's new in this waterfall that you've not seen
12 before are points G, H, and I.

13 What we've found is that with the
14 direction of the change to DoD Instruction 5505.18
15 which is the Department of Defense Inspector
16 General's instruction telling the military
17 criminal investigators what to do when they get a
18 sexual assault.

19 They told them that they had to review
20 every allegation of sexual assault for
21 investigative purposes.

22 We were finding that -- we found in '14

1 that there was no way to kind of account for that
2 review process.

3 Not every single case is within their
4 jurisdiction and not every single case comes to
5 them in a prima facie way to be able to say yes,
6 indeed, this is something that we should be
7 investigating as a sexual assault.

8 So what you see in the waterfall now,
9 G, H, and I are some factoring out of a number of
10 cases where if an allegation comes in as a sexual
11 assault and then they look at it and they say we
12 don't see any elements of proof here as a sexual
13 assault. We cannot open the case. We factored
14 out about 145 cases. So those are reports,
15 individual reports that have come in.

16 Now, regardless of whether or not these
17 cases are factored out of our waterfall or not
18 folks that are making these reports, if they're a
19 victim, if they've signed a 2910 they're eligible
20 for care and services from a SARC, special victims
21 counsel or whatever they need in order to recover.
22 But it just might be outside their jurisdiction.

1 In addition there were 11 cases here
2 where the MCIOs at the outset said sorry, this
3 report is for something prior to your military
4 service and the subject is not subject to the
5 UCMJ. We can't investigate.

6 However, in those cases they connect
7 those folks with the jurisdiction appropriate to
8 the allegation.

9 The next one down is a matter outside
10 an MCIO jurisdiction. And this is a bucket of
11 cases where, again, it would probably be somewhat
12 similar to the prior to service situation that
13 someone's come in.

14 Cases that are in here are, for
15 example, if someone is traveling to a foreign
16 country where we do not have relationships with
17 the host nation and something happens to them
18 while they're there, there's no investigation
19 possible because we don't have a relationship with
20 that.

21 One of the cases for an example was
22 someone was vacationing in the Republic of China,

1 mainland China, and they reported a sexual assault
2 that occurred to them while they were at a massage
3 spa. And there was nothing that the MCIOs could
4 do. We just don't have that kind of relationship
5 with the government of China to investigate. So
6 it's that kind of case.

7 So what we're trying to do with those
8 three buckets is getting a closer accounting now
9 so that we can account for all of the cases that
10 come in to the department.

11 And we're discovering things as we go,
12 especially over the last three years where we're
13 getting closer and closer where we know exactly
14 where -- we can count every bean that goes into
15 the bucket here. And so we want to make sure that
16 we're accounting for everything that Congress told
17 us we needed to.

18 I'm not going to try and make your
19 brains hurt with the math here, but if you want to
20 just go to point N what I can tell you in point N
21 is the number of subjects, dispositions that we
22 had to report out to Congress.

1 As you know or you might recall every
2 year my cases as far as case dispositions go are
3 a cross section of what occurred, or at least what
4 was reported as finishing up in the year that I'm
5 talking about.

6 So, in FY '15 the Services told me that
7 they had about 3,386 dispositions to tell me about
8 in DSAID. And that's where I begin to do my
9 waterfall chart to kind of show you where things
10 kind of wash in and wash out with regard to what
11 happens next.

12 One of the things that I've just
13 recently begun to look at is something that in
14 reading Dr. Spohn's analysis and also talking with
15 your staff, beginning to take a look at why is it
16 that we -- that it looked like in your bucket of
17 cases that you all were looking at you might have
18 had duplicate records and duplicate things.

19 And so I began to look at our data, and
20 my team and I that do this.

21 And what we found is that we
22 constructed DSAID to do exactly what the law told

1 us to do which is provide a case disposition for
2 every single criminal investigation that was done.

3 The interesting thing is that I am at
4 the whim of the military criminal investigative
5 organizations to report out how they have packaged
6 a case.

7 And so, for example, I'll give you an
8 example out of here, one of the subjects, in other
9 words one person, one human body accounted for 15
10 separate investigations.

11 And that was because OSI decided to
12 open up one case per victim despite the fact that
13 they just had one subject perpetrating all 15
14 alleged crimes.

15 So, for them that makes sense and
16 that's -- as an OSI detachment commander I might
17 have done that. I might not have. But
18 nonetheless that's within their jurisdiction and
19 I don't get to comment on that other than say wow,
20 that makes my life difficult.

21 That being said, I now have a duty to
22 you and to Congress to maybe go beyond what I was

1 told to do and to collapse it down to what are we
2 talking about with regard to human bodies.

3 So, some of the work that I've done
4 with my team, we had been looking at over the past
5 couple of months is that if I were to report to
6 you what I have in each of these buckets are
7 dispositions of criminal investigations related to
8 subjects. Not necessarily a one to one subject
9 count. So that's why we see some duplication.

10 That being said, we're only over by
11 about 89 dispositions. It's a very small number.
12 And it's basically 64 unique subjects had
13 duplicate dispositions.

14 Those duplicate dispositions could be
15 a good call. They could be a fair call.

16 For example, if you had two separate
17 investigations, one for an abusive sexual contact
18 and one for a sexual assault you could receive an
19 NJP for that abusive sexual contact at an earlier
20 time depending on what happens.

21 If that happened in the year and that
22 came open. And then you were court-martialed for

1 this penetrating crime of sexual assault it makes
2 sense and logic that you would appear twice in our
3 buckets because you have the outcome of the court-
4 martial and you have the outcome of the non-
5 judicial punishment. That's fair.

6 What's not fair, what's hard to
7 understand is when you have a court-martial that
8 accounts for one subject's behavior with 15
9 different victims and 15 different cases. Then
10 our numbers get a little bit inflated with that.

11 But what I could tell you is that,
12 again, a very small number, this is less than
13 about 3 or 4 percent of our overall number that we
14 reported.

15 MR. STONE: That last example where you
16 have 1 defendant with 15 victims, did that get
17 reflected as 15 in here or 1?

18 DR. GALBREATH: So, in this version we
19 didn't know that this was going on until I had my
20 team dig in and make some new data rules for
21 cleaning this.

22 In here it's going to count as 15

1 because I'm counting 15 dispositions.

2 We're thinking about -- clearly I don't
3 think that's what Congress wanted to know. They
4 wanted us to account for all the dispositions, but
5 tell us what happens to every accused.

6 And that's the thing where we're now
7 looking at our three years of data that we have,
8 what can we do to make sure that what we're
9 reporting makes sense and it's not just following
10 the letter of the law.

11 So, we're going back and we're taking
12 a look.

13 The other thing that I've done with the
14 team is instead of this cross-sectional look which
15 is what you get when we snap the chalk line on
16 September 30 every year.

17 We've gone back and we've done the
18 longitudinal look. In other words, the
19 longitudinal is that in 2014 there were 6,131
20 reports of sexual assault.

21 My analysis for that year, now I've
22 gone back -- and we can account for all 6,131

1 reports because it's been about 2 or 3 years since
2 we got that data.

3 That's probably the most helpful
4 information that you guys would have. It's not on
5 the schedule that many of our leadership and our
6 decision-makers want because it takes two to three
7 years to get for all of these cases to flow
8 through the system.

9 But it's probably the most valid of
10 everything that you could do because you know in
11 a year's time if we receive a sexual assault
12 report you have a common denominator all the way
13 through. And that's the 6,131, what happens to
14 each one of those as you go through.

15 This data that you're looking at in
16 front of you, there's a break, and that's
17 represented by the black box of criminal
18 investigation.

19 There's a break between what was
20 reported to us by victims and the dispositions
21 that were ready to report.

22 As you know, these dispositions include

1 things that were opened and concluded in FY '15 as
2 well as cases that were opened in previous years
3 and concluded in FY '15. That's the cross-
4 sectional approach that we're talking about.

5 So, my recommendation at some point is
6 -- well, what we're going to do whether we're told
7 to or not is in SAPRO we're going to be issuing
8 some additional follow-up information, whether
9 it's with the annual report or some other time,
10 but when we are fairly confident that we've got
11 most of a given fiscal year's cases accounted for
12 we're going to be going through and updating the
13 numbers to reflect what all happened to all these
14 cases in a given year.

15 Again, it might be two years, it might
16 be three years later, but that I think is probably
17 the most useful.

18 Then we can really talk about, okay, of
19 this number after we subtract out our restricted
20 reports what happened to all those unrestricted
21 reports because all of those unrestricted reports
22 should have a case disposition in the system

1 somewhere. And that's my goal to be able to do
2 and that I don't think anybody else in the country
3 can do right now. And I think that that would be
4 very informative for everybody.

5 So, any questions about that before we
6 press on and I rapidly conclude?

7 MR. STONE: I guess I don't really
8 understand frankly why it would make so much
9 difference to do it by fiscal year even if you
10 have to wait two or three years.

11 I don't mind understanding that the
12 numbers you're giving me have to do with
13 dispositions in this year that came from a prior
14 year and that some are held over.

15 I mean, I don't think there's any
16 company that can look at its inventory or sales
17 and not have carryovers from one fiscal year to
18 the next. So I understand in terms of discrete
19 numbers it's a little easier to get, but I don't
20 know. I'm fine seeing you tell us how many are
21 carried over and how many dispositions are from a
22 prior year.

1 I mean, that disposition is still
2 happening by judges or whatever in the year I'm
3 looking at. And their trial probably has too.

4 DR. GALBREATH: And to respond to you
5 and your not minding that, I'll have that data for
6 you.

7 But I also think, and it might be my
8 own personal obsessive compulsiveness, I want to
9 know what happens to all those cases.

10 And I think from a research standpoint
11 you get a different answer whether you look at
12 cross-sectional or longitudinal.

13 And so I will tell you right now my
14 initial look into the FY '14 data is that there's
15 not a whole lot of difference.

16 For example, the percentage of cases
17 going forward that I reported to you in FY '14 was
18 about 76 percent of the subjects under the DoD
19 authority to take some kind of action received
20 some kind of action based on -- were
21 substantiated. And they received some kind of
22 disciplinary action.

1 When I look at it longitudinally that
2 number goes to about 69 percent. Of course that
3 also reflects additional information that comes
4 through and things, but it's not that big of a
5 difference.

6 But I still think it's a difference
7 worth noting and looking at. So.

8 So that's one thing. So if we go to
9 the next slide, please. And if we start at that
10 point N at the top, again, of those 3,400 or so
11 subjects of investigation we had dispositions for,
12 a good portion of those every year are outside the
13 legal jurisdiction of the department.

14 And so again, at point 0 you see that
15 offenders, we had about 418 subjects where the
16 offender is unknown.

17 We had 111 subjects that were civilian
18 and foreign nationals that were accused of
19 perpetrating crimes against active duty members.

20 We had about 12 subjects where they
21 died or deserted. In this case we have 12
22 dispositions in that bucket for deaths of subjects

1 in point Q.

2 And then in point R we have our number
3 of active duty folks that were prosecuted by a
4 civilian or foreign authority. And they exercised
5 their jurisdiction and the department ceded that
6 to them.

7 So that leaves in that year about 2,783
8 subjects that were under the legal authority of
9 the department.

10 If you turn to the next page under
11 point S we'll just continue that on down.

12 At the very top there are three main
13 buckets that I'll call your attention to. It's T,
14 W, and X, and I'll walk you through each one of
15 those.

16 Under point T is the evidence supported
17 commander action in these cases. In other words,
18 the department had the jurisdiction and the
19 evidence to take some kind of action for a subject
20 accused of a sexual assault. Doesn't necessarily
21 mean that the adjudication was for a sexual
22 assault, but the matter was investigated as sexual

1 assault.

2 And I'll talk about those in just a
3 second.

4 Over on point W is where our command
5 action was precluded. And that means that we
6 could not move forward due to largely evidence
7 problems.

8 And then under point X is our unfounded
9 by command legal review. This basically means
10 that evidence existed to prove that either the
11 crime did not occur, or the accused did not commit
12 the crime.

13 And that is based on both a legal
14 review by a staff judge advocate and a commander
15 agreeing with that review.

16 And so one of the things that changed
17 this year was how we accounted for these cases.
18 If you recall the Army had a separate accounting
19 system for their unfounded cases.

20 This was the first year that the
21 department went a singular accounting system for
22 unfounded cases.

1 And essentially what we took a look at
2 is it looks like those cases were really less
3 unfounded and more insufficient evidence types of
4 situations than anything else. And so that's
5 where a lot of those cases ended up is in that
6 bucket of insufficient evidence of any offense to
7 prosecute.

8 I'll let the Army tell you about that
9 themselves, but that's the high-level story about
10 what was going on there.

11 And so this kind of reflects the legal
12 process of the department where a commander upon
13 review of case with their staff judge advocate is
14 making a decision about whether to go or to not
15 go.

16 So if we go back to point T I'll tell
17 you that we have about 2,013 subjects where we
18 could substantiate the allegation.

19 And we agreed as the department the
20 Congress said you all need to come to an agreement
21 about what "substantiated" means.

22 And so we all agreed if we had

1 sufficient evidence to take some kind of action
2 regardless of whatever that action was, that's our
3 substantiation point.

4 And so the next bucket underneath that
5 are the cases where we were able to take action
6 for a sexual assault charge of some kind. And
7 those are the 120 offenses that you all know
8 about.

9 And of course in that bucket are 926
10 subjects that -- where court-martial charges were
11 preferred.

12 Underneath that about 300 subject
13 dispositions for non-judicial punishment, 95
14 subjects for administrative discharges, and then
15 other adverse actions would be general officer
16 memorandums of reprimand, letters of reprimand,
17 things like that. Or not letting somebody
18 reenlist or things along those lines.

19 So, one thing I did want to make sure
20 that I made clear is under that court-martial
21 charges preferred I told you about the case with
22 the 15 different victims.

1 So, I asked my team to take a look
2 inside that bucket. And what we found is that 42
3 subjects had more than 1 disposition in that
4 bucket.

5 And so I asked them if we were to kind
6 of subtract out, how many of those dispositions
7 should we subtract out.

8 And so about 61 out of that 926 are
9 multiple dispositions because we're counting the
10 way Congress told us to, by disposition.

11 So, not off by much, but I think it's
12 helpful to understand the difference.

13 And then if you go down to point V
14 these are the cases where there wasn't sufficient
15 information to prosecute the sexual assault, but
16 there certainly was to take some kind of action
17 against other misconduct.

18 So that could be Article 128 simple
19 assault, it could be false official statement, it
20 could be adultery, it could be whatever else the
21 evidence backed up. And of course that's the
22 drilldown there.

1 In these cases you'll notice that there
2 is a proportionate difference of the number of
3 court-martials taken. Usually we have non-
4 judicial punishments in these buckets more than
5 anything else, and court-martial charges are
6 actually fairly few and far between there.

7 And then if we go up to bucket W we had
8 697 subjects where command action was precluded.
9 The victim declined to participate in a justice
10 action.

11 That basically meant that we had 257
12 subject cases where the victims declined to
13 participate in that case.

14 Interestingly enough since about 2011
15 or so that percentage has stayed about 9 percent
16 of all of the cases.

17 Even the past couple of years, and as
18 a matter of fact 2016 is going to be about 9
19 percent as well. No movement in that case.

20 And so we're still watching that to
21 kind of whether or not there's an intervention
22 that we might do to be able to reduce that. We're

1 watching that from the aspect of the special
2 victims counsel, victim legal counsel. But again,
3 we're still in kind of a watch mode to see what
4 occurs with that.

5 MR. STONE: Is there any kind of a
6 voluntary questionnaire that gets sent out to
7 those people to see if they want to answer and
8 explain why they backed out?

9 DR. GALBREATH: Not yet, not directly.

10 What I would tell you is that we are
11 surveying victims that are participating in the
12 military justice process and one of the things
13 that we've included in that survey is if your case
14 did not go forward what's the reason.

15 And one of those would be is because I
16 didn't want to participate anymore.

17 The challenge is that the numbers that
18 I get are only a couple of hundred of folks want
19 to answer that survey. And so I don't have really
20 any good empirical data. It's just whoever
21 happened to respond to the survey.

22 So we're still trying to figure out

1 ways to tap into understanding that.

2 The challenge is that victims want to
3 get on with their lives. And when we go back to
4 them in this way it can be re-traumatizing and
5 upsetting for folks. And so we have to think
6 very, very carefully about balancing our want to
7 know versus their privacy and their need to get on
8 with life.

9 So, we're thinking about how do we do
10 that in the most thoughtful way we can.

11 And that really kind of concludes the
12 walk through the waterfall there. Any questions
13 about any of that?

14 CHAIR HOLTZMAN: I just have a question
15 about -- maybe it's not this waterfall, but back
16 further where you were talking about reasons for
17 not going forward.

18 Somewhere in the back of my mind I'm
19 seeing a number that's closer to 10 percent of the
20 number of reports that are made that cover sexual
21 assaults that took place before entrance into the
22 military.

1 DR. GALBREATH: That is correct.

2 CHAIR HOLTZMAN: Is that number holding
3 up?

4 DR. GALBREATH: It is. It's actually
5 very consistent as well.

6 I am actually very surprised to see how
7 consistent our numbers are in these buckets where
8 I thought -- I just kind of guessed that there
9 might be more movement. But you're right.

10 And most of those cases though are
11 restricted reports. And that's why we see a
12 smaller number under the unrestricted reports.

13 CHAIR HOLTZMAN: Well, probably because
14 it took place in the past and possibly they're
15 looking for medical or psychological help.

16 DR. GALBREATH: Yes, ma'am.

17 CHAIR HOLTZMAN: Are you able to probe
18 those numbers in any way, or is this just
19 speculation?

20 DR. GALBREATH: Not really. Let me put
21 it this way. We created restricted reports with
22 the idea that people would have a number of

1 different experiences that could be addressed with
2 that, that would help them keep it private. And
3 that was one of our goals.

4 So we don't keep personal identifying
5 information about restricted reporters. So even
6 if I got hit with a subpoena tomorrow in DSAID you
7 would not know who the restricted reporters are
8 because I don't.

9 If you'd like we can go kind of quickly
10 on. Time is of the essence. And then I'll just
11 stop and ask for any more questions unless you
12 have something else you want to go to.

13 But if we were to take a look at the
14 court-martial outcomes for FY '15 that were
15 reported to us we start off with in the top
16 lefthand corner of this chart with 926 subjects.

17 Again, not all cases that were reported
18 to us. In other words, they came to an
19 investigative conclusion, but they're not all the
20 way through the court system. So I have about 113
21 subjects that are pending.

22 And my team is very good about

1 following up on that. And so as those conclude
2 they are included in future reports to Congress.

3 The 813 subjects that had go forward,
4 of those about 67 percent proceeded to trial in
5 some way. So, in other words they made it past an
6 Article 32 if there was one and then they went
7 forward to an actual trial.

8 Down underneath that we have the RILOs
9 and the DILOs. So that's the resignation in lieu
10 of court-martial for officers or the discharge in
11 lieu of court-martial for enlisted folks. That
12 accounts for about 20 percent of cases.

13 And as you know in order to be in that
14 bucket the accused needs to make a statement that
15 says there's probably enough information to
16 convict me here, or at least I acknowledge that
17 there's evidence out there to my detriment and so
18 I would rather be able to be discharged or
19 resigned in lieu of that court-martial.

20 And so it's as close to a guilty plea
21 as you can get without a guilty plea I guess as
22 it's explained to me.

1 And then in addition to that we had
2 about 111 subjects where court charges were
3 dismissed at any point in the proceeding. So,
4 whether that was at the 32, or right before the
5 32, or after the 32, that's where those folks go
6 at our cut point.

7 If you go up to the top again to the
8 proceeded to trial bucket in that same column
9 we're going to follow the lines and go to the
10 right. And we're going to look at the convicted
11 of any charge at trial.

12 And we had about 76 percent convicted
13 of any charge. So that means it could have been
14 a sexual assault charge or it could have been any
15 other misconduct for which they were charged.

16 And I would tell you right now that
17 that's -- we have an additional analysis that I'll
18 leave with you all to take a look at with regard
19 to how all those broke out.

20 We had about 130 subjects in that year
21 acquitted of all charges. If you look to the
22 right of that column you'll see all the different

1 punishments awarded as a result.

2 These are the punishments awarded. And
3 so we have about -- most folks getting
4 confinement, a reduction in rank, a final
5 forfeiture, or a punitive discharge or dismissal.
6 And a very small percentage of other things as a
7 result of the outcomes of those trials in the
8 remaining buckets there.

9 Of the folks that were convicted at
10 trial the Services reported to us that there were
11 255 subjects convicted of a qualifying sex offense
12 that were required to register as a sex offender.

13 The rest of the blue space on that are
14 just if the court charge -- if you've got a RIL0
15 or a DIL0. We have 8 officer resignations, 3
16 disenrollments and 148 enlisted discharges, and
17 the vast majority of those were under other than
18 honorable conditions.

19 And then of the court charges dismissed
20 commanders used the evidence gathered to that
21 point to take non-judicial punishment against 22
22 subjects. You can see the outcomes of those.

1 Any questions about any of that? Yes,
2 sir.

3 MR. STONE: In the middle column where
4 you have convicted of any charge at trial, I
5 presume that does not distinguish between guilty
6 pleas and actual contested trials.

7 DR. GALBREATH: That is correct.

8 MR. STONE: Is there any way for you to
9 get that data in the future? Are you looking at
10 it? Because that's really, I think, what a lot of
11 people are interested in.

12 Because if 99 percent of those are
13 guilty pleas then it's quite different than if 99
14 percent are contested trials.

15 DR. GALBREATH: Okay, sir, that kind of
16 goes beyond my mandate for reporting as far as the
17 outcomes of things go.

18 I know that the Services are looking at
19 solutions to give you greater granularity for
20 that, but that goes beyond what I do.

21 CHAIR HOLTZMAN: I just want to make
22 sure I don't lose track of this question.

1 DR. GALBREATH: Yes, ma'am.

2 CHAIR HOLTZMAN: We asked I believe
3 that the Defense Department has implemented the
4 recommendation that a form be created to track
5 retaliation.

6 DR. GALBREATH: Yes.

7 CHAIR HOLTZMAN: Is someone keeping
8 track of that?

9 DR. GALBREATH: Absolutely. So, part
10 of the retaliation prevention and response
11 strategy is to do exactly that so that people can
12 come in and make a report of retaliation.

13 Right now the process that we're
14 implementing will allow people to come in and make
15 a report to a sexual assault response coordinator.

16 We have two ways to do this. So if you
17 would like an allegation of retaliation reported
18 at the case management group every month and have
19 that matter discussed by the senior commander on
20 that base then you can do that.

21 A small percentage of folks are doing
22 that and mostly allegations of ostracism and

1 maltreatment.

2 Then of course you can go the IG route
3 and be able to go that route.

4 So, at the risk of doing another form
5 what we're looking at is we're capturing all of
6 that data in DSAID.

7 And so that if you come in and do that
8 the sexual assault response coordinator will
9 actually capture that information instead, both
10 for sexual assault reports as well as sexual
11 assault harassment complaints. And so that's the
12 route that I think that we're going to be taking.

13 CHAIR HOLTZMAN: And so, is somebody
14 going to be looking at what happens in these
15 cases?

16 DR. GALBREATH: That's us. Yes.

17 CHAIR HOLTZMAN: So you're going to be
18 analyzing them. And when is that process going to
19 start?

20 DR. GALBREATH: It actually started.
21 I provide that information in both '14, '15, and
22 this year's report as well.

1 And so I can tell you out of those two
2 processes -- I don't have those memorized, but out
3 of those two processes I have all that disposition
4 data in appendices to our annual report.

5 CHAIR HOLTZMAN: So, someone could find
6 out not only the number of cases, but in what
7 percentage of cases the culprit was identified,
8 there was corrective action taken, the victim is
9 satisfied, and so forth, and so on.

10 DR. GALBREATH: All that. Yes, ma'am.

11 CHAIR HOLTZMAN: Okay, thank you.

12 DR. GALBREATH: I'll conclude my
13 remarks unless there's something else that you're
14 interested in.

15 CHAIR HOLTZMAN: Anybody else have any
16 questions?

17 MR. STONE: I thought one of these
18 tables before suggested that the outcome when I
19 asked about trials was quite a bit lower than the
20 -- you've got convicted of any charge at trial 76
21 percent.

22 I thought the numbers were all quite a

1 bit lower here on Dr. Spohn's analysis. I can't
2 see any numbers here to 76 percent.

3 DR. GALBREATH: I noticed that in Dr.
4 Spohn's analysis. So, Dr. Spohn used a different
5 cut point for her denominator. And so that's at
6 least what I could tell.

7 I haven't talked to her so I can't
8 track exactly what she did a little bit
9 differently.

10 But then in addition to that my
11 guesstimate based on my criminal investigative
12 experience and my working around this is that a
13 fair number of those included the family advocacy
14 program cases.

15 And I think there may be a lower rate
16 of conviction in those cases then there are in
17 sexual assault cases. And that probably also
18 dragged down the average as well. That would be
19 my supposition.

20 MR. STONE: All right. I guess I just
21 recommend that you and she look because the data
22 I thought was penetrative offenses. It wouldn't

1 --

2 DR. GALBREATH: So, I went in and she
3 did such a great job I was able to kind of
4 replicate what she did and where she did our cut
5 points.

6 And actually, to tell you the truth we
7 get very close except for one category.

8 So all of my numbers when I take a look
9 and see the convictions for penetrating crimes,
10 non-penetrating crimes, and then all the other
11 misconduct that was -- where those convictions
12 are, I get very close when I move my denominator
13 to where she did in the process except for
14 convictions for abusive and aggravated sexual
15 contact. I can't account. We're not close in
16 that. But I get real close for the other stuff.

17 CHAIR HOLTZMAN: I wanted to ask you
18 again a couple of questions.

19 First on the retaliation. We made a
20 recommendation and I don't think it was in 2014.
21 I think it was in 2015 about retaliation.

22 We asked that a form be appended so

1 that it could be tracked always vis-a-vis the
2 person making the complaint whether there had been
3 retaliation and then what was done.

4 So, the way you're doing it would
5 basically allow the same kind of tracking so that
6 we could find out for every complainant what
7 happened and how many instances of retaliation
8 were reported for how many complaints and what
9 kinds of complaints and all that stuff.

10 DR. GALBREATH: Yes, ma'am.

11 CHAIR HOLTZMAN: Okay. The second
12 question has to do with the kind of interesting
13 outcome that -- or interesting fact that Dr. Spohn
14 found which was that you could -- one of the
15 predictive -- well, one of the things she found
16 was that if the victim was a member of the
17 military there was a lower conviction rate and a
18 lower sentence.

19 And one of the things we asked her to
20 do, or I asked her to do and other people asked as
21 well was to see how we could understand that
22 better.

1 What kinds of additional information
2 would we need to begin to understand what that
3 phenomenon is about?

4 Is that something that -- have you
5 identified that as an issue? And how would you
6 approach finding out the factors that determine
7 that result?

8 DR. GALBREATH: So, my thought when I
9 read that was -- and like I said I wasn't doing a
10 full analysis of things.

11 But my thought was the threshold of
12 reporting, or the kinds of crimes that our
13 military folks are reporting might be different
14 than our civilian folks.

15 My guess is that folks may have been
16 reporting a larger percentage of abusive sexual
17 contact than sexual assault and rape. And that's
18 probably where I would start to look to see if
19 that is the case or not.

20 Because I think it's easier for folks
21 in the system to be able to find the SARC, access
22 the SARC, tell us about stuff.

1 And they're motivated more by our
2 leadership's message to please report and get the
3 assistance that you need.

4 If you are a civilian on the outside
5 coming in and making a report these are probably
6 for things that are much more serious because a
7 finding in the civilian literature is that the
8 more serious the crime is the more likely you are
9 to report it.

10 So that would be my first stop. But
11 that's really kind of speculation on my part. It
12 might not line up with what Dr. Spohn found.

13 CHAIR HOLTZMAN: Do you two talk to
14 each other? Would you talk to her about this?

15 DR. GALBREATH: I did -- but I haven't
16 got to talk to her yet.

17 CHAIR HOLTZMAN: Okay. I would
18 appreciate it if you do because it's a kind of
19 troubling thing that popped out and we'd love to
20 get some kind of handle on it to see whether your
21 analysis or your supposition is correct, or
22 there's something else.

1 Any other questions that the panel has?

2 MR. STONE: Just that you don't really
3 give us any kind of little summary of trends. Any
4 kind of trend data you could give us literally
5 called out on a sheet what trends you see would be
6 really helpful as a supplement to this because
7 part of our obligation is to talk about trends.

8 So, even if you say this is totally
9 tentative, or this is, you know, not speaking for
10 the Service, but based on our best guess of the
11 trends these are some of the trends we see in some
12 of these numbers and data would be very helpful.

13 DR. GALBREATH: Absolutely. I'll get
14 with the staff right after we're done here and
15 I'll make sure that they pass on to you our trend
16 data that we include in the annual report every
17 year.

18 And if there's other trends that you
19 all would like to see tell the staff and I'll see
20 if that's something that we have.

21 CHAIR HOLTZMAN: Thank you very much.
22 Thank you too, Ms. Robertson. We really

1 appreciate your coming here and enlightening us as
2 you have in the past. I hope DoD stops thinking
3 and starts acting on the numbers.

4 Thanks, everybody. Mr. Sprance?

5 MR. SPRANCE: The meeting is closed.

6 CHAIR HOLTZMAN: Thank you very much.

7 (Whereupon, the above-entitled matter
8 went off the record at 3:14 p.m.)

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Before: US Department of Defense

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