

**JUDICIAL PROCEEDINGS PANEL
REQUEST FOR INFORMATION SET # 6**

117. Services: Please provide the following information regarding independence of investigators assigned to SVIP:

a. How does the Service ensure the independence of investigators assigned to SVIPs?

USA	CID: The Army has organized CID as a "stove-pipe" investigation element that does not report to or is subordinate to any local or regional Army organization. CID agents assigned to SVIP work report directly to CID supervisors up a chain of command that culminates in the CID Commanding General reporting to the Chief of Staff of the Army and the Secretary of the Army.
USAF	Air Force regulation and policy make clear that AFOSI and all criminal investigators are independent. Air Force Policy Directive 71-1, <i>Special Investigations, Criminal Investigations and CI</i> , dated 13 November 2015 and AFI 71-101, Volume 1, <i>Criminal Investigations Program</i> , dated 8 October 2015 both outline the independence of AFOSI investigators. The regulations also inform the reader on what recourse is available if an agent's independence is being impeded. All AFOSI regulations are FOUO and cannot be publically released.
USN	NCIS is an echelon two command that directly reports to the Secretary of the Navy. As such, NCIS Special Agents and investigators are independent of the command and have no military officers within the chain of command. NCIS conducts logical investigative steps in all sexual assault investigations without requiring approval or concurrence from the command, trial counsel or other SVIP members.
USMC	NCIS is an echelon two command that directly reports to the Secretary of the Navy. As such, NCIS Special Agents and investigators are independent of the command and have no military officers within the chain of command. NCIS conducts logical investigative steps in all sexual assault investigations without requiring approval or concurrence from the command, trial counsel or other SVIP members.
USCG	The Coast Guard does not have policies concerning Special Victim Capability services. Section 573 of NDAA FY 13 mandates that each DoD military department establish a "special victim capability" to investigate and prosecute for specified criminal offenses. Section 573 of the NDAA 2013 does not expressly apply to Department of Homeland Security or the Coast Guard.

b. Are there concerns about perceptions that investigators assigned to the SVIP capability are working for the SVP or trial counsel?

USA	Because of public law and the resulting DoD implementing instructions and policy, there are concerns that there are perceptions that CID agents assigned to SVIP work are working for the SVP or trial counsel. To counter that perception, it is emphasized at every opportunity and at every forum that CID is a neutral, fact finding investigative unit, dedicated to the diligent pursuit of the truth, no matter if the facts uncovered benefit the alleged victim or the alleged offender.
USAF	While AFOSI investigators, STCs, and trial counsel work collaboratively, there are no concerns about perceptions that investigators assigned to work sexual assault cases in the Air Force are working for STCs or trial counsel. AFOSI has a chain of command and supervision separate from that of STCs and that of trial counsel.

**JUDICIAL PROCEEDINGS PANEL
REQUEST FOR INFORMATION SET # 6**

USN	Not that the Navy is aware of. NCIS Special Agents and investigators conduct all investigations in accordance with agency and DoD standards without undue influence by command or SVIP members.
USMC	<p>The Marine Corps Defense Services Organization has concerns that the SVIP capability is working for the trial counsel. This is based upon the Marine Corps' policy that the RTC leverage assets to deliver a Special Victim Capability, including meetings and consultations with NCIS SVIP. Reports of Investigation from NCIS frequently state that investigative actions were taken at the behest of the trial counsel or the SJA. In addition, a Regional Trial Investigator (RTI) is assigned to each Complex Litigation Team. These Investigators are accredited agents of Marine Corps Criminal Investigation Division and they must have completed a tour as a Special Agent with NCIS (LEGADMINMAN, paragraph 1202(1)(b)(6)). The relationships these investigators have with NCIS allows them to focus SVIP investigations under the direction of the SVIP trial counsel. A request by a defense counsel for NCIS investigative assistance requires routing through or coordination with the trial counsel, furthering the perception among defense counsel that the SVIP is essentially an investigative arm that works for the SVIP trial counsel.</p> <p>From the government's perspective, as NCIS special agents have been increasingly incorporated into case planning meetings, some Special Victim Trial Counsel (SVTC) have expressed concern that this may create the perception that they are working with or for the trial counsel, as opposed to working as impartial agents. Despite this concern, trial counsel have continued to incorporate NCIS into their meetings. The government's justification for doing this is that the military's rules permit NCIS agents to sit at counsel table at trial. There, the perception that they are a member of the SVIP team is unmistakable.</p>
USCG	N/A

c. Have defense counsel raised issues to convening authorities or filed any motions challenging the independence of the MCIO investigations conducted using the SVIP capability?

USA	OTJAG: Army defense counsel routinely file motions requesting investigators be appointed to the defense team. Army defense counsel have cited perceptions of the MCIO neutrality, along with the lack of attorney-client work-product confidentiality between the MCIO and the defense team, as a basis for granting these motions.
USAF	<p>No, Air Force defense counsel have not directly raised issues regarding AFOSI's independence. Defense counsel frequently challenge the quality and thoroughness of the investigation, the failure of investigators to pursue inconsistencies in victim and witness statements, and possible bias of investigators, but we are not aware of an instance where the defense counsel directly challenged the independence of the agent.</p> <p>Defense counsel have raised issues concerning the lack of independent defense investigators and in some cases have requested the appointment of an AFOSI agent as a confidential defense investigator. In the rare instances these requests are granted, there has been no issue with the performance of these investigators or their ability to work "for the defense" within the limited confines of that particular case.</p>
USN	Not that the Navy is aware of.

**JUDICIAL PROCEEDINGS PANEL
REQUEST FOR INFORMATION SET # 6**

USMC	Yes. Defense counsel occasionally file motions for investigative support. These motions are generally denied by the military judge. The Marine Corps has received requests from the Defense Services Organization to retain independent defense investigators. However, there are no plans to hire defense investigators in the foreseeable future. Currently, requests for information, evidence, or additional investigation are handled through the discovery process.
USCG	N/A