20. (ALL) What impact would it have on the Services to replace the commander's disposition authority for sexual assault cases with JAGs in the rank of O-6? (Please address specific details other than the good order and discipline concerns that were expressed during the September public meeting.) Specifically comment on: the cost associated with substituting JAGs as the disposition authority and centralizing the convening authority as suggested in recent legislative proposals, and any other logistical or resourcing issues or any other issues DoD and the Services foresee.

CJCS	Transferring the commander's disposition authority for sexual assault cases to JAGs in the rank of 0-6 would have adverse impacts that would resonate throughout the military justice system beyond incidents of sexual assault. The Services do not currently have the manpower to accommodate this requirement. During service drawdowns, unless additional authority is provided specifically for judge advocates, the military will not be able to field this requirement without great cost, both in terms of dollars and in terms of diminished legal services in the short term, and potentially diminished operational capability in the long term. In the short term, the Services do not have enough 0-6s to satisfy this requirement without potentially utilizing non-military justice experts and significantly degrading capability in other areas such as operational law. In the longer term, as the Services attempt to grow more 0-6s, that will necessarily mean fewer operational 0-6s and fewer experienced commanders at the 0-6 level. During a drawdown, this is particularly risky and not a good a/Location of resources. There are also significant logistical and legal impediments to expeditious justice that would arise under this construct. Speedy trial rules risk being violated if extra bureaucratic steps are added to the process. In addition, the manpower, installations, and resource cost associated with adding an extra office, and the back-and-forth between the command and the external office are significant.
USA	The proposed legislative amendment to the NDAA provides that the implementation of the new judicial system proposed under the legislation would be cost neutral. That is not the case. The Department of Defense Office of Cost Assessment & Program Evaluation determined that the additional personnel required by this proposal would cost the government an additional $133 million per year. The requirement for full-time colonel (O6) judge advocate disposition authorities and the requirement that they be outside the chain of command exceeds the existing personnel inventory of the Army JAG Corps and fails to consider the administrative support required for the creation and maintenance of these new duties. In order to implement the legislation as currently drafted, the Army anticipates that it would need an additional 50 colonel (O6) judge advocates, one for each of the 50 designated general courts-martial convening authority jurisdictions. Implementing the draft legislative proposal on a cost-neutral basis would significantly impact other capabilities. While standing up entirely new offices that require colonel (O6) judge advocate leaders with substantial military justice

	training creates baseline administrative costs, the more pressing concern for our communities is the cost in terms of diverted expertise we require elsewhere. The requirement for full-time colonel (O6) judge advocates to serve as disposition authorities necessarily removes these officers from critical billets as military judges, senior prosecutors, senior defense counsel, and staff judge advocates who advise the Army's senior commanders, and the development of an adequate pool of replacement judge advocates is a process that will take years to complete. Centralizing the convening authority as proposed under legislation would have a disproportionate impact on the Army. The Army tries nearly four times the number of courts-martial than the other services. Having to send thousands of cases each year to a centralized convening authority for referral to special and general courts-martial will almost certainly impact the accused's Constitutional right to a speedy trial and/or result in lengthy delays. Soldiers are located world-wide on virtually every continent. Over the past 12 years, the Army has tried almost 1,000 courts-martial in Iraq, Kuwait, and Afghanistan. Having to send original charge sheets, transmittal memos and accompanying documents to a centralized convening authority thousands of miles away will all but certainly bring an end to prosecuting cases in combat zones. The proposed legislation also provides that the centralized convening authority be responsible for selecting all of the court-martial personnel. For decades now, the services have made the trial judiciary and defense counsel independent of the chain of command, a change the appellate courts certainly welcomed and a tradition that they expect to maintain because of the right of the accused. Bestowing on one centralized convening authority the ability to hand pick prosecutors, defense counsel, the military judge, and the panel members certainly presents an appearance to outsiders and to the accused that the deck is stacked in favor of the government. This proposal also builds in more delay in the process in that a centralized convening authority would have to coordinate with 75 general-courts martial convening authority jurisdictions in order to facilitate panel nominations for courts-martial taking place in jurisdictions all over the world. A centralized convening authority selecting court-martial members would run afoul of Article 25, UCMJ, as the convening authority "in his opinion" must select members who are "best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament." Additionally, there are grave concerns that trials will be further delayed after initial panel selection while this centralized convening authority attempts to act on hundreds of requests for excusal from various panel members on various cases scattered around the world. This particular aspect of the proposed amendment, bifurcating our system between an independent colonel (O6) judge advocate initial disposition authority and a separate centralized convening authority, creates a bureaucracy that eliminates the hallmarks of our military justice system – that it is efficient, swift, local, and transportable.
USAF	See the two attached Air Force inputs (Tabs 9 and 10)to the DoD CAPE request

	for the MJIA: (1) "Air Force Response to OSD Data Call on MJIA Implementation 19 August 2013 FINAL" and (2) "Additional Manpower Requirements Costing MJIA."
USN	Assigning the commander's disposition authority for sexual assault cases to JAGs in the rank of 0-6 would effectively establish two parallel systems of justice: the status quo for military-specific and misdemeanor-type offenses, and the proposed 0-6 judge advocate system for felony-type offenses. However, the UCMJ is not neatly divided between misdemeanors and felonies. For example, Article 134 includes both misdemeanor and felony level offenses, yet the proposed amendment indiscriminately prescribes the same treatment for all Article 134 offenses, without regard to the nature of each specified offense. The result is inconsistency between the offense and the process for handling the offense. The process for disposition of cases in which the two systems intersect, i.e., in cases involving multiple offenses that fall into both systems, is undetermined and therefore ripe for conflict and confusion. Such cases arise quite frequent in military justice practice. Potentially, this would result in parallel prosecutions for such cases, doubling the prosecution's caseload and attendant costs. In addition, should legislation remove the commander's disposition authority and assign it to JAGs in the rank of O-6 or to centralized convening authorities based on the offense alleged, there would be significant initial start-up requirements as well as substantial sustainment costs. For example, the proposed legislation would create a significant demand for senior Navy JAGC Military Justice Litigation Career Track (MJCLT) officers. To meet this demand in the immediate future, MJCLT officers would have to be reallocated, creating experience gaps in their current critical billets as commanding officers, military judges, senior prosecutors and defense attorneys, and staff judge advocates for our senior commanders. More junior officers currently filling other valid requirements would have to be diverted to fill the gaps, which would result in a reduction in capability. Additional administrative support personnel and other logistical support (e.g., office space, computers, and supplies) would also be required. Based on analysis of the proposed Military Justice Improvement Act (MJIA) and the caseload it would cover, the Navy would require a minimum of nine full-time O-6 judge advocate disposition authorities, one assigned to each Navy region. This would require an increased inventory of O-6 MJLCT judge advocates as well as a larger inventory of O-3 judge advocates to support investigation review. Overall, 54 personnel, including judge advocates and administrative support staff, would be required to implement an O-6 judge advocate disposition authority requirement. Implementing the new Convening Authority offices would require approximately 45 additional personnel in order to establish nine new general court-martial convening authorities with support staff and facilities. Overall, based on these personnel numbers, CAPE estimated that it would cost the Navy almost $25 million dollars.
USMC	The Marine Corps believes there is a substantial risk that the ability to ensure good order and discipline will be severely limited if the current proposal to remove the commander from the initial military justice disposition decision in certain cases is

	approved. The following paragraphs detail the specific resourcing impact that the current proposal would have on military justice in the Marine Corps. The Marine Corps estimates that in the last two fiscal years, under the current proposal to remove the commander from the initial disposition of certain offenses, approximately 82% of GCMs and 46% of SPCMs would require a disposition decision by the O-6 judge advocate, (Felony IDA). The number of cases that would actually go to trial, however, does not fully represent the number of cases that would require Felony IDA involvement. On average, Marine Corps Legal Services Support Sections (LSSS) receive 2567 requests for legal services (RLS) per year that result in an average of 538 GCMs and SPCMs. That leaves 2029 RLSs that the LSSSs review but that do not end up at a GCM or SPCM. The Marine Corps does not have the ability to accurately count what offenses were initially listed in each RLS, but it is very likely that a significant number of those RLSs initially contained Felony IDA-level offenses that would have required Felony IDA case review and analysis. The Marine Corps would organize its new Felony IDA offices along a regional construct that aligns with our Legal Services Support Areas (LSSA – East, West, Pacific, and National Capital Region). To implement this requirement, the Marine Corps would place two Felony IDAs within each LSSA, one to handle cases within operational commands (i.e., Marine Expeditionary Force) and one to handle cases within the Marine Corps Installations Command (MCICOM). Two Felony IDAs are needed per region to comply with the requirement in the current proposal for the Felony IDA to not be in the chain of command of the victim or the accused. The total Marine Corps requirement, therefore, would be eight Felony IDAs to handle all cases involving an offense requiring a Felony IDA decision. The existing Regional Trial Counsel (RTC) offices' structure and personnel in each region would provide the Felony IDAs with investigation review, command liaison, and legal research support. Additionally, the Marine Corps would establish an Office of the Chief of Staff on Courts-Martial at Headquarters Marine Corps. This office would serve as a back-up Felony IDA in cases where the regional Felony IDAs were conflicted out (e.g., a MEF accused and an MCICOM victim), and also serve as the GCMCA for deployed military justice cases. This office would be led by an experienced O-6 judge advocate and have a staff of four additional officers, four Legal Services Support Specialists, and one civilian. The Marine Corps would require an increase of nine additional O-6 billets to meet the Felony IDA requirement. The current colonel LSSS Officers-in-Charge (OIC – O-6 judge advocates) would remain in place to supervise trial support for cases that do not require GCMCA action, legal assistance, civil law, and review. All GCMCA SJAs would also remain in place because commanders' requirements to have a legal advisor on many different legal issues remain. The mission placed on the RTC offices to support the Felony IDAs creates a supervisory void for the remaining trial counsel in each region that would handle the

	non-Felony IDA cases (case analysis/preparation, liaison with the convening authority). The RTC is currently responsible for all training and supervision of these trial counsel. To fill this responsibility, the Marine Corps would need one O-4 judge advocate in each region (four total) to act as the OIC for the remaining trial counsel in the region, and one O-3 judge advocate per region (four total) to act as the OIC's deputy. Additionally, support staff would be needed for regional GCMCAs that would be appointed under the proposal. Altogether, the Marine Corps estimates the need for 49 additional billets to implement the Felony IDA concept.
USCG	Like the civilian criminal system, the military system is designed to promote justice. However, the military justice system is also intended to promote discipline. With this in mind, an effective system of military justice must afford commanders with the authority and methods needed to efficiently discharge their responsibilities for developing and maintaining discipline within their unit. Inherent in the concept of military discipline is an acceptance of a superior-subordinate relationship and a respect for command authority. Moreover, the system of military justice must be sufficiently flexible to adapt to worldwide commitments, in which the application of criminal law must be able to operate effectively during peacetime and in war, and during periods of rapid mobilization and global deployments. While JAGs are critical to the effective and fair application of the modern military justice system, discipline of the military personnel is the responsibility of commanders whose supervision of their units better positions them to assess the appropriate disposition of cases involving their personnel. Moreover, commanders' actions are more apparent to subordinate military members and reinforce discipline. Because military members are inculcated to respect and obey the authority of their commanders, they are predisposed to view the prosecutorial decisions of commanders as legitimate, reinforcing confidence in the system, as opposed to actions taken by some remote authority external to the unit. Requiring commanders to be absolutely responsible for mission execution, crew safety, and unit discipline, and not provide commanders the authority over military justice matters, places commanders at a disadvantage in fulfilling their mandated military role. Requiring full-time 0-6 judge advocate disposition authorities outside the chain of command would exceed the existing personnel inventory of the Coast Guard and would not take account of the size and organizational structure of the Coast Guard which differs markedly from our sister services. Coast Guard judge advocates are "unrestricted line" officers, who not only serve in legal billets but also serve in other operational specialty assignments including command. A statutory requirement imposing mandatory 0-6 disposition authorities would impose a difficult resource requirement on the Coast Guard in a declining budget environment, distort the already-small judge advocate force structure in which there are only 14 0-6 legal billets, potentially create a scarcity of officers available to serve in the role if promotion selection rates decline or the needs of the service require the assignment of judge advocate 0-6's to other key legal and non-legal positions. A centralized convening authority would require additional administrative support currently unavailable.

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DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON DC 20330

JUL 24 2013

HQ USAF/JA
1420 Air Force Pentagon
Washington, DC 20330-1420

The Honorable Lindsey O. Graham
United States Senate
Washington, DC 20510

Dear Senator Graham:

Thank you for asking for my personal, professional opinion regarding the programs and initiatives being implemented by the Air Force to combat sexual assault within our ranks and whether removing or restricting commanders as the UCMJ disposition authority will help combat sexual assault in the Armed Forces. As you are well aware, Acting Secretary of the Air Force, the Honorable Eric Fanning, and our Chief of Staff, General Mark Welsh, take this issue very seriously and are relentless in their efforts to find solutions to the problem – solutions that must be led by our commanders.

The authority currently vested in commanders to create and sustain military discipline is crucial to achieve and sustain winning combat capability. Removing commanders' authority over disciplining service members for committing serious crimes is an outward expression of the Congress' lack of confidence in commanders and a message that will resonate as a vote of no confidence in the ranks of the service members they command. In the final analysis, we cannot fix the awful problem of sexual assault in the Armed Forces without commanders. If we eliminate commanders' authority to serve as court-martial disposition authorities, we will not only fail to solve our sexual assault problem, but also chip away at commanders' ability to grow and sustain disciplined forces.

In making decisions whether to send sexual assault charges to a court-martial, the UCMJ wisely teams commanders with staff judge advocates, and thus adopts the best of the civilian District Attorney model (where an experienced criminal justice attorney drafts charges and recommends indictments) with the need for commanders to be seen by service members as holding them accountable for their behavior. It is this team – the commander and SJA – which succeeds in creating the optimal climate for good order and discipline.

SJAs fulfill a district attorney-like role within the military justice system. After a case is thoroughly investigated by one of our specially trained military criminal investigative organizations, the SJA and his staff conduct a full analysis of the case and then present recommended charges to the commander. Only then does the commander, with the advice of his SJA, make a disposition decision, and in an overwhelming majority of cases, the commander follows the SJA's recommendation to send the case to a court-martial. From 1 Jan 10 to 23 Apr 13, Air Force commanders and their SJA agreed on the appropriate disposition in over 99% of the 2,511 cases where the SJA recommended that the charges be sent to a court-martial. Any proposal to remove the commander from this process will result in very few, if any, additional sexual assault cases going to a court-martial.

Some argue that removing commanders from the military justice process will encourage more service members to file sexual assault complaints because today they are intimidated by the prospect that commanders will retaliate against them if they file charges. However, we believe that while service members do fear retaliation and stigmatization, it usually is not from their commander; rather it is more likely to come from co-workers and some first-line supervisors. We absolutely need to fix this fear of retaliation, but it is a command issue that has to be dealt with swiftly by commanders, not by a third party unknown to the members of that unit.

Further, those who argue to remove commanders from the UCMJ disposition process have not considered the impact of last year's change, directed by the Secretary of Defense, to elevate the disposition decision in sexual assault cases to the Special Court-Martial Convening Authority who is an O-6 or higher. No longer are mid-level officers making these decisions – senior officers are. Therefore, it is not surprising to see an increase in the reporting rate (for example, last year the Air Force saw a 28% increase in reporting of sexual assault) and prosecution rates in sexual assault cases – the Air Force's prosecution rate is 300% greater than it was just 2 years ago. In the last quarter (ending 30 Jun 13), Air Force commanders preferred 65 sexual assault cases to court-martial, vice an average of 17 cases preferred per quarter in 2011. Any proposal to remove commanders is focused on the past and neglects today's reality: senior commanders reviewing cases has led to more reporting and more prosecutions.

Moreover, in January of this year, the Air Force implemented the Special Victims' Counsel (SVC) Program as an important step forward in our effort to provide world class response capabilities to victims. The purpose of the SVC Program is to provide legal advice to victims on the investigatory and military justice processes and protect the rights afforded to victims. In the six months since program implementation, SVCs have represented 379 victims of sexual assault with 94% of those victims, whose cases have concluded, stating they were "extremely satisfied" with the advice and support the SVC provided. Further, 54% of victims represented by SVCs converted their allegations from restricted to unrestricted status, thus allowing their cases to be addressed by our investigative and military justice processes, as compared to only 13% in FY11 before the program was implemented. This increase in our conversion rate is a vote of victim confidence in the SVC Program. Game-changing programs like the SVC Program, when coupled with senior-level command involvement, can make the kind of powerful impact we need to end this crime in our service.

In last year's FY13 National Defense Authorization Act (NDAA), Congress directed the Secretary of Defense to form a panel to conduct an independent review and assessment of the systems used to investigate, prosecute and adjudicate sexual assault in order to develop recommendations regarding how to improve the effectiveness of such systems. The panel's research will be instrumental in understanding how the myriad initiatives, laws, policies and directives interplay and in identifying new strategies to combat sexual assault. The panel can also examine whether commanders should remain the disposition authority under the UCMJ, but it must be given time to complete its work before sweeping changes are made to the military justice system.

Sincerely,

RICHARD C. HARDING
Lieutenant General, USAF
The Judge Advocate General

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON DC 20330

JUL 24 2013

HQ USAF/JA
1420 Air Force Pentagon
Washington, DC 20330-1420

The Honorable Lindsey O. Graham
United States Senate
Washington, DC 20510

Dear Senator Graham:

The Air Force (AF) Special Victims' Counsel (SVC) Program was implemented on 28 January 2013 as an important step forward in AF efforts to provide world class victim care for sexual assault victims. The purpose of the SVC Program is to provide legal representation for sexual assault victims during the investigatory and military justice processes and to protect the rights of victims (especially their privacy rights) throughout the criminal justice process. At the outset, let me say that if I believed that this program would interfere with accused military members' rights, I would never have recommended that the Air Force establish an SVC Program. The Air Force has established an SVC program that carefully avoids interfering with the rights of Airmen accused of sexual assault while substantially improving victim care and our criminal justice processing of sexual assault cases.

Today, 24 judge advocates are serving as SVCs worldwide, supported by 10 paralegals. Representing victim-clients is their full time duty. All were personally selected by me, are certified to practice as trial and defense counsel, and have experience in litigating courts-martial. The SVC Program is an independent division under the Air Force Legal Operations Agency (like the Area Defense Counsel Program) so that victims are assured no one in their chain of command or the alleged perpetrator's chain of command will influence, or appear to influence, the SVC. The SVC's sole obligation is to zealously represent the victim.

Our SVCs were trained during a five-day course at the AF JAG School featuring civilian subject matter experts, including Ms. Meg Garvin, Executive Director of the National Crime Victim Law Institute, and Ms. Jessica Mindlin, National Director of Training and Technical Assistance from the Victim Rights Law Center. Representatives from Protect Our Defenders and Service Women's Action Network also spoke at the course. SVCs have also attended other training opportunities funded by the Department of Justice. Collaboration and outreach with our civilian counterparts in the victims' counsel field of practice have been crucial to our success.

SVCs represent victims regarding any allegation that falls under the Department of Defense definition of "sexual assault," which includes the following offenses under the Uniform Code of Military Justice (UCMJ): rape, sexual assault, aggravated or abusive sexual contact, forcible sodomy, and attempts to commit these offenses, (UCMJ Articles 120, 125, and 80 respectively). SVC services include attending AFOSI, prosecution, and defense counsel interviews of the victim. SVCs can assert the victim's privacy interests during these interviews and can limit the number of times the victim must recount the event, which may help victims from being re-victimized by the interview process. For instance, victims can sometimes feel

badgered during these interviews with questions, which are often inadmissible at trial, such as: Was this your first sexual experience? How many sexual partners have you had in past? Are you taking birth control pills? The SVC can assert the victim's privacy and rape shield interests as to these questions. Without an SVC, the victim will often feel unnecessarily compelled to answer these questions, adding to his or her feeling of being re-victimized.

SVCs also attend courts-martial with their victim clients. The SVCs sit in the gallery and are prepared to argue on behalf of the victim when issues involving rape shield privilege, psychotherapist privilege, and victim advocate communication privilege are raised (Military Rules of Evidence 412, 513 and 514, respectively). The Court of Criminal Appeals for the Armed Forces' recent decision in *LRM v. Kastenberg* determined that not only does a victim have a right to be heard regarding her privacy interests, but may do so through her SVC.

SVCs also presents matters on behalf of the victim to the convening authority when, for example, a convening authority is considering a pretrial agreement offered by the accused to plead guilty in return for a sentencing cap or when the convening authority is considering whether to approve the sentence of the accused. Also, the SVC can represent the victim when she seeks a no-contact order against the accused or seeks an expedited transfer to be reassigned to another installation away from the accused and his supporters.

In the six months since program's implementation, SVCs have represented 379 victims of sexual assault. Not surprisingly, the initial feedback from victims has validated that the SVC Program is meeting its objectives:

- 94% of victims are "extremely satisfied" with the advice and support the SVC provided during the Article 32 hearing and court-martial
- 96% of victims would recommend other victims request an SVC
- 54% of victims, who filed restricted report of sexual assault (meaning they do not wish to cooperate with a prosecution of the offender) changed their mind and converted their report to an unrestricted complaint (meaning they wish to cooperate with the prosecution of their offender) after receiving an SVC to represent their interests, compared to 13% who converted from restricted to unrestricted status before the SVC Program in FY11.

The SVC Program improves victim care which inspires trust and confidence in our military justice system or any criminal justice system for that matter. This results in increased reporting, prosecutions, and holding offenders accountable for their crimes, in fact we are currently seeing record rates of prosecutions for sexual assault (300% higher than in CY11). The SVC Program is working and is critical to the Air Force's efforts to eliminate sexual assault in its ranks.

Sincerely,

RICHARD C. HARDING
Lieutenant General, USAF
The Judge Advocate General