

UNITED STATES DEPARTMENT OF DEFENSE

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RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT  
CRIMES PANEL

VICTIM SERVICES SUBCOMMITTEE

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DELIBERATION ON VICTIMS' LEGAL COUNSEL  
AND VICTIM RIGHTS  
BRIEFING ON MENTAL HEALTH COUNSELING AND  
FAMILY ADVOCACY PROGRAM

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WEDNESDAY  
FEBRUARY 26, 2014

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The Subcommittee met in Conference Room 150 at One Liberty Center, 875 North Randolph Street, Arlington, Virginia, at 9:00 a.m., Mai Fernandez, Chairman, presiding.

PRESENT:

Mai Fernandez, Chair  
Dean Michelle Anderson  
Bill Cassara  
Meg Garvin\*  
Honorable Elizabeth Holtzman\*  
Honorable Christel Marquardt  
BG Colleen McGuire  
Colonel Lisa Schenck

STAFF:

Bill Sprance, Designated Federal Official  
Colonel Patricia Ham, Staff Director  
Julie Carson  
Commander Sherry King

PRESENTERS:

Captain Mike Colston, MC, USN Director for  
Mental Health Policy  
Captain John A. Ralph, U.S. Navy  
Colonel (sel) Marie Colasanti, U.S. Air  
Force\*  
Colonel Tracy Neal-Walden, U.S. Air Force  
Lieutenant Colonel Todd Yosick, U.S. Army  
Commander Kristie Robson  
Scott Berkowitz, RAINN  
Crystal Griffen, Navy FAP  
Patricia Haist, Director of Clinical

Services, YWCA West Central

Paulette Hubbert, PhD, LCSW, ADC II, USMC

(ret)

Katherine Robertson, DoD/Service Family

Advocacy Program

Jacqueline Richardson, Army FAP

\* present by teleconference

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

9:02 a.m.

MR. SPRANCE: Good morning.

I'm Bill Sprance, the Designated Federal Official, and here to open the meeting of the Subcommittee. And now, I will turn things over to Commander Sherry King.

CDR KING: Thank you.

Good morning, everybody. Thanks for braving the snow to get here.

For this meeting, most people are here. We have Representative Holtzman and Ms. Garvin, both on the phone already. So, we are ready for that.

For today, the agenda shows that we divided the meeting in two parts, deliberation this morning. And then, this afternoon we have people coming in. We have three panels coming in:

The military mental health professionals to talk about both the kind of treatments that sexual assault victims get

1 and, also, just in general mental health  
2 services available in the military, to give  
3 you an overview of that and perhaps answer  
4 some of your questions that you had regarding  
5 records and things like that even.

6           Then, we also have some civilians  
7 coming in from three agencies: the D.C. Rape  
8 Crisis Center, RAINN, and then, the YWCA in  
9 Grand Rapids, Michigan. And that's kind of a  
10 multidisciplinary center where they provide a  
11 number of services to sexual assault and  
12 domestic violence victims. We visited it with  
13 the JSC group, and I thought it was a very  
14 good program that's something that would give  
15 you an overview of what's available in some  
16 other parts of the country to sexual assault  
17 victims.

18           And then, finally, we have a  
19 presentation about the Family Advocacy  
20 Program. I think we saw a little bit of that,  
21 maybe at Fort Hood it was, but this will give  
22 you an overview. We have the DoD

1 representative coming and representatives from  
2 most of the Services will be here. So, they  
3 can talk about that program, help distinguish  
4 the Family Advocacy Program from the SAPR  
5 program, what they each do, where they  
6 carryover, what kind of counseling services  
7 they each provide, stuff like that.

8           So, for this morning's  
9 deliberation, we were planning to discuss the  
10 Victim Legal Counsel. And Julie has made this  
11 big chart for all of you. It pretty much has  
12 most issues that we have gotten information  
13 about at least. You may have some other  
14 issues you want to discuss regarding Victim  
15 Counsel, but at least this sets it out as far  
16 as all the information we got. You can see  
17 across the board what services there are and  
18 what the Services have done so far.

19           Meg Garvin agreed to start the  
20 discussion or lead the discussion of standing.  
21 At our last meeting we talked about victim  
22 rights quite a bit. And we went through the

1 transcript, tried to pull out your  
2 recommendations. Some of them you still may  
3 want to discuss them more, especially as it  
4 relates to victim counsel, the victim counsel  
5 role in enforcing or upholding victim rights.

6           And so, we'll try to get you a  
7 record of what you decided before at some  
8 point. That is, some of it, we may be asking  
9 you to clarify what you're actually  
10 recommending because, as we went through, we  
11 kind of had a hard time figuring it out in  
12 very specific terms. So, as we go on, I'll  
13 probably try to clarify a little bit more,  
14 just to make sure that we're able to write it  
15 up for you.

16           So, we also sent you materials, a  
17 lot of transcripts. We sent you the handbooks  
18 that have been done by the Services. One of  
19 them suggested that, if we needed it, they  
20 would prepare one for us, but I didn't think  
21 that would be necessary. So, I didn't ask  
22 them to do that. So, we have provided you

1 with the handbooks we have.

2 We didn't copy all those for each  
3 of you again, since you had them, but we do  
4 have copies and we can make more, if you want  
5 them. Or, if anybody really wants to look at  
6 them, just let us know and we can get started  
7 on that.

8 And so, with that, if we wanted to  
9 get started -- if we have more time after  
10 discussing Victim Legal Counsel, we can move  
11 on to other issues. And probably one I would  
12 suggest that either we discuss with this or  
13 separately is collateral misconduct, if you  
14 have any thoughts on how you want to address  
15 that or discuss that.

16 DEAN ANDERSON: Could I comment?  
17 You all sent around some videos --

18 CDR KING: We did.

19 DEAN ANDERSON: -- that I actually  
20 thought were terrific.

21 BG MCGUIRE: Weren't they good?

22 DEAN ANDERSON: They were very

1 good.

2 BG MCGUIRE: They were very good.

3 CDR KING: And that's something  
4 you might want to discuss a little bit, too.

5 DEAN ANDERSON: Well, you know, I  
6 was thinking, because there's a collection of  
7 information that doesn't currently show up in  
8 our report, our draft report, the outline that  
9 you've prepared.

10 CDR KING: Uh-hum.

11 DEAN ANDERSON: And it has to do  
12 with, it's connected to victims not reporting,  
13 which is where we're kind of starting.

14 CDR KING: Uh-hum.

15 DEAN ANDERSON: The basic problem,  
16 victims not having faith in the system and not  
17 reporting. And a lot of the dialog that  
18 happens in those videos -- I thought the first  
19 two, in particular, were terrific -- goes to  
20 some of those questions. So, I would love to  
21 see some of that incorporated in.

22 I think the first victim who was

1 interviewed quite extensively had a comment at  
2 one point. It was something to the effect of,  
3 if we don't report, there's nothing to go  
4 forward. It was something like getting people  
5 to report and come forward has to be step one.

6           And I think that we might want to  
7 identify that quotation. It's pretty obvious.  
8 I can find it. But that would be a place to  
9 start as a way to frame the dialog moving  
10 forward. Because a lot of the detailed work  
11 that we're doing here, victims' right, Special  
12 Victim Counsel, all of that depends on someone  
13 being willing to trust the system, self-  
14 identify, come forward. And then, that goes  
15 to the harm of not being able to trust the  
16 system or not feeling like one could trust the  
17 system. And I think both of those victims  
18 talked about it, the woman and the man, the  
19 first two in those videos.

20           Anyway, I thought that that would  
21 be rich, that that would help make more rich  
22 or enrich the first section of our report.

1                   CDR KING: I don't know if anybody  
2 else has any comments about that. But, just  
3 to let you know, we are actually trying to  
4 start writing, and especially that section.  
5 So far, Rachel has been working on that. We  
6 haven't gotten anything that's ready yet. We  
7 have been trying to put together stuff for  
8 you, so we can get it out for your evaluation.

9                   DEAN ANDERSON: Just let me add  
10 one other thing. And that is, I remembered  
11 what it was that didn't show up anywhere in  
12 our materials, and that was the psychology of  
13 how victims respond to trauma and their  
14 ability or inability to create a coherent  
15 narrative over time, when queried. I think we  
16 had oral testimony to that effect.

17                   BG MCGUIRE: Yes, I guess Russ --

18                   DEAN ANDERSON: Exactly.

19                   CDR KING: Right.

20                   DEAN ANDERSON: Right, Russ --

21                   CDR KING: We sent out --

22                   DEAN ANDERSON: The PowerPoint --

1 CDR KING: The PowerPoint --

2 DEAN ANDERSON: -- which was  
3 terrific.

4 CDR KING: -- from Rebecca  
5 Campbell.

6 DEAN ANDERSON: Very interesting.

7 CDR KING: I've actually seen her  
8 present that before, and it's really good.

9 DEAN ANDERSON: Well, those two  
10 things go to --

11 CDR KING: Yes. Right.

12 DEAN ANDERSON: Those two  
13 presentations, the PowerPoint and, then, the  
14 oral presentation that Russ gave I think go to  
15 how members of the law enforcement and the  
16 criminal justice community can believe that  
17 they're doing the right thing in interacting  
18 with the victims, and how the victims can  
19 perceive it as hostile because they are unable  
20 to construct a coherent sequential narrative.

21 CDR KING: Uh-hum.

22 DEAN ANDERSON: And so, the way

1 that victim memory and fragmentation and tonic  
2 immobility, all of those issues are actually  
3 connected to faith in the system.

4 CDR KING: Uh-hum.

5 DEAN ANDERSON: Because they mean  
6 that victims many times think that they  
7 themselves are not credible because they are  
8 treated in ways that, "Well, why can't you  
9 create...?" What's A to B?

10 So, I think that would be helpful  
11 to kind of talk about that. It's a place to  
12 put Russ' work that I'm not sure fits anywhere  
13 else.

14 BG MCGUIRE: And along that line  
15 as well is another thing, an observation I  
16 made in looking at the videos and, then,  
17 having sidebar conversations within the  
18 sorority world, is even the definition of what  
19 a sexual assault is. While they may have been  
20 a victim, it didn't feel right, but they don't  
21 know to identify it as a sexual assault.

22 So, when the young man is talking

1 about the grab ass --

2 DEAN ANDERSON: Well, that's  
3 right.

4 BG MCGUIRE: -- you know, the  
5 fondling and that type of thing, some of those  
6 antics that were accepted in the high school  
7 locker room are actually sexual assaults.  
8 They don't know that.

9 DEAN ANDERSON: Right.

10 BG MCGUIRE: Then, there was a  
11 conversation that I had with a forum of  
12 executive directors, and they said, "We  
13 probably need to talk about sexual assault on  
14 the campuses. And one of our concerns is that  
15 we need to make sure that people know the  
16 difference between rape and date rape."

17 And I went, "Well, what would be  
18 the difference? That would be rape."

19 (Laughter.)

20 DEAN ANDERSON: Yes, right.

21 BG MCGUIRE: And, no, they were  
22 adamant. "That is not rape. That is not

1 sexual assault. They're both drunk. And so,  
2 that is not" -- they call it date rape only  
3 because you're incapacitated.

4 So, here we've got adults that are  
5 executive level, women, no doubt, and then,  
6 they can't even define what a sexual assault  
7 is or what rape is.

8 So, going back to those videos,  
9 while it doesn't seem right, doesn't feel  
10 right, they may not identify it as sexual  
11 assault. And it could be months later, once  
12 they get educated this is sexual assault,  
13 then -- in fact, I was talking to my staff.  
14 And I could even look at some of the  
15 expressions and I know they had been sexually  
16 assaulted as soon as I started talking about  
17 it. Anyway, just definition, defining what  
18 that is.

19 CDR KING: That is a good point.

20 MS. FERNANDEZ: Well, again, it's  
21 putting a frame on all of this.

22 CDR KING: Right.

1 MS. FERNANDEZ: If we take the  
2 narrative forward, we've got to start the  
3 narrative as to understanding what's going on,  
4 understanding what the common reactions are.  
5 So, we have to do what often victims can't do,  
6 is put the sequential narrative together for  
7 people.

8 And then, getting that to --  
9 there's all these steps before and, then, we  
10 get to reporting. But we need to make that  
11 clear to everybody, that all of this needs to  
12 be addressed before you get to a report.

13 CDR KING: That is probably one of  
14 the sections that we'll try to put something  
15 together, but probably will need a lot of work  
16 from all of you. But, hopefully, since we're  
17 getting close to the time we have to get our  
18 report done, hopefully, we can start sending  
19 things out and having you review them and give  
20 us input, so that we can try to put your  
21 report together. But at least if we start  
22 drafting some of the basics for you, that

1 will, hopefully, help you to input all this  
2 stuff and make sure it gets to be what you  
3 want it to be and the message you want it to  
4 relay.

5                   And then, at some point,  
6 hopefully, once we get all the sections  
7 written, we'll also just have a meeting on how  
8 you want to put it together. And we have some  
9 ideas, but you may have, obviously, ideas.  
10 And maybe all of you together can work on the  
11 actual order of it. You know, our outline has  
12 all the sections, so that we make sure we  
13 don't miss anything we have to talk about, but  
14 that doesn't necessarily mean that's the exact  
15 order that we want to put it in for your  
16 report.

17                   MS. FERNANDEZ: I know that the  
18 White House just did a forum on campus sexual  
19 assault.

20                   CDR KING: We sent out that study,  
21 I think. I'm pretty sure it was on the list  
22 of things we had sent out to you.

1 MS. FERNANDEZ: Right. I am just  
2 wondering if there is any best practices on  
3 educational campaigns that are out there for  
4 students to understand what a sexual assault  
5 is. Because if there's anything that's really  
6 good out there, we should be recommending that  
7 those should be put on military bases, too;  
8 those same campaigns should be done on  
9 military bases.

10 COL HAM: There was an NPR story,  
11 also. Actually, it's in a folder to send out  
12 to the full Panel members and then, the Branch  
13 Chiefs decide which of that is applicable to  
14 you. But there was an NPR story on the first  
15 college-level -- I don't know what the right  
16 word is -- forum on campus sexual assault. It  
17 was held at UVA. And that story was last  
18 week, and they were discussing some issues.  
19 I'm not sure the prevention piece was one of  
20 them.

21 I'll tell you, the Role the  
22 Commander Subcommittee heard from -- I'm

1 getting my dates mixed up; I think it was last  
2 week -- from the Centers for Disease Control  
3 on all their research and what works in the  
4 prevention area.

5           And there was a presentation, a  
6 PowerPoint presentation, associated with that  
7 that we can send to you. And they say what  
8 doesn't work and what the empirical evidence  
9 shows does have some effect, I guess for you  
10 to decide as you balance that against the  
11 military being this 1.5 million or 1.3 million  
12 captive audience with which to try new things.

13           And I think some of the presenters  
14 for the Role of the Commander said that.  
15 There was an academic panel, too, with some  
16 experts, academics from the University of New  
17 Hampshire who work in this area and some  
18 others.

19           And they were very excited for the  
20 military to try new things and be the entity  
21 developing some empirical evidence on some new  
22 approaches, and the CDC was as well.

1                   So, of course, that transcript is  
2 available to you. If we don't have it  
3 already, we should have it soon.

4                   MS. FERNANDEZ: I think it would  
5 be good to comment on that, but also comment  
6 on we should get better research on what works  
7 preventive-wise. But, again, it's not even  
8 prevention; it's identifying what it is. It  
9 is even a step before prevention.

10                  JUDGE MARQUARDT: But it is not  
11 just for the victims. It's for the  
12 perpetrators.

13                  MS. FERNANDEZ: The perpetrators,  
14 too.

15                  JUDGE MARQUARDT: It should say  
16 they can stop doing what they're doing.

17                  MS. FERNANDEZ: Right.

18                  BG MCGUIRE: So, basically,  
19 intervention and prevention. I mean  
20 intervention, prevention/intervention.

21                  MR. CASSARA: I would love to see  
22 us put a bit in the report because I think

1 that that's -- I mean, in my world, that is of  
2 the utmost importance. I mean, I have clients  
3 who are getting put on sex offender  
4 registries. I have a client who -- and I'm  
5 not defending any of these guys' behavior, but  
6 he literally walked up behind a girl with a  
7 book and flipped her skirt up. That was  
8 charged as a sexual assault. He is now on the  
9 sex offender registry.

10 I think that if these people are  
11 told in advance -- you know, I'm harkening  
12 back to the very first time that we all met  
13 when we went to the RSP meeting, and the  
14 soldier who went to the meeting and he said,  
15 "I don't know what everybody is complaining  
16 about. I'd love to get raped by a woman," or  
17 something like that.

18 Identifying those kinds of  
19 behaviors ahead of time and saying, "Look,  
20 when you" -- you know, in another case I  
21 had -- we're in a mixed audience, so I  
22 apologize. But a soldier tea-bagged -- yes,

1 you're big girls.

2 (Laughter.)

3 A soldier tea-bagged another  
4 soldier, a very common high school/college  
5 prank. Okay? Very Army. Very Army. Twenty,  
6 30 years ago, it was probably --

7 MS. FERNANDEZ: What, the Navy  
8 doesn't do that?

9 (Laughter.)

10 MR. CASSARA: Well, I don't know  
11 if --

12 (Laughter.)

13 Some guy wakes up in that morning,  
14 and on his computer is a screenshot of a man's  
15 penis on his very drunken face, okay, with a  
16 derogatory, gay slur, you know, Sharpied onto  
17 his face.

18 That client is now a registered  
19 sex offender. I guarantee you that, when that  
20 person did that, the thought of this being a  
21 crime or this being something that's going to  
22 put me on the sex offender registry for the

1 remainder of my life never occurred to him.

2 Similarly, the victim of that  
3 didn't want to report it because he thought it  
4 was a joke. He didn't think it was a crime.

5 MS. FERNANDEZ: Then, who reported  
6 it?

7 MR. CASSARA: Somebody walked in  
8 and saw it on the screensaver, you know, and  
9 they reported it to the first sergeant. And  
10 the kid was caught.

11 Obviously, not very often do my  
12 clients have video proof of their crimes, but  
13 he did.

14 BG MCGUIRE: But they are being  
15 trained to report, too.

16 MR. CASSARA: Right.

17 BG MCGUIRE: They're trained to  
18 report it.

19 MR. CASSARA: You know, and so the  
20 guy reported it. So, I'm just saying, I mean,  
21 here we have a victim who didn't know he was  
22 sexually assaulted, an assailant who had no

1 idea at all that that was a sexual assault.  
2 And I think that a unit formation at the  
3 beginning of, you know, once a year, once a  
4 quarter, whatever, in which --

5 MS. FERNANDEZ: Folks, we're  
6 talking about such enormous culture change.  
7 I mean, it's not a culture change just with  
8 the Commanders. It's a culture change that  
9 civil society hasn't taken in any way.

10 BG MCGUIRE: Exactly. They're  
11 coming in this way, having already been  
12 conditioned to --

13 MS. FERNANDEZ: Yes.

14 BG MCGUIRE: -- consider that  
15 normal behavior.

16 MR. CASSARA: Absolutely. You  
17 know, I mean, the average E3-E4 that comes  
18 into the Army isn't coming after they've  
19 graduated from Harvard. You know, they're not  
20 coming after college. They're generally  
21 coming and, you know --

22 DEAN ANDERSON: Harvard has its

1 own sexual assault behaviors.

2 (Laughter.)

3 MR. CASSARA: Well, no, I  
4 understand that. I understand. Maybe that's  
5 a bad example. Use another one.

6 But we're getting young kids who  
7 in high school environment this is common, you  
8 know. In fact, my son played high school  
9 football, and I've told him a couple of these  
10 stories, just trying to warn him. "Stay the  
11 hell out of trouble, kid." And he's like,  
12 "You're kidding me. That's a crime?" You  
13 know, guys did that all the time in the locker  
14 room.

15 We can't affect, in our report or  
16 in the military, we can't necessarily affect,  
17 we can't affect at all what happens to them in  
18 high school, but we can certainly attempt to  
19 change that culture once they get into the  
20 military.

21 And so, with that long diatribe,  
22 what I'm getting at is I would like for part

1 of the report to address the issue of  
2 prevention. Because I think all of us agree,  
3 while we all come at this from different  
4 angles, all of us agree that the best response  
5 would be for us not to have to do this again.

6 COL HAM: And the Role of the  
7 Commander had that as part of their charter,  
8 which doesn't mean that other subcommittees  
9 can't comment on it or look at it from  
10 different ways as well. But Congress charged  
11 them with examining the role of the Commander  
12 in prevention and response, which led to them  
13 hearing from the CDC.

14 MS. FERNANDEZ: But I think we are  
15 going beyond the role of the Commander here.  
16 What we're saying is this is a cultural shift  
17 that's beyond -- I mean, the Commanders are  
18 the leaders, but, like you said -- what's it  
19 called when you try to take information out of  
20 somebody?

21 BG MCGUIRE: Deprogramming or --

22 MS. FERNANDEZ: Yes, yes,

1 deprogramming from what society has taught  
2 them.

3 DEAN ANDERSON: But there are all  
4 kinds of ways that military culture is  
5 radically different than the average high  
6 school culture.

7 MS. FERNANDEZ: Absolutely.

8 DEAN ANDERSON: And we teach new  
9 recruits all kinds of self-discipline and  
10 self-respect that are profoundly different in  
11 terms of their inculcation to become a  
12 soldier.

13 MR. CASSARA: Yes. If they can  
14 say, "Yes, sir," "Yes, ma'am," "No, ma'am" to  
15 somebody that's just a few years older than  
16 them, and obey all of their commands, they are  
17 a reachable audience.

18 And believe me, while 80 percent  
19 of my practice right now is sexual assaults,  
20 I'll still be employed if it doesn't happen,  
21 and I would be very happy with that.

22 MS. FERNANDEZ: Should we go to

1 Meg, who has probably been since 5:00 this  
2 morning?

3 MR. CASSARA: Oh my, good morning,  
4 Meg.

5 MS. GARVIN: Good morning.

6 MR. CASSARA: We are lost and  
7 wallowing without you.

8 (Laughter.)

9 MS. GARVIN: I have to say, when I  
10 fly back for one day, and I think, ah, you  
11 know, it's so hard to get up in the morning,  
12 yes, it was really hard to get up this  
13 morning. I would prefer to be there in  
14 person.

15 CDR KING: Well, we appreciate you  
16 being on the phone, if nothing else. So,  
17 thank you.

18 MS. GARVIN: Yes. Of course.

19 CDR KING: Do we want to get  
20 started talking about standing and other  
21 victim counsel issues?

22 Meg, do you want to start the

1 discussion?

2 MS. GARVIN: Well, sure. And  
3 obviously, let me know -- I think that the  
4 issue I presented last time on standing or two  
5 times ago on standing is actually pretty  
6 narrow in terms of the scope of the  
7 discussion. So, maybe you want more than that  
8 out of the Subcommittee or maybe the  
9 Subcommittee wants to go more on that.

10 But my issue that I raised two  
11 meetings ago, I think, and that we didn't get  
12 to last meeting, is one of the new -- and I'll  
13 get the wording wrong -- oh, one of the new  
14 additional duties that came out of the NDAA to  
15 this Committee, and Representative Holtzman  
16 had flagged it also, is in the additional  
17 duties includes the question of "An assessment  
18 of the feasibility" -- so, I'm reading right  
19 now from the NDAA. And I know Julie, I  
20 believe, had prepared excerpts, or someone,  
21 one of the staff had prepared excerpts of the  
22 NDAA at some point.

1                   But it reads, "An assessment of  
2                   the feasibility and appropriateness of  
3                   expanding the victims of crime in the  
4                   military, the rights afforded to victims in  
5                   the CVRA" -- so the civilian version -- "under  
6                   A.4," which is the right to be heard, one, but  
7                   also "and legal standing to seek enforcement  
8                   of crime victims' rights as provided in  
9                   Subsection D of the CVRA."

10                   And Subsection D of the CVRA has  
11                   two prongs of standing. One prong is an  
12                   explicit statement of trial-level standing for  
13                   victims. That is, who can assert the rights  
14                   at the trial level in civilian court. And  
15                   then, a separate section about the appellate  
16                   device by which you would seek appellate  
17                   review of a violation of your rights.

18                   And I really think that this  
19                   Committee should comment on what we think  
20                   victims already have under the passage of the  
21                   NDAA and, actually, also, before the NDAA.  
22                   Because we know under Kastenberg that they

1 have some standing at trial court level, and  
2 we know under Kastenberg that the mandamus  
3 exists for them to seek appellate review  
4 already.

5           So, my question to the Committee,  
6 and what I hope we could talk about, is, what  
7 is this additional duty? What are we  
8 analyzing under this additional duty? Because  
9 my assessment of victims' rights in the  
10 military is they already have trial-level  
11 standing to assert all of their rights under  
12 traditional Article 3 standing, which does  
13 apply in the military. It has been  
14 incorporated.

15           And then, right now, the appellate  
16 standing they have would be through the  
17 appellate device of mandamus, which we heard  
18 in some testimony may not be the best device.  
19 And so, maybe our additional duty is to make  
20 a recommendation for what they do in the year  
21 ahead on crafting a better appellate device.  
22 But that was what I was hoping we could talk

1 about.

2 And I agree with the conversation  
3 so far this morning, which is, of course, this  
4 comes after they've already accessed the  
5 justice in some way. So, it is kind of a  
6 funneling, I think, someone had said during  
7 our last meeting. But I think this piece of  
8 the funnel is pretty important for us to  
9 comment on.

10 DEAN ANDERSON: Meg, I think we  
11 understand the limitations of mandamus as a  
12 mechanism of appellate review. What is your  
13 recommendation for alternatives to mandamus?

14 MS. GARVIN: I think an explicit  
15 -- and I don't know; I think those of you who  
16 have practiced in military court could  
17 probably point to the right rule -- but I  
18 think an explicit integration of victims'  
19 rights into a preexisting rule that governs  
20 interlocutory appeal may be the way to go, so  
21 long as there is mandatory review of that  
22 interlocutory appeal.

1           And part of that is because there  
2           is no case law right now. And so, I think  
3           everybody would be in good stead if we got  
4           some direction from the CAAF, in particular,  
5           about what victims' rights mean.

6           But I think it could be integrated  
7           into an interlocutory appeal rule or statute  
8           that governs already in the military and just  
9           an addition there. And that's what is  
10          happening in a handful of states. I mean, in  
11          Oregon, it is a standalone provision on  
12          interlocutory appeal, but that's what it is,  
13          is an interlocutory appeal. In Arizona, they  
14          crafted a subsection of what's called their  
15          Petition for Special Action, which is a writ,  
16          but it is a mandatory review writ that goes up  
17          on expedited review.

18          So, as long as it can happen  
19          interlocutory, so that it does not delay --  
20          delay is bad for defendants; it's bad for  
21          victims; it's bad for the system -- so, as  
22          long as it's an expedited process and can go

1 up and down to the appellate court without  
2 delaying the trial or the proceedings, I think  
3 that that's what we need. And it should be  
4 something that they have to comment on.

5 COL HAM: You discussed last time  
6 -- and Dean Schenk and Mr. Cassara are aware  
7 of these mechanisms as well -- there are  
8 basically two mechanisms currently for  
9 interlocutory appeal. So, it is the  
10 Extraordinary Writs Act, which applies to,  
11 primarily applies to the accused. Primarily,  
12 it applies to the accused and it is very  
13 limited. It is extraordinary. Of course, a  
14 Writ of Mandamus would be one of those things.

15 And then, there's similar to the  
16 authority granted to Assistant U.S. Attorneys  
17 to appeal on behalf of the government under  
18 the Uniform Code of Military Justice. That's  
19 found in Article 62 of the Uniform Code of  
20 Military Justice. Again, that is a very  
21 limited appeal for the government in very  
22 specific instances, limited to matters of law.

1                   So, it sounds like what you're  
2 looking for is maybe form of Article 62, small  
3 "a", something like that.

4                   DEAN ANDERSON: Yes, Article 62  
5 would probably work.

6                   COL HAM: However, whether the  
7 proceedings would be stayed is always a  
8 separate question. So, there can be an  
9 expedited review, but that doesn't mean a  
10 proceeding has stopped.

11                  MS. GARVIN: And I guess I don't  
12 know the scope of this Subcommittee's job when  
13 it comes to the details of that. My  
14 understanding, I guess, is that some of that  
15 can be worked out in the year ahead, but I  
16 could be wrong about that.

17                  I guess I think the Subcommittee  
18 should be making some recommendations about  
19 the big picture of it, which would be  
20 expedited review, consideration of stays, not  
21 something that is subject to traditional  
22 mandamus review, which is the Extraordinary

1 Relief Review.

2 Because that was one of the  
3 criticisms we heard through testimony about  
4 the civilian version of the CVRA and mandamus,  
5 was that when traditional review is used on a  
6 mandamus, there are not decisions being issues  
7 because they're not be reviewed by the  
8 appellate court.

9 So, I think we can go at a pretty  
10 high level of recommendation. On the stays,  
11 across the country those are just very  
12 different. In Oregon, you know, it can be  
13 stayed if the court finds it's in the interest  
14 of justice to stay the proceedings. And then,  
15 the clock doesn't tick against anybody. In  
16 Arizona, it's automatically stayed. It's kind  
17 of all over the map in terms of like looking  
18 for examples of this.

19 And I'm not sure we know enough to  
20 make a specific recommendation. I think a  
21 stay should be a possibility, but whether it  
22 is a mandatory stay I think requires more

1 testimony and information. And we haven't  
2 heard enough, I don't think, about that.

3 COL SCHENCK: I think that the All  
4 Writs Act, obviously, we wouldn't impose  
5 anything through that. But I do believe that  
6 Article 62 could be amended.

7 The automatic appeal -- I sat on  
8 ACCA for six years, the Army Court of Criminal  
9 Appeals. And, of course, Extraordinary Writs,  
10 the rule is, is the accused on fire? And the  
11 accused is not on fire if this is going to  
12 come up on appellate review.

13 So, I don't believe there were any  
14 writs granted for the six years I was there or  
15 very few as far as stays go. But I did see  
16 valid issues which later were overturned on  
17 appeal. So, the accused did spend time in  
18 confinement.

19 But I think, depending on what  
20 writ there is, there was an automatic stay for  
21 some of them, depending on what the writ was.  
22 And I think that's by Army regulation

1 generally. You know, we have rules, we have  
2 different rules in the Services through  
3 regulation on what you do for the writs.

4 Article 62, which applies to all  
5 the Services, obviously, has only been used by  
6 the government, except for maybe that one case  
7 where the judge -- I'm talking to Patty --  
8 where the judge ordered some crazy, outlandish  
9 thing, and the appeal came up through some  
10 other process.

11 COL HAM: One of the questions  
12 was, does the government have standing to use  
13 the Extraordinary Writ Act.

14 COL SCHENCK: Right. But you know  
15 what I'm talking about.

16 COL HAM: Yes. It is an  
17 unpublished opinion, so it has no precedential  
18 value.

19 COL SCHENCK: Right. But I'm  
20 looking at 62 now, and I believe it can be  
21 amended.

22 The automatic appeal, the

1 automatic stay, though, I'm leery that the  
2 trial judges won't grant stays at all for  
3 victims' counsel. I'm concerned about that.  
4 So, I think that maybe we should make, when  
5 we're looking at, when we make a  
6 recommendation in amending Article 62, that  
7 maybe we make a recommendation when they're  
8 imposing the rules regarding stays, just  
9 because I think from the Army perspective  
10 they're just going to let the trial judges  
11 make those hard decisions. And sometimes the  
12 trial judges aren't very accepting of this new  
13 victim counsel. And so, that's just my two  
14 cents.

15 MS. GARVIN: Yes, I would echo. I  
16 mean, if the culture, as an outsider, trying  
17 to litigate right now these issues, we have  
18 actually been trying to seek stays on some  
19 discovery issues, and they are not being  
20 granted ever. And, in fact, they're not even  
21 being responded to, the motion.

22 So, I mean, that would be my

1 recommendation also, is that we talk about  
2 that stays are appropriate in determining  
3 victims' right.

4 COL SCHENCK: Yes, because, you  
5 know, for me, we had a case where I was on  
6 this task force, the DTF-SAMS. There was a  
7 case the victim spoke to me and she spoke to  
8 one of the other task force members. She had  
9 written letters to the accused. Now she did  
10 not have a victim counsel. This predates  
11 that. But she had written letters to the  
12 accused for her counselor to see, not for the  
13 accused to see. Because she had no counsel,  
14 no voice, those were shown to the accused.  
15 The counselor was ordered to provide those to  
16 the accused, and she was in the courtroom.

17 And, okay, I can't think of  
18 anything more demeaning than that. The guy  
19 was acquitted from that case. And there were  
20 all sorts of other issues. She had written  
21 cards to him, you know, that he actually  
22 received.

1                   But the counseling between the  
2                   victim and the counselor, you know, that would  
3                   be a discovery issue to me that maybe the  
4                   judge would --

5                   DEAN ANDERSON: Well, this is  
6                   exactly what I was thinking that we might want  
7                   to do, Lisa, is go through and identify, well,  
8                   what are the circumstances in which victims  
9                   had rights.

10                  COL SCHENCK: Okay.

11                  DEAN ANDERSON: And are each of  
12                  those circumstances in which stays, the  
13                  failure to grant a stay would produce  
14                  irreparable harm? In other words, if this is  
15                  a question of a rape shield issue, when the  
16                  evidence is in, it's in.

17                  And so, if there's a challenge to  
18                  a judge's decision to admit that evidence,  
19                  there needs to be a hold on the process while  
20                  that's litigated on appeal. And so, it might  
21                  be that all or some of the rights that are  
22                  articulated would ordinarily require stays,

1 but I just think we might want to go through  
2 that and identify what kinds of circumstances.

3 My assumption is that most of the  
4 circumstances in which a victim's counsel are  
5 asserting rights as against the rest of the  
6 process, those are circumstances in which  
7 there would be harm if a stay were not  
8 granted.

9 COL HAM: I'm being the nit-noid  
10 legal advisor, too, right now.

11 There are two additional duties  
12 that I would ask you to address standing. One  
13 is, as you've been discussing, standing to  
14 enforce crime victim rights under the new, I'm  
15 calling it the Military Victim Rights Act,  
16 that you're all familiar with, that you  
17 discussed last time.

18 There is an "additional"  
19 additional duty to assess whether the roles of  
20 the Special Victim Counsel should be expanded  
21 to include legal standing to represent the  
22 victim during investigative and military

1 justice proceedings in connection with the  
2 prosecution of the offense, which I throw out  
3 to you for you to decide.

4 Is that where this 412 and stuff  
5 issues -- they're not really under the  
6 Military Victim Rights Act. They're separate  
7 issues.

8 MS. FERNANDEZ: Colonel, could you  
9 just say that one more time, the second one?

10 COL HAM: Yes. Yes. The second  
11 one is an assessment regarding whether the  
12 roles, responsibilities, and authorities of  
13 Special Victim Counsel to provide legal  
14 assistance under the new provision of the NDAA  
15 should be expanded to include legal standing  
16 to represent the victim during investigative  
17 and military justice proceedings in connection  
18 with the prosecution of the offense. So, a  
19 broader standing than to seek enforcement of  
20 the limited rights in the Military Victim --  
21 that's not what it's called; it's what I'm  
22 calling it, the MVRA.

1 MS. FERNANDEZ: Right, right.

2 Okay.

3 COL HAM: That makes sense.

4 DEAN ANDERSON: And that's  
5 important. That's important.

6 MS. GARVIN: But --

7 MR. CASSARA: Well, I think part  
8 of that is -- I'm sorry, go ahead, Meg.

9 MS. GARVIN: No, no, no. Go  
10 ahead.

11 MR. CASSARA: Part of that is, as  
12 I read the information last night that  
13 discusses how in the civilian sector the  
14 victim's counsels aren't appointed until  
15 charges are brought, and I think just because  
16 of the nature of our system being so different  
17 in terms of how the preferral and referral  
18 process works, I think it's going to have to  
19 be a fairly specific recommendation on our  
20 part as to when the right to a Special  
21 Victim's Counsel kicks in. Is it upon  
22 preferral or charges? Is it upon swearing --

1 you know, the CID investigating the case?

2 REP. HOLTZMAN: Isn't it already  
3 set --

4 COL HAM: Yes.

5 REP. HOLTZMAN: Isn't it already  
6 set forth as the minute the victim reports,  
7 and maybe even before the victim reports, she  
8 or he is entitled to victim's counsel?

9 MR. CASSARA: I'm sorry, my bad  
10 then.

11 But, then, the other part of that  
12 is, you know, in the little empirical data  
13 that we have -- and my empirical data being,  
14 you know, a half dozen courts-martial since  
15 all of this has started -- I will say, to put  
16 it kindly, that the Special Victim's Counsel  
17 that I have run into have been very junior and  
18 very inexperienced and know little to nothing  
19 about the military justice system.

20 COL HAM: Right. In the Service  
21 non-specific across all Services or  
22 specifically to one Service?

1 MR. CASSARA: Mostly Army, a  
2 couple, and one Navy. And they've just been  
3 very junior counsel.

4 COL SCHENCK: Well, they're  
5 drawing from Legal Assistance. And  
6 historically, the Army JAG Corps has assigned  
7 brand-new JAGs --

8 MR. CASSARA: Right.

9 COL SCHENCK: -- to Legal  
10 Assistance. So, there are senior people in  
11 Legal Assistance that like to do legal  
12 assistance. So, we could make a  
13 recommendation regarding --

14 MR. CASSARA: Yes.

15 COL HAM: And that's the Army  
16 model, which, as you know, is different than  
17 the other Services.

18 COL SCHENCK: Right.

19 MS. GARVIN: I --

20 MR. CASSARA: But also in the --  
21 go ahead. I'm sorry, Meg.

22 MS. GARVIN: A couple of comments.

1 This is Meg.

2 With regard to this additional  
3 duty of ours, I have two comments. One is it  
4 confuses me, although the way it was just  
5 framed makes more sense. But the idea that  
6 we're assessing whether we should expand their  
7 duties to include legal standing to represent  
8 victims during investigative and military  
9 justice proceedings, you know, I interpret --  
10 if I were an SVC right now, I would interpret  
11 that I have standing anytime my client's  
12 rights are at issue.

13 And those rights are actually very  
14 broad and they have to attach during the  
15 investigative phase. And I know, at least in  
16 the Air Force, SVCs are representing during  
17 the investigative phase. And the Kastenber  
18 case was about pretrial standing.

19 So, part of me is confused by the  
20 word "expand"; should it be "expanded"?  
21 Because I think there should be an  
22 acknowledgment that, when you have a client,

1 you represent that client's interest. And  
2 those rights, whenever they are manifest, you  
3 interpret them relatively broadly to figure  
4 out when they're manifest.

5 That said, if part of the question  
6 is, is it general representation of one's  
7 client rather than limited representation to  
8 the eight rights afforded under the NDAA's  
9 version of the CVRA, then that makes a little  
10 more sense to me, and I think the  
11 recommendation could be -- you know, SVCs  
12 should represent the victims in all their  
13 rights and interests from the moment they  
14 become their client.

15 CDR KING: It also may be a slight  
16 issue of timing regarding when the requirement  
17 for assessment was made compared to what the  
18 Services have done since --

19 MS. GARVIN: Right.

20 CDR KING: -- as far as setting  
21 out their policies and their handbooks and  
22 things like that.

1 MS. GARVIN: But that was part of  
2 my confusion. With all respect to Congress,  
3 this reads like language that predates some of  
4 what the SVCs are already doing. And so, I  
5 would like it to be an acknowledgment of  
6 clarification, you know, a statement in our  
7 report to Congress and others that they  
8 already have standing and our recommendation  
9 is that standing be legally interpreted to  
10 include all moments when victims' rights and  
11 interests are at issue as soon as they become  
12 your client.

13 COL SCHENCK: I want to make a  
14 little correction for the record. Okay, so  
15 I'm reading the Judge Advocate General of the  
16 Army's message regarding the SVCs. And it  
17 specifically states in here that she asks the  
18 Staff Judge Advocates to appoint Judge  
19 Advocates who have defense or trial counsel  
20 experience and ensure completion of training  
21 prior to assumption of duties. "Regardless of  
22 experience, the SVAs must have the maturity

1 and judgment to assume responsibilities."

2 So, she is directing the SJAs to  
3 make sure they have trial counsel or defense  
4 counsel experience and training. But I don't  
5 know how long they were --

6 CDR KING: If you look in the  
7 standards and the handbooks, and I think it's  
8 laid out in one of these things, some of them  
9 require like one trial or something, which is  
10 not an extensive -- it's at least a  
11 familiarity, but it is not an extensive  
12 amount.

13 But one thing I was going to say  
14 is, so far at least, the standards for victim  
15 counsel are set out in handbooks or policy.  
16 And handbooks can change and policies can  
17 change.

18 It's the scope of representation I  
19 think would discuss that on page 6 of the  
20 chart. It kind of sets out the different  
21 Services. Yes, there's a couple of them. So,  
22 if you want to get into specifics about

1 them --

2 COL SCHENCK: We're looking at the  
3 comparison chart.

4 MS. GARVIN: Yes, I just pulled  
5 that up, too. Thank you.

6 CDR KING: It's on page 6, and  
7 then, on 10 it kind of describes --

8 MS. FERNANDEZ: Can we start  
9 looking at page 5 first, which is the  
10 training? It looks like they're given almost  
11 no training.

12 CDR KING: I think they're  
13 given -- Meg, haven't you been to the Air  
14 Force training?

15 MS. GARVIN: Yes, I'm chuckling  
16 because I both agree and disagree with Mai  
17 they are given almost no training in that.  
18 They get one week.

19 I've done the Air Force, the Navy.  
20 The Marines have sat in on the Air Force  
21 training. Army has not, to the best of my  
22 knowledge, invited outsiders to train. So, I

1 haven't participated in that training. All  
2 the other branches, though, I think I have  
3 done some of the training for.

4 And what the training consists of  
5 is generally three to four days.

6 Are you guys getting an echo?

7 CDR KING: A little bit.

8 MS. GARVIN: I don't know what  
9 just changed.

10 Anyhow, it's about a week on  
11 victims' rights and the legal issues per se.  
12 I usually give about a four-hour training, and  
13 then, they now will have an experienced SVC  
14 talk about what they have done for another  
15 hour or two. Then, they do some  
16 hypotheticals, close to like a NITA-type  
17 training or trial-advocacy-type training for  
18 one of the days.

19 Oh, and then, Rebecca Campbell  
20 usually comes in and does the neurobiology of  
21 trauma.

22 But it's three to four days

1 maximum.

2 MR. CASSARA: And, Meg, how much  
3 of that is dedicated to military justice,  
4 like, you know, knowing the Rules of Evidence  
5 and that sort of thing?

6 MS. GARVIN: Usually day one.  
7 Usually day one is, but I will say I have sat  
8 in on the first day of the training a couple  
9 of times, so that I would have some level of  
10 orientation myself to military justice. And  
11 the ones I have sat in on -- and they may have  
12 changed the curriculum -- but the ones I have  
13 sat in on, about half the day is kind of more  
14 administrative and here's your charter as an  
15 SVC. And then, half the day is how do you fit  
16 in military justice.

17 It's not the rules and policies of  
18 military justice. It's not like a 101 of  
19 military justice, not from my perspective.

20 Because I sat in on it to learn a  
21 little bit, and I had to like go to the books  
22 after that because I hadn't learned it myself.

1                   CDR KING: Just so you know, the  
2 curriculum is set out on page 18 of the chart,  
3 if you want to look at it.

4                   But, Meg, one thing that I think  
5 -- you know, we talked about that these are  
6 pretty new lawyers. All these lawyers have  
7 probably just went through their lawyer basic  
8 course where they go over criminal justice  
9 procedures --

10                   MS. GARVIN: That is my  
11 understanding, is they all have that.

12                   CDR KING: -- in great detail.

13                   COL HAM: They are all certified  
14 to try cases. So, they are all totally  
15 trained in the military justice system.  
16 Whether they are varying levels of experience,  
17 that may be.

18                   But I will tell you the Special  
19 Victim Counsel that the Comparative Systems  
20 Subcommittee talked to on recent site visits  
21 were extraordinarily experienced. They were  
22 not new counsel.

1 CDR KING: And those were Navy.

2 COL SCHENCK: When we were at  
3 Hood, they had those three Army SVCs and they  
4 were experienced.

5 MR. CASSARA: And I think part of  
6 the problem comes from, when we are at a  
7 smaller base, there may be five uniformed  
8 officers on that entire base. You know, I  
9 think at Fort Gordon, where I do a lot of  
10 cases, there's, let's see, three prosecutors,  
11 one legal assistance attorney, a deputy, and  
12 a Staff Judge Advocate.

13 COL SCHENCK: Just like the tax  
14 program, you know, you've got to have a tax  
15 program. Who runs that? Mostly your counsel.

16 MR. CASSARA: Yes, usually the  
17 SVC.

18 COL SCHENCK: Yes. Yes, exactly.

19 COL HAM: Well, one thing for you  
20 to consider is, is there a best practice  
21 developing amongst the Services, as new as  
22 that is, on how they're setting it up?

1       Because what was presented on November 7th and  
2       8th from the heads of these programs is the  
3       Army is the only one that hasn't set up a  
4       stovepipe system, a new structure. The Army  
5       is taking from an existing structure. So,  
6       it's up to you if you want to recommend that  
7       that is or isn't a best practice.

8                   DEAN ANDERSON: And I would be  
9       interested -- I understand there's some  
10      disagreement among folks about whether or not  
11      the training is adequate.

12                   Meg, you seem to suggest that you  
13      did not think the training was adequate. And  
14      given what you heard about the background  
15      training in military justice that these  
16      attorneys come to the table with, do you still  
17      believe that the training isn't adequate or do  
18      you feel like that's --

19                   MS. GARVIN: Let me clarify  
20      because I actually think they're doing a very  
21      good job of training. I think the only  
22      inadequacy in that is that this is so new that

1 it might require a little more. Because, as  
2 we all have talked about, you are not just  
3 training on a new subject matter of law.  
4 There are cultural dynamics here that might  
5 require additional training.

6 But I think the branches that I  
7 have witnessed are doing a very good job.  
8 They are pulling from -- I mean, the SVCs I  
9 have worked with, I would love to work with  
10 them more. I think they are incredibly-  
11 talented lawyers. You know, I only wish the  
12 civilian world had some of them operating in  
13 it.

14 The inadequacies come from this  
15 reality of we're tilting at a cultural change  
16 here. The criminal justice system has  
17 operated in recent history as a biparty system  
18 with third voices not really heard. That's  
19 changing with this injection of SVCs, and it's  
20 changing in a very challenging arena of sexual  
21 violence that has its own control baggage.

22 So, I actually think -- again, I

1 can't speak to the Army because I haven't seen  
2 the Army do this work. But the other branches  
3 I believe are doing a very good job and are  
4 trying to follow the model that I understand  
5 they train other specialties with. I believe  
6 the defense counsel gets a week of defense  
7 training in certain branches, and prosecution  
8 has a prosecution school or trial counsel has  
9 a trial counsel school. I think they're  
10 trying to model it on the way they train  
11 others, but maybe I'm wrong on that. I don't  
12 know.

13 MS. FERNANDEZ: Meg, tell me if  
14 I'm right on this. I mean, I know as a rookie  
15 prosecutor, there was 550 other attorneys  
16 surrounding me that had seen my issues and my  
17 problems a million times over when I was in  
18 court and I had an issue. So, they gave me  
19 weeks of training when I first walked into the  
20 prosecutor's office, but my real training came  
21 from the people who are around me.

22 The problem with the SVCs is that

1 nobody has seen this body of work before. So,  
2 I've got a question of, should I be asking for  
3 a stay or not, and everybody else in the  
4 office is shrugging their shoulders going,  
5 "I've never seen this problem before." Is  
6 that part of what the situation is?

7 MS. GARVIN: Excellent, Mai, yes,  
8 and you phrased it perfectly. That is,  
9 because it's a new arena, they don't have  
10 colleagues to turn to. They're starting to  
11 have some colleagues who have more experience,  
12 but that is a year old, right? So, yes, I  
13 think you just nailed it.

14 MS. FERNANDEZ: Is there some way  
15 of being able to provide via Skype or via some  
16 sort of technology some sort of repository of,  
17 "Hey, I've got this issue. Nobody here in my  
18 office knows."? Is that available? Sherry is  
19 nodding her head.

20 MS. GARVIN: They are doing that,  
21 and I think the Air Force may have sent us  
22 material from that. I'm not sure. They do

1 case rounds regularly by videoconferencing  
2 with each other and are starting to share.  
3 They share pleadings, I know, through -- I  
4 don't know -- the internet or something. So,  
5 they are doing that, and I think that's a best  
6 practice.

7 CDR KING: It is like a SharePoint  
8 site.

9 MS. GARVIN: Yes.

10 CDR KING: They have them in the  
11 Services for defense, for prosecution. Now  
12 they have them, the Special Victim's Counsel  
13 has those.

14 MS. FERNANDEZ: They have  
15 pleadings and things. Is that actually one-  
16 on-one?

17 CDR KING: Well, it can be.

18 COL SCHENCK: In the Army anyway,  
19 they have what's called the Trial Counsel  
20 Assistance Program, Defense Counsel Assistance  
21 Program. And according to General Darpino's  
22 message, she's got, as of October, she had 45

1 SVCs, headed up by an O-6 who would be able to  
2 provide technical ongoing assistance.

3 Now whether or not they've  
4 established any kind of monthly VTC, which is  
5 what they used to do with Legal Assistance.  
6 They had a monthly videoteleconference way  
7 back. This is the nineties. So, I'm thinking  
8 they probably do that because they're drawing  
9 from Colonel McKee, I think his name is, from  
10 the Army.

11 I think what Colonel Ham was  
12 suggesting, that maybe they create a separate  
13 organization, would not be a bad idea, a bad  
14 recommendation, but we could also see if they  
15 have anything set up where they do have the  
16 SVC Assistance Program, like they do for the  
17 defense counsel and trial counsel.

18 As far as training that goes for  
19 the Army, and they do this by assisting you  
20 with your CLE credits, they allow trial  
21 counsel and defense counsel to go to the Army  
22 JAG school for a week. It could be a week on

1 military justice. It could be a week on  
2 defense. There's several courses that are  
3 available for government and prosecution to go  
4 to the schools, you know, get their CLE  
5 credits, while also maintaining skills.

6 And so, I guess we could look at  
7 whether or not they have annual training, in  
8 addition to the initial training for SVCs.

9 CDR KING: The Navy is saying that  
10 they are developing a two-day course at our  
11 Justice School in Newport, Rhode Island. And  
12 so, you assume the others are. So, as far as  
13 I know from our information we've gotten back,  
14 pretty much every Service has a SharePoint  
15 site that they share materials, and they can  
16 have like a blog sort of on there in some  
17 cases.

18 And I think each Service does its  
19 own -- you know, they have their head of the  
20 thing and do their own conferencing. They do  
21 not, as far as I know, have like a comparable  
22 thing to TCAP and DCAP, the Trial Counsel

1 Assistance Program.

2 COL SCHENCK: We used to call it  
3 "Dial the Law". So, we're stationed in Korea  
4 and I've got to get an affidavit in from the  
5 rehab, from Leavenworth saying that we had his  
6 rehab there. I dial that number and get  
7 someone who works at Fort Belvoir and says,  
8 "Oh, we've got the same problem over here at  
9 Fort Hood."

10 CDR KING: Right, but I think  
11 their programs are so small --

12 COL SCHENCK: Right.

13 CDR KING: -- that they're  
14 essentially doing that through their command  
15 heads. You know, like Karen Fischer-Anderson  
16 for the Navy, she's in Mayport --

17 COL SCHENCK: Right.

18 CDR KING: -- but they have a  
19 department head here, and they only have 20-  
20 some people. They can easily have  
21 conferences, phone conferences or  
22 teleconferences, VTC conferences.

1 MS. FERNANDEZ: I still think that  
2 that needs to be some sort of recommendation.  
3 If we don't, how do we get the information  
4 out --

5 CDR KING: Right.

6 MS. FERNANDEZ: -- to the people  
7 doing it? And then, we start talking about  
8 standing.

9 CDR KING: Right.

10 MS. FERNANDEZ: But if nobody  
11 really understands -- I mean, we don't  
12 understand the standing issue. You know, how  
13 are we going to get this brand-new corps?

14 CDR KING: So, I think they're  
15 trying, but that may be a good thing to come  
16 up with.

17 MS. FERNANDEZ: I think it's going  
18 to be critical, come the downsizing of the  
19 military.

20 CDR KING: Yes.

21 MS. FERNANDEZ: Yes.

22 COL SCHENCK: Yes. That's why the

1 stovepipe recommendation for the Army, the  
2 Army would probably be happy with that.  
3 Because I was at something with General  
4 Darpino, and I think it was Senator Reid asked  
5 about, his staffer asked, "Can you support  
6 this?" Because we were talking about the  
7 SVCs. And General Darpino said, "Oh, it was  
8 the role of the commander," pulling the  
9 commanders on it.

10                   The Army would have to do an  
11 entirely new restructuring. The SVC is sort  
12 of the same thing. We only have so many  
13 people to do so many missions. And if you're  
14 downsizing and increasing missions, I think  
15 our recommendation, if we want the Army to be  
16 able to fulfill it, a stovepipe might not be  
17 a bad recommendation.

18                   COL HAM: Plus, that makes them  
19 independent. I mean, the other stovepipe  
20 organizations are the defense organizations,  
21 the military judges. They don't report to  
22 anybody locally.

1                   MR. CASSARA: But I am wondering,  
2                   and I noticed in the comparative chart that we  
3                   got that at least two of the Services, if not  
4                   more, have said that they cannot be civilian  
5                   attorneys. And I wondering what the rationale  
6                   for that is, because there is so much turnover  
7                   in Legal Assistance.

8                   CDR KING: What I think, at least  
9                   I thought about that because we have Legal  
10                  Assistance attorneys who are civilians that  
11                  are hired by the government, but they don't  
12                  appear in court.

13                  Traditionally, at least now, all  
14                  employees of the military --

15                  MR. CASSARA: Yes, yes, okay.

16                  CDR KING: -- who appear in court  
17                  are military people.

18                  MR. CASSARA: Yes, okay, now that  
19                  I think about it --

20                  CDR KING: I know the Navy trained  
21                  some of our -- we sent a few of our HQEs to  
22                  the Justice School --

1 MR. CASSARA: Right.

2 CDR KING: -- and they went  
3 through the course. But there was still a  
4 determination that they couldn't appear in  
5 court as counsel because --

6 MR. CASSARA: No, you're right.  
7 You're right.

8 CDR KING: Right. So, that's why.  
9 I mean, you can have civilians who are hired  
10 in separate --

11 MR. CASSARA: I mean, you have so  
12 much turnover --

13 CDR KING: Right.

14 MR. CASSARA: -- in Legal  
15 Assistance. You know, when you talk about  
16 annual training, most Legal Assistance  
17 attorneys are in their jobs for a year.

18 CDR KING: Right, right.

19 COL HAM: But if it's a stovepipe-  
20 type organization, it would be a two- or  
21 three-year assignment like a defense counsel,  
22 the prosecutor, the special victim prosecutor.

1 I mean, it's a new structure  
2 which --

3 COL SCHENCK: It could be a job  
4 that would end up being like a defense  
5 counsel. You would have your senior defense  
6 counsel; you would have your regional defense  
7 counsel, and you could move within that  
8 structure. And you could spend your entire  
9 career being an SVC, like you could spent your  
10 entire career being a defense attorney,  
11 defense counsel. You know, I think it's  
12 great. I think there are many, many counsel  
13 who would love to do that. Many kids would  
14 like come into the JAG corps to do that.

15 BG MCGUIRE: Yes, but I caution  
16 making that recommendation because I think in  
17 downsizing you're going to have people being  
18 much more generalists. And so, when you have  
19 a stovepipe, that brings more bureaucracy,  
20 more people. I see that that would be, if we  
21 proposed that, that would probably be the  
22 first thing on the chopping block.

1                   CDR KING:  Also, the question is,  
2                   how do you become a qualified or a veteran  
3                   SVC?  Do you do it only by doing an SVC or do  
4                   you do it by being a prosecutor and defense  
5                   attorney also, so that you know all aspects of  
6                   the system when you go to that job?  You know,  
7                   you get better at the other aspects and  
8                   understand --

9                   COL SCHENCK:  Right, but you don't  
10                  litigate as much.  So, you have people who  
11                  have come in the JAG corps where they force  
12                  them to be trial counsel.  They don't want to  
13                  be trial counsel; they want to be Legal  
14                  Assistance.  And there is limited litigation  
15                  exposure in SVC.  It is more advising.  It is  
16                  more with client.  It is more client-service-  
17                  oriented than trial counsel and defense  
18                  counsel, right?  Well, sorry about that.

19                  (Laughter.)

20                  CDR KING:  When our JSC Committee  
21                  went around and studied them -- and, Meg,  
22                  especially in Oregon, I think a lot of the

1 people who are victim counsel in the civilian  
2 world seem to be former prosecutors where they  
3 had a lot of experience; they had a lot of  
4 criminal justice experience before they went  
5 into this. And that seemed to make them  
6 probably do better overall.

7 MS. GARVIN: You don't have to  
8 have it, and I don't think it should be a  
9 mandatory recommendation necessarily. But I  
10 have to say, those who have either come from  
11 defense or come from prosecution, they know  
12 how the system as a whole works, and that  
13 seems to have benefitted their clients quite  
14 a bit.

15 COL HAM: They are familiar with  
16 the Rules of Evidence and the rules that apply  
17 in trial cases.

18 MS. GARVIN: Yes.

19 COL HAM: So, they can enforce  
20 them on behalf of the client.

21 COL SCHENCK: They understand  
22 Article 120. I mean, that alone, 40 pages

1     worth --

2                   COL HAM:  Meg, can I ask you to  
3     circle back for a minute to kind of nail down  
4     your recommendation on the enforcement of both  
5     the Military Victim Rights Act -- and that's  
6     not the formal title, but that's how I'm  
7     thinking of it -- the MVRA and other rights?  
8     Do you think it should be the same mechanism,  
9     a proposed -- I think what I'm hearing is your  
10    recommendation is that the DoD work with  
11    Congress on an amendment on Article 62.  Would  
12    that be for all victim issues?

13                   And I guess what I'm asking is,  
14    you could -- do you want an amendment to  
15    Article 62 for the Military Victim Rights Act  
16    stuff and writ for MRE 412 rape shield issues?  
17    There could be a distinction that one is  
18    enforced one way and one is enforced another  
19    way.

20                   MS. GARVIN:  Yes, I would think  
21    they should all be the same device.  And I  
22    think they should all be in the amendment.  It

1 would be cleaner, as well as I think -- well,  
2 it's not an "and". I think the reason it will  
3 be cleaner is because I think some of the  
4 issues are going to become interrelated,  
5 right?

6           So, for instance, the Military  
7 Victims' Rights Act will have, it has some  
8 level of rape privacy because it has the  
9 fairness one, which in the civilian world has  
10 been interpreted to apply in rape shield  
11 proceedings to govern part of the discussion.  
12 So, you would have a 412 going on, and then,  
13 you would also have a military CVRA going on.  
14 And so, then, you would have to decide which  
15 device are you going under, and I think it  
16 would probably aid the process if they were  
17 the same appellate device.

18           COL HAM: And, Meg, would you  
19 agree that's still an open question? LRM  
20 didn't address whether there was standing to  
21 assert an error of law by the military judge  
22 in a 412 motion.

1 MS. GARVIN: Correct.

2 COL HAM: Would you agree?

3 MS. GARVIN: Yes, I definitely  
4 agree with that. They did not reach that  
5 issue.

6 In the civilian world,  
7 civilian/federal, that has actually been  
8 decided since 1984, pre-CVRA. In federal  
9 courts, victims can instantly seek appellate  
10 review on 412. But in LRM, the Kastenber  
11 case, it was left untouched.

12 COL HAM: And I will tell you  
13 right now there is an extraordinary writ  
14 pending in the Navy case that deals with  
15 MRE513, which is the psychotherapist patient  
16 records.

17 MS. GARVIN: Yes.

18 COL HAM: So, it was denied out of  
19 hand by the Navy/Marine Court of Criminal  
20 Appeals. So, it is a writ appeal to CAAF.  
21 They may or may not -- they may deny it out of  
22 hand, too, or they could order full --

1 MS. GARVIN: It is in all  
2 likelihood going to be -- the trial judge  
3 finished reviewing the record.

4 COL HAM: It is a writ of  
5 mandamus, I believe.

6 MS. FERNANDEZ: For those of us  
7 who haven't litigated in 15 years, can we --  
8 I'm lost. I'm completely and utterly lost at  
9 this point and just want to clarify what we're  
10 talking about.

11 COL SCHENCK: Okay. Do you want  
12 to tell about the military justice process --

13 MS. FERNANDEZ: No. What's the  
14 issue on the table right now?

15 MS. GARVIN: As I am understanding  
16 it, Colonel Ham's question was, do we put all  
17 -- is the Committee's recommendation to put  
18 all appellate devices in one place, meaning  
19 interlocutory appeal, which would be the  
20 amendment to 62? Do we say all victims'  
21 issues go through this new recommended  
22 appellate device or do some go through

1 mandamus, which already exists, and some would  
2 go through our recommendation for a new  
3 device?

4 MS. FERNANDEZ: I got it.

5 MS. GARVIN: Am I summarizing  
6 correctly?

7 COL HAM: Yes. Yes, that was my  
8 question, if you had a recommendation on that.  
9 It sounds like -- and I'm trying to capulate  
10 for the drafters -- it sounds like your  
11 recommendation is one device. You think it  
12 would fit in Article 62.

13 MS. GARVIN: Uh-hum.

14 MS. FERNANDEZ: Okay. Got it.

15 REP. HOLTZMAN: Now let me just  
16 ask about this because I'm still a little at  
17 sea, too, so to speak.

18 MS. FERNANDEZ: You're obviously a  
19 Navy girl, Liz.

20 REP. HOLTZMAN: Yes, right.

21 MS. FERNANDEZ: Bad joke.

22 (Laughter.)

1                   REP. HOLTZMAN: The Special  
2 Victims' Counsel is likely to be raising some  
3 issues on appeal. And the military justice,  
4 the trial counsel is likely to be raising some  
5 other issues on appeal.

6                   So, does it matter which one is  
7 raising these issues? I mean, I don't know  
8 necessarily on the 412 issue that it would be  
9 the Special Victims' Counsel. It might be the  
10 trial counsel. Isn't that correct?

11                  COL HAM: That is currently not an  
12 appealable issue under Article 62. It is not  
13 an appealable issue on behalf of the  
14 government. That does not fit under the very  
15 limited appellate rights for the government.

16                  REP. HOLTZMAN: Well, wait. But  
17 that raises a big issue. That means the  
18 government can't raise an issue on appeal  
19 about 412, but a Special Victim's Counsel will  
20 be able to do that?

21                  COL SCHENCK: Well, I think it  
22 depends on what evidence the government, what

1 evidence the military judge is suppressing  
2 under 412, if you're the trial counsel.  
3 Because if you suppress something under -- the  
4 rule, Article 62 requires that the judge  
5 suppress evidence that's going to dismiss a  
6 charge. So, if you had a confession from the  
7 accused and the judge suppressed it, the  
8 government would notify the judge in 72 hours  
9 and say, "Hey, we're appealing your decision  
10 to the Army Court of Criminal Appeals." And  
11 that judge, who would be ticked off probably,  
12 would allow for that to move through the  
13 process.

14 So, under 412 -- I guess I kind of  
15 disagree with what Patty was saying -- so,  
16 under 412, if the judge decided something that  
17 was negative to the government that would  
18 cause a charge to be dismissed, then the trial  
19 counsel could appeal that under Article 62.  
20 So, it's not just a victim.

21 MR. CASSARA: I think it is pretty  
22 rare under 412 to do that.

1 COL SCHENCK: Yes, it's rare, but,  
2 you know, still, it could happen.

3 REP. HOLTZMAN: Well, I guess my  
4 point is a little bit different, though. My  
5 point is, are we creating here -- because in  
6 some cases the trial counsel, the government's  
7 counsel and the Special Victims' Counsel will  
8 have identical concerns.

9 And what I am concerned about is  
10 whether under existing law the trial counsel  
11 will not be able to appeal, but are we  
12 granting a new right of appeal for the Special  
13 Victims' Counsel? And if that's the case,  
14 that's kind of an anomaly. That is all I'm  
15 raising.

16 MR. CASSARA: Well, I think it's a  
17 valid point, Liz.

18 REP. HOLTZMAN: It is a very  
19 limited point.

20 MR. CASSARA: I think there is  
21 also -- I'm in a case right now where the SVC  
22 has a very different position from the trial

1 counsel. The trial counsel and defense  
2 counsel both believe that the evidence is  
3 admissible under 412; the SVC does not.

4 COL SCHENCK: Right, and that is  
5 what the Kastenberg decision said. I mean,  
6 the SVC on Kastenberg said there were going to  
7 be issues where SVC and that trial counsel do  
8 not align.

9 MR. CASSARA: Right.

10 COL SCHENCK: That was  
11 specifically one of the things --

12 REP. HOLTZMAN: Right, but there  
13 may be issues where they do align. And in  
14 that case, is there some kind of an anomaly  
15 that is being created here where the trial  
16 counsel cannot appeal, the government has no  
17 right to appeal, but the SVC will have a right  
18 to appeal? I'm just asking, is that possible?

19 COL SCHENCK: I think it's  
20 possible.

21 REP. HOLTZMAN: And, if so --  
22 what?

1 COL SCHENCK: I definitely think  
2 it's possible. My personal opinion is yes.  
3 And Sherry --

4 REP. HOLTZMAN: Well, if that is  
5 going to happen, then we should address it  
6 because I don't think we should put the  
7 Special Victim's Counsel in a preferred  
8 position over the government.

9 COL SCHENCK: That's a good point.

10 MR. CASSARA: It's a very good  
11 point.

12 REP. HOLTZMAN: That's all I'm  
13 raising. That's my only point here. It is  
14 very limited.

15 COL SCHENCK: No, that's a good  
16 point.

17 REP. HOLTZMAN: I mean, I'm not  
18 saying that the Special Victim's Counsel's  
19 rights should be curtailed. I'm just saying  
20 that we shouldn't curtail the government's  
21 rights, too.

22 CDR KING: Meg, I assume that

1 issue comes up other places or has come up in  
2 other courts. Because, obviously, special  
3 victims, you know, the victim rights can align  
4 with either party or neither party. And I  
5 guess that is a conceptual idea for getting  
6 the victim their own standing to address their  
7 own issues, either regardless of who thinks  
8 what on the other side and who would have a  
9 right to appeal. Or if you want to change  
10 that somehow to -- I don't know what you would  
11 do to give the victims some input as well as  
12 not change the rights of the other parties to  
13 appeal.

14 MS. GARVIN: Yes, it has come up,  
15 although maybe not as thoughtfully as it has  
16 just come up in this conversation.

17 So, I was trying to pull up  
18 quickly some language from a couple of  
19 statutes, and I couldn't find them. But I  
20 might want to retract my recommendation from  
21 earlier that everything, the victims go under  
22 one device.

1                   Because, for instance, in Oregon,  
2                   the way it works -- and overall it's operating  
3                   fairly well -- rape shield is a stand-alone  
4                   statute, and appellate stuff under that  
5                   proceeds the way it always has, which actually  
6                   in most jurisdictions the prosecution doesn't  
7                   have interlocutory appeal of rape shield  
8                   issues.

9                   And then, victims' rights, the  
10                  appellate device that was crafted actually  
11                  said that anyone who disagrees with the  
12                  outcome of a victim's rights determination at  
13                  the trial court level can exercise appellate  
14                  review. And then, it has a caveat that takes  
15                  away the word "anyone," essentially. So, the  
16                  truth of the matter is that prosecution or  
17                  victim can seek interlocutory appellate review  
18                  of victims' rights issues. Defense is  
19                  directed to wrap it into its standard appeal.  
20                  But they put both prosecution and victim on  
21                  the same track for appeal of victim issues  
22                  pretrial.

1                   REP. HOLTZMAN:   And what happens  
2                   in a 412 matter?

3                   MS. GARVIN:   In a 412 matter, the  
4                   victim can seek review based on privacy  
5                   rights.  In most jurisdictions, the state  
6                   cannot seek an interlocutory appeal of rape  
7                   shield.

8                   COL HAM:   And the defense cannot,  
9                   either.

10                  MS. GARVIN:   Yes, it is a rare  
11                  thing if a prosecution or defense -- defense  
12                  wraps it into their normal appeal.  
13                  Prosecution, if they lose, they lose and the  
14                  victim's info is out there unless you have a  
15                  place where the victim has standing and they  
16                  seek appellate review themselves.  It is  
17                  actually a huge gap in rape shield from a  
18                  victim's perspective because very few of them  
19                  have their own lawyer.

20                  REP. HOLTZMAN:   Right.  So, maybe  
21                  this is -- I don't know if it's worth thinking  
22                  about it.

1 MS. GARVIN: I think one of the  
2 challenges is -- and I think I might have just  
3 heard other folks saying it -- is, you know,  
4 who's asserting the victim's right during the  
5 appeal? You know, like in the military  
6 system, the way it would be is the SVC would  
7 be asserting the victim's position on appeal.  
8 And if the victim and the state align -- the  
9 state has to be or the trial counsel has to be  
10 asserting government interests and not arguing  
11 the victim's interest. Otherwise, it's two  
12 victim's interest versus the defense interest.  
13 And vice versa, if the government and the  
14 defense agree, the defense should be asserting  
15 defendant's rights, and the government usually  
16 is asserting state rights, you know,  
17 government rights and interests.

18 I mean, I think what we have to  
19 make sure is that we haven't in any  
20 construction set up two people arguing exactly  
21 the same thing to the appellate court, both  
22 asserting the same rights. So, government

1 asserting victim's rights, SVC asserting  
2 victim's rights. Instead, it has to be, if  
3 the government has an interest in the appeal,  
4 they have standing in that appeal. If the  
5 victim has interest in that appeal or  
6 interlocutory appeal, they get to assert  
7 those, and the defense -- I mean, appellate  
8 standing has to still be intact, meaning you  
9 still have to meet the standing analysis.

10 I probably need my second cup of  
11 coffee. I'm sorry. That was really badly  
12 articulated.

13 (Laughter.)

14 DEAN ANDERSON: This is a  
15 fundamental question because there will be  
16 times in which the victim's interests are  
17 antithetical to both the government and the  
18 defense. There will be times in which the  
19 victim's interests align with one or the  
20 other, obviously, most often with the  
21 government's position. But how to  
22 conceptualize the appellate process, given

1 three instead of two, I think is a really  
2 interesting one.

3 It's simpler in the civilian world  
4 without Victim Counsel. It doesn't  
5 necessarily inure to the benefit of the victim  
6 every time because sometimes there are  
7 interests that are different; they diverge  
8 between the state and the victim.

9 So, Meg, what's your  
10 recommendation on this?

11 MS. FERNANDEZ: It's on you. Grab  
12 the coffee.

13 (Laughter.)

14 MR. CASSARA: That's why they're  
15 paying you so much, Meg.

16 (Laughter.)

17 MS. GARVIN: You know, I think we  
18 leave it with a recommendation that victims  
19 have the right to seek appellate review of  
20 their MVRA, if that's what we're going to call  
21 it, Military Victims' Rights Act, and other  
22 rights and interests.

1                   So, we would amend 62. So, again,  
2 Colonel Ham, I'm changing what I said earlier.  
3 I do think it might be cleaner to have them be  
4 separated.

5                   So, we create a new thing under 62  
6 for MVRA, right? We recommend that it be made  
7 clear that 412 and 513 allow for review,  
8 interlocutory review by the victim.

9                   And then, the rest of the standing  
10 analysis stays intact for the other parties on  
11 appeal. So, if the government already had  
12 standing to seek review, that stays intact.  
13 If they didn't, they don't have a new standing  
14 to seek review. But, that said, everybody  
15 would know that, if a victim seeks appeal, the  
16 other parties are respondents. So, their  
17 voice would be heard. Or they're real parties  
18 in interest, so their voice would be heard.

19                   And maybe that's the part we make  
20 clear. We're not creating new appellate  
21 standing for defense or prosecution. We are  
22 recommending new appellate standing for the

1 victim. But we make clear that both defense  
2 and government are real parties in interest or  
3 are appropriate parties for response in that  
4 it is appellate.

5 COL HAM: Are there any limits to  
6 the scope? Again, it sounded like you are  
7 limited to the eight or so rights in the  
8 Military Victim Rights Act and 412/513.

9 MS. GARVIN: I think it is of any  
10 right of the victim. I guess I don't know --  
11 I apologize -- I just don't know how to  
12 recommend more than that because I don't know  
13 what other rights exist.

14 I mean, the way it's crafted in  
15 the civilian world is you have standing on all  
16 of your rights. And so, we find other rights.  
17 You know, I'll be honest; like we go find and  
18 we have litigated straight-up privilege issues  
19 and other things. I don't know how to phrase  
20 it for the military.

21 MS. FERNANDEZ: Can I make a  
22 recommendation here? Sherry, why don't you

1 try to write up the recommendation as best we  
2 put it together?

3 CDR KING: Okay.

4 MS. FERNANDEZ: I think it is a  
5 lot to put it on Meg right now solely.

6 MS. GARVIN: At 7:15 in the  
7 morning.

8 (Laughter.)

9 MS. FERNANDEZ: Yes, exactly.  
10 Let's circulate it. I'm asking  
11 particularly the folks who have been  
12 litigating this stuff. I feel a little out of  
13 my capacity to be able to help out with this.  
14 But to circulate it amongst those who have  
15 thought through these issues and to see if  
16 we're missing something or, having some time  
17 to look at it, we think about it differently.

18 CDR KING: Okay. Right.

19 MS. FERNANDEZ: And then, hearing  
20 from everybody, because I know we can't talk  
21 to each other, God forbid.

22 CDR KING: Right.

1 MS. FERNANDEZ: Sherry, if you  
2 would say, you know, "Lisa says this, Mai says  
3 this, Colleen says this," and then, we get a  
4 final recommendation that way.

5 CDR KING: And then, we can always  
6 have a phone meeting to discuss several of  
7 those. Once everybody has had a chance --  
8 we'll try to work it up; everybody have a  
9 chance to respond. Remember to only respond  
10 to me, so we don't get in trouble. And then,  
11 we can have a phone conference, since we have  
12 a few of those, and maybe going over them and  
13 work them out.

14 JUDGE MARQUARDT: From a non-  
15 military perspective, I would like to see it  
16 covered for all of the victims' rights and not  
17 limited to what enumerated in the Act.

18 DEAN ANDERSON: I think Meg was  
19 suggesting that.

20 JUDGE MARQUARDT: Yes.

21 MS. GARVIN: I would agree with  
22 that, yes.

1                   CDR KING: I mean, that is a lot  
2 for a committee of this size, with the scope  
3 of other things you have to do, to make about  
4 something this big and this far-reaching, but  
5 it is certainly something that you should do  
6 probably or should look at. So, we will do  
7 the --

8                   MS. FERNANDEZ: Let's try to do  
9 the best we can here.

10                  CDR KING: Right, exactly.

11                  MS. FERNANDEZ: If we have an  
12 opportunity to -- what I'm hoping is to learn  
13 what we've learned on the civilian side, and  
14 being the bad and the good, and make this  
15 better.

16                  CDR KING: Right.

17                  MS. FERNANDEZ: Okay. That was  
18 painful.

19                  COL SCHENCK: It was really  
20 intellectually challenging.

21                  MS. FERNANDEZ: Yes, yes, yes.  
22 Well, intellectually challenging is painful

1 for those of us who -- never mind.

2 (Laughter.)

3 COL HAM: You have completed two  
4 of your assigned tasks by Congress this  
5 morning.

6 (Laughter and applause.)

7 BG MCGUIRE: Mimosas all around.

8 (Laughter.)

9 MS. FERNANDEZ: Yes, not bad for a  
10 morning's worth of work.

11 Where do we go from here?

12 CDR KING: Well, Meg, I mean, we  
13 do have this whole chart that spells out  
14 things that the Services have thought about,  
15 haven't thought about, that you may want to  
16 look at and decide if you want to make  
17 recommendations as to how they do it or if  
18 they do it consistently or not.

19 Meg, you may have some other ideas  
20 of what we should be talking about also. But  
21 it seems like it might be worth spending a  
22 little bit of time going over these or any

1 other issues you've thought about regarding  
2 victim counsel and perhaps as it relates to  
3 victim rights. So that we can start working  
4 up this issue, and not only discussing the  
5 realm of it, but also other recommendations or  
6 thoughts you have for how it be formed, since  
7 everybody is just really starting it at this  
8 point.

9 DEAN ANDERSON: Can I make a  
10 suggestion --

11 CDR KING: Yes.

12 DEAN ANDERSON: -- about process  
13 here?

14 So, this is an extremely-helpful  
15 document, and I appreciate the work that must  
16 have been almost limitless to try to assemble  
17 this. I really do.

18 Yes, we are all looking at Julie  
19 and thanking her.

20 I am wondering if -- it's 19 pages  
21 single-spaced in a small type face and font --  
22 and I'm just wondering if, rather than going

1 through each one of these, if we could task  
2 Julie, who at this point knows more about this  
3 than anyone probably on the planet, you know,  
4 having assembled the level of detail that she  
5 has assembled here, if we could ask her to  
6 identify in each of these areas what appears  
7 to be the best practices among the Services.  
8 And then, having that as a sort of preliminary  
9 default position of the Panel, that we would,  
10 then, discuss and weigh the merits of.

11 But it does seem to me that she is  
12 in the best position at this point to identify  
13 which of the Services have the most robust  
14 programs, even just identifying that for us,  
15 which of the Services have the most robust  
16 procedures in each of the areas, and might we  
17 consider those procedures kind of the best  
18 practices that end up being our  
19 recommendations?

20 BG MCGUIRE: There are some  
21 limitations in that, too, I think where one  
22 may not look like the other, may not

1 necessarily be better or worse.

2 DEAN ANDERSON: Exactly. Right.

3 And she could identify, look, here are two  
4 very different ways of conceptualizing it, and  
5 it looks like the Services have fallen into  
6 these two camps.

7 MS. CARSON: I'm not sure I can  
8 give my opinion on it, though.

9 CDR KING: I think we could pick  
10 some issues to talk about.

11 MS. CARSON: I have a few things  
12 highlighted in there that you might want to --

13 BG MCGUIRE: And I was going to  
14 say, what would be easier for her, because she  
15 can't really be in a position to adjudge, but  
16 she could say the anomalies and, then, where  
17 everybody else is sitting. So, if everybody  
18 else is sitting here, and then Army is the  
19 anomaly, why is that? Because that could be  
20 a better practice or it is a cultural thing.

21 MS. CARSON: I can write up the  
22 questions maybe.

1                   CDR KING: Well, we have thought  
2 of a few of those that Julie and I have talked  
3 about. And maybe, Julie, you want to come up  
4 here and help contribute to that.

5                   But one of the issues is, who gets  
6 this Special Victims' Counsel? And I don't  
7 know if you want to address that or not. They  
8 all get a Special Victims' Counsel if they are  
9 a sexual assault victim, but in the Marine  
10 Corps --

11                  COL HAM: Adult military sexual  
12 assault --

13                  CDR KING: Right, if they're an  
14 adult military sexual assault --

15                  COL HAM: Victim or a dependent  
16 entitled to legal assistance by statute.

17                  CDR KING: Right. But in the  
18 Marine Corps it's all crimes. If you're a  
19 victim of any crime, they're giving you a --

20                  MS. FERNANDEZ: That is not within  
21 our scope.

22                  CDR KING: It is not necessarily.

1 MS. FERNANDEZ: If that is what  
2 the Marine Corps wants to do, then for them --

3 CDR KING: Yes. Right. So, you  
4 may not want to do that, but that is one of  
5 the differences that we found.

6 And the Army is --

7 MS. GARVIN: Can I ask a question  
8 about the clarification that just happened?  
9 Are they all adult victims right now?

10 CDR KING: Yes. I don't think any  
11 -- well, the Marines, did the Marines --

12 MS. CARSON: The Marines may still  
13 be all adult. I don't know if they have  
14 clarified that or not.

15 CDR KING: You know, the Marines  
16 take dependents also. And some of them  
17 take --

18 COL SCHENCK: I am looking at page  
19 3 of the chart.

20 CDR KING: Right.

21 COL SCHENCK: It says Army  
22 specifically excluding minors, yes, is

1 definitely -- and I guess, going across --

2 CDR KING: The Marines say it  
3 includes, provided to adult dependents. Yes,  
4 they're all adults.

5 COL SCHENCK: And the Air Force  
6 says excluding minors.

7 CDR KING: Uh-hum. They are all  
8 adults at this point.

9 COL SCHENCK: Yes, they're all  
10 adults.

11 CDR KING: And part of it is I  
12 think it might go through Family Advocacy.

13 COL SCHENCK: Right, right.

14 CDR KING: And that may be  
15 something to address this afternoon with the  
16 Family Advocacy Specialists also.

17 COL SCHENCK: Meg, in the civilian  
18 sector, is it Victim Counsel for every crime  
19 victim, specific crimes, or just sexual  
20 assaults?

21 MS. GARVIN: All victims.

22 COL SCHENCK: Yes, see, to me,

1 it's like, oh, you're an attempted murder  
2 victim; you'll get nothing in the military.  
3 But if you are attempted murder victim in the  
4 civilian sector, you are getting the same --

5 COL HAM: Meg, what percentage of  
6 all victims get a counsel?

7 JUDGE MARQUARDT: Almost none.

8 MS. GARVIN: Right. It is very  
9 small, the number of lawyers --

10 JUDGE MARQUARDT: It depends on  
11 your jurisdiction as well.

12 MS. FERNANDEZ: Yes, I kind of  
13 think we've got to stick to what our mandate  
14 is.

15 MS. GARVIN: I think if our  
16 charter is sexual assault, I think we stick  
17 with that. But I do think we should address  
18 the child victim issue of sexual assault.

19 JUDGE MARQUARDT: We can't.

20 COL SCHENCK: No, our title of our  
21 response panel is adult systems.

22 MS. GARVIN: Oh, my gosh, that's

1 right. I'm sorry. I forget the sexual  
2 assault.

3 (Laughter.)

4 MS. FERNANDEZ: More coffee, Meg.

5 (Laughter.)

6 MR. CASSARA: I feel better about  
7 my stupid comment a couple of hours ago,  
8 though.

9 (Laughter.)

10 MS. FERNANDEZ: What was yours,  
11 Bill?

12 MR. CASSARA: About when they get  
13 Victims' Counsel, and it's like already in the  
14 law, and I just completely forgot --

15 MS. FERNANDEZ: Oh.

16 MR. CASSARA: -- because I hadn't  
17 had any coffee yet.

18 DEAN ANDERSON: All right. So,  
19 let me throw out another process possibility.  
20 I'm trying to streamline and move this party  
21 forward.

22 And that is, I guess that I am

1 very happy and impressed that Julie has  
2 assembled this information, but I would not  
3 want this level of detail to show up in the  
4 report.

5 CDR KING: No. It was done for  
6 your discussion.

7 DEAN ANDERSON: Right. Okay.

8 CDR KING: Right.

9 DEAN ANDERSON: Good. Good, good,  
10 good. So, we're all on the same page there.

11 CDR KING: It was not done to  
12 write the report.

13 DEAN ANDERSON: Yes.

14 CDR KING: It was done so that you  
15 would be able to see --

16 DEAN ANDERSON: As a background  
17 document.

18 MS. FERNANDEZ: Can you just walk  
19 us through the document as quickly as  
20 possible? I think that that would be helpful.  
21 If we feel like we're starting to get bogged  
22 down, we'll say, "Well, Julie, we're being

1 bogged down." But I think it would be helpful  
2 just to get some stuff out. And if we could  
3 limit commentary as we're just going through,  
4 or at least every couple of pages and then we  
5 talk about it; every couple of pages and we  
6 talk about it.

7 CDR KING: Julie, if you're going  
8 to do that, you should probably come up here,  
9 so that we can get it on the transcript.

10 MR. CASSARA: Actually, if she is  
11 going to do that, can we take a five-minute  
12 break?

13 CDR KING: Yes. I think that  
14 would be a really good idea.

15 (Whereupon, the foregoing matter  
16 went off the record at 10:29 a.m. and went  
17 back on the record at 10:47 a.m.)

18 CDR KING: Okay. So Julie, go  
19 ahead.

20 MS. CARSON: So my chart that I  
21 put together with the handbooks that we  
22 received, the RFI responses, the requests for

1 information and the testimony that we received  
2 from the Special Victim Counsel program  
3 managers at the November 8th meeting.

4 CDR KING: Can you hear Julie on  
5 the phone, just to clarify?

6 FEMALE PARTICIPANT: It could be  
7 -- if she could be a little louder.

8 MS. CARSON: Louder? So I was  
9 just saying this is the compilation of of the  
10 information that we have, including testimony  
11 from November 7th and 8th, and then I give you  
12 the reference for the Army and the Air Force  
13 have what they are calling a handbook. It's  
14 not signed, it's not an official document like  
15 a reg.

16 The Navy is working on a manual  
17 and we haven't seen it yet. The Marine Corps  
18 has actually incorporated this now into their  
19 legal admin manual as another section in it,  
20 and I don't know if the other services are  
21 planning to do the same thing or not, and then  
22 we haven't heard anything from the Coast

1 Guard.

2 The next section just gives you  
3 the number of SVCs in each service, and I  
4 don't know if that's anything we have enough  
5 information to analyze at this point.

6 Caseload, we've only heard from Air Force  
7 about their total cases and Coast Guard.

8 CDR KING: The trouble is that  
9 it's too new to tell.

10 MS. CARSON: It looks that the  
11 rank across the Services is going to be about  
12 the O-3 level, and some will have a few O-4s,  
13 will be a little but more senior counsel, and  
14 they all seem to report to an O-6 program  
15 manager.

16 CDR KING: --to the O-3 legally.  
17 It could be one year. It could be ten years.

18 FEMALE PARTICIPANT: Exactly.  
19 (Simultaneous speaking.)

20 FEMALE PARTICIPANT: It could be  
21 nine months. It's the newest.

22 COL SCHENCK: Because in the Army,

1 you get promoted automatically from first  
2 lieutenant to captain, what is it, nine  
3 months?

4 BG McGUIRE: But then it takes  
5 about anywhere from six to eight years to make  
6 major. So when you --

7 (Simultaneous speaking.)

8 BG McGUIRE: You don't know if  
9 this is a brand new captain or eight years  
10 under his belt captain in the JAG.

11 (Simultaneous speaking.)

12 COL HAM: They make up the  
13 majority of the trial counsel and the majority  
14 of defense counsel. They are not the special  
15 victim -- the special victim prosecutors are  
16 typically higher ranking, with much more  
17 experience. But most of your defense counsel  
18 are in a structure where the captains are the  
19 work horses, and they have supervisory chains  
20 above them.

21 FEMALE PARTICIPANT: And that's  
22 for all the Services.

1 DEAN ANDERSON: So the O-3 level  
2 is not unusual, vis-a-vis their --

3 MALE PARTICIPANT: No, yes.

4 DEAN ANDERSON: Compatriots who  
5 are on the other side of the table. So this  
6 is fine.

7 CDR KING: Right, especially  
8 unless you specialize like the special victim  
9 prosecutors or the Navy people, most of the  
10 trial experience left in the higher O-3s. By  
11 the time you're O-6s in the military, you  
12 haven't really tried very many cases in the  
13 recent past. So what most people O3/O4s are  
14 the ones who try the cases.

15 BG MCGUIRE: Those are the  
16 workhorses.

17 CDR KING: Right. So that seems  
18 to be --

19 BG MCGUIRE: Norm.

20 CDR KING: Well, you want it to be  
21 maybe on the spectrum of having tried some  
22 cases, so they know how it actually works and

1     how dealing with victims works.  O-3s are  
2     probably going to be --

3                   MS. FERNANDEZ:  Well, I'm just  
4     wondering if that should be a recommendation,  
5     that you should have -- it could be an O-3  
6     level, but with X amount of years of trial  
7     experience.

8                   I mean if you've got a kid going  
9     in there who is basically just learning their  
10    way around a courtroom, and on top of it  
11    they're being -- making a whole new body of  
12    law, they're going to be lost.

13                   DEAN ANDERSON:  But that's true  
14    for prosecutors and defense attorneys as well.

15                   MS. FERNANDEZ:  But they've got a  
16    whole system around them that can tell them  
17    what to do.  There isn't that kind of  
18    infrastructure in with the special victims'  
19    counsel.

20                   BG McGUIRE:  I think the most you  
21    could probably do as far as enforcing -- is  
22    that the first assignments would not be that.

1                   So if you say your first  
2 assignment shouldn't be right out of the  
3 chute, you're going to be an SVC, but you  
4 know, you could say one year or two year.  
5 Somebody has one year experience when they  
6 maybe have only one trial.

7                   You go to another person who has  
8 one year experience, and they're going to have  
9 six.

10                   FEMALE PARTICIPANT: Depending on  
11 where they're assigned.

12                   BG MCGUIRE: So those are  
13 dependent on where they're assigned. But  
14 first out of the chute probably don't need to  
15 be an SVC. So that would be like your first  
16 assignment. Your first assignment's anywhere  
17 from two to three years.

18                   MS. FERNANDEZ: What do you think  
19 Bill? You're the one who had the  
20 inexperienced counsel issues.

21                   MR. CASSARA: Yes. My only  
22 concern was saying first assignment is a lot

1 of -- you can be on an assignment for four  
2 years and, you know, by Year 2, you're going  
3 to know more than your average bear.

4 But you know like I said, of the  
5 few cases that I've had so far, you know, one  
6 case had a really good special victims'  
7 counsel, knew what they were doing.

8 A couple of the other ones, they  
9 were just brand new out of the chute, and you  
10 know, were just -- it was not their fault.  
11 They just didn't know these particular  
12 questions.

13 MS. FERNANDEZ: I'd like to say  
14 that it's not their first assignment. Can we  
15 make that as a recommendation?

16 FEMALE PARTICIPANT: Or steer  
17 their first assignment.

18 COL SCHENCK: I would recommend  
19 that we ask them to have previously been  
20 assigned to military justice capacity as a  
21 defense counsel, as trial counsel. You could  
22 -- I mean I would be more specific.

1 MR. CASSARA: Yes, but if  
2 somebody's done 18 months as a trial lawyer or  
3 defense counsel, then I'd say they're ready to  
4 do it.

5 COL SCHENCK: Right. I would  
6 specifically say, because you can be assigned  
7 to claims as a first assignment, and then go  
8 to this your second.

9 JUDGE MARQUARDT: Do they second  
10 chair in the military?

11 COL SCHENCK: Yes, they do,  
12 assistant trial counsel.

13 JUDGE MARQUARDT: You can say  
14 trial counsel and the assistant trial counsel?

15 COL SCHENCK: Yes. You could  
16 actually say assistant trial counsel or trial  
17 counsel. But maybe you want to put a number  
18 on there, number of -- I don't know.

19 MS. CARSON: Having done a tour --

20 REP HOLTZMAN: Why do we want to  
21 be so specific? Is there really some -- can't  
22 we just say that the special victim counsel

1 has to have a certain, you know, has to have  
2 experience in and list the categories, whether  
3 they have experience in trial, experience in  
4 whatever, and just leave it at that, because  
5 I don't know that we can specify -- I don't  
6 know what the advantage is of being as  
7 specific as we're trying to be here.

8 BG MCGUIRE: I think that's good.  
9 I think that's a good idea too.

10 DEAN ANDERSON: What advantage do  
11 we gain by limiting the number of possible  
12 people who could serve in this capacity, given  
13 limited staffing across the military in a  
14 range of different areas? What we don't want  
15 to do is to make the hurdles so high that it  
16 impinges upon the pool of people who might  
17 otherwise be able to serve in this capacity.

18 BG MCGUIRE: Maybe preferred,  
19 recommended?

20 MS. FERNANDEZ: No. I mean I  
21 honestly think that if you don't have somebody  
22 in there who knows their way around a

1 courtroom, then it's a complete disservice to  
2 the victim. I mean I just --

3 COL HAM: Julie, do you know if  
4 the Services are getting additional billets  
5 for these slots at this point? One of the  
6 issues arising, they have to pull from  
7 existing resources right now.

8 I know Congress allocated or  
9 appropriated \$25 million to the Special Victim  
10 Counsel Program in the last Appropriations  
11 Act. But I don't know if there are additional  
12 billets. That may be something you want to  
13 consider.

14 COL SCHENCK: The Air Force Chief  
15 SVC said that they were pulling from existing  
16 resources in the Air Force when she sat on the  
17 panel.

18 BG MCGUIRE: You know, in two or  
19 three years, this may be a moot point, because  
20 then you'll have a foundation of experience  
21 out there with SVC. So I mean because we have  
22 brand new lawyers going in and trying and

1       defending cases right now, because they have  
2       a foundation or a mentorship or other folks  
3       that can help them do that.

4                    Because SVC's new, then perhaps I  
5       mean -- do we just kind of, you know, cross  
6       our fingers for the next two years until we,  
7       you know, have that foundation, or do we for  
8       a period of time make a recommendation that  
9       they have some prior experience?

10                   COL SCHENCK: I would say prior  
11       experience in military justice or criminal  
12       justice, because sometimes people come in from  
13       the -- into the military, and they're  
14       previously prosecutors or defense counsel.  
15       That way it's broad enough that the Services  
16       can get the hint.

17                   CDR KING: At this point, not the  
18       Army but the other Services, or at least some  
19       of them have brought in reserve counsel, and  
20       some of those may be very experienced in  
21       criminal justice.

22                   DEAN ANDERSON: If you look at

1 page five, it's explaining --

2 FEMALE PARTICIPANT: That's great,  
3 that's excellent.

4 CDR KING: I think the Army has  
5 brought in reservists, but only to backfill  
6 their legal assistance attorneys. So they  
7 might be missing out on people who have  
8 actual, you know, criminal justice experience  
9 and putting them in the legal assistance  
10 slots.

11 MS. CARSON: Yes, and then on page  
12 14, the impact on the overall JAG structure is  
13 where it talks about where they're bringing in  
14 reservists.

15 COL HAM: Which means they have to  
16 say they can't -- they don't have it in their  
17 existing inventory. They don't have the  
18 manpower in their existing inventory to  
19 justify it.

20 CDR KING: On page what Julie?

21 MS. CARSON: 14, Impact on Overall  
22 JAG Structure. That gives you a little bit of

1 the --

2 DEAN ANDERSON: So the use of  
3 reservists actually advantages the victim?

4 CDR KING: It can be.

5 MR. SPRANCE: They usually come in  
6 more experience than --

7 FEMALE PARTICIPANT: Right.

8 CDR KING: I mean especially if  
9 they pick ones, you know, because people -- as  
10 reservists, you apply for these billets, send  
11 in your resumes or whatever, and then they  
12 look at them hopefully select people who have  
13 the experience, at least in the civilian world  
14 and some of the military.

15 COL HAM: The Special Victim  
16 counsel, that Comparative Systems Subcommittee  
17 was able to visit in Bremerton was a mobilized  
18 assistant U.S. attorney.

19 FEMALE PARTICIPANT: Wow.

20 MR. SPRANCE: Yes. That's good.

21 DEAN ANDERSON: That's terrific.

22 CDR KING: So I'm not -- I mean I

1 think --

2 MS. FERNANDEZ: I think criminal  
3 or military justice, experience in criminal  
4 military justice is broad. But it also --

5 DEAN ANDERSON: It's vague and  
6 flexible. We don't identify number of years  
7 or anything. We just say some experience in  
8 criminal or military justice.

9 REP HOLTZMAN: As appropriate.

10 CDR KING: And all reservists, I  
11 think all the Services the reservists have all  
12 read through the basic military training also.  
13 I mean they all have to be active duty JAGs  
14 first. So they all have the basic military  
15 and then a lot of them will have gone out and  
16 done criminal law.

17 Whoever applied for these billets  
18 I assume would have done criminal law in  
19 other, you know, areas in their states. So  
20 that would be the recommendation, is that this  
21 special victim counsel have at least some  
22 experience in criminal and military justice.

1                   JUDGE MARQUARDT: I think she said  
2 appropriate.

3                   REP HOLTZMAN: I really don't like  
4 that at least some experience. I would just  
5 rather say have appropriate experience, you  
6 know, trial experience and other appropriate  
7 -- I mean have "appropriate trial experience"  
8 before being retained, at least for the next  
9 several years. Or just leave it at that.

10                  DEAN ANDERSON: I guess one  
11 question I have is that there are folks who  
12 have experience working with victims as rape  
13 crisis counselors or in the civilian world,  
14 that may be directly applicable to this kind  
15 of work, and make them particularly well-  
16 suited for this kind of work, if they came in  
17 and became JAGs.

18                  MS. FERNANDEZ: Yes, but it's a  
19 whole -- that's a whole thing than actual  
20 trial experience, and knowing, you know.

21                  DEAN ANDERSON: Well, let's ask  
22 Bill. Bill, in your experience, when folks

1 fell down on the job who were SVCs, was it for  
2 failure to understand the criminal justice  
3 process?

4 MR. CASSARA: They didn't  
5 understand the military justice process under  
6 rules of evidence, absolutely.

7 DEAN ANDERSON: Okay, okay. Then  
8 that's fine. Then let's say appropriate  
9 experience in that area. That's fine.

10 CDR KING: And I think they're all  
11 doing that, but it certainly wouldn't hurt to  
12 have a record of it, and they all said they  
13 have their JAGs approve everybody, and that  
14 they look for people who -- some of them said  
15 "volunteer."

16 But I think they're all doing it,  
17 but that would be a recommendation that you  
18 all can make, because they may change what  
19 they're doing. I mean these are, you know,  
20 initial concepts. So if you make that a  
21 recommendation, that would probably be  
22 helpful.

1 MS. CARSON: The NDAA requires  
2 them to be certified as competent, to be  
3 designated as a special victims' counsel by  
4 the TJAG of the armed force in which the judge  
5 advocate is a member, or by which the civilian  
6 attorney is employed. That doesn't apply.  
7 Silly guidance.

8 FEMALE PARTICIPANT: So we don't  
9 need to beat this horse.

10 MS. CARSON: This is kind of  
11 small, what are the victim attorneys called.  
12 It actually says in the NDAA they should be  
13 called special victim counsel, and the Army,  
14 the Air Force and the Coast Guard call them  
15 that. The Navy and Marine Corps call them  
16 victim legal counsel. So just to highlight  
17 that for you.

18 CDR KING: And of course the  
19 problem is that is they also have special  
20 victims capability in all the Services now,  
21 that all the Services have to have prosecuting  
22 -- you know have to have a team for the

1 prosecution that are especially skilled to  
2 handle sexual assault cases, and that's called  
3 the special victim capability.

4 So that's also an SVC. So there's  
5 a little bit of confusion with that, and so I  
6 don't know if you want to make any  
7 recommendation about what we call them. But  
8 of course they're all doing it differently.

9 MS. FERNANDEZ: Bigger fish.

10 MS. CARSON: Okay. Full-time or  
11 collateral duty. I think they're mostly  
12 contemplated to be full-time positions, but we  
13 don't have that definitively provided to us.  
14 If we want to inquire anymore about it, we can  
15 do that.

16 DEAN ANDERSON: I don't think we  
17 can mandate full-time.

18 MS. CARSON: No.

19 DEAN ANDERSON: Because there are  
20 circumstances in which that simply doesn't  
21 make sense.

22 MS. CARSON: Right.

1 DEAN ANDERSON: Okay.

2 COL HAM: Here's where you can  
3 recommend -- General McGuire, I'm looking to  
4 you, because you may be the expert. They're  
5 not in the force structure right now. Again,  
6 they're pulled out of -- they're pulled out of  
7 -- there's no spot designated on a manning  
8 document for that.

9 MS. CARSON: Right.

10 COL HAM: So do you want to go  
11 there or -- which means they're on the  
12 chopping block.

13 BG MCGUIRE: Would be the first  
14 ones on the chopping block. I think -- I  
15 think this is fine. I think that, you know,  
16 I don't --

17 MS. FERNANDEZ: Well, if they're  
18 the first ones on the chopping block, why  
19 wouldn't we want to do something to make sure  
20 that they weren't?

21 REP HOLTZMAN: Because they're not  
22 going to cut them now. It's not realistic.

1 But they might in five years, five years from  
2 now.

3 BG MCGUIRE: What we want is a  
4 capability, not an individual. So I mean  
5 that's the difference, that we're talking  
6 about semantics here.

7 We want capability. When you look  
8 at force structure and developing force  
9 structure and assigning people that tag of  
10 SVC, that is a unique individual that goes to  
11 that particular position.

12 So that's all they can do is that  
13 job. So let's say you are at a court board  
14 and you've got only about three attorneys on  
15 that installation, and that person could be  
16 just twiddling thumbs while the other two are  
17 kicking tail, because he is billeted against  
18 an SVC billet.

19 Or it could be a collateral, you  
20 know, based on the requirements. So therefore  
21 the capability they have on the installation.

22 MS. FERNANDEZ: Okay, okay. So

1 you want the capability in the installation;  
2 you don't want the actual individual?

3 BG McGUIRE: It would be limiting.  
4 It would be limiting. That would put a bill  
5 on the table for the services I think that  
6 they'd not be willing to pay frankly.

7 MR. CASSARA: There are some  
8 installations with only three JAGs, like the  
9 Presidio.

10 BG McGUIRE: Okay.

11 FEMALE PARTICIPANT: Right.

12 REP HOLTZMAN: I don't even  
13 understand this conversation. I'm sorry.  
14 This is Liz Holtzman. I'm totally lost here.  
15 Why are we getting down to a recommendation  
16 about number of billets or something like  
17 that, or this program's going to end in five  
18 years?

19 BG McGUIRE: We don't have to.

20 REP HOLTZMAN: I mean can't we --  
21 if we worry the program is going to end in  
22 five years, shouldn't we say that -- something

1 about the military has to make a long-term  
2 commitment to it? I mean of course they could  
3 say well, we want to see how it works first.  
4 But I don't know. That level of detail is not  
5 really -- not really necessary.

6 BG McGUIRE: No, and that was the  
7 discussion, was that the only discussion was  
8 do we want, you know it goes along with the  
9 stovepipe discussion that goes with the, you  
10 know, defining this person as solely -- with  
11 force management.

12 Force management is a whole  
13 different topic. I don't think we need to  
14 address force management issues. That was the  
15 point I was trying to make, is that --

16 REP HOLTZMAN: Well, I don't know  
17 what force management is, so you're really  
18 dealing with a problem in me. I'm sorry.

19 BG McGUIRE: Well, I won't go  
20 through it. I won't explain, but --

21 REP HOLTZMAN: Please don't.

22 BG McGUIRE: It's beans and

1 bullets, you know. It's an accounting thing.

2 Thanks. Yes, move on.

3 MS. CARSON: Locations. This just  
4 gives you an idea of how many state places.  
5 It looks like all the Services are  
6 contemplating putting them as far-reaching as  
7 possible. This gives you an idea of where  
8 they are.

9 Who is eligible for services? The  
10 one note in the NDAA is that it needs to be  
11 for restricted or/and unrestricted. Other  
12 than that, it's not particularly specific on  
13 who's eligible for services, as long as  
14 they're eligible for military legal  
15 assistance.

16 So you get from each of the  
17 Services the eligibility for military legal  
18 assistance, and then they've all noted that if  
19 a sexual assault is prior to their military  
20 service, the victim is not eligible for victim  
21 counsel.

22 MS. FERNANDEZ: Why is that? I

1 mean I don't know --

2 MS. CARSON: It could be -- one of  
3 the requirements is that they have to have  
4 jurisdiction over the perpetrator, and it's  
5 possible that they don't. So that would  
6 disqualify it anyway.

7 MS. FERNANDEZ: Meg, does that  
8 ring correct for you?

9 MS. GARVIN: I'm not sure  
10 actually. Yes.

11 JUDGE MARQUARDT: Wouldn't that  
12 complicate investigation and everything else  
13 if it's prior to the Service?

14 COL HAM: If it wasn't committed  
15 by a military member, there would be no  
16 jurisdiction over the offense.

17 JUDGE MARQUARDT: Right, right.

18 COL HAM: Or the person.

19 MS. GARVIN: Julie, can you repeat  
20 the language again? Or kind of your  
21 understanding of what it's saying?

22 MS. CARSON: Right. It's kind of

1 laid out here. For instance, all active duty  
2 Army, for the Army, Army Reserve, National  
3 Guard. They have to report that they've been  
4 a victim under the UCMJ.

5 The commander has to have  
6 jurisdiction, and that's where you get into it  
7 has to be somebody that's under his  
8 jurisdiction. So it's a military member, and  
9 the victim is in an active status.

10 CDR KING: But the thing is  
11 anybody who's on active duty who's an adult at  
12 least has the right to legal assistance, and  
13 so they're still entitled -- and that's one of  
14 the things legal assistance attorneys would  
15 do, would give them advice about the civilian  
16 system.

17 So that they might not get their  
18 own attorney necessarily to go with them out  
19 in town, assuming there was a still a case  
20 over something that happened before they came  
21 in, which there probably isn't. They would  
22 still have advice of a lawyer, just it's not

1 necessarily a special victim lawyer.

2 MS. CARSON: Right.

3 COL HAM: Okay.

4 MS. CARSON: Also you might note  
5 they added the entry level status members who  
6 are alleged to have been involved in an  
7 unprofessional relationship with basic  
8 military training faculty or staff.

9 They don't call it a sexual  
10 assault. It's if you've been in an  
11 unprofessional relationship with someone at  
12 that level. So they both -- the Air Force and  
13 the Army have noted that in their manuals.

14 CDR KING: So technically that  
15 might be a fraternization or some other  
16 charge, rather than sexual assault.

17 MS. CARSON: But you still get a  
18 victim counsel.

19 REP HOLTZMAN: And what are the  
20 consequences of that, that there's no victims'  
21 counsel in those cases?

22 FEMALE PARTICIPANT: No, that you

1 don't get --

2 MS. CARSON: You do get one.

3 REP HOLTZMAN: They do or they  
4 don't?

5 MS. CARSON: They do.

6 REP HOLTZMAN: They do, okay.

7 Well, should that be something that's expanded  
8 to all the branches?

9 FEMALE PARTICIPANT: It's already  
10 in the Air Force.

11 MS. CARSON: It's in the Air Force  
12 and the Army.

13 MS. FERNANDEZ: Do we want to  
14 just ask that it be done throughout all the  
15 Services?

16 DEAN ANDERSON: I guess I would  
17 want to know a little bit more about  
18 circumstances in which that's the charge. Are  
19 there circumstances in which sexual assaults  
20 are charged as fraternization?

21 BG McGUIRE: Well, and see this is  
22 where it's hard. How could -- I wouldn't

1 characterize it as a sexual assault. If it  
2 was a mutual --

3 DEAN ANDERSON: Of course. But  
4 what I'm asking is something slightly  
5 different.

6 BG McGUIRE: Okay.

7 DEAN ANDERSON: And that is if  
8 it's not -- you know, in the civilian world,  
9 things are forcible assaults, that are then  
10 charged as lesser offenses all the time.

11 Non-forcible but non-consensual,  
12 and I guess I'm wondering now that we have a  
13 consensual, is it true that there are non-  
14 consensual sexual interactions that are  
15 charged as consensual interactions, because  
16 it's easier to prove fraternization?

17 COL SCHENCK: And maltreatment of  
18 subordinates. That's a whole other charge  
19 they've been charging.

20 CDR KING: It's possible, but I  
21 think this is -- I think what they've done, oh  
22 I'm sorry. Congress has proposed legislation

1 to make those a per se sex crime, and so far  
2 it hasn't happened.

3 So what they're trying to address  
4 is the situations where there is, you know, at  
5 least consensual on the surface, but perhaps  
6 it's not as, you know, because of the  
7 different levels like student-teacher or  
8 something, it might be consensual because the  
9 student didn't say no or didn't object to it.

10 But there was some, you know,  
11 pressure that maybe you can't prove or that's  
12 not a crime per se. But they've included this  
13 victim to help them into the special victims'  
14 counsel, to help them sort through the system.  
15 Maybe that happens at the academies and so  
16 forth.

17 COL SCHENCK: At the Air Force  
18 training bases. The trainers are young,  
19 because they are, you know, they were good  
20 when they got trained. They did a little  
21 tour.

22 They came back there, they're very

1 junior and they look good, and then they  
2 develop this relationship. You may come in  
3 the Air Force with a little senior, and they  
4 develop this relationship, which is clearly a  
5 consensual in the normal circumstances.

6 But by regulation, it is  
7 prohibited conduct, by the post regulation, by  
8 the Air Force regulation. So they then charge  
9 it under -- as a violation of the regulation,  
10 and they don't charge it as a sex offense,  
11 because it wasn't an eggshell victim. It was  
12 a, you know, mature woman, whatever.

13 BG MCGUIRE: It's good order and  
14 discipline.

15 COL SCHENCK: Right. But it's  
16 still a crime in the military. But then there  
17 are also -- so those are the type victims I  
18 think that would fall under that. Victims I  
19 think that would still fall under sexual  
20 assaults would be the drill sergeant trainee,  
21 previously sexually assaulted victim trainee  
22 with the drill sergeant married predator type.

1           I could see those being pulled out  
2           and being charged, and the people in the  
3           ground figure that out, the people at the  
4           installation.

5           CDR KING: But I think this is  
6           just designed to give special help to the new  
7           people in the military, that might find  
8           themselves in those circumstances. So it's  
9           not like excluding other crimes. It's just  
10          trying to -- it's just picking out something  
11          that might not be able to be charged as a  
12          sexual assault, and still giving them the same  
13          advice as they would give other sexual assault  
14          victims, probably because they're new.

15          COL HAM: If it's fraternization,  
16          they're not a victim at all.

17          MS. CARSON: Right.

18          REP HOLTZMAN: Well maybe before  
19          we make the recommendation of that expanding  
20          to all the branches, we ought to ask the two  
21          branches that did include this for their  
22          rationalization and their experience.

1 COL SCHENCK: Agreed.

2 FEMALE PARTICIPANT: Yes. I'd be  
3 interested in their experience.

4 CDR KING: And it may be that the  
5 other services are providing it. We just  
6 didn't have the manual from the Navy. You  
7 know, they haven't written up the manual.  
8 They may -- I don't know if they even know  
9 exactly. But we can certainly ask, do a  
10 follow-up question, I guess.

11 REP HOLTZMAN: Well, if the Navy  
12 already has it, then we don't have any work to  
13 do on this. We'd have to find out first from  
14 the Navy what they're planning to do and what  
15 they are doing.

16 MS. CARSON: It's looking like the  
17 Air Force had the first manual, because they  
18 had the first program. It looks like the Army  
19 basically used the same manual, which was  
20 pretty comprehensive.

21 There's one difference that I was  
22 able to see really between the two, and that

1 is that the Air Force will not deploy special  
2 victim counsel and the Army will.

3 Other than that, they've taken it  
4 from this one document, and I would imagine  
5 the other Services will. Now the Marine Corps  
6 didn't do that handoff. They did their own  
7 regulation. So that may be something you want  
8 to look at.

9 MS. FERNANDEZ: Who are the  
10 Services that deploy special victims' counsels  
11 and the ones that don't, because that is --

12 MS. CARSON: We don't know of any  
13 except what the Army and the Air Force. The  
14 others haven't addressed the question.

15 MS. FERNANDEZ: So the Army --

16 MS. CARSON: The Army deploys; the  
17 Air Force does not deploy. They say they have  
18 reach back that capability.

19 MS. FERNANDEZ: It's a  
20 philosophy; it's a deployment philosophy.

21 (Simultaneous speaking.)

22 CDR KING: So the Navy has put

1 their special victims' counsel at all of their  
2 regions, which includes overseas, and so they  
3 --

4 MS. FERNANDEZ: What is their  
5 deployment philosophy?

6 BG McGUIRE: Well, deployment  
7 philosophy, you know, in the last couple of  
8 years, the last decade, has been the military  
9 usually goes for a year. The Air Force  
10 usually goes maybe four months, six months,  
11 four to six months.

12 COL SCHENCK: In pieces. They  
13 deploy in pieces. We deploy in units, you  
14 know. We have intel officers that are plugged  
15 to the unit, but -- and they can do that with  
16 the SVCs. So that's the Army. But the Air  
17 Force, it would be like okay, you're an F-16  
18 pilot. You're going.

19 These six F-16 pilots are going,  
20 and then -- and they also actually don't sit  
21 on the ground in Afghanistan. They fly from  
22 other locations. So the Air Force doesn't --

1 they rely on the other Services.

2 BG McGUIRE: Usually the heavy  
3 support structure in a ground combat  
4 environment is usually, usually the Army.

5 MS. FERNANDEZ: Hence, you need  
6 your lawyers on the ground.

7 BG McGUIRE: So usually our  
8 lawyers are on the ground and our  
9 investigators are on the ground, where again  
10 a lot of the other investigators, OSI, NCIS,  
11 will come in and out and what will often  
12 happen is that both the lawyers and the Army  
13 will investigate or have agreements with the  
14 other Services to do it while in theater.

15 MS. CARSON: I will point out that  
16 where I think we passed it. Each of the  
17 Services says that they will provide the  
18 Service for the others if their Service is the  
19 perpetrator. The Army says they'll provide it  
20 for the other Services and the dependents if  
21 it's an Army perpetrator. The Air Force will  
22 represent the victim if it's an Air Force

1 perpetrator.

2 So if you're in a joint deployed  
3 environment and it's a perpetrator from a  
4 different Service than the Army, you may be at  
5 a loss there.

6 CDR KING: But they also provide  
7 VTC services or phone services, but and that's  
8 typical for other legal assistance also that  
9 they do for people, you know, who are in  
10 remote places, if the victim called for legal  
11 advice or something and, you know, I don't  
12 know how that --

13 MS. FERNANDEZ: Who's calling in?  
14 I mean the victim's not going to be calling in  
15 for advice. I mean it's another attorney who  
16 would call in for advice.

17 CDR KING: Well, the victim would  
18 be hooked up where they are and they would  
19 hook the victim up --

20 MS. CARSON: The SARC would hook  
21 them up.

22 CDR KING: Right, yes.

1                   BG McGUIRE:  There's actually  
2  deployed SARCs in combat zones.

3                   CDR KING:  Right.  They would put  
4  them in touch with whichever victim lawyer is  
5  responsible for that deployed facility.

6                   MS. FERNANDEZ:  Right.  Does that  
7  sound okay with you guys?

8                   COL SCHENCK:  It does to me, just  
9  because I know the way the Air Force -- I  
10 understand how the Services work together when  
11 they're in this deployed environment, and  
12 we're going to this --

13                   MS. FERNANDEZ:  It's very joint,  
14 very purple.

15                   COL SCHENCK:  Yes, joint.

16                   CDR KING:  It may not be as ideal  
17 as having a victim lawyer at every place, but  
18 I mean there's some limitations.

19                   MS. FERNANDEZ:  No, I get it.  I  
20 understand.

21                   CDR KING:  Actually I was  
22 wondering --

1 MS. FERNANDEZ: But you guys know  
2 what it's like on the ground. I have no idea.

3 BG McGUIRE: In fact, at NMCI,  
4 MNF-I in Iraq, there were lawyers from each of  
5 the Services right there at the headquarters,  
6 that would help facilitate those kind of  
7 issues.

8 COL SCHENCK: And when I was a  
9 legal assistance attorney many moons ago, I  
10 saw Air Force clients, because the Army  
11 provided divorce separation counseling, and  
12 the Air Force does not. So they just go to  
13 the Army people.

14 JUDGE MARQUARDT: Well, with the  
15 reduction in force too, I don't think we can  
16 mandate the other changes.

17 COL SCHENCK: Right, and the Air  
18 Force probably has other military operational  
19 skills that do not deploy, I mean that they  
20 don't have designated. So it would seem  
21 somewhat odd for us to force an SVC, unless we  
22 research what other military operational

1 skills are not deployed, you know.

2 I'd just -- I'd feel  
3 uncomfortable, because I don't want to go  
4 there. Too much informational research.

5 MS. FERNANDEZ: Let's go on.

6 MS. CARSON: Okay. The next is  
7 the reporting structure and the big issue here  
8 is all of them are stovepiped, except for the  
9 Army, which is part of their legal assistance  
10 program.

11 REP HOLTZMAN: What does it mean  
12 "stovepiped"?

13 MS. CARSON: It means it's its own  
14 independent unit. It doesn't report locally  
15 to the SJA.

16 COL HAM: Yes. The name stovepipe  
17 comes from -- if you look at a chart of how it  
18 was organized, it would, you know, you put  
19 your hand in the air and go out right and up.

20 So it actually looks like a pipe.  
21 It's skipping -- it's skipping the structure  
22 and the chain of command at the location, and

1 it's reporting to somewhere else, usually --

2 FEMALE PARTICIPANT: Fort Belvoir.

3 COL HAM: Usually the D.C. area.

4 The headquarters will be in the D.C. area, and

5 the people will be all around the world. The

6 examples are the trial defense organizations,

7 the military judge organizations. So they are

8 CID, the military investigative organizations.

9 So they are completely independent

10 of any command at the location where they are

11 stationed.

12 REP HOLTZMAN: Okay

13 MS. FERNANDEZ: Who thinks that's

14 an issue? Again, you don't think it's an

15 issue, Colleen?

16 BG MCGUIRE: I don't, no.

17 MS. FERNANDEZ: They can get

18 sufficient amounts of support, even though the

19 command isn't local?

20 COL HAM: They are ordered to

21 provide it.

22 COL SCHENCK: Well, I'm not

1 worried about the support. I'm more worried  
2 about the -- I, my little SVC, working in --  
3 I happen to be sitting in legal assistance.  
4 If I need advice, I can call Colonel McKee.  
5 But the prosecutor is down the hall from me,  
6 and he's going to kick my butt, and I  
7 eventually want to be a prosecutor.

8           They move people within the  
9 offices. So I want to get that job that that  
10 guy's in over there. I don't want to be in  
11 legal assistance. I want to be prosecutor.  
12 So then, these people might know that whatever  
13 they're advising is going to adversely impact  
14 that prosecutor who I do PT with. Every  
15 morning, I form up next to him.

16           So in order for me to get that  
17 job, he's going to leave and I want to be a  
18 trial counsel. I've got to make sure -- you  
19 know, my client may be my client, but there's  
20 that tension, command influence type tension  
21 within that office.

22           That's the only concern I have,

1       having been in legal assistance wanting to be  
2       the prosecutor, never having this issue  
3       because --

4                       FEMALE PARTICIPANT: They're both  
5       typically working for the same --

6                       COL SCHENCK: Working for the same  
7       boss, too.

8                       CDR KING: Not in the Navy  
9       anymore.

10                      (Simultaneous speaking.)

11                      CDR KING: They have different  
12       commands.

13                      COL SCHENCK: Well, yes. You've  
14       got a separate command, because of the  
15       stovepipe, that stovepipe says. So I'll use  
16       the defense counsel as an example. Jim  
17       Garrett is the defense counsel. He still  
18       worked in the building, but he's connected to  
19       the other side, has his own entrance office.

20                      Doesn't have to do physical  
21       training with the JAG office, the prosecutors.  
22       He has his clients go over there. His boss is

1 sitting in Atlanta, a different -- his  
2 regional -- he's the senior defense counsel.  
3 His regional defense counsel is in Atlanta.  
4 The Trial Defense Service boss is at Fort  
5 Belvoir.

6 So he is very independent.  
7 There's no pressure for him to guilty plea all  
8 his clients because he doesn't have any --  
9 there's no one telling him you've got to be at  
10 PT. There's no one telling him -- there's no  
11 kind of -- you're completely independent.

12 Same with the military judge. The  
13 military judge flies in, hears cases, is under  
14 a circuit judge, who's under -- the chief of  
15 trial judiciary sits at Fort Belvoir. No  
16 pressure to come up with a hammer sentence.  
17 There's no command influence. Not assigned to  
18 the commander of the installation, a lot of  
19 independence. And they created those two --

20 (Simultaneous speaking.)

21 DEAN ANDERSON: So that sort of  
22 argument for stovepiping the SVC. Maybe we

1 should make that recommendation.

2 COL SCHENCK: Right, right.

3 That's me, that's me. I mean I leave it to  
4 you all, but to me that's my -- why you want  
5 that independence.

6 REP HOLTZMAN: How would you  
7 achieve it?

8 COL SCHENCK: You just tell the  
9 Army to do what the other Services are doing.

10 FEMALE PARTICIPANT: Yes, all the  
11 other Services are doing it.

12 BG MCGUIRE: I disagree.

13 COL SCHENCK: No, I totally  
14 understand. But I'm just telling you why --

15 FEMALE PARTICIPANT: Why do you  
16 disagree?

17 BG MCGUIRE: I disagree only  
18 because you're building another structure  
19 within an organization. Stovepipe, while  
20 administratively works well, it's easy but  
21 it's very frictional.

22 It's very frictional. So even if

1 you are in a stovepipe organization, and you  
2 hold your ground or you're -- it's hard to  
3 describe unless you experience and live it, a  
4 stovepipe operation or experience.

5 But you're going to come out of  
6 that stovepipe. You do, and so unless you're  
7 competent and you're good and competent,  
8 whether you're in a stovepipe or not, and  
9 you're going to be true to your client, if  
10 you're going to get a reputation of being a  
11 good, you know, a lawyer or whatever  
12 regardless of the stovepipe or not.

13 Because you could be in a  
14 stovepipe organization and be defiant and  
15 flippant, still be a good, you know, support  
16 your client, but not play well with others.  
17 Yes, so it would hurt you anyway. So I mean  
18 just the stovepipe to me just adds another  
19 layer of bureaucracy and friction within the  
20 different chains of command, myself.

21 MS. GARVIN: Is the stovepiping  
22 though also -- I kind of understand, because

1 I hadn't thought of the friction component.  
2 But I am wondering if it makes the Brady  
3 analysis cleaner, meaning you are so separated  
4 from trial counsel that the argument that you  
5 are subject to Brady is less viable.

6 There wouldn't have to be  
7 litigation over that, because you literally  
8 are a separate entity. Is that -- does it aid  
9 that or not, having it stovepiped?

10 COL HAM: Well, do you want to  
11 direct the Service -- well, I don't -- I mean  
12 maybe a middle ground is directing the  
13 Services.

14 Are they having these issues? Are  
15 there any potential conflicts of interest  
16 because the special victim counsel may be  
17 taking a position in opposition to the trial  
18 counsel, and in some of the Services they work  
19 for the same person.

20 COL SCHENCK: And I would ask them  
21 do they have a justification for not doing it?  
22 I mean they have thought -- they've got big

1 brains running the Army.

2 COL HAM: That would address  
3 Professor Garvin's issue. Are there any -- is  
4 there any Brady litigation going on? I don't  
5 know. That might be something to do.

6 COL SCHENCK: We did talk to one  
7 of the witnesses about that Brady, and Brady  
8 was a concern.

9 CDR KING: Well, and it's  
10 something you may want to discuss as a  
11 separate issue also, regarding victim counsel  
12 obligations or not, because it seems like  
13 every single witness has brought or every  
14 single person that we've addressed it to has  
15 brought it up.

16 COL HAM: It seems the attorney-  
17 client privilege trumps any --

18 MS. CARSON: Right, right.

19 COL HAM: It's the attorney-client  
20 privilege, right Meg? I mean the attorney-  
21 client privilege trumps, and the  
22 psychotherapist or not psychotherapist -- the

1 priest-penitent and the attorney-client  
2 privileges are ironclad in the military.

3 FEMALE PARTICIPANT: Right,  
4 ironclad.

5 CDR KING: But that's something  
6 every single person that we've talked to  
7 almost has brought up as a concern, which is  
8 why it seems like maybe you want to discuss it  
9 and decide if you have any recommendations or  
10 not at some point, you know, once we get past  
11 this.

12 DEAN ANDERSON: So just to  
13 clarify, what we're asking -- are we asking  
14 the Services generally why they do or do not  
15 stovepipe?

16 FEMALE PARTICIPANT: Right.

17 DEAN ANDERSON: I would -- I just  
18 think that -- are we asking for a report on  
19 this? What are we asking? Who are we asking?

20 COL SCHENCK: I think it's a one-  
21 line question. Would you -- if you look at  
22 where it says request for information, RFI

1 cited in here, where the Navy hasn't responded  
2 or some Services haven't, we would do a  
3 request for information, I would imagine, and  
4 say could you answer these three questions,  
5 and then they come back with a paragraph.

6 MS. FERNANDEZ: Yes. If there  
7 are Brady concerns, are there --

8 COL SCHENCK: Have there been any  
9 issues regarding Brady --

10 MS. FERNANDEZ: Or really  
11 frictional concerns?

12 COL SCHENCK: Why don't you  
13 stovepipe? Do you have a basis or  
14 justification for not?

15 CDR KING: Well everybody does  
16 except the Army.

17 COL SCHENCK: Well, you ask the  
18 Army why, you know, what's your justification  
19 for not stovepiping, and it may be manpower  
20 issues. I mean that's what I would think. It  
21 would be manpower issues, what you guys were  
22 saying.

1 (Simultaneous speaking.)

2 MS. FERNANDEZ: Let's move along  
3 folks. Otherwise, we're never going to get  
4 through.

5 CDR KING: We need some  
6 clarification as to what questions  
7 specifically you want to send out.

8 MS. CARSON: And one point, just  
9 for moving on. Is it important to you or  
10 important to the military that the Services be  
11 consistent? There's only one outlier.

12 Okay. Next is the screening and  
13 selection process, and we've kind of gone  
14 through this already. But just to note it for  
15 you, the Army says they're selected on their  
16 military justice experience. The Air Force  
17 says their experience may be less, but it's  
18 comparable to the JAGs entering the defense  
19 counsel, new JAGs.

20 The Navy says all VLC have prior  
21 courtroom experience on at least one side.  
22 Most have been both defense and trial counsel.

1 The Marine Corps says you have to have at  
2 least six months of military experience unless  
3 waived, and the Coast Guard doesn't really  
4 specify, other than having the training.

5 MS. FERNANDEZ: I think we went  
6 through this. Let's just keep going.

7 MS. CARSON: For the training  
8 requirements, we went through.

9 MS. FERNANDEZ: Yes. We went  
10 through that.

11 MS. CARSON: The mission and  
12 scope, the big difference there is the Marine  
13 Corps is offering the service to all victims,  
14 versus sexual assault victims. The pre-trial  
15 or the pre-trial role is what kind of lays out  
16 all the things they're supposed to do.

17 They're similar but slight  
18 differences of wording here and there. That's  
19 why I kind of listed them all out. I don't  
20 know if you want to go through all those  
21 things. They should be consistent across the  
22 Services.

1 MS. FERNANDEZ: I think if  
2 they're hitting the same rights and issues,  
3 then no, we don't need to make the -- we don't  
4 need to make them uniform. We just have to  
5 make -- you didn't see that there was  
6 something that one of the Services was giving  
7 that the others weren't, did you?

8 MS. CARSON: Well, I haven't. I  
9 haven't really dug into this, to see whether  
10 or not there are any key differences. But I  
11 will and I'll note them if there are. They're  
12 pretty consistent. They pretty much say the  
13 same thing in different ways.

14 MS. FERNANDEZ: I think just  
15 about collateral misconduct, advising on  
16 collateral misconduct.

17 MS. CARSON: The collateral  
18 misconduct is the one that's a difference.

19 CDR KING: There's another issue  
20 that we thought you might want to discuss if  
21 you have time.

22 MS. FERNANDEZ: Yes. That's in

1 this section.

2 CDR KING: They all handle it  
3 differently, as far as what the special victim  
4 lawyer can do in relation to that issue also.

5 MS. FERNANDEZ: Yes. That's a  
6 tough one.

7 CDR KING: Yes. So we may not  
8 have time to get down to philosophy. So all  
9 right, go on.

10 MS. CARSON: The next one is their  
11 role during the court-martial, and I'll just  
12 note that the Army says that they can  
13 represent the victims in proceedings as  
14 permitted by law. It has that caveat. The  
15 others don't. I don't know if that's  
16 important.

17 MS. FERNANDEZ: We know -- what's  
18 the significance of that? I mean they all  
19 have "as provided by law," as provided by the  
20 NDAA; correct?

21 MS. CARSON: Yes. I don't think  
22 we should necessarily --

1                   REP HOLTZMAN: Well is that  
2 intended or could that be any way of  
3 squelching the ability of the special victim  
4 counsel to challenge the law, to try to change  
5 the law, to criticize the law? I don't know.

6                   MS. CARSON: And the Army says  
7 they can accompany and advise. The Air Force  
8 says advocacy. The Navy says will attend,  
9 will present facts and legal arguments and  
10 attend.

11                   MS. GARVIN: It seems like we  
12 should have -- I mean I haven't -- this is  
13 Meg. I have -- I don't know that any of us,  
14 it sounds like, have gone through these in  
15 details, and Bill, you obviously know the  
16 most. But it seems like our recommendations  
17 should be broader.

18                   They have a client. That client  
19 has rights and interests in the pre-trial  
20 during court-martial and post-trial. Those  
21 rights are legal rights, and they can  
22 represent on those. It just seems like our

1 recommendations should be broader than the  
2 nuance of well, you can represent on victim  
3 impact statements.

4 Well then everything's going to  
5 have to be revisited if the restitution kicks  
6 in, right? And in summary we should say is  
7 SVCs, or whatever they call them in each  
8 branch, should represent on their client's  
9 rights and interests. Or maybe we just say  
10 rights, at the various proceedings, during  
11 investigation and prosecution of a case.

12 REP HOLTZMAN: Maybe not various,  
13 but at all.

14 MS. GARVIN: Right.

15 MS. FERNANDEZ: So what's our  
16 recommendation? Meg, you want to say it one  
17 more time?

18 MS. GARVIN: Oh, I think our  
19 recommendation should be SVCs have the  
20 authority to represent their clients' rights  
21 at every stage of --

22 REP HOLTZMAN: And interests, and

1 interests.

2 MS. GARVIN: Rights and interests  
3 at every stage of the investigation and  
4 prosecution, from pre-trial to post-conviction  
5 of a client.

6 MS. FERNANDEZ: And they  
7 shouldn't have all these distinct  
8 enumerations. It just should be wide open?

9 MS. GARVIN: That would be my  
10 recommendation. I mean I think every time you  
11 list one thing, you may saying they can't be  
12 doing something else.

13 REP HOLTZMAN: Correct.

14 MS. FERNANDEZ: Okay, that's  
15 good.

16 MR. CASSARA: Can I raise just one  
17 quick question, Meg? Would you also -- would  
18 you consider that to also include the  
19 appellate process? When you say "post-  
20 conviction," are you talking about a victim  
21 being able to have representation in the  
22 appellate phase of a court-martial?

1 MS. GARVIN: Yes, if they have an  
2 articulatable right at issue. So most of the  
3 rights in a defense appeal, most of the rights  
4 don't actually attach, right. Now if they  
5 appeal the sufficiency of evidence or  
6 something, Victims Rights really won't have  
7 much to say in that moment, because actually  
8 they'll have nothing to say in the sufficiency  
9 of the evidence argument.

10 CDR KING: So is everybody okay  
11 with putting that as a recommendation or  
12 something similar to that?

13 MS. CARSON: Do you want to  
14 mention standing, or do you just want to say  
15 that SVC has the authority?

16 MR. CASSARA: Isn't standing  
17 something determined by --

18 MS. GARVIN: Standing.

19 MS. CARSON: Uh-huh.

20 MR. CASSARA: Okay.

21 MS. FERNANDEZ: Authority and  
22 standing? Is that amended? Authority and

1 standing.

2 MS. GARVIN: It is, but based on  
3 experience, I think the redundancy could be  
4 useful.

5 JUDGE MARQUARDT: Does that allow  
6 them then to get evidence?

7 CDR KING: You mean to get like  
8 reports?

9 JUDGE MARQUARDT: Yes, yes.

10 CDR KING: That's another issue.

11 JUDGE MARQUARDT: Another issue.  
12 Yes, because I mean that -- if we say it that  
13 way, then they could be bothering the  
14 investigators, right? I mean but General  
15 McGuire is better at talking about that than  
16 I am.

17 But for example, during discovery,  
18 right, the accused is going to be able to go  
19 over to the investigative office and look at  
20 the file and see what they have. When we  
21 allow for counsel to have authority and  
22 standing at every stage of the military

1 justice process, including investigation, that  
2 allows the victim to go over with their  
3 counsel to --

4 And I don't know one way or the  
5 other, but allows the SVC to start pummeling  
6 investigators, right, at the start of the  
7 investigation. I don't know.

8 CDR KING: Some of these rights  
9 are limited, at least in the military, by  
10 saying that the victim lawyer has no more  
11 rights than the --

12 MS. CARSON: That's the next  
13 section, SVC standing and access. To the  
14 extent anybody's talked about, both the Army  
15 and Air Force say that the victims' counsel  
16 has no more right to records or access to  
17 records than the victims have.

18 CDR KING: Although the Army  
19 handbook permits the trial counsel to give the  
20 Army victim lawyer more discovery, but not  
21 even present it -- not show it to the victim,  
22 to represent the -- to help with

1 representation, which I thought was kind of  
2 interesting. It doesn't require, but it  
3 permits them to.

4 JUDGE MARQUARDT: Well, if you  
5 allow the defense counsel to have all that  
6 information, why wouldn't you allow the  
7 victim?

8 CDR KING: I think they're saying  
9 partly that the -- I mean the defendant is a  
10 party. A victim isn't necessarily a party to  
11 the case, as much as an interested person or  
12 an interested -- Meg, you can probably explain  
13 that better.

14 COL SCHENCK: Well, it's like Meg  
15 said. The rights of the victim. So what's in  
16 that investigative file may be other victim  
17 statements. There may be co-conspirator  
18 statements.

19 There may be all sorts of stuff in  
20 the file. Oh, one thing in the military of  
21 course would be statements regarding the  
22 victim from other witnesses, right, and

1 they're all in this little unit. They all  
2 went to the hotel together. I don't know.  
3 I'm just giving you an example of what I'm  
4 talking about.

5 MR. CASSARA: That's most of my  
6 cases.

7 MS. GARVIN: But I mean, I think  
8 the way this has played out, and it has mostly  
9 been litigation. So because the language in  
10 the civilian world is relatively broad, too.  
11 The way it's played out is litigation over --  
12 victim's counsel should get to see those  
13 portions of the investigative file that are  
14 relevant to the assertion of the victim's  
15 rights.

16 So, right, which sometimes  
17 requires an in camera review, which judges  
18 aren't particularly happy with usually. But  
19 it's, you know, no, I don't get other witness  
20 or victim statements if they aren't relevant  
21 to me asserting my right to be heard at  
22 whatever. Or they are not relevant to my

1 right to, you know, if the military mandates  
2 restitution.

3 If they are relevant to my  
4 assertion of my right, you know, whether it be  
5 rape shield protections, other privacy,  
6 whatever, I get that portion of it, because  
7 otherwise, my counsel can't do his or her job  
8 in advocating for my right.

9 So it's kind of -- it's not a  
10 clean line, always. Like, it's not all or  
11 nothing. It's more those portions which  
12 require some level of judgment, but we expect  
13 that in other moments, right? Brady turns  
14 over Brady material. You know, the  
15 prosecution turns over Brady materials.

16 I mean, that's how it's played out  
17 in the civilian world. I'd love it if the  
18 victims got everything, but truth of the  
19 matter is, a good victim's counsel shouldn't  
20 want everything most times because there are  
21 other privacy concerns. So they should get  
22 that which is relevant to their rights.

1 COL SCHENCK: So Meg, the victim  
2 counsel in the civilian sector, though, when  
3 it happens, is triggered at charging or when  
4 is it triggered?

5 MS. GARVIN: It depends on the  
6 jurisdiction. In Oregon, it's as soon as the  
7 victim calls you, and it can be pre-reporting  
8 to police and you go with them to the  
9 reporting phase and sit in on the interview  
10 with them. In Arizona, it's the same way.

11 It just depends on the  
12 jurisdiction. It depends when the victim gets  
13 ahold of you. In all of them, you could start  
14 representing them before charging. It's just  
15 which rights attach pre- and post-charging.  
16 In the federal system, the rights attach pre-  
17 charging, and so attorneys start representing  
18 pre-charging during the investigative phase.

19 JUDGE MARQUARDT: Well it seems to  
20 me that SVCs should have access to those  
21 things that pertain to the victim's rights.

22 MS. FERNANDEZ: Yes, I think

1 that sounds right. You ready to move on?

2 MS. CARSON: Yes, okay. The next  
3 section is when is a victim eligible, and  
4 we've kind of been through this. They all say  
5 as soon as they are in contact with a victim  
6 advocate or anyone in the system.

7 The one who does lay this out  
8 specifically is the Air Force, that says the  
9 victims can contact the SVC offices on their  
10 own as well. I don't know if the others --  
11 it's implied, but it's not stated.

12 DEAN ANDERSON: It seems like an  
13 unobjectionable recommendation that we could  
14 input.

15 MS. CARSON: Yes. Then the  
16 duration of the relationship, and that kind of  
17 goes to whether they're doing it through all  
18 phases because the Marine Corps is the one of  
19 the Services that says post-trial assistance  
20 will be evaluated on a case-by-case basis.  
21 The rest of them pretty much say when it's  
22 logically over or the client ends the

1 relationship.

2 DEAN ANDERSON: So I guess I'm  
3 wondering -- in the Marine Corps, what does it  
4 mean it will be evaluated? By whom?

5 CDR KING: Hopefully by the  
6 supervisor, or if they need to by the head of  
7 the program.

8 DEAN ANDERSON: The head of the  
9 Special Victims Group?

10 CDR KING: Yeah. Colonel Joyce at  
11 this point.

12 DEAN ANDERSON: And the others?  
13 I'm sorry. I'm not a master of the details  
14 here. The others assume that appellate  
15 representation is part of the process?

16 CDR KING: It's post-trial  
17 submission of clemency materials, or  
18 submission of materials in relation to the  
19 clemency material which was provided by the  
20 defense, assuming there is.

21 MR. CASSARA: And I read that as  
22 fairly clearly stating that that does not

1 include the appellate process.

2 (Simultaneous speaking.)

3 CDR KING: Right, and also they  
4 have clemency and parole boards. Victims have  
5 a right to speak at those. So they're  
6 providing representation for those. But  
7 that's not necessarily at the appellate  
8 process itself. It might be happening at the  
9 same time.

10 DEAN ANDERSON: So why -- why are  
11 there no victim's rights during the appellate  
12 process?

13 COL SCHENCK: Because it takes a  
14 really -- I don't know how it works in the  
15 civilian sector, but my concern as far as  
16 maintaining that attorney-client privilege  
17 with an SVC through appellate is just the flux  
18 of the assignments in the military.

19 So that appellate process is  
20 probably not going to be done by the time your  
21 SVC is moving to another job. I don't know.  
22 Maybe that's why they're justifying it, and

1 that's how they're justifying it.

2 CDR KING: One thing that happens  
3 in many of the Services at least is that  
4 there's an appellate defense unit and an  
5 appellate government unit. So when a case is  
6 done and completed, you know, with clemency  
7 and those kind of things, for an appeal, the  
8 case moves to the appellate defense attorney.

9 DEAN ANDERSON: It moves to the  
10 appellate division.

11 CDR KING: Right, and so the  
12 defendant, the accused will be given a new  
13 appellate attorney. So it's not the same  
14 trial attorney who necessarily -- who  
15 represents him. So that's where they cut it  
16 off from the trial.

17 We don't really have that system  
18 set up anyplace yet for special victims'  
19 counsel, where there's an appellate special  
20 victims' unit.

21 COL SCHENCK: In legal assistance  
22 generally, you are not going to maintain that

1 attorney. It ends at the time you end your  
2 assignment as --

3 REP HOLTZMAN: So let me ask a  
4 question about that. Suppose a trial counsel  
5 decides, for strategic reasons, not to make a  
6 big issue of some fact that came up in the  
7 trial, but special victims' counsel disagrees  
8 with that. What's the status of that? I  
9 mean, can special victims' counsel write a  
10 separate brief? What happens?

11 COL HAM: Those are all to be  
12 determined. There's no law on it. There's  
13 the one case that Meg can discuss in detail,  
14 and I think all of you have and have read LRM  
15 v. Kastenberg. But it left to the judge to  
16 develop all of those issues.

17 There's only a right to be heard  
18 built into a couple of places. MRE 412, MRE  
19 513, the psychotherapist-patient privilege,  
20 medical records, and the Military Victim  
21 Rights Act. So there are only certain points  
22 --

1 MS. FERNANDEZ: It's new law.

2 REP HOLTZMAN: Well, do we -- is  
3 this something worth addressing in detail, or  
4 we don't have time for it, or what?

5 COL SCHENCK: I think it's really  
6 too in the weeds with this new law that's  
7 being developed. I imagine that if someone,  
8 an SVC has an issue that is so cutting-edge  
9 that that colonel who oversees the SVCs is  
10 going to track it.

11 I mean, those are hand-picked O-6s  
12 who are, you know, they've got their hands on  
13 all those issues. That's just my perception  
14 of that, and I really don't think we should  
15 require them to go through the appellate  
16 process, require the SVC, because you're  
17 hindering what the Services can do with their  
18 attorneys.

19 One of the Services -- I note it's  
20 the Marine Corps -- says ends if the VLC is  
21 reassigned or discharged.

22 REP HOLTZMAN: Right. Well --

1 COL SCHENCK: So I think that's  
2 the way -- we could leave it at that. I mean,  
3 we could put that --

4 REP HOLTZMAN: We could, but  
5 should we? I mean, just because the Marine  
6 Corps wants to do that.

7 COL SCHENCK: Well, I think  
8 reassignment is a good -- is a good ending  
9 point. You're going to have to end the VLC if  
10 you're reassigned, to me, even if you're not  
11 through -- even if you're not tried yet,  
12 right?

13 Your accused, the accused is not  
14 tried. I'm the VLC. The case is taking  
15 forever. He has civilian counsel who keep  
16 delaying, and so the case goes on and on, and  
17 I'm leaving. I'm going to be moving to  
18 another assignment. My victim and I cannot  
19 maintain that attorney-client privilege. So  
20 I think that --

21 REP HOLTZMAN: The relationship.

22 COL SCHENCK: Right.

1                   REP HOLTZMAN: Well so, well maybe  
2 they're entitled to another.

3                   COL SCHENCK: Oh, they would get  
4 another. I believe they would get another.  
5 I think reassignment just means I'm moving,  
6 you're not. Here's my new replacement. I'm  
7 sure these Services have a transfer. Just  
8 like legal assistance. Again, I go back to  
9 legal assistance.

10                  REP HOLTZMAN: Yes, but the point  
11 you're making is that because the Marine Corps  
12 says no, nothing happens after the trial ends,  
13 that that should be the end of it, and my  
14 question is, why? I'm not saying that you're  
15 wrong, but I don't know why you aren't wrong.

16                  COL SCHENCK: No, no. That's not  
17 the point I'm making. The point I'm making is  
18 that the Army -- if you look at the chart on  
19 page --

20                  REP HOLTZMAN: I don't have it. I  
21 don't have the chart.

22                  COL SCHENCK: - 11, on page 11

1       there's the long --

2                   MS. CARSON:  She doesn't have it.

3                   COL SCHENCK:  Oh, you don't have  
4       it.  Oh.  Well, we need to get that to you,  
5       Congresswoman.

6                   MS. CARSON:  She has it on her  
7       email.

8                   COL SCHENCK:  It's one of the  
9       attachments in the --

10                  MS. CARSON:  We could send it  
11       again.

12                  COL SCHENCK:  Do you want us to  
13       send it again?

14                  REP HOLTZMAN:  You could send it  
15       to me.  But I could probably follow what  
16       you're saying, if you're --

17                  COL SCHENCK:  Okay.  So I'll be a  
18       little bit more clear.  So on this chart, the  
19       comparison chart which we're going through  
20       page by page.

21                  REP HOLTZMAN:  Right.

22                  COL SCHENCK:  On page 11, it lays

1 out each Service's ending point for the  
2 duration of the relationship between the SVC  
3 and the victim. The Army apparently has said  
4 representation ends at action by the general  
5 court-martial convening authority or similar  
6 disposition.

7 In other words, the trial process  
8 is ended. The trial process and a little  
9 post-trial process, where the convening  
10 authority has affirmed or changed -- modified  
11 the findings and sentence. Boom. That's the  
12 end of the trial.

13 The Marine Corps, on the other  
14 hand, indicates that the VLC, the victim legal  
15 counsel, the relationship ends when the victim  
16 legal counsel is reassigned or discharged or  
17 retired, and it parentheses says a new VLC  
18 will be assigned.

19 So in other words, if some of that  
20 appellate process occurs while I'm still  
21 there, I can still advise on the appellate  
22 process, you see. The Army, on the other

1 hand, says the convening authority has acted  
2 on the case. The case, you're no longer --

3 REP HOLTZMAN: Okay. Well, I  
4 guess I was confused as to which the ending  
5 point was. But my question is, should there  
6 be an ending point when the trial is over or  
7 the convening authority does whatever he or  
8 she does?

9 I mean, if the case is still on  
10 appeal, why should the process -- why should  
11 the special victims' counsel be ousted?

12 COL SCHENCK: Well, one of the  
13 things I would look at is what are the  
14 responsibilities of the victim legal counsel?  
15 So if I am advising as victim legal counsel,  
16 I'm advising the victim regarding collateral  
17 misconduct.

18 Perhaps that's not done when the  
19 court-martial and action are done, right? So  
20 I think it kind of is -- it's whatever I'm  
21 advising. I think responsibilities is one of  
22 the considerations when you determine duration

1 of a relationship, attorney-client  
2 relationship.

3 JUDGE MARQUARDT: Well, I think it  
4 depends on the circumstances really, and  
5 that's not very well defined in these  
6 statements.

7 CDR KING: Maybe we haven't  
8 spelled out all the details, but I'm pretty  
9 sure in every one, the chief of the department  
10 can make exceptions or can make determinations  
11 about --

12 REP HOLTZMAN: Yes, but maybe that  
13 shouldn't be the way it's working, that it  
14 should be discretionary. I mean, the whole  
15 point of having special victims' counsel is  
16 that it's not a discretionary right. And so,  
17 why at the end of the trial should it then  
18 become a discretionary right?

19 CDR KING: So maybe you want to  
20 make a recommendation that so long as the  
21 victim requests it or so long as there's an  
22 appellate process? I don't know.

1 (Simultaneous speaking.)

2 MS. FERNANDEZ: I mean, tell me  
3 if I'm wrong on this. There's three areas --

4 BG McGUIRE: So you get a counsel.  
5 It may not be the same counsel.

6 MS. FERNANDEZ: Yes, it won't be  
7 the same counsel. There's no way.

8 (Simultaneous speaking.)

9 REP HOLTZMAN: That's a different  
10 issue.

11 MS. FERNANDEZ: There are two  
12 times after trial that you need your SVC. I'm  
13 going to get my -- collateral misconduct and  
14 then appeal.

15 REP HOLTZMAN: Now, maybe also,  
16 there may be another issue that I'd bring up.  
17 Suppose for some reason the military denies  
18 you the right to medical care for your, you  
19 know, for the incident. Who's going to -- I  
20 mean, that might happen. Suppose the case is  
21 dismissed. Everyone says, you know, nothing  
22 happened, okay.

1                   Nothing happened. We don't  
2 believe the victim. The victim lied, and so  
3 maybe the military says what do we have to  
4 give you medical treatment for or mental  
5 health treatment or whatever it is? I'm just  
6 giving a wild hypothetical. I don't know that  
7 this could ever happen.

8                   But suppose -- wouldn't you need  
9 special victims' counsel at that point too, to  
10 ensure that you do get those medical benefits?  
11 Just -- I don't know if that's a legitimate  
12 example.

13                  COL HAM: In your example, there's  
14 been a determination that there's no victim.  
15 The person would always be entitled to legal  
16 assistance for any matter. So in other words,  
17 the person would be entitled to see a lawyer.  
18 It would be a different kind of lawyer that  
19 would have a different title.

20                  REP HOLTZMAN: I see.

21                  MS. FERNANDEZ: Right, right.

22                  REP HOLTZMAN: Oh, okay.

1 JUDGE MARQUARDT: Within this  
2 section, I think it would be preferable to put  
3 in there, as long as the victim requests  
4 assistance.

5 MS. CARSON: That's what the Army  
6 says, when the general court-martial ends or  
7 when the client determines services are no  
8 longer required.

9 FEMALE PARTICIPANT: I think  
10 that's fine.

11 JUDGE MARQUARDT: I do, too.

12 COL HAM: I'm not sure -- I'd like  
13 to interpose. I'm not -- I question whether  
14 that means what you said, because it's going  
15 to end -- I think what it means, because it's  
16 patterned on defense counsel, when defense  
17 counsel representation ends, it appears to me.

18 When the convening authority takes  
19 action, or at an earlier point in time, not a  
20 later point in time.

21 DEAN ANDERSON: Well, it does seem  
22 to me that we can at least hypothetically

1 envision circumstances in which there may be  
2 rights of the victim still at play post-trial,  
3 unclear, new area of the law. Maybe we want  
4 to pin duration to presumptively at the end of  
5 trial, unless additional rights are at stake  
6 or you know, you know what I mean?

7 To provide for the opposite  
8 option, that is the option to terminate  
9 earlier by the victim or by the client is what  
10 the Army appears to be saying.

11 MS. FERNANDEZ: Rights or legal  
12 proceedings? Because collateral misconduct  
13 isn't a right. It's a legal proceeding.

14 COL HAM: But not all the Services  
15 have the special victims' counsel dealing with  
16 collateral misconduct. Because that person is  
17 entitled to a defense attorney as well if  
18 they're suspected of a criminal offense.

19 FEMALE PARTICIPANT: Right, right.

20 COL HAM: But if the larger  
21 subject you're discussing is the scope of  
22 representation, which plays for defense

1 counsel as well and for legal assistance  
2 counsel. So maybe that's the larger topic, is  
3 Congress has listed some of the scope of  
4 representation. The Services in some ways  
5 have gone beyond that. Do you want to tackle  
6 that as some of your recommendations?

7 MS. FERNANDEZ: I say we go  
8 beyond, you know. I think we can envision  
9 moments where there's going to be victim  
10 issues on appellate review. So why don't --  
11 if we can envision it, why don't we stick it  
12 in there?

13 JUDGE MARQUARDT: Well, so long as  
14 the victim requests additional counsel.

15 MS. FERNANDEZ: Right.

16 DEAN ANDERSON: Well, so what we  
17 don't want to do is open the door to anything,  
18 any kind of -- so you know, I'm interested.  
19 You know, it's an interesting question how  
20 page six, the scope of representation,  
21 dovetails with the duration of representation,  
22 because it does seem to me that the scope may

1 extend beyond -- may, not clear, unclear area  
2 of the law that's new.

3 But that the scope may extend  
4 beyond the duration, in which case we don't  
5 want the duration to unduly curtail, if there  
6 are rights at stake -- arguably, you know.

7 Because we -- I thought we agreed  
8 on the scope of representation, that the scope  
9 of representation was going to include  
10 circumstances in which any of these rights  
11 were at stake. And if that's true, we might  
12 be able to envision circumstances in which  
13 that extended beyond the moment of the  
14 disposition at trial. Do you see what I'm  
15 saying, how the duration --

16 REP HOLTZMAN: I like your  
17 formulation of that, connecting it to rights,  
18 because that narrows it. I agree with your  
19 concern that it shouldn't be opening the door  
20 to things that are not really connected to  
21 rights.

22 COL HAM: Well right now, that

1 goes back to what are the rights? Again, the  
2 CVRA always refers to the rights within the  
3 CVRA, and enforcement of those rights. So  
4 right now, I thought Meg agreed that the  
5 sources of rights right now are the Military  
6 Victim Rights Act and a couple of the military  
7 rules of evidence.

8 DEAN ANDERSON: Right. 412, 513.

9 COL HAM: Is that right, Meg?

10 MS. GARVIN: Those are in line  
11 with them. I mean I suppose if you -- or you  
12 could dig through the military justice code  
13 and find more, but those are the ones that I  
14 think are the most prominent.

15 I would agree, it would be the --  
16 with the dean's comments right now, which is  
17 the right and representation on the right does  
18 not have to be and should not be limited by  
19 the term of representation of a particular  
20 SVC. The rights will arguably continue, or  
21 may re-arise, even though my relationship as  
22 an SVC ends. They may re-present later, when

1 we thought they never would.

2 COL HAM: Well for example, the  
3 Crime Victim Rights Act definitely has rights  
4 to be heard at proceedings that occur, and  
5 right to be notified of proceedings that occur  
6 after trial. So how --

7 DEAN ANDERSON: That's kind of my  
8 question, right? That scope of representation  
9 beyond the duration that's explicitly  
10 articulated, and I don't think duration should  
11 trump the rights. If they're granted the  
12 rights, it can't be that, you know, we allow  
13 this language to circumscribe the opportunity  
14 for having those rights vindicated.

15 REP HOLTZMAN: Right. I think it  
16 should be made, you know, it should be clear  
17 that the right, as long as the rights exist  
18 under the military -- as long as the crime  
19 victim has rights, then that person has the  
20 right to the special victim counsel.

21 It shouldn't end either with the  
22 trial, end of the trial or before that, and

1 that any of the Services that are trying to  
2 curtail rights after trial with regard to the  
3 special victim counsel, that those  
4 curtailments be removed. I mean, that's the  
5 recommendation I would make. I mean, in  
6 following the dean's suggestion.

7 Or do we not have enough  
8 information to make such a suggestion?

9 MS. GARVIN: I would concur with  
10 that suggestion. I think the branch of the  
11 military and the duration of the relationship  
12 might be mixing and matching a couple of  
13 things.

14 One is rape, and the idea of what  
15 does this particular -- what's the scope of  
16 this particular SVC's relationship with this  
17 particular victim, versus what is the right of  
18 the victim to have access to an SVC, right?  
19 Those are two different questions.

20 We're answering the latter one to  
21 say any and all times our victim rights are at  
22 issue, they should have access to an SVC, even

1 if that is post-conviction.

2 DEAN ANDERSON: Right, and even if  
3 that's a new person because the SVC's been  
4 deployed elsewhere.

5 REP HOLTZMAN: Exactly.

6 MR. CASSARA: That seems to be  
7 what the Air Force is saying. Am I reading it  
8 right?

9 MS. CARSON: And the Army, yes.  
10 The Army, I read you what their response for  
11 representation was. What their handbook  
12 actually says is once appointed, an SVC  
13 remains the counsel for the victim for all  
14 matters relating to the sexual assault until  
15 released by the victim.

16 MR. CASSARA: It seems like those  
17 first two bullets by the Army are  
18 contradictory.

19 REP HOLTZMAN: Until released by  
20 whom?

21 FEMALE PARTICIPANT: The victim.

22 MS. FERNANDEZ: The victim.

1                   REP HOLTZMAN: Okay, sorry. Thank  
2 you.

3                   FEMALE PARTICIPANT: They do seem  
4 contradictory, don't they, Bill?

5                   MR. CASSARA: Well, they do. The  
6 first one says it ends when the convening  
7 authority takes action.

8                   MS. CARSON: Or when --

9                   MR. CASSARA: Or the disposition,  
10 whatever that means.

11                  MS. CARSON: Or when the client  
12 determines.

13                  MR. CASSARA: Yes.

14                  MS. CARSON: I don't think they're  
15 inconsistent.

16                  BG McGUIRE: I think that's where  
17 we talked about, you know, it could be prior  
18 termination, you know, prior to the end of the  
19 trial.

20                  DEAN ANDERSON: So will this -- so  
21 clearly what we've stumbled upon, it seems to  
22 me, is an area in which we believe that the

1 scope of representation should attend to the  
2 rights that the victims have, regardless of  
3 duration of trial, and that the duration  
4 language that many of the Services have  
5 articulated appears to be in some tension with  
6 that.

7 It may be just about the scope of  
8 representation and the attorney-client  
9 relationship with this particular SVC, but  
10 that we could envision other circumstances in  
11 which one would need an SVC in order to  
12 vindicate one's rights post-trial.

13 So what we might just want to do  
14 in terms of duration is flag this as an issue  
15 and make a suggestion that the duration of  
16 representation for an individual SVC is  
17 different than the scope of representation, or  
18 the ability for a victim to obtain an SVC to  
19 vindicate his rights or her rights in any  
20 given circumstance, pre- or post-trial.

21 Does that -- I don't know that  
22 that's -- that's not very simple. But I think

1 that's the nub of the issue.

2 JUDGE MARQUARDT: I think that if  
3 we would cross out that first paragraph under  
4 the Army and just take those second and third  
5 paragraphs, that would probably cover the  
6 issue.

7 MS. CARSON: Well, also directed  
8 to the Air Force. Mr. Cassara mentioned the  
9 last two bullets in the Air Force basically  
10 say the same thing.

11 JUDGE MARQUARDT: Okay.

12 FEMALE PARTICIPANT: What page is  
13 that on?

14 MS. CARSON: Eleven.

15 FEMALE PARTICIPANT: Yes, those  
16 are good.

17 FEMALE PARTICIPANT: Don't they  
18 interpret that, what do they mean by that?

19 MS. CARSON: They say the SVC-  
20 client relationship will be terminated after  
21 case disposition, once all ongoing legal needs  
22 are met and upon agreement between the

1 parties.

2 Then it says, once an SVC is  
3 detailed to represent a victim of the sexual  
4 assault, the SVC remains the counsel for all  
5 matters relating to the sexual assault, unless  
6 released by the victim.

7 REP HOLTZMAN: Unless what?

8 MS. CARSON: Released by the  
9 victim.

10 REP HOLTZMAN: Okay. That sounds  
11 fine.

12 FEMALE PARTICIPANT: I mean, these  
13 are a conglomeration -- right. But these are  
14 a conglomeration --

15 REP HOLTZMAN: I mean, I would  
16 just point -- I mean I think the  
17 recommendation should be that any language in  
18 manuals or in practice or in other rules  
19 inconsistent with this should be removed.  
20 That's all, something like that.

21 MS. CARSON: Okay.

22 REP HOLTZMAN: It really has to be

1 confusing to have two at least, and I think it  
2 should be very clear that the, you know, what  
3 the relationship, the duration of the  
4 relationship is. In theory at least.

5 MS. FERNANDEZ: It's twelve  
6 o'clock. We've got a half an hour to cover  
7 five more pages, is it, or more than that?  
8 No, seven more pages.

9 CDR KING: Do you want to take a  
10 break and get some lunch from the other room?  
11 We have sandwiches and fruit and cheese there,  
12 and then come back in here and discuss while  
13 you eat?

14 MS. FERNANDEZ: Yes.

15 CDR KING: Would that be --

16 REP HOLTZMAN: Sounds good.

17 CDR KING: Okay.

18 REP HOLTZMAN: So what are we  
19 talking, ten minutes?

20 CDR KING: Yes, \$10 for everybody,  
21 if that's okay.

22 (Whereupon, the above-entitled

1 matter briefly went off the record.)

2 MS. FERNANDEZ: Let's see how  
3 much of this we can get through. Can you --  
4 you're good?

5 MS. CARSON: Yes.

6 MS. FERNANDEZ: Okay.

7 MS. CARSON: The next section is  
8 how long will the SVC serve, and the only --  
9 the answers we got were from the Air Force, 18  
10 to 24 months. Navy, one to three years, and  
11 the Marine Corps at least 18 months. So I  
12 think that's their standard tour.

13 FEMALE PARTICIPANT: I want to  
14 just say it varies.

15 MS. FERNANDEZ: And I don't even  
16 think we should report out. It's not that  
17 interesting.

18 MS. CARSON: Then, collateral  
19 misconduct.

20 FEMALE PARTICIPANT: Oh, that's a  
21 big item.

22 FEMALE PARTICIPANT: Here we go.

1 MS. CARSON: In the Army, the SVC  
2 will refer the victim to the Trial Defense  
3 Service. In the Air Force, the SVC may  
4 represent the victim for covered collateral  
5 misconduct with the victim's consent. The  
6 Navy, the victim legal counsel will provide  
7 limited personal representation regarding  
8 alleged misconduct.

9 The Marine Corps, they will refer  
10 them to the defense services for collateral  
11 misconduct, and we don't know what the Coast  
12 Guard's is.

13 CDR KING: Well, they don't have  
14 very many cases.

15 MS. CARSON: They don't, yes.  
16 Interestingly, the Air Force says that the SVC  
17 can be a secondary counsel if they want, if  
18 the client wants defense counsel.

19 DEAN ANDERSON: I'm less  
20 interested in who represents the victim, if  
21 she or he is prosecuted, than I am in the fact  
22 of prosecution for low level offenses when an

1 allegation of sexual assault is made. And  
2 I'll just throw out there that I think we  
3 should recommend that we should take a look at  
4 -- I understand, certainly from the military's  
5 perspective, that you don't want to waive all  
6 kinds of collateral misconduct potential  
7 charges.

8 But it does seem to me that  
9 drinking, fraternization, any number of other  
10 kinds of offenses should be -- the military  
11 should have a policy to not prosecute those  
12 claims, if a claim of sexual assault is made  
13 that is meritorious and goes forward.

14 COL SCHENCK: Well, I think it's  
15 already discretionary in the field. That's my  
16 opinion from what I see in the cases we  
17 reviewed with the task force. There are a lot  
18 of times collateral misconduct with victims,  
19 you know, adultery. The other person was  
20 married, I didn't know it. Never goes  
21 forward. You molested my daughter. I walked  
22 in on you. I'm now hitting you and assaulting

1 you. Never goes forward.

2 MS. CARSON: Right.

3 JUDGE MARQUARDT: So I just think  
4 that's --

5 BG MCGUIRE: There is a lot of  
6 discretion out there.

7 COL SCHENCK: Yes, and my concern  
8 is that while I'm drinking, I'm going to get  
9 in trouble. I don't want to be kicked out of  
10 this Air Force, so I'm going to report and now  
11 I report so I don't get charged, you know.  
12 Sort of -- you report when there really wasn't  
13 a sexual assault.

14 JUDGE MARQUARDT: Well, I think  
15 you should state in this section, then, that  
16 it's discretionary as to whether or not the  
17 collateral misconduct is going to be referred,  
18 because if it's not stated that way, you know.

19 COL SCHENCK: Right. It just  
20 gives you more leeway to --

21 JUDGE MARQUARDT: Yes. I mean --

22 DEAN ANDERSON: Can I just say

1       though, that I don't think there's any  
2       evidence in the record that we've come across,  
3       that there's an overwhelming problem of false  
4       allegations. I understand Bill believes that  
5       every client he represents is innocent, and --  
6       as all good defense attorneys should.

7                But I think that the record is  
8       replete with detail that victims feel deterred  
9       from reporting, and choose not to report for  
10      a range of reasons, including the fear of  
11      prosecution for collateral misconduct.

12              Additionally, if you just look at  
13      the videos that were just circulated, the  
14      first video -- I believe of the female victim  
15      -- she wasn't engaged in any collateral  
16      misconduct, but was then charged with  
17      inappropriate -- I can't remember exactly what  
18      she was charged with. It was some kind of  
19      something that was supposedly collateral  
20      misconduct, or was misconduct.

21              She was charged with misconduct as  
22      a result of coming forward and making an

1 allegation of sexual assault. I think we have  
2 too many stories on the record of  
3 circumstances in which victims are charged  
4 themselves with misconduct.

5 Sometimes it's collateral  
6 misconduct as to the event itself; other  
7 times, it is entirely new, you know,  
8 dereliction of duty or any other kinds of  
9 allegations against them.

10 You know, I do think that the  
11 incentive structure that's created by a  
12 decision not to pursue charges is something  
13 that has to weigh in the balance. I just  
14 think that for lower level offenses, the  
15 military services would be better served by  
16 choosing to pursue aggressively sexual assault  
17 and forego opportunities to choose to  
18 prosecute fraternization and alcohol  
19 violations.

20 You know, I think I'm less  
21 convinced at higher, at other kinds of higher  
22 level offenses. But I will say in the

1 civilian world, you know, there's a cocaine  
2 allegation. That never gets prosecuted when  
3 it comes to light as a result of an allegation  
4 of sexual assault or rape. I guess --

5 CDR KING: It comes to light. You  
6 just say yes -- the victim will say yes, I was  
7 using cocaine, and then you just move on.

8 DEAN ANDERSON: Right. It doesn't  
9 become the source of a reason not to report  
10 sexual assault, you know. The same issue  
11 comes up in immigration cases. What you don't  
12 want is someone's status, as someone without  
13 legal status, to be a reason that they are  
14 deterred from coming forward with legitimate  
15 allegations of crimes.

16 CDR KING: They might be a little  
17 deterred or worried about -- a lot of them are  
18 a little bit worried about it. But that's why  
19 when police and prosecutors both say we're not  
20 worried about what -- about your issue of  
21 using drugs or your issue of this or that,  
22 then that's when you get them to talk about

1 it.

2 COL SCHENCK: I also think the SVC  
3 plays a huge role now, in this, because they  
4 get an attorney right away who can talk out,  
5 flesh out the issues, and whether or not they  
6 cover that may be the ones that negotiate and  
7 say look, she's -- and subject to what you're  
8 telling me.

9 MS. FERNANDEZ: Liz, you were  
10 about to make a comment.

11 REP HOLTZMAN: My concern here is  
12 that we haven't heard -- I tend to be  
13 sympathetic to the notion that these very low-  
14 level charges, you know, could be a deterrent  
15 to dealing with the much more serious charge  
16 of sexual assault.

17 But we haven't heard from the  
18 other side. We haven't heard from the  
19 commanders or the people who are making these  
20 decisions, as to why they feel they need to  
21 have that power. I mean, I think it would be  
22 -- I mean, before I made a decision about what

1 the right thing to do is, I'd like to hear  
2 about that.

3 And I mean I think what bothers me  
4 the most about this is also that you're  
5 convicting the victim out of his or her own  
6 mouth. I don't know what the situation would  
7 be if you had collateral evidence, I mean  
8 independent evidence of misconduct.

9 Well, I guess -- so that's  
10 another, that's another factor that I would  
11 like to consider. But I certainly would like  
12 to know what the rationale is for continuing  
13 to need these powers.

14 DEAN ANDERSON: Well, don't we  
15 know it? It's military discipline.

16 REP HOLTZMAN: Well, maybe we can  
17 hypothesize. But have we had testimony about  
18 that?

19 DEAN ANDERSON: I think we have.

20 MS. FERNANDEZ: No, we really  
21 haven't.

22 FEMALE PARTICIPANT: We may be --

1 I'm not sure for all of the commanders --

2 BG MCGUIRE: I know the military  
3 -- the MCIOs, the military criminal  
4 investigation organizations, did address  
5 collateral investigations, and that sometimes  
6 they did, sometimes they didn't, given the  
7 circumstances of the event.

8 So for example, one of them I know  
9 that they did not incorporate violations of  
10 General Order No. 1 while deployed, which is  
11 no alcohol. So if the victim was actually  
12 consuming alcohol, they just bypassed that.  
13 They didn't even -- they didn't even bring it  
14 up on charges at all.

15 MS. FERNANDEZ: You're not  
16 allowed to drink at all when you're deployed?

17 BG MCGUIRE: No, no.

18 MR. CASSARA: No, no, no.

19 MS. FERNANDEZ: No alcohol,  
20 regardless of age?

21 MR. CASSARA: This might surprise  
22 you, but it still happens.

1 FEMALE PARTICIPANT: And they get  
2 it from the locals.

3 (Simultaneous speaking.)

4 FEMALE PARTICIPANT: No. We get  
5 it from the State Department.

6 (Laughter.)

7 JUDGE MARQUARDT: Well, the  
8 problem is that some of these people don't  
9 know that they won't likely be charged, and  
10 therefore they won't report in the first  
11 place.

12 MS. CARSON: Right.

13 REP HOLTZMAN: Right, exactly.  
14 Look, just my recommendation -- if the  
15 subcommittee has jurisdiction over this point,  
16 we really need to hear the other side.

17 BG McGUIRE: Yes. I think there  
18 is definitely another side to it that -- I  
19 don't think my recommendation would be, but  
20 I'd like to hear what others have to say, was  
21 that we'd still need to take collateral into  
22 consideration. Only from my investigative

1 background and experience, there have been  
2 instances where yes, a rape occurred, but she  
3 was also a known drug dealer. So, I mean --

4 MS. FERNANDEZ: Where do you go  
5 with that?

6 BG McGUIRE: Where do you go with  
7 that?

8 MS. FERNANDEZ: Yes.

9 BG McGUIRE: And she was high at  
10 the time.

11 MS. FERNANDEZ: Well, the high  
12 part doesn't -- I would say that that's the  
13 part you excuse, but the fact that she's --  
14 could have been dealing drugs and getting lots  
15 of other people into harm's way is something  
16 you have to -- is not something that would  
17 disappear.

18 I go with Liz's recommendation. I  
19 think that this is something that we need to  
20 hear the other side on, and we may end up with  
21 what Colleen is telling us right now. But I  
22 think we need to hear both sides.

1                   CDR KING:    So are you saying you  
2                   want to have -- you want us to arrange a panel  
3                   on this or --

4                   FEMALE PARTICIPANT:   Or sort of a  
5                   discussion on collateral misconduct.

6                   MS. FERNANDEZ:    I mean, it might  
7                   be a shorter -- so that we don't need to have  
8                   a whole day on this.  But maybe this could be  
9                   a conference call kind of thing.  We could  
10                  have a few people who would speak on it, and  
11                  I'm not sure that we need somebody from each  
12                  one of the Services.  But somebody --

13                  BG MCGUIRE:    You can have a  
14                  perspective of a convening authority or a  
15                  commander that, you know, and then also from  
16                  maybe an investigator.

17                  MS. FERNANDEZ:    Right.

18                  DEAN ANDERSON:   But so, you know,  
19                  to be fair, we have not heard from the other  
20                  side formally on this question either, the  
21                  other side than what we're talking about right  
22                  now.  It's not that we've tasked anyone with

1 coming forward and talking about the incentive  
2 structures that are created by the prospect of  
3 being prosecuted for collateral misconduct.

4 I think if we do that, where we  
5 have heard it in my recollection is that  
6 civilian attorneys who are prosecutors,  
7 testified fairly fluently about the fact that  
8 oh, we don't pay any attention to cocaine when  
9 it's part of the scenario, because it's just  
10 not as big a priority societally,  
11 institutionally, culturally, as the sexual  
12 assault is.

13 So if we're going to task the  
14 military representatives with coming forward  
15 and talking about what are the military's  
16 interest in continuing to be able to prosecute  
17 collateral misconduct in circumstances of  
18 sexual assault, including low level.

19 I'm not -- by the way, you know,  
20 I'm not proposing that every kind of  
21 collateral misconduct is given a pass. But  
22 you know, what are the military's interest in

1 lowest form of collateral misconduct? In  
2 prosecuting not all the time, but in having  
3 the flexibility and discretion to prosecute  
4 that kind of collateral misconduct.

5 I don't think the military has a  
6 strong interest in that, but I'd be interested  
7 to hear. I'd absolutely be interested to hear  
8 from convening authorities or investigators,  
9 others, about what that interest might be.

10 I think it would also be  
11 interesting to hear from the perspective of  
12 victim advocates, and I use that term loosely,  
13 not specifically, because I know it has a  
14 specific legal meaning here. But what are the  
15 incentives created by the existence of being  
16 prosecuted for collateral misconduct,  
17 particularly given fear of being prosecuted  
18 for any number of other things if they should  
19 come forward and make themselves a target in  
20 the way that it appears that victims have  
21 inadvertently done.

22 We've got -- we've got some

1 stories on the record in which victims have  
2 become targets for commanding officers to get  
3 them either, in the small sense, harassed or  
4 in the large sense, discharged from duty. So  
5 anyway, I would look forward to both sides of  
6 that issue, hearing from both sides.

7 CDR KING: You know, it's too bad  
8 Colonel Ham isn't in here. We can check with  
9 her because they may have done some of this in  
10 some of the other committees that we didn't --  
11 weren't present for.

12 FEMALE PARTICIPANT: I have the  
13 transcripts.

14 CDR KING: And I know we don't  
15 want to spend a --

16 MS. FERNANDEZ: I also want to  
17 know that -- yes, is this within the body of  
18 work that we should be doing?

19 COL SCHENCK: You know, where does  
20 it fall into our mission?

21 DEAN ANDERSON: Well, it's about  
22 reporting.

1 (Simultaneous speaking.)

2 FEMALE PARTICIPANT: But it would  
3 be interesting to see if it falls squarely  
4 within the jurisdiction of say the Comparative  
5 Systems, because if it falls squarely within  
6 their jurisdiction, I think we can tread a  
7 little more lightly. I think we should cover  
8 it. But if it doesn't fall within their  
9 jurisdiction, then I really want to cover it.

10 DEAN ANDERSON: That would be my  
11 guess. It would be -- I mean, I think they  
12 probably -- I know they've heard some evidence  
13 on it. I'm just not exactly sure what, and we  
14 can pull that together for you, what there is  
15 out there.

16 JUDGE MARQUARDT: I don't think  
17 their report touched on this issue, though.

18 (Simultaneous speaking.)

19 JUDGE MARQUARDT: Yes, I know.

20 CDR KING: But they only decided  
21 one issue, ma'am, and they're working on other  
22 ones now. They've been doing other things.

1 So they're going to make more recommendations  
2 soon.

3 DEAN ANDERSON: I think this might  
4 be under Comparative Systems, though.

5 CDR KING: Maybe under that one.

6 DEAN ANDERSON: Do you know what I  
7 mean, because it is a big divergence between  
8 the civilian world and the --

9 CDR KING: Right, but --

10 DEAN ANDERSON: It would be  
11 interesting to see arguably, who's taking this  
12 on.

13 CDR KING: We can find that.  
14 Maybe, depending on what we find out, we might  
15 have to have quick phone call to decide, for  
16 you to decide how much you want to hear about  
17 it, if I can report back what we have and  
18 who's deciding. How about something like that  
19 before we --

20 FEMALE PARTICIPANT: Sounds good.

21 CDR KING: Because I don't want to  
22 plan a whole day or even a half a day on

1 something that's going to be a small  
2 recommendation that you maybe don't even need  
3 it for.

4 DEAN ANDERSON: Well, and it might  
5 be that we can read the testimony that's  
6 already been gathered.

7 CDR KING: Exactly. I'll gather  
8 up -- we'll gather up what we can find.

9 DEAN ANDERSON: Right.

10 MS. FERNANDEZ: Okay. How  
11 integrated with existing legal assistance,  
12 except for VA services?

13 (Simultaneous speaking.)

14 MS. FERNANDEZ: - with the  
15 SARCs, the victim advocates, the family  
16 advocacy.

17 (Simultaneous speaking.)

18 BG MCGUIRE: I can validate.

19 MS. GARVIN: Julie, can you speak  
20 up a little bit.

21 MS. CARSON: Yes, sorry. I just  
22 said that they're all work -- they all have in

1 their policies that they work with the special  
2 victims advocates and SARCs.

3 Then the next section is the cost  
4 and resources required, and that's where you  
5 get kind of different answers from each  
6 Service. This was a request for information  
7 question.

8 MS. FERNANDEZ: Who's the only  
9 one who gave you dollars and cents?

10 MS. CARSON: The Navy and the  
11 Marine Corps.

12 CDR KING: I'm not sure if this is  
13 something that anybody has any particular  
14 recommendations that we know how to measure at  
15 this point.

16 JUDGE MARQUARDT: It's probably  
17 not within the purview of our charge.

18 MS. FERNANDEZ: Now, the purview  
19 of the charge, however, is that sufficient  
20 resources are continued to be made, and --

21 JUDGE MARQUARDT: We can assert  
22 that.

1 MS. FERNANDEZ: Yes. That's not  
2 a recommendation really to the Services.  
3 That's a recommendation straight to Congress.

4 DEAN ANDERSON: I think the last  
5 part of our outline, though --

6 REP HOLTZMAN: Not entirely. I  
7 mean that's not entirely true, because the  
8 Services have to request them, generally  
9 should be requesting the money. The budget,  
10 you know, originates from the administration.  
11 Congress can add or subtract.

12 CDR KING: Maybe we could -- could  
13 we maybe table this until we get more --  
14 because we requested more information on the  
15 cost of all their incentive programs, and next  
16 time we'll be discussing some of the other  
17 costs like special, you know, like you know,  
18 victim advocates, SARCs and those kind of  
19 things.

20 So maybe they'll -- if we want to  
21 discuss it, and especially since we have a  
22 panel here, that maybe we could table it and

1 discuss them all at once because it may be --  
2 it's hard to discuss it in a vacuum anyway.

3 MS. CARSON: Sure. Okay, the next  
4 section, impact on overall JAG structure, and  
5 this is where again they tell you where  
6 they're going to put new billets in or take  
7 reservists, and each Service has kind of given  
8 you their plan. We kind of went through that.

9 Legal services being eliminated or  
10 curtailed. Most of them say their legal  
11 assistance programs are the ones that are  
12 going to be impacted. The Navy says nothing  
13 will be impacted.

14 REP HOLTZMAN: Could you please  
15 speak more loudly?

16 MS. CARSON: I'm sorry. Most of  
17 the Services say that the --

18 REP HOLTZMAN: Pull the mic closer  
19 to you.

20 MS. CARSON: - that the legal  
21 assistance will be what's impacted by this,  
22 except the Navy says that nothing will be

1 impacted.

2 DEAN ANDERSON: So this goes  
3 directly to the question of costs and  
4 sustainability of the program, and who's  
5 being, you know, is it moving bodies from one  
6 to another, or is it funding new services? So  
7 I think that needs to go in that last section  
8 you were talking about.

9 MS. FERNANDEZ: Yes, I agree. I  
10 agree. Okay.

11 MS. CARSON: Okay. Assessment,  
12 evaluation and reports, and this is where we  
13 can kind of highlight the -- really, the one  
14 that's been done is the Air Force. They have  
15 done an evaluation report and you can see the  
16 data in here that was fielded on 20 March,  
17 2013. Feedback from several civilian subject  
18 matter experts incorporated into their  
19 questions on this study.

20 JUDGE MARQUARDT: But their  
21 program was the one that's been in existence  
22 the longest.

1 MS. CARSON: Yes, exactly. So  
2 they're the ones that had something to report  
3 back. But it's overwhelmingly positive.

4 DEAN ANDERSON: That's great.

5 MS. FERNANDEZ: Okay. So the  
6 Navy doesn't have any, and Marines have none?

7 MS. CARSON: Well, most of them  
8 say they're going to --

9 (Simultaneous speaking.)

10 MS. CARSON: - like the Air Force  
11 did. I mean they're all kind of looking at  
12 the Air Force as their model.

13 DEAN ANDERSON: I don't think we  
14 want to mandate anything here.

15 FEMALE PARTICIPANT: Yes.

16 MS. FERNANDEZ: I think we have  
17 to mandate evaluations, though.

18 DEAN ANDERSON: Why? The  
19 evaluations we've gotten so far from the  
20 Service upon which the others are modeled are  
21 -- there is no survey that I know of of any  
22 program that gets 92 percent extremely

1 satisfied responses.

2 I mean, there's -- you know, what  
3 this suggests is they need to spend their  
4 money rather than evaluating -- you know, they  
5 need to spend their money on implementing  
6 these programs. I guess that's one impulse,  
7 is to preserve money for core resource  
8 allocation to actual victims services, as  
9 opposed to assessments.

10 (Simultaneous speaking.)

11 BG McGUIRE: The Inspector General  
12 also does periodic internal reviews of all  
13 processes and programs within, to make sure  
14 that --

15 MS. FERNANDEZ: That will tell  
16 you what's not evaluated is not going to be  
17 funded. So if we want to have this continue  
18 to be funded, we have to have stark evidence  
19 that this is doing a right thing on a regular  
20 and yearly basis.

21 REP HOLTZMAN: I completely I  
22 agree with that, and you know, and I think

1 they need to develop standards across all the  
2 branches, on effectiveness.

3 What are they trying to measure?  
4 Are we just talking about victim satisfaction?  
5 Victims may be very happy, but suppose they're  
6 not coming forward to report. Is that -- you  
7 know, are there other issues about that? I  
8 don't know.

9 DEAN ANDERSON: So we want them to  
10 assess something different, as I understand  
11 your comment on this, because this is an  
12 assessment of the services provided, which are  
13 only provided to folks who come forward with  
14 a report, either restricted or unrestricted in  
15 different services.

16 REP HOLTZMAN: Right. But suppose  
17 in the end these are not producing -- I mean,  
18 I'm just using the hypothetical. But I  
19 completely agree with the prior comment that  
20 was made, that if it's not evaluated and not  
21 shown to be successful, these programs are not  
22 going to last.

1                   And we're also in an environment  
2                   when major cuts are going to be made in the  
3                   Pentagon's budget. So I think we need -- it  
4                   behooves us, in my opinion, to suggest that  
5                   they develop standards for evaluation and  
6                   provide for yearly evaluation of these  
7                   programs. At least for the, you know, next  
8                   two or three years.

9                   BG McGUIRE: I think if we -- if  
10                  you limit it to that, perhaps that will be  
11                  palatable, because now, again, we're building  
12                  another whole bureaucracy just to evaluate  
13                  this.

14                 REP HOLTZMAN: No one's building a  
15                  bureaucracy. They'll probably outsource it to  
16                  some consultant like -- not necessary for a  
17                  bureaucracy.

18                 FEMALE PARTICIPANT: You're right.

19                 MS. FERNANDEZ: I hear it's more  
20                  money, but I think if we just keep throwing --  
21                  right now, we're throwing solutions to a  
22                  problem. If we don't know that those

1 solutions don't work, do or do not work, we're  
2 just -- at the end of the day, we don't --  
3 we're just hoping that things are working, and  
4 that's not going to get funded when you're  
5 deciding between priorities.

6 DEAN ANDERSON: Okay. So I agree  
7 with that. But that's different than what's  
8 here. What's here is simply a survey  
9 evaluation of victims who have used the  
10 special victims' counsel, and they've all  
11 said, almost uniformly, fantastic program,  
12 should continue.

13 So we've got a uniform assessment,  
14 at least from the preliminary stage, of the  
15 Air Force's provision of special victims'  
16 counsel. You're saying that we should be  
17 surveying relative merits.

18 Given conditions of scarce  
19 resources, the relative merits of a whole  
20 range of victim services, independent of or  
21 including -- but including and independent of  
22 the special victim's counsel.

1 MS. FERNANDEZ: No.

2 DEAN ANDERSON: Okay.

3 REP HOLTZMAN: No.

4 MS. FERNANDEZ: No. I'm saying  
5 the special victims' counsel program should be  
6 evaluated, and it should not just be a victim  
7 satisfaction, but a -- you have standards.  
8 You put standards on there, you know. I  
9 can't, off the top of my head -- Meg could  
10 probably do it -- as to what some of the  
11 standards could be.

12 But you have a thorough evaluation  
13 of a program. I think all the victims  
14 services programs need to be evaluated, to see  
15 if they are getting the outcomes that we want.

16 JUDGE MARQUARDT: And if not, to  
17 make the changes.

18 MS. FERNANDEZ: Right.

19 FEMALE PARTICIPANT: What are the  
20 statistics from the --

21 MS. GARVIN: Just that I agree  
22 with that statement just made. I guess I have

1 a question. Are the other -- do we know if  
2 the other Service programs are currently being  
3 evaluated? So is SAPRO being evaluated right  
4 now? Are they doing some more satisfaction  
5 surveys or something similar?

6 REP HOLTZMAN: Satisfaction  
7 surveys. I think in one case, I remember  
8 asking a question, and they do not do even  
9 satisfaction surveys on -- was it victim's  
10 advocates? Something like that.

11 MS. FERNANDEZ: We have a whole  
12 section in the outline about evaluation, and  
13 in my mind, every one of the victim programs  
14 should be evaluated. Otherwise --

15 MS. GARVIN: I would echo the idea  
16 that they should not just be there, you know,  
17 user satisfaction surveys, which then of  
18 course require setting out what the benchmarks  
19 are that you hope to achieve with it. I think  
20 there will be some debate about what you're  
21 hoping to achieve with each of these things.

22 But I agree with that, and I agree

1 for the very reason I articulated, which is  
2 this Congress for the last now ten years,  
3 essentially, has been moving even more clearly  
4 than historically to if you do not have the  
5 evidence to show impact, you will not get a  
6 dollar.

7 So I really think that if we  
8 believe that these programs might have  
9 viability, they're only going to have  
10 viability if they have money, which means they  
11 have to have evidence.

12 BG MCGUIRE: I'd like to also ask  
13 if you could go back and ask each of the  
14 inspector generals, what is their internal  
15 controls in looking at these programs, because  
16 they're charged with looking at all of these  
17 -- all programs in the military regardless,  
18 and if this is on a schedule and if it was,  
19 how often would it be reviewed?

20 MS. FERNANDEZ: And what are they  
21 looking for?

22 BG MCGUIRE: And what are they

1 looking for.

2 COL SCHENCK: I think there was a  
3 provision in NDAA regarding the inspector  
4 generals, inspectors general.

5 REP HOLTZMAN: But aren't  
6 inspectors general looking for corruption  
7 issues and how the money is spent, as opposed  
8 to the point that was just made before --

9 BG McGUIRE: No. They're looking  
10 at efficacy as well.

11 MS. CARSON: They've published a  
12 study on --

13 REP HOLTZMAN: Okay, fine.

14 MS. CARSON: There's not been  
15 anything published on victim advocates.

16 COL SCHENCK: The DoD IG oversees  
17 all the MCIOs, military criminal investigative  
18 organizations. That's why our Department of  
19 Defense Inspector General has a different  
20 responsibility than most.

21 REP HOLTZMAN: Okay. Well, I'm  
22 not sure they've done any evaluations of

1 victims programs, because I don't know. I  
2 haven't heard of it.

3 But I think that's a good point.  
4 I mean it's not only the inspector general,  
5 but maybe there are other evaluations that  
6 have been done by other branches of the  
7 military, any evaluations that have been done  
8 of these programs, systematic, scientific,  
9 serious evaluations.

10 MS. FERNANDEZ: Okay. Next  
11 subject.

12 MS. CARSON: If I could just point  
13 you to one statistic from the Air Force that  
14 you might be interested in for a metric to  
15 measure. They said that, of those who filed  
16 a restricted report and asked for a special  
17 victim counsel, nearly 50 percent converted to  
18 an unrestricted report. That conversion rate  
19 might be something you can track.

20 REP HOLTZMAN: Could you speak  
21 more loudly? I know there's talking --

22 (Simultaneous speaking.)

1 MS. FERNANDEZ: Why don't you  
2 just put a chair on the other side? So we  
3 flip over a chair to the other side.

4 FEMALE PARTICIPANT: Move the  
5 table back and just put your chair -- sit  
6 here. Just walk over here. There you go.

7 MS. FERNANDEZ: Thank you,  
8 genius. Brilliant.

9 FEMALE PARTICIPANT: I think the  
10 witnesses, there's pretty soon enough going to  
11 be an issue with them too.

12 MALE PARTICIPANT: Maybe if we  
13 move the phone over, she can take the witness'  
14 testimony.

15 FEMALE PARTICIPANT: Okay. She's  
16 closer now, ma'am.

17 DEAN ANDERSON: So I mean, I think  
18 what you're implying, Julie, is that the  
19 existence of SVCs helps to convert  
20 unrestricted reports to reports -- I'm sorry,  
21 restricted reports to unrestricted reports; is  
22 that right?

1 MS. CARSON: I'm just noting that  
2 the one piece of data that we have from their  
3 -- that's not a victim satisfaction question,  
4 but is an actual metric is that one.

5 DEAN ANDERSON: Yes, fascinating.

6 CDR KING: Although I don't know  
7 if they've evaluated, if they get a victim  
8 advocate, someone who's a victim or a good  
9 victim advocate.

10 MS. CARSON: Right, whether or not  
11 that does the same thing. Yes, we don't know.

12 CDR KING: Correct. We don't  
13 know.

14 MS. CARSON: Right. Which goes to  
15 the point Mai is making about the importance  
16 of assessment.

17 CDR KING: Right.

18 COL SCHENCK: I don't see any  
19 statistic regarding perpetrator status. Do  
20 you know if it's --

21 MS. CARSON: In their -- in the  
22 Air Force report?

1 COL SCHENCK: Right, in the Air  
2 Force report.

3 MS. CARSON: This is the data they  
4 gave us. So I'm not sure --

5 COL SCHENCK: Do we have a copy of  
6 the survey that they provided to the --

7 MS. CARSON: We don't. This is  
8 the answer they gave to the -- well, this is  
9 actually from Colonel Henkins' testimony, and  
10 then we have an RFI that they provided us. So  
11 -- but we can ask for the survey.

12 CDR KING: Julie, what page are  
13 you on?

14 MS. CARSON: I'm on page 16.

15 CDR KING: Do we want to keep  
16 going, or do we want to get our witnesses in  
17 here pretty soon because they're waiting, and  
18 we have more coming. You know, we only gave  
19 them an hour and a half in the first place,  
20 and they have a lot to say, I think.

21 MS. CARSON: I think we've covered  
22 the critical stuff.

1                   CDR KING: Great. We can always  
2 either go back later and do a phone conference  
3 to finish the rest. But I'd hate to miss out  
4 on having all these people get enough time to  
5 talk to you because they've prepared some,  
6 mostly questions for you -- or are waiting for  
7 your questions.

8                   But maybe we should move on. If  
9 we could just take a two minute recess, move  
10 on to them, and then if we have -- we can  
11 answer some of your questions, and then maybe  
12 have a phone conference to go over the rest of  
13 this.

14                   (Whereupon, the above-entitled  
15 matter briefly went off the record.)

16                   MS. FERNANDEZ: Welcome to the  
17 Victim Subcommittee. I am Mai Fernandez. I  
18 am chairing.

19                   Maybe each one of the panel  
20 members, subcommittee members wants to  
21 introduce themselves.

22                   DEAN ANDERSON: Sure. I am

1 Michelle Anderson. I am the Dean at CUNY Law  
2 School

3 JUDGE MARQUARDT: And I am  
4 Christel Marquardt, a retired Court of Appeals  
5 Judge from Kansas.

6 MS. FERNANDEZ: I am Mai Fernandez  
7 and I am with the National Center for Victims  
8 of Crime.

9 COL SCHENCK: I'm Lisa Schenck. I  
10 am Associate Dean at GW Law School and I am  
11 retired Army JAG.

12 BG MCGUIRE: I'm retired military  
13 police and was the Provost Marshal General of  
14 the Army.

15 MR. CASSARA: Hi, I'm Bill  
16 Cassara. I am retired JAG Corps and I am a  
17 civilian attorney in private practice doing  
18 military defense work.

19 CDR KING: I'm Sherry King. I am  
20 the Branch Chief for the Victim Services  
21 Subcommittee.

22 COL HAM: I'm Patty Ham. Thank

1 you all for coming. I am the Staff Director.

2 Thank you for giving your time today.

3 MR. SPRANCE: I'm Bill Sprance.

4 I'm the DFO and I will say the magic words, if  
5 you want me to.

6 (Laughter.)

7 COL HAM: DFO stands for  
8 Designated Federal Official.

9 CDR KING: Captain Colston, you  
10 may want to start. I think you prepared a  
11 more formal presentation.

12 CAPT COLSTON: Hi, everyone. My  
13 name is Mike Colston. I am a Navy  
14 psychiatrist. General McGuire, I remember I  
15 sat next to you at various meetings at the  
16 Pentagon. Nice to see you again.

17 BG MCGUIRE: Yes, nice to see you.

18 CAPT COLSTON: Members of the  
19 committee, thanks for having me here to  
20 discuss DoD's mental health support for sexual  
21 assault survivors and the policy protections  
22 we have in place. I work for Dr. Woodson in

1 his policy shop.

2 MS. FERNANDEZ: Can I stop you?  
3 We have people on the phone that didn't  
4 introduce themselves. Sorry about that.

5 CAPT COLSTON: Oh, I apologize.

6 MS. FERNANDEZ: No, no, no. It  
7 was our fault.

8 Meg and Liz?

9 REP. HOLTZMAN: My name is  
10 Elizabeth Holtzman. I am an attorney in New  
11 York and a former member of Congress.

12 MS. GARVIN: And I am Meg Garvin.  
13 I am a law professor at Lewis and Clark Law  
14 School and the Director of the National Crime  
15 Victim Law Institute.

16 MS. FERNANDEZ: Okay, I think we  
17 got everybody now.

18 CAPT COLSTON: Hi. So, I just  
19 wanted to say DoD is committed to giving  
20 everyone access to timely evidence-based  
21 healthcare delivered by competent and  
22 compassionate providers. We are also

1 committed to a strong prevention strategy in  
2 regard to sexual assault.

3 Obviously, one of the signature  
4 injuries that we have seen over the past  
5 decade of war is PTSD, which is a treatable  
6 psychological condition associated with a  
7 traumatic event from any number of stressors,  
8 combat, accidents. What I see a lot as a  
9 child psychiatrist is physical abuse or  
10 neglect and obviously sexual abuse, be that in  
11 -- whether you are in uniform or whether that  
12 occurred antecedent to service.

13 Our Armed Forces Health  
14 Surveillance Center says about two percent of  
15 the force has PTSD. That number is a bit at  
16 odds with things that you will see in the  
17 press and that is only because of the  
18 definition the Armed Forces Health  
19 Surveillance Center uses, which is two  
20 outpatient visits or one in-patient visit to  
21 have the diagnosis.

22 PTSD, like many other psychiatric

1 diagnoses can develop months or years  
2 following a traumatic event. DoD routinely  
3 screen service members for PTSD and a number  
4 of other mental health conditions, both pre-  
5 and post-deployment, at accession and at  
6 various times during a service lifetime.

7 For folks who screen positive, we  
8 have a number of treatment options. We do  
9 monitor outcomes to treatment. We have also  
10 integrated behavioral health providers into  
11 primary care clinics and even with line units,  
12 even be they in austere environments such as  
13 forward operating bases.

14 Clinical experience shows PTSD is  
15 either associated with or precipitated by  
16 sexual abuse. The CDC definition of sexual  
17 abuse, as most of you know here is pretty  
18 expansive. It includes sexual assault, past  
19 or present, in any manifestation.

20 From a clinical standpoint, the  
21 nature of association between a trauma and the  
22 development of PTSD always is -- there is

1 always comorbid factors and it is never  
2 perfectly clear. Clinical experience -- my  
3 clinical experience does show --

4 MS. FERNANDEZ: Comorbid?

5 CAPT COLSTON: Comorbid other  
6 things. So, substance abuse, impulsivity,  
7 legal problems, family problems, any number of  
8 other things.

9 Because sexual assault and  
10 harassment and PTSD are issues of great  
11 concern, obviously we have invested in a  
12 variety of prevention and treatment  
13 strategies, as well as policies and protocols,  
14 to ensure that appropriate care is provided.

15 Sexual assault survivors are at  
16 increased risk for STDs, for depression, for  
17 anxiety, and for PTSD, all of which confer  
18 functional limitations and have long-lasting  
19 effects on folks' well-being.

20 To address these risks and  
21 regardless of whether survivors are male or  
22 female, whether sexual abuse occurred prior to

1 the military or during service, whether the  
2 manifestations are physical or emotional, DoD  
3 has policies and procedures in place to ensure  
4 that we have a structured, competent,  
5 coordinated continuum of care for survivors.

6 Continuing care begins when  
7 individuals seek care and extends through  
8 transitions. That is transitions through  
9 military service, from unit to unit, or  
10 transition from DoD into VA care. Our care is  
11 multi-disciplinary and it is recovery-  
12 oriented. Our healthcare providers are  
13 trained to recognize the potential for  
14 preexisting trauma and the perils of re-  
15 traumatization, which certainly has been an  
16 issue in Congress and elsewhere.

17 According to the Department's  
18 instructions, the case of any sexual assault  
19 survivor who presents to one of our MTFs or  
20 Military Treatment Facility, is treated as a  
21 medical emergency. And we have a wide range  
22 of medical treatments and psychological

1 treatments for survivors.

2 The thing that, for instance,  
3 Captain Ralph and I would deal with a lot is  
4 whether a patient wants therapy or whether a  
5 patient wants medication and that is something  
6 that comes up a lot. We have any number of  
7 evidence-based therapies that we deliver. And  
8 of course, medications are available.

9 For folks who are in a place where  
10 there aren't a lot of military providers, we  
11 have a very expansive TRICARE Network with 9.7  
12 million beneficiaries and we can get you out  
13 to the local community.

14 Patient preference always drives  
15 the type of approach we use to help folks  
16 achieve recovery. And delivery of our care is  
17 responsive and sensitive to patient's gender,  
18 sexual orientation, age, and any other issue  
19 of personal identity.

20 Patient preference also motivates  
21 us to provide lots methods to enter care. You  
22 can enter care through command referral to the

1 military health system, through just walking  
2 into a clinic, through a crisis support  
3 service. One of them that we have is the non-  
4 profit Rape Abuse and Incest National Network  
5 self-help line. We have Military OneSource,  
6 which lots and lots of both deployers and just  
7 folks in the military have used to access  
8 care.

9           And we recognize that the long-  
10 term needs of survivors of sexual assault  
11 often extend beyond the period where they are  
12 in service. When sexual assault survivors are  
13 actively receiving care, we have an in-  
14 transition program that gives them a coach  
15 that actually helps them get over to VA care.

16           We also have instructions. DoD  
17 has a continuity of behavioral healthcare  
18 instruction which was signed by the Under  
19 Secretary for Personnel and Readiness, which  
20 directs our providers to do warm hand-offs  
21 with VA providers or whomever the next  
22 provider is. And I can say from personal

1 experience, and as a credentialed clinician at  
2 Fort Belvoir, that that actually does happen.

3           The final thing I want to say is  
4 that sexual abuse is a complex problem. And  
5 we have focused our efforts on increasing  
6 access to care and decreasing the stigma that  
7 is associated with care. We have a stigma  
8 reduction instruction that my colleagues are  
9 going to speak about to great measure here,  
10 but the one thing that I want to communicate  
11 is that we have quadrupled the size of our  
12 mental health system since 9/11. It has  
13 sustained a 12 percent compounded annual rate  
14 of growth. And like most of us, I have  
15 practiced in both civilian places and military  
16 places and I can tell you that DoD's access to  
17 care is second to none and it is something  
18 that we monitor really closely.

19           We also focus on education.  
20 Research shows that changing attitudes about  
21 sexual boundaries associated with more  
22 normative behavior in educated persons. I

1 don't know if anybody read the Atlantic  
2 Monthly article in the last couple of day by  
3 Caitlin Flanagan but it is just horrifying  
4 when you see when behavior isn't normally what  
5 kind of sequelae you see. And this particular  
6 article was about fraternities but you could  
7 say anywhere where you don't train folks.

8           And our training is ubiquitous in  
9 DoD about these measures. We train folks on  
10 sexual assault. We train them on sexual  
11 harassment. We have trafficking in persons  
12 training. No, it is not acceptable to have  
13 sex with prostitutes when you go the  
14 Philippines, things along those lines.

15           And the training continues over  
16 your lifetime. So I want to thank the members  
17 of the committee for having me here and giving  
18 me the opportunity to discuss these matters.  
19 And whatever questions you have, I would be  
20 happy to field.

21           MS. FERNANDEZ: Thank you.

22           COL NEAL-WALDEN: Good afternoon.

1 I am Colonel Tracy Neal-Walden. I am a  
2 clinical health psychologist and I am the  
3 Deputy Director of Psychological Health for  
4 the Air Force. I specifically work for the  
5 Air Force Surgeon General in the Division of  
6 Healthcare Operations.

7 As you have seen from my bio, I  
8 have 20 years' service in the Air Force. All  
9 of that time clinical service as a clinical  
10 psychologist. And then I did additional  
11 training, a two-year fellowship, post-doctoral  
12 fellowship in clinical health psychology.

13 In addition, I have numerous  
14 clinical leadership career-broadening  
15 experiences, as well as deployment.

16 Just a few things that I want to  
17 cover in my statement and then I will be  
18 available to your questions as we continue.

19 The Air Force is a comprehensive  
20 behavioral health program to provide services  
21 for our military members. We have developed  
22 a system, a behavioral health system, which

1 allows multiple entry points of access to  
2 behavioral health, which includes our  
3 integrated behavioral health care with those  
4 consultants in primary care. And I was  
5 actively and have been actively involved in  
6 that role and actually was the Program Manager  
7 for that program a few years ago.

8 In addition, we have embedded  
9 behavioral health providers in our units.  
10 Specifically, we just added six additional  
11 behavioral health providers in our ISR Units,  
12 which is Intelligence, Surveillance, and  
13 Recognizance. And we have behavioral health  
14 providers, primarily psychologists with our  
15 special operators also.

16 Of course, our mental health  
17 clinics and then we have access to in-patient  
18 services. Not many of those are active duty,  
19 however, we have great relationships, as  
20 Captain Colston mentioned with our partners in  
21 the civilian sector via TRICARE.

22 Our behavioral health providers

1 are trained in evidence-based psychotherapies,  
2 to include cognitive behavior therapy,  
3 exposure therapy, cognitive processing  
4 therapy, and we have providers trained in EMDR  
5 and acceptance and commitment therapy. All of  
6 those therapies are useful for a variety of  
7 mental health disorders but specifically  
8 related to sexual assault and post-traumatic  
9 stress disorder.

10 We maintain and foster good  
11 relationships with all helping agencies via  
12 our integrated delivery service, which is a  
13 governing body on each installation, which  
14 includes all of our helping agencies to  
15 include the chaplains, mental health, our  
16 medical personnel, our SARCs, as well as  
17 Security Forces, legal, and EO, equal  
18 opportunity. It is through this comprehensive  
19 support that we are able to address the needs  
20 of sexual assault victims and all victims.

21 The last thing I am going to  
22 mention and then I am going to let Lieutenant

1 Colonel Yosick go because some of these  
2 comments are also in his, our work with the  
3 Army. Specifically looking at the Behavior  
4 Health Data Portal, they have been running  
5 this program for quite some time and we are  
6 collaborating with them in order to utilize  
7 that same program throughout the Air Force  
8 Medical Service. And with that program we  
9 will be able to not only look at outcomes but  
10 we will be able to track our personnel as they  
11 PCS from one location to the next.

12 So, I am available for your  
13 questions and thank you for your time.

14 LTC YOSICK: Good afternoon,  
15 ladies and gentlemen. My name is Lieutenant  
16 Colonel Todd Yosick. I work for the Army  
17 Surgeon General and I have actually been a  
18 clinician for 18 years. I am a licensed  
19 clinical social worker, board certified.

20 I have served in a lot of  
21 different areas, both operationally and in  
22 clinics. I was a clinician in combat. I was

1 with the 25th Infantry for four years. I have  
2 been in various training positions and policy  
3 positions over my 15-year career.

4 On behalf of the Army, I would  
5 like to thank everyone for the opportunity to  
6 speak about this critical issue today. We see  
7 it as critical for Army readiness and family  
8 and soldier well-being.

9 Army medicine is transitioning to  
10 an enterprise model comprised of healthcare  
11 service lines and transitioning from the  
12 healthcare system to a system of health. The  
13 behavior health component is known as the  
14 Behavioral Health Service Line. Army Medical  
15 Command initiated this to implement a  
16 standardized system of care to identify,  
17 prevent, treat, and track behavioral health  
18 issues affecting soldiers and beneficiaries  
19 across our enterprise. Whether a garrison or  
20 a deployed environment, the behavioral health  
21 system of care provides multiple touch points  
22 as was previously mentioned and opportunities

1 to serve our population.

2 Unlike the civilian sector, we do  
3 a pretty good job of being able to reach out  
4 and find out and screen and see where people  
5 are and we do it a lot. We regularly screen  
6 soldiers' conditions, which would include PTSD  
7 throughout our pre-deployment and post-  
8 deployment phase, and also in our primary care  
9 clinics. So, it is something unique that we  
10 can do in the military.

11 A few key points that I want to  
12 make as we kind of get started here, first of  
13 all, Army medicine plays a critical role in  
14 sexual assault treatment for survivors and  
15 behavior health. Victims of sexual assault  
16 are provided expert treatment. And it is  
17 integrated in the Army Medical Command Sexual  
18 Harassment and Assault Response Program. And  
19 actually, we are placing a behavior health  
20 provider in every team that we have in every  
21 Army MTF. So it is integrated.

22 REP. HOLTZMAN: What is an Army

1 MTF?

2 LTC YOSICK: Medical treatment  
3 facility -- hospital.

4 REP. HOLTZMAN: All right.

5 LTC YOSICK: Each sexual assault  
6 management team has been resourced with that.

7 And regardless of evidence of  
8 physical injury, all patients presenting to an  
9 Army medical treatment facility with an  
10 allegation of sexual assault are treated as  
11 emergency cases and they receive comprehensive  
12 standard of care treatment. In our healthcare  
13 systems, it is designed for both short- and  
14 long-term treatment when folks need it.

15 All sexual assault patients are  
16 encouraged to received psychological care as  
17 well and it is offered to everyone. Everyone  
18 that presents for sexual assault is offered  
19 that continued treatment.

20 Another key thing to point out is  
21 everything is done through the Health  
22 Insurance Portability and Accountability,

1 HIPAA guidelines, just as it would be on the  
2 civilian side.

3 Sexual trauma is treated through  
4 evidence-based practice. You have heard that  
5 before and you will probably hear it again.  
6 And we take pride in that. It is not  
7 necessarily gender-specific but the way we  
8 treat folks is tailored specifically for where  
9 they are at and what they need. And we  
10 actually had a recent study that found that 86  
11 percent of patients with PTSD receive  
12 evidence-based psychotherapy in Army medical  
13 treatment facilities. We find this highly  
14 encouraging.

15 We also monitor the use of  
16 evidence-based practices through documented  
17 quality management standards, which would  
18 include peer reviews, continuing education  
19 units and licensing requirements. We have  
20 regulations for that.

21 We also have standardized --

22 REP. HOLTZMAN: Before you go on,

1 could I ask you what evidence-based means, if  
2 you don't mind just really briefly?

3 LTC YOSICK: Sure. Evidence-based  
4 would be based on what the clinical field has  
5 peer reviewed and deemed as having sufficient  
6 evidence to be something that could be  
7 proliferated across the system of care.

8 REP. HOLTZMAN: Okay, thank you.

9 LTC YOSICK: Now, one of our best  
10 examples of a program that we have  
11 proliferated that we placed by the soldiers,  
12 and you have heard the term embedded  
13 behavioral health. We have an embedded  
14 behavioral health initiative. And as of  
15 January 2014, we have 37 of our brigade combat  
16 teams and 14 other brigade size units  
17 supported by EBH units.

18 Now, a brigade is 5,000 to 6,000  
19 troops. So in essence what we have done is we  
20 have taken a team. It is a team of about 13  
21 people. So you have seven providers. You  
22 have a psychiatrist, a psych nurse

1 practitioner, three clinical psychologists,  
2 and three social workers, and then you have  
3 your five staff in the location of where they  
4 are at, providing care where and when they  
5 need it. Now, that is 13 folks in that  
6 footprint of a brigade of 5,000 to 6,000.

7 Now, let me take you back to 2004  
8 when I was with the 25th Infantry. There was  
9 myself, there was a psychologist and a  
10 psychiatrist. So, there were three of us. We  
11 had over 16,000 soldiers that we took care of.

12 So, if you kind of understand the  
13 magnitude of access that we have now compared  
14 to where we were a decade ago, it is  
15 significantly different. And we are able to  
16 see folks quicker, faster, more expeditiously,  
17 and we are able to provide better care than we  
18 ever have before because of that.

19 MS. FERNANDEZ: What is the  
20 waiting time?

21 LTC YOSICK: It is instantaneous.  
22 They can walk over to a clinic and see

1 someone.

2 We have also had -- we have looked  
3 at this program. We have had the Army Public  
4 Health Command evaluate it. They found a 32  
5 percent reduction in inpatient psychiatric  
6 admissions, which resulted in a cost savings,  
7 if you are interested, in \$1.3 million per  
8 brigade combat team. They also found a 58  
9 percent decrease in high-risk behavior in  
10 recently redeployed soldiers and a 65 percent  
11 reduction in medically not-ready soldiers for  
12 behavior health reasons at the time of  
13 deployment.

14 So, we are finding that this  
15 program is increasing the health and well-  
16 being of our force and it is increasing our  
17 ability to prepare folks to be able to do what  
18 it is they came in to do.

19 MIT is also involved with the  
20 program and they have made a statement at  
21 fully-staffed that this is a DoD-wide best  
22 initiative. And I think all the services, we

1 are all trying to do this to our best of our  
2 capability of the resources to put folks where  
3 the service member is.

4 Just to conclude, I want to talk  
5 just a little bit about the Behavior Health  
6 Data Portal that was just mentioned. This is  
7 something we are really excited about. We  
8 have a tool that we are proliferating where we  
9 can measure how effective the treatment is all  
10 the way down to the individual provider across  
11 our services. It is something that we have a  
12 web-based platform that we can track that and  
13 we have it. It is at every Army medical  
14 treatment facility site. And right now, we  
15 are in the process of increasing the  
16 proliferations. The hardware is in place and  
17 now we are in the socialization phase of  
18 phasing it in and this, too, is something that  
19 we are working across DoD on.

20 But in terms of warm hand-off and  
21 our ability to have seamless care from one  
22 installation to another and one location to

1 another, it is pretty exciting where we are  
2 headed.

3 I will close there. And pending  
4 any questions, thanks again. And I look  
5 forward to our discussion.

6 CDR ROBSON: Good afternoon. I am  
7 Commander Kristie Robson. I am an emergency  
8 medicine physician. My role is at the Bureau  
9 of Medicine and Surgery in Falls Church. My  
10 job position is Department Head of Clinical  
11 Programs. And I was appointed the Sexual  
12 Assault Forensic Exam Program Manager for the  
13 Navy.

14 What I really want to do is  
15 provide the clearest oversight I can in terms  
16 of what our sexual assault response is for the  
17 Navy. And I want to try to do it without  
18 talking too much to all the instructions  
19 because I feel like I lose civilians when I  
20 start talking to instructions. Okay?

21 I will say we are standardized,  
22 accountable, and coordinated and leave it at

1 that. Everything that we do is by  
2 requirement.

3           So, let me just say one of the  
4 things in all of our instructions is that  
5 sexual assault patients will be treated like  
6 emergency patients. They will be given  
7 priority. And I don't know if anyone has  
8 experienced the worst of an emergency patient,  
9 which is when you have to call the code blue.  
10 And when you call the code blue, everybody  
11 comes running. And that is really what I want  
12 to get across today. The Navy's response has  
13 medical running, has legal running, has  
14 advocates running, and it is a response that  
15 -- has criminal support running -- and it is  
16 a response that I have a hard time describing  
17 because it is what I am living every day.

18           But if you are a patient and you  
19 come into any of our MTFs in the Navy -- I am  
20 already going to ruin myself -- according to  
21 the BUMED 6310.11A, we have a SAFE response  
22 ready for you, which means we have trained

1 provider there to assist you with a forensic  
2 exam.

3 The other people that are going to  
4 be coming to your side, per victim care  
5 protocols, also to another instruction, are  
6 victim advocates. Our SAPR victim advocate is  
7 going to be with you during this emergency.  
8 This is a person that is going to explain to  
9 you all the jibber-jab that we deal with every  
10 day to understand your options. What does it  
11 mean to be restricted? What does it mean to  
12 be unrestricted? What does it mean to have  
13 just a medical? This doesn't -- when you are  
14 in an emergency situation, you want someone to  
15 help guide you.

16 We have SARCs there that help not  
17 only to keep your record but to guide you  
18 after this initial emergency. We have victim  
19 care. We have victim legal counsel advocates  
20 who are actually stationed with the SAPR  
21 victim advocates and the SARCs. And this is  
22 a new entity. And they have stood up in

1 January and I have had them talk to all our  
2 SAFE providers. I had them talk yesterday --  
3 or on Monday from BUMED.

4 This is an outstanding new  
5 resource to help during this code. And I  
6 think the best way to understand them is that  
7 they are for you until you have peace of mind.  
8 And what that means is, when our job is done  
9 as medical, they are there to ensure that.  
10 Well, say that they got you moved from that  
11 person where you were working with who  
12 sexually assaulted you to a ship. And we will  
13 say if that ship just keeps deploying and you  
14 can't get to your mental health appointments,  
15 that victim legal counsel is going to ensure  
16 that you are making it to your mental health.

17 In addition to our victim legal  
18 counsels, our NCIS agents, of course, it is  
19 about getting the prosecution and using that  
20 evidence.

21 I could talk about our chaplains  
22 who are now coming in to help. Okay? They

1 are there. They are your confidants in terms  
2 of assisting.

3 I could tell you that when we  
4 collect your sexual assault forensic exam and  
5 send it to our own lab, your lab time is 70 to  
6 78 days, once it hits the door, and everything  
7 in that kit is going to be run.

8 DEAN ANDERSON: Is there any  
9 backlog in the military for sexual assault  
10 kits?

11 CDR ROBSON: That would be a  
12 question you would have to address right to  
13 USACIL. But I will tell you because of the  
14 UCMJ, we have to get you to trial in less than  
15 120 days, I don't believe a backlog is there.  
16 Okay, 70-78 days is when that thing hits their  
17 door, they have to turn that around.

18 And I know in the news was about  
19 Tennessee and the backlogs and Congress  
20 looking into that but I could tell you from --  
21 because I track everything, I know when those  
22 SAFE kits were collected and I know that I got

1 my evidence back and was able to look at how  
2 the quality of the evidence that was submitted  
3 in a short amount of time.

4 COL HAM: Dean, for your  
5 information the Comparative Systems  
6 Subcommittee, some members of that  
7 subcommittee did a site visit to USACIL and  
8 the Georgia, I think it is GBI, Georgia Bureau  
9 of Investigation Lab as a comparison and they  
10 have all that specific information from them.  
11 I don't remember the number of days off the  
12 top of my head. The important thing that they  
13 reported was as the Commander said, that time  
14 limit is for the entire kit, whereas, they  
15 found the civilian lab, it is one lab, so it  
16 is one process, was counting time periods for  
17 each piece of evidence, which you might be  
18 familiar with.

19 CDR ROBSON: The bottom line is in  
20 terms of taking care of our emergency  
21 patients, you have a full team that is  
22 responding to the code. And what I try to

1 tell our providers and what I try to tell my  
2 family and friends when they say what is this  
3 on the news I hear about sexual assault in the  
4 military, I say the same thing. I say we are  
5 there to help you from door to recovery and  
6 that is our mission every day.

7 So, that is all I have for you.

8 CAPT RALPH: All right, last one.  
9 So, I can just agree with everything they  
10 said.

11 I am John Ralph. I am a  
12 psychologist. I have been in the Navy for 26  
13 years. A variety of assignments, both medical  
14 and operational. I am currently at BUMED  
15 also. I am the Director of Psychological  
16 Health for Navy Medicine and the Chief of  
17 Staff for Wounded, Ill, and Injured Programs.

18 And I will just piggyback on a few  
19 of the things my colleagues have said and try  
20 to answer some of the questions that I knew  
21 that you had, just briefly. And then we can  
22 talk with Q and A.

1                   In terms of our overall system in  
2                   the Navy of mental health care, similar to  
3                   what the other services offer it is  
4                   predominantly MTF-based, so based in our  
5                   clinics and hospitals with a combination of  
6                   active duty, federal employee, and contract  
7                   providers. We have been relying a great deal  
8                   on contract providers over the last five or  
9                   six years in particular, as we have tried to  
10                  plus up our mental health resources in the  
11                  hospitals.

12                  A variety of specialties,  
13                  psychologists, psychiatrists, clinical social  
14                  workers, psych nursing, psych nurse  
15                  practitioners, about 1800 in all in terms of  
16                  mental health professionals at our hospitals.

17                  And people have said it a lot,  
18                  evidence-based care. You know when you say  
19                  that, it sounds obvious. So hopefully, people  
20                  will say aren't you -- hopefully you are using  
21                  care that there is some evidence that it  
22                  works. However, I will tell you in mental

1 health that hasn't always been the case. And  
2 I would argue that in the military our  
3 emphasis on actual treatment methods that have  
4 been empirically supported to be effective is  
5 better than you will get pretty much anywhere.

6 And like the Army and the other  
7 services, we do audits now of records,  
8 particularly for PTSD and depression cases and  
9 are just happy to see that we are between 80  
10 and 90 percent compliant with the DoD/VA  
11 clinical practice guidelines. So these  
12 evidence-based practices that people are  
13 using.

14 That doesn't mean that the goal is  
15 100 percent either. Just so you know, there  
16 is reasons with individual patients that you  
17 would stay within the standard of care and  
18 maybe use some alternative methods. But  
19 generally speaking, we feel very confident  
20 that our providers are trained in actually  
21 using evidence-based practices for trauma  
22 patients, both combat trauma, sexual assault

1 trauma and other types of trauma.

2 We talked a lot about embedded  
3 behavioral health. And if I could just  
4 underscore that a little bit, I do think that  
5 that is the wave of the future and the wave of  
6 the present for military mental health. For  
7 the Navy, most of those embedded providers are  
8 active duty. Not all but most. And we have  
9 them at Marine Corps regiments and in our  
10 large seagoing platforms, Special Operations  
11 units.

12 That increases access, you are  
13 right. You can just -- you know you don't  
14 have to call the hospital and make an  
15 appointment and leave work for half a day,  
16 have everyone ask where you are going, where  
17 were you, you just walk down the hall and see  
18 the person that you see all the time. And  
19 from a mental health provider's perspective,  
20 it really increases the willingness of people  
21 to come see you, since they know that you are  
22 around. They know that you are going through

1 the same thing that they are going through.  
2 It is a stigma reduction tool and it is an  
3 access to care tool, that I think all the  
4 services have found to have been very, very  
5 effective. And so, we want to see that  
6 continuing as much as possible.

7           Again, we have been plussing up  
8 our numbers a great deal as the demand has  
9 increased. We spend about 220 million just in  
10 supplemental funding to increase our  
11 behavioral health providers throughout the  
12 system. And as Captain Colston said, probably  
13 a quadrupling of these resources since 2001.

14           And again, just to underscore, I  
15 won't go into all this detail but the  
16 Behavioral Health Data Portal, great system.  
17 The whole idea of -- and again, this is like  
18 the evidence-based care. How do you know your  
19 patients are getting better? You would think  
20 that that would be something that could be  
21 demonstrated nationally by mental health  
22 people, but typically it is not. We will

1 traditionally do a lot of outcome metrics like  
2 customer satisfaction, patient satisfaction,  
3 or how long do they have to wait to get an  
4 appointment. None of that tells you whether  
5 your patients are actually getting better.  
6 And this is a tool by which we can do that in  
7 a systematic way that is the same for all the  
8 services. And I think that is a great, great  
9 initiative.

10 We had something similar in the  
11 Navy that wasn't deployed as far-reaching and  
12 so we are happy to switch over to the Army  
13 system so we can all be doing the same thing.  
14 But I think the way we are going and the  
15 things that we have learned over the last  
16 several years in terms of giving focused  
17 evidence-based care, tracking treatment  
18 outcomes, and increasing access, reducing  
19 stigma through these embedded providers have  
20 been great initiatives, not that we don't have  
21 a lot to learn of course, but I think those  
22 have been great improvements.

1           And real quick, I am sure we will  
2           be getting into some of this. One of the  
3           questions was about the release of counseling  
4           records to commands and I can talk about that  
5           briefly. For those who seek mental health  
6           care for issues related to sexual assault, it  
7           is the same rules as it is for any person  
8           seeking mental health care. This is governed  
9           by an instruction, a DoD instruction. But for  
10          mental health providers, by regulation, there  
11          is the presumption of nondisclosure to  
12          commands for any issue, unless specific  
13          criteria are met. And most of those criteria  
14          are the same as the criteria you have in the  
15          civilian world. The same limits to  
16          confidentiality exist: harm to self, harm to  
17          others, abuse going on that must be reported,  
18          and things of that sort.

19                 In the military there is in the  
20          DoD instruction also reference to impact of  
21          the mission as well. So, there could be some  
22          disclosures related to that. But those are

1        few and far between.  It really has to be  
2        related to someone's deployability, duty  
3        status.  If they are hospitalized, if there is  
4        some reason they are not able to function at  
5        work in an noticeable way to the commander or  
6        if they are going to somehow impact the  
7        overall mission of the unit, then that would  
8        be something that would be communicated.  So,  
9        that is unlike the civilian world.

10                                Yes?

11                                CDR KING:  So when it is  
12        communicated, what level of material is  
13        communicated to the commander?

14                                CAPT RALPH:  The minimum amount of  
15        material necessary to satisfy the purpose of  
16        the disclosure is what the instruction says.

17                                DEAN ANDERSON:  Yes, but that is  
18        everything.  I mean, that is the existence of  
19        post-traumatic stress disorder or --

20                                CAPT RALPH:  Well, it wouldn't be  
21        a diagnosis unless there was a need to give a  
22        diagnosis.

1                   DEAN ANDERSON: Well so that is  
2 interesting. One of my questions was, is it  
3 the fact of treatment that is therapy or  
4 medications or is it the diagnosis, either  
5 self-reported or diagnosed -- a self-reported  
6 condition or a diagnosis from an authority  
7 figure that is -- or rather from a mental  
8 health professional that is transmitted to the  
9 commanding officer, should the commanding  
10 officer ask you, hey, what is up with this  
11 person; is she prepared for combat duty?

12                   CAPT RALPH: Well again, you can  
13 only answer that in the minimalist way to  
14 answer this particular question.

15                   DEAN ANDERSON: Right.

16                   CAPT RALPH: So are they prepared  
17 for combat duty? Well, are they fully  
18 deployable? Can they carry a weapon? Do they  
19 have a safety plan?

20                   DEAN ANDERSON: Right. And so  
21 let's say someone is in serious trauma and she  
22 has posttraumatic stress disorder or he has

1 posttraumatic stress disorder as a result of  
2 a sexual assault that happened on duty. In  
3 your assessment, is that the kind of thing  
4 that impacts one's ability to carry a weapon?

5 CAPT RALPH: It could. It depends  
6 on the situation. You always have to take  
7 that.

8 DEAN ANDERSON: Right.

9 CAPT RALPH: So you could say,  
10 this person is engaged in care for which in my  
11 judgment they shouldn't carry a weapon. And  
12 that would be something the CO would have to  
13 know. Because it would limit their  
14 functioning at work, depending on their job.

15 DEAN ANDERSON: Right. It would  
16 also deter them from seeking mental health  
17 assistance, potentially.

18 CAPT RALPH: Yes, a fear that the  
19 care would render them unfit to do a job that  
20 they wanted to do.

21 DEAN ANDERSON: Impact their  
22 career trajectory.

1                   CAPT RALPH: Well that is, again,  
2                   you are talking about an issue with mental  
3                   health care or medical care of all sorts in  
4                   the military. Because all sorts of care could  
5                   potentially come with that.

6                   DEAN ANDERSON: Right. But we  
7                   have heard from victims who have indicated  
8                   either fear that seeking mental health  
9                   treatment would impact their career trajectory  
10                  in the military and/or those who have had  
11                  their mental health treatment impact their  
12                  career trajectory.

13                  And we are considering how to deal  
14                  with that because it should not be that a  
15                  victim's potential to excel in the military is  
16                  curtailed by their own victimization. And yet  
17                  it appears that the regulations that allow for  
18                  the disclosure to commanding officers in  
19                  exactly the circumstances that you are  
20                  identifying may deter victims from seeking  
21                  appropriate mental health assistance or may  
22                  deter victims from reporting at all.

1           CAPT RALPH: Yes, it is a tough  
2 question. And I do agree with you. This  
3 isn't an issue specific to sexual assault at  
4 all. With mental health care, specifically,  
5 we deal with this issue all the time.

6           DEAN ANDERSON: Right.

7           CAPT RALPH: So as a mental health  
8 provider, let me just say a few things. One,  
9 in my experience it is extremely rare for the  
10 seeking of mental health care to impact one's  
11 military trajectory, career trajectory, or  
12 duty status. It is by far the exception,  
13 rather than the rule. But it could happen and  
14 people know it could happen. I think the  
15 perception of that plays a big role in whether  
16 people decide to seek care or not.

17           I think, and this is me talking,  
18 since I am the one sitting here able to do the  
19 talking. You know we do have some work to do  
20 in terms of stigma. We talk about stigma  
21 reduction usually in terms of marketing,  
22 convincing people that hey, come seek help.

1 We encourage it. I do think --

2 DEAN ANDERSON: This is exactly  
3 the stigma.

4 CAPT RALPH: Right. I do think  
5 the military as a whole needs some work  
6 related to what extent do we have rules in  
7 place that do impact careers, if you seek  
8 care.

9 We are going in the right  
10 direction. I know for Navy medicine now, you  
11 can now work in the nuclear reactor of a  
12 submarine and still be on antidepressant  
13 medication. That is a recent change. That is  
14 a step in the right direction. Before, you  
15 couldn't be. If you took antidepressants, you  
16 were disqualified for sub duty, nuc duty,  
17 aviation duty, all sorts of types of duties.

18 There is other rules like that in  
19 place and that is not good. I do think that we  
20 need to take a hard look at those kinds of  
21 things and those proposals are in the works.  
22 And how much traction we will get from that,

1 time will tell. But we don't want to  
2 discourage people from seeking care. We  
3 certainly don't want to encourage them on the  
4 one hand but then meanwhile have policies in  
5 place that do discourage them.

6 COL SCHENCK: But it is generally  
7 not just mental health issues. It is medical  
8 issues as well. I was in the Army, John, Bill  
9 was in the Army. And back in the day, you  
10 didn't want to go on profile. You didn't want  
11 to go to medical treatment. I mean I self-  
12 medicated my entire career.

13 (Laughter.)

14 COL SCHENCK: I would have birthed  
15 my own child if it would have kept me -- it  
16 wouldn't have gone in my military record  
17 because you don't want to be looked at as a  
18 slacker. But I think what you are saying is  
19 there are improvements. And what you have  
20 said is just really impressive to me that the  
21 advancements --

22 MR. CASSARA: Well it is true in

1 all areas of PTSD. I mean, a soldier who gets  
2 a traumatic brain injury while deployed  
3 through no fault of his own or her own,  
4 obviously, is still going to face the same  
5 issues in terms of it is going to impact their  
6 deployability. It is going to impact whether  
7 or not they can have a security clearance,  
8 potentially.

9 CDR ROBSON: It is for their  
10 safety and the safety of those around them.

11 CAPT RALPH: Absolutely.  
12 Absolutely. I agree completely.

13 COL HAM: Is the decision left to  
14 the medical provider? In other words -- take  
15 it out of sexual assault -- an aviator comes  
16 to you and is having, I don't know, a  
17 disqualifying medical condition. Pick one.  
18 Migraine headaches where they have auras and  
19 they can't see, if that would be a  
20 disqualifying condition.

21 CAPT COLSTON: In fact, it is not  
22 anymore.

1 COL HAM: Okay. Pick something.  
2 I don't know. Pick something and then what  
3 happens? Do you have a duty to report to the  
4 commander that this person has a disqualifying  
5 condition -- do you have to say what it is?  
6 Is it up to you? A) is it up to you to  
7 determine as a doctor that person has a  
8 disqualifying condition? B) When you go to  
9 the commander and say, it is my professional  
10 medical opinion that this person has a  
11 disqualifying medical condition that  
12 disqualifies them from whatever, is that a  
13 recommendation to the commander? Is that a  
14 binding decision on the commander? And what  
15 body decides what those disqualifying  
16 conditions are? Is it all medical  
17 professionals? Legal professionals? I don't  
18 know.

19 CDR ROBSON: I can answer as a  
20 flight surgeon because that was the community  
21 I served in. And I not only served in  
22 aviation but it was the nuclear community.

1 So, you had two things that you were dealing  
2 with, your ability to fly and your PRP, your  
3 personal reliability program. And so you had  
4 two different ways that could put you down.

5 And so, you know, I didn't have  
6 any friends to hang out with. No one wanted  
7 to --

8 (Laughter.)

9 CDR ROBSON: But the bottom line  
10 to that is yes, our Man Med, our Manual of  
11 Medicine that says what is disqualifying  
12 conditions, you have that, according to the  
13 personal reliability program, multiple things  
14 can put you down. Going in the middle of a  
15 divorce, gambling, as we saw recently,  
16 cheating certainly. They look at the whole  
17 picture of --

18 DEAN ANDERSON: So, whose  
19 responsibility is it to report? Is it your  
20 responsibility to make that assessment and  
21 then, on your own report? Or do you wait for  
22 the commanding officer to ask you to make the

1 report on any particular individual? Or how  
2 does this get communicated? By what  
3 mechanism?

4 CDR ROBSON: It is kind of a  
5 magical system that we have. It is not  
6 something that is transparent.

7 COL SCHENCK: Well, if a service  
8 member comes to you and they are a danger to  
9 themselves or others, they are in infantry.  
10 I mean in infantry, you have no security  
11 issues. You are just going to be carrying a  
12 weapon. Right?

13 So, if a service member comes to  
14 you and they are suffering from General  
15 Anxiety Disorder, GAD, but you believe they  
16 are a danger to themselves or others, are you  
17 required to then report to the commander or is  
18 there something -- I mean what are your  
19 responsibilities?

20 CDR ROBSON: Aviation is very cut  
21 and dry. You get a down chip. You don't fly.  
22 And so, they put you --

1 COL SCHENCK: I understand. I am  
2 talking about the general infantry. I mean I  
3 was assigned with the aviation command.

4 COL NEAL-WALDEN: We have a  
5 profiling system. And the first thing that  
6 occurs is that there is a conversation with  
7 the patient. And so there is a conversation  
8 with that member, letting him know that hey,  
9 I am concerned about the severity of your  
10 condition currently and this is what I am  
11 recommending.

12 And so, they understand and it is  
13 discussed, even perhaps, how long we are going  
14 to put this profile in place. And then the  
15 profile may be renewed or extended or it may  
16 be ended sooner, if there is a need for it.

17 BG MCGUIRE: Could you explain  
18 further what a profile is?

19 COL NEAL-WALDEN: Yes, a profile,  
20 basically let's say someone does come in with  
21 generalized anxiety disorder and --

22 MS. FERNANDEZ: Get more specific.

1 Somebody who has just been sexually assaulted

2 --

3 COL NEAL-WALDEN: Yes.

4 MS. FERNANDEZ: -- and they show  
5 up at your office. What are they presenting  
6 with -- walk me through a scenario they get  
7 somebody who says they can't go back to their  
8 job.

9 COL NEAL-WALDEN: Well, for a  
10 sexual assault, it is going to depend on the  
11 symptoms that they are having. Let's say they  
12 are pretty distraught, this has just occurred  
13 and they just don't feel like they can  
14 concentrate enough to do their job. You know,  
15 they may be Security Forces or they may be a  
16 calm guy or gal, whatever, but they just feel  
17 like they can't concentrate enough.

18 So, let's take Security Forces.  
19 With Security Forces, that individual, there  
20 is going to be a discussion about maybe taking  
21 them off shift, or relieving them of duty  
22 temporarily.

1 MS. FERNANDEZ: A discussion with  
2 who?

3 COL NEAL-WALDEN: With the patient  
4 first.

5 MS. FERNANDEZ: Okay.

6 COL NEAL-WALDEN: The discussion  
7 is always with the patient.

8 DEAN ANDERSON: What if the  
9 patient says, don't do it. It will ruin my  
10 career?

11 COL NEAL-WALDEN: You have a  
12 longer discussion with them as well. And you  
13 explain --

14 DEAN ANDERSON: Well, then what  
15 happens as a result of that longer discussion?  
16 You make a determination. Right?

17 COL NEAL-WALDEN: Yes. And I  
18 always present facts to them. Because we have  
19 actually, we have looked at our records over  
20 years and we have done it numerous times and  
21 we have shown only in three percent of cases,  
22 so three percent of our population who seeks

1 mental health care, it is only three percent  
2 that have an adverse impact to their career.  
3 And of that three percent, 95 percent of those  
4 individuals sought care late. So, they were  
5 already having significant administrative  
6 issues at work and disciplinary issues at  
7 work.

8 DEAN ANDERSON: Can you send that  
9 study to us?

10 COL NEAL-WALDEN: Yes, I can.

11 DEAN ANDERSON: How recent is that  
12 study and who is the population?

13 REP. HOLTZMAN: Can whoever is  
14 speaking speak louder or into the mike? I'm  
15 sorry, I am having trouble hearing.

16 COL NEAL-WALDEN: I can get that  
17 information from the Air Force Medical  
18 Operations Agency for you.

19 REP. HOLTZMAN: I didn't hear the  
20 question. I'm sorry.

21 COL NEAL-WALDEN: It was a data  
22 pull of all of the records.

1                   DEAN ANDERSON:  So it was a random  
2                   sample survey of people who had sought  
3                   treatment?

4                   COL NEAL-WALDEN:  Yes.

5                   DEAN ANDERSON:  The self-  
6                   identified that it had adversely affected  
7                   their --

8                   COL NEAL-WALDEN:  Yes.

9                   DEAN ANDERSON:  And those who  
10                  didn't respond to the poll, were not counted  
11                  in the end?

12                  COL NEAL-WALDEN:  No, it was a  
13                  pull of our records.  It wasn't a survey of  
14                  the people who sought help.

15                  And so I mean, if someone -- there  
16                  are a few cases where someone may have dropped  
17                  out of care prematurely and we may not have  
18                  been able to track that they were discharged  
19                  from the service, but that is not an issue now  
20                  because victims of sexual assault are then  
21                  seen in the clinic prior to discharge anyway.

22                  REP. HOLTZMAN:  Can I ask another

1 set of questions about the actual treatment of  
2 sexual assault victims?

3 What kind of treatment are  
4 actually giving concretely? And how do you  
5 define success? And is there success? What  
6 are the outcomes that you want to find in your  
7 treatment of somebody who comes -- presents to  
8 you, as you call it?

9 CAPT COLSTON: So, I could speak  
10 to that. In psychiatry we have really two  
11 terms. One is remission and the other is a  
12 full response to treatment.

13 Many, many folks, when they come  
14 to treatment get some type of improvement.  
15 PTSD has 17 symptoms. Almost everybody who  
16 comes to treatment gets some sort of --

17 REP. HOLTZMAN: But I just want  
18 you to focus on sexual assault.

19 CAPT COLSTON: Okay.

20 REP. HOLTZMAN: I am not  
21 interested, for the moment, in the larger  
22 issue of PTSD. I am interested in sexual

1 assault and the consequences of that.

2 CAPT COLSTON: Okay.

3 REP. HOLTZMAN: So, if you could  
4 just focus your answer on that, please, sir.

5 CAPT COLSTON: So, in regard to  
6 things that I might see as a mental health  
7 clinician stemming from a sexual assault -- by  
8 the way as a clinician, by far, the majority  
9 of cases that I have seen are in people who  
10 were traumatized in development, folks who  
11 were traumatized antecedent to service. It  
12 has actually been the exception, rather than  
13 the rule, that somebody has walked into my  
14 office secondary to a recent sexual assault.  
15 You just don't see that a great deal of the  
16 time.

17 Functional limitations. Is this  
18 patient still having recollections about the  
19 trauma? Is this patient still struggling with  
20 arousal symptoms? Is this patient numb or  
21 detached? Is this patient avoiding cues to  
22 the stressor for what happened to them? Are

1 those things that are going away?

2 If not, we have a number of things  
3 in our armamentarium to make you better, to  
4 help you recover.

5 MS. FERNANDEZ: Can I stop you for  
6 just a second? Did you just say that you are  
7 not seeing sexual assault victims come into  
8 your office?

9 CAPT COLSTON: I am saying that  
10 among the majority of patients that I have  
11 seen who have been sexually abused, sexually  
12 assault would be in the minority. So there  
13 would be more of other forms of sexual abuse,  
14 and that would include stuff that happened in  
15 development, inappropriate sexual touching --

16 REP. HOLTZMAN: When you say  
17 development, were they a child?

18 CAPT COLSTON: Yes, ma'am.

19 REP. HOLTZMAN: What does that  
20 mean?

21 CAPT COLSTON: Yes, ma'am, that is  
22 exactly what I mean.

1 MS. FERNANDEZ: Let me just -- are  
2 all of you not seeing sexual assault victims  
3 come to your offices?

4 COL NEAL-WALDEN: We are but the  
5 vast -- and I agree with Captain Colston, the  
6 vast majority of sexual assault -- individuals  
7 reporting sexual assault, it is prior to  
8 service. But we are seeing new cases as well  
9 because we all know that they do occur.

10 MS. FERNANDEZ: That is the  
11 minority you are saying. Is that true for the  
12 rest of you?

13 DEAN ANDERSON: Yes, it sounds  
14 like they don't wish it to harm their service.  
15 Well, actually let me back up because that is  
16 an assumption, a conclusion I am making that  
17 is possibly not based on what you are saying.

18 Do you think that there are cases  
19 of sexual assault in which folks are not  
20 seeking mental health treatment?

21 COL NEAL-WALDEN: Yes, and I  
22 believe that happens in the civilian sector as

1 well.

2 DEAN ANDERSON: Sure, with  
3 different career consequences.

4 COL NEAL-WALDEN: Right. It is  
5 very under-reported.

6 CDR ROBSON: There are other ways  
7 that people seek treatment, though. Military  
8 OneSource was what the Captain started it off  
9 first. And that is, you know, treatment --  
10 I'm sorry if I am speaking out of turn because  
11 I am just a dumb ER doc but people choose  
12 their treatment.

13 Military OneSource, you could type  
14 back and forth with a counselor. You could  
15 call with a counselor. You could pick up and  
16 be seen out in town by a civilian counselor.  
17 There are multiple ways to get help.

18 COL SCHENCK: Could you explain  
19 that, the Military OneSource, what it is?

20 REP. HOLTZMAN: Can you speak up,  
21 whoever is asking that question? I couldn't  
22 hear the question.

1                   CDR ROBSON: You can hear us loud  
2 and clear, right, ma'am?

3                   REP. HOLTZMAN: I can hear you  
4 loud and clear but I cannot hear the  
5 questioner.

6                   CDR ROBSON: Do we have another  
7 mike in the room?

8                   (Chorus of no.)

9                   CDR ROBSON: We're sorry but the  
10 questioners are across the table, ma'am. So,  
11 we will just ask them to turn their volume up.

12                   CAPT RALPH: There are a host of  
13 non-medical psychological health services that  
14 are available. So, these are services that  
15 people can use that aren't entered into their  
16 medical record and are preclinical,  
17 subclinical.

18                   So for instance, Fleet and Family  
19 Support Centers have licensed clinical social  
20 workers but behavioral health providers who  
21 see cases of domestic abuse and others. The  
22 Marine Corps has similar things. All the

1 services have similar things. Marine Family  
2 Life Counselors that are non-clinical. They  
3 may be clinically trained but they are not in  
4 a clinical role but they are embedded within  
5 operational units to be chaplain-like without  
6 the chaplaincy.

7 So, Military OneSource is one of  
8 those options, where you can call and get it  
9 is non-medical care, I believe, up to six  
10 sessions and it doesn't get entered into your  
11 medical record.

12 Now, the caveat of that is that if  
13 you are a sexual assault victim who is dealing  
14 with trauma and it is not rising to the level  
15 of a disorder that would be potentially  
16 compensable like PTSD, then you can get  
17 treated at that level. It is not medical  
18 intervention.

19 However, you do have a disorder  
20 that is depression. You meet the criteria for  
21 depression or a chronic adjustment disorder or  
22 PTSD. That would have to be seen, if you

1 wanted to be seen, in the medical treatment  
2 facility.

3 So, there are a range of treatment  
4 options.

5 COL SCHENCK: Well, when you go  
6 when you are a victim -- I am a victim and I  
7 want to go to mental health. You say  
8 embedded. Does that mean I walk down the hall  
9 or does that mean hey, I'm signing out to go  
10 to mental health?

11 And my second question is, when  
12 they go to you -- and they haven't disclosed  
13 to the commander that they have been sexually  
14 assaulted. When they go to you and they tell  
15 why they are there to see you and you decide  
16 for conversation that they need to be pulled  
17 from duty or they are just not ready to go  
18 back, do you, when you tell the commander,  
19 recommend this person get a profile?

20 And for those of you who haven't  
21 been in the military, a profile is just a form  
22 that says medically not fit for duty at this

1 time. Sprained ankle, you get a profile.

2 So, you would fill out the form  
3 that Lisa has a profile. You don't disclose  
4 what caused that profile. You don't disclose  
5 that I am suffering from whatever I am  
6 suffering from. You just say Lisa can't be a  
7 lawyer right now, even though I practice.

8 (Laughter.)

9 COL SCHENCK: But anyway, you just  
10 fill the form out and the commander never  
11 would even know. You see what I mean?

12 So talk to me about the embedded.  
13 Because in the old days, where exactly are you  
14 going to sign out to? You put down mental  
15 health, ding, ding, ding.

16 LTC YOSICK: The biggest thing to  
17 not get confused on is when we say embedded,  
18 we are still talking about the same quality of  
19 care that you would get in a hospital.

20 COL SCHENCK: Even better care.  
21 There is more people.

22 LTC YOSICK: The location is

1 different.

2 CDR KING: Well, what is the  
3 location, I mean, in particular?

4 LTC YOSICK: Within walking  
5 distance from a barracks, operational center.

6 BG MCGUIRE: See but it used to be  
7 there was a real stigma with mental health  
8 being in the mental health wing or the mental  
9 health building.

10 Now you are saying there is mental  
11 health that -- here is my regular doctor is  
12 right here and the mental health is right next  
13 door, the next office. In fact, they may even  
14 have an adjoining door. So there is not that  
15 stigma of going into that actual facility  
16 somewhere.

17 COL HAM: Can I give you a  
18 personal example? I went to my primary care  
19 physician several months ago complaining of  
20 problems sleeping. Down the hall three doors  
21 is the behavioral health guy. She gave me  
22 like a hall pass. I went outside. I saw him

1 the next day. The same building. The same  
2 hallway. My doctor was next door. He walked  
3 across the hall to talk to her.

4 I mean, I am a living example of  
5 this. And then I was referred out to a sleep  
6 specialist who said yes, you have insomnia.

7 (Laughter.)

8 COL HAM: And I said thank you  
9 RSP. But that is a living example. I didn't  
10 even know he was there. He was literally  
11 five steps away and it didn't have a door on  
12 it that said shrink. I didn't even know who  
13 he was.

14 COL NEAL-WALDEN: What is so great  
15 about that is that most people, they go and  
16 see their primary care provider first, whether  
17 it is depression or if they have been sexually  
18 assaulted or they have any other sort of ache  
19 or pain. That is where they are going to go.  
20 And so that is why it is important that we  
21 have those integrated behavioral health  
22 providers right there.

1 COL HAM: Is that what you are  
2 talking about? Is that an example of it?

3 CAPT RALPH: It is different but  
4 it is a great example.

5 REP. HOLTZMAN: Can I go back to  
6 the question I asked?

7 CAPT RALPH: All branches have  
8 embedded behavioral health providers in  
9 primary care settings. I think what we were  
10 talking about before was in operational  
11 settings, so in the medical department of the  
12 ship. But still, we are all in primary care,  
13 too, which is a great example as well.

14 MS. FERNANDEZ: Liz, go ahead.

15 REP. HOLTZMAN: Can I go back to  
16 the question I asked a little while ago?  
17 Which is I want to understand what works and  
18 what is the actual treatment for a sexual  
19 assault victim. And what do you consider  
20 working?

21 This is all very vague and I mean  
22 I am glad it is all evidence-based but what

1 actually are you doing and what actually are  
2 the outcomes? Are people quote-unquote cured?  
3 What do you consider a "cure?" Is there a  
4 cure?

5 That is the part I would like to  
6 understand a little bit more about the medical  
7 aspect of this and the consequences for the  
8 victim. The mental, the positive outcomes, if  
9 there are any.

10 CAPT COLSTON: So I think that  
11 Commander Robson can speak to the medical side  
12 and I will speak to the mental health side, if  
13 that is okay.

14 REP. HOLTZMAN: Yes, whatever.

15 CAPT COLSTON: So the natural  
16 course of PTSD is toward recovery. So,  
17 individuals have been traumatized for the  
18 majority of human history. And I think that  
19 we would all recognize that this was probably  
20 a very different world before 1900, the way  
21 that things operated. You saw death and  
22 destruction around you, women functionally had

1 no rights. It was just a very different  
2 world. The amount of trauma that the average  
3 human being was exposed to was considerably  
4 higher than it is today.

5 So the way your brain circuits  
6 work, we are all wired to process trauma.  
7 Nightmares are actually one way that we  
8 process trauma. And most of us have a  
9 trajectory, absent any treatment, where we get  
10 better from trauma after we sustain a trauma.

11 And in fact, some folks get inured  
12 to particular traumas and that is why folks  
13 can jump out of airplanes again, and again,  
14 and again, things along those lines.

15 What types of care do we give?  
16 Well, I am a psychiatrist. So, I give meds a  
17 lot for any type of anxiety disorder of which  
18 PTSD is one. For folks who have been sexually  
19 assaulted, insomnia is an overwhelming  
20 symptom. It is something that folks struggle  
21 with to a great deal and we have sleep  
22 adjuvants and we have various programs to help

1     you sleep.

2                     And of course we have a number of  
3     therapies.  And the thing about these  
4     therapies is not only has there been a lot of  
5     the research been done in the military, a  
6     number of these therapies were developed in  
7     sexual assault -- for sexual assault  
8     survivors, like cognitive processing therapy,  
9     imaginal exposures, prolonged exposure  
10    therapies.

11                    Let me make it really easy.  One  
12    way to expose yourself again, and again, and  
13    again, and to change a piece of your brain  
14    called your amygdala that deals with your  
15    stress response is to experience it again, and  
16    again, and again, in a safe place.

17                    So one way that you can do it is  
18    you can write a trauma narrative.  Now, that  
19    is not something you just walk into the office  
20    and you write a narrative about how you were  
21    sexually traumatized.  That is something where  
22    we develop a therapeutic rapport and well

1 after we have walked through skills and  
2 various behavioral techniques that you can use  
3 to relax yourself, we work on some sort of  
4 exposure task. For sexual trauma, that might  
5 be a narrative. It might be an imaginal  
6 exposure, just as for someone with a fear of  
7 heights or fear of flying, we are going to try  
8 and get you on a plane again, and again, and  
9 again. Or if you have problems putting an OBA  
10 on and you are in the Navy, we are going to  
11 try and put that OBA on you again, and again,  
12 and again, a breathing apparatus.

13 And these things work because that  
14 is the way that we are wired. They don't work  
15 all the time and sometimes folks do struggle  
16 with symptoms well after the exposure.  
17 Especially as a child psychiatrist I can tell  
18 you I see a lot of folks who struggle with the  
19 sequelae of developmental trauma, be that  
20 whether it manifests in regard to impulsivity,  
21 spending, sex, substance abuse, things along  
22 those lines.

1 Ma'am?

2 MS. FERNANDEZ: Sequelae? You  
3 lost me.

4 CAPT COLSTON: Okay. The after  
5 effects. I apologize.

6 MS. FERNANDEZ: Oh, the after  
7 effects of child abuse?

8 CAPT COLSTON: Yes. Child abuse,  
9 neglect.

10 REP. HOLTZMAN: So what kind of  
11 help are people really -- I mean I know people  
12 going through this. But do you consider  
13 something a cure? How do you know you have a  
14 good outcome? How do you measure that?

15 CAPT COLSTON: So Dr. Woodson, who  
16 is my boss, actually just put out an  
17 instruction that said everybody is going to  
18 get outcome measures. And we picked a way to  
19 do it, the Behavioral Health Data Portal, and  
20 we actually have the first set of data on  
21 about 70,000 patients who had PTSD. And what  
22 those data showed is that a lot of people had

1 a response --

2 MS. FERNANDEZ: I hate do to this.  
3 Sorry about my legal interjections here. But  
4 you keep mentioning PTSD. Because I am  
5 thinking that PTSD is one of the things that  
6 sexual assault victims are most likely to --

7 CAPT COLSTON: So insomnia,  
8 depression, other forms of anxiety. And  
9 functional limitations. If you are scanning  
10 the horizon for danger constantly, you may not  
11 do all that well at work, especially early in  
12 service. And we do see folks who have been  
13 neglected, abused, traumatized developmentally  
14 and they don't necessarily do as well as other  
15 folks do.

16 JUDGE MARQUARDT: Do any of you  
17 deal with prevention?

18 REP. HOLTZMAN: Can I just get an  
19 answer to that? I just want him to tell me  
20 what the outcomes were. Please, can I get an  
21 answer to that?

22 CAPT COLSTON: Okay, so we got our

1 first data set on 70,000 patients. Of those  
2 70,000 patients, a few thousand of them  
3 actually had measures for PTSD, although we  
4 also get anxiety and depression measures. And  
5 we looked at that and there was an improvement  
6 in the group. The improvement didn't equal a  
7 full response in most of the group and the  
8 next thing to look at is hey, did these folks  
9 get a full course of therapy?

10 As Todd said, 86 percent of folks  
11 we know are getting evidence-based care. And  
12 I would say, as a clinician, that is about  
13 what I am seeing. There aren't a lot of folks  
14 that are getting Freudian therapy or Jungian  
15 therapy anymore when they come in with a  
16 particular problem. We are focused on  
17 recovery and I think that we have set up -- we  
18 have clinical practice guidelines for PTSD.  
19 We have clinical practice guidelines for  
20 depression, suicide, all of those things. And  
21 I think that most of our clinicians are  
22 trained on those.

1 MS. FERNANDEZ: Okay, can we ask  
2 another question?

3 REP. HOLTZMAN: All right, sorry.

4 MS. FERNANDEZ: No, Liz, this is a  
5 follow-up to your question, I think.

6 Okay, you had your 70,000 people  
7 dataset. And you said that a portion of that  
8 got better?

9 CAPT COLSTON: Okay. So, we just  
10 put the instruction out. Dr. Woodson just  
11 signed the instruction six months ago. So, a  
12 lot of people wouldn't have had two measures  
13 in any particular diagnostic spectrum, an  
14 anxiety measure, a depression measure, a PTSD  
15 measure. But everybody gets those now when  
16 you go into mental health care.

17 So the very first dataset, a lot  
18 of the cases were from Hickham, which is out  
19 in Hawaii showed, hey, we have a couple of  
20 folks that we already have two measures for,  
21 even really early in the game here.

22 MS. FERNANDEZ: Two measures for?

1                   CAPT COLSTON: Two measures. You  
2                   could do what is called a PTSD-17 or a PCL.  
3                   In essence, you sit down and we ask you do you  
4                   have any of these 17 diagnostic criteria for  
5                   PTSD? And you write down which ones you have  
6                   and which ones you don't. And then those are  
7                   put in a computerized data portal.

8                   You get some treatment. You come  
9                   back later, we look at it again.

10                  MS. FERNANDEZ: A pre- and post-  
11                  test?

12                  CAPT COLSTON: A pre- and post-  
13                  test, absolutely.

14                  BG MCGUIRE: Can I also add to,  
15                  and it was based on my experience in working  
16                  with the Suicide Prevention Task Force that I  
17                  stood up was that we also found, and tell me  
18                  if this is not some of your findings as well,  
19                  is that if you experienced a traumatic  
20                  incident and you immediately sought help,  
21                  advice, childhood traumatic that manifests  
22                  over time, what is the likelihood of some sort

1 of positive return on treatment, given the  
2 time line of the event? The most recent event  
3 may be a better chance of a better outcome  
4 vice, something that has been brewing for the  
5 last 20 years. Tell me.

6 CAPT COLSTON: And as far as the  
7 science goes, it is important to know what we  
8 don't know. And all patients are individuals.

9 So, I can't give you a number  
10 because each patients is an individual.

11 Now, we do have a health-related  
12 behavior survey and we look at okay, PTSD in  
13 the force, incidence is one percent. So, one  
14 in a hundred folks develops PTSD every year.  
15 Prevalence is two percent. In folks who  
16 haven't been sexually abused, the prevalence  
17 is only one percent. So, we know that people  
18 who have been abused as opposed to haven't are  
19 at more risk.

20 We look at folks who were abused  
21 before service. It is seven percent. So, it  
22 is higher. It is three and a half times

1 higher, 250 percent higher. And we have a  
2 number of those surveys that look at suicide  
3 and things along those lines.

4 And of course -- oh, go ahead.

5 MS. FERNANDEZ: Going back to  
6 Liz's question. So the jury is out on the  
7 data of what works and what doesn't work. We  
8 just don't have enough. Is that --

9 CAPT COLSTON: See, I would  
10 disagree with that. What I would say is that  
11 we have very controlled studies from places,  
12 for instance, where John and I trained at  
13 Northwestern, where they take groups of  
14 patients and they have looked at a particular  
15 treatment for depression or for anxiety, for  
16 PTSD, and they say okay, we treated you for 12  
17 weeks and you got this much percent better.

18 When you look at populations, it  
19 is a different ballgame because the mode,  
20 especially for psychiatry, the number of  
21 visits, the most common number of visits for  
22 a psychiatrist, and this is civilian and

1 military, is one. That is what you would  
2 often see.

3           Psychologists, it is a different  
4 ballgame. You know, I think -- I can't speak  
5 for John but I could probably say you have  
6 seen a lot of folks for extended period of  
7 therapy. So, it is all patient-specific. In  
8 populations, the way to do it is to measure  
9 everyone and that is what we just started  
10 doing.

11           CAPT RALPH: These are complicated  
12 questions and almost philosophical questions.  
13 How do you know when a patient gets better?  
14 And that is what we are just starting to  
15 measure in a way that isn't really going on in  
16 very many places with behavioral healthcare.  
17 We know that we are using techniques that are  
18 proven to work, based on real world studies.  
19 So, we are doing that. Now, to what extent is  
20 that manifesting itself in our patients? That  
21 is the data we are getting now.

22           You know the question of when are

1 they better and how better are they, that is  
2 a very subjective judgment, based on the  
3 individual patient. I mean the goals of  
4 therapy are to help a person to overcome this  
5 event in a way that they can have satisfying  
6 relationships and good functioning at work and  
7 feel good about themselves and generally  
8 thrive as a person.

9           It doesn't mean that they leave  
10 this event as if it had never happened. It  
11 doesn't mean it doesn't continue to impact  
12 them. But it means that they can approach  
13 life and functioning in a fulfilling way. And  
14 that is a very subjective call but we know and  
15 I think that we will find that our patients  
16 get better it is a difficult question to ask  
17 do they get better enough. I mean, that  
18 depends on the individual patients.

19           But I think we know that PTSD and  
20 trauma and depression, we use these cognitive-  
21 based and exposure-based treatments that are  
22 effective and there is every expectation of

1 recovery for people. And I think it is true,  
2 particularly for people that come in and have  
3 a willingness to engage in treatment pretty  
4 soon after the event itself. I think those  
5 people have a very high likelihood of  
6 successful outcome.

7 DEAN ANDERSON: Can I jump in and  
8 ask a couple of questions? I have to leave at  
9 2:30, so I just want to make sure that I --

10 Despite my skeptical questioning,  
11 I am -- or in addition to my skeptical  
12 questioning, I am deeply impressed with the  
13 work that each of you do. And I am thrilled  
14 to hear that the military is engaging in  
15 evidence-based practices and that it seems  
16 that you have come a long way toward thinking  
17 about assessment and making interventions that  
18 are under conditions that are extremely  
19 difficult, successful interventions.

20 So, I appreciate the work that you  
21 are all doing.

22 I wonder about folks who don't

1 make it to you. And so I have a couple  
2 questions about that. One is, how do you get  
3 to and treat people who do not report having  
4 been sexually assaulted? Do people -- can  
5 they, in the different services, simply come  
6 to you and say confidentially, I have been  
7 sexually assaulted? Or are you mandatory  
8 reporters to the command structure?

9 CDR ROBSON: We are military  
10 providers. We can take restricted reports, if  
11 they want to get into that system.

12 DEAN ANDERSON: Yes, I guess I am  
13 wondering if they don't even want to do a  
14 restricted report, they just want to talk to  
15 you.

16 CAPT COLSTON: Not at all a  
17 mandatory report. As a matter of fact, he  
18 would be forbidden from reporting that  
19 information.

20 DEAN ANDERSON: Yes, that is what  
21 I thought.

22 And what percentage of the sexual

1 assault victims that you see, and by this I  
2 don't mean people who have been sexually  
3 assaulted prior to their service. I mean  
4 people that small percentage that you  
5 indicated you are seeing who have been  
6 sexually assaulted in service and you are  
7 seeing them shortly thereafter. What  
8 percentage of those folks are engaged in a  
9 full and unrestricted report versus restricted  
10 reporting, if you could estimate?

11 CAPT COLSTON: I defer to Kristie.  
12 Though I think in the last year, what were  
13 there, about 3,000 reports total?

14 CDR ROBSON: Yes, and that means  
15 unwanted sexual assault. I didn't bring my  
16 numbers with me, ma'am, I'm sorry.

17 CAPT COLSTON: The unwanted sexual  
18 contact.

19 So, getting to your first point  
20 that making an estimate of how many assaults  
21 were there or how much sexual abuse was there  
22 in relation to reports. Our SAPRO office has

1 estimated that it was --

2 DEAN ANDERSON: No, no, no. I am  
3 actually wondering in terms of your treatment,  
4 are you primarily treating folks who have made  
5 a decision to report in an unrestricted  
6 fashion or are you primarily --

7 CDR ROBSON: I can give you  
8 numbers. I will tell you overall because this  
9 is what I measure. Since October, we have  
10 done a total of 88. And all around the globe,  
11 88 total sexual assault forensic exams.  
12 That's it. And so out of those, they are  
13 offered behavioral health referrals.

14 And so the only reason I say that  
15 is you would think 88 people out of 97 MTFs  
16 and how many of them possibly could have seen  
17 this group of people. It just gets diluted.  
18 So, I don't know that asking a person have you  
19 seen --

20 CAPT RALPH: I'm having a hard  
21 time answering that because I can think of  
22 several examples of both. I wanted to say it

1 is almost even. I have seen many people where  
2 they have made a unrestricted report and it  
3 the command is very aware and it is common  
4 knowledge and others who don't want anyone to  
5 know and still don't want anyone to know. And  
6 it would not be within regulations to let  
7 people know for those people that come.

8 DEAN ANDERSON: Right. So, that is  
9 helpful. And I am wondering about whether or  
10 not in your dialogues, for those of you  
11 actually primarily who do talk therapy, if in  
12 the dialogue with victims who have either  
13 chosen to make restricted or unrestricted  
14 reports, if the question of collateral  
15 consequences or collateral misconduct charges  
16 against them has come up as a motivation for  
17 why they may choose not to make an  
18 unrestricted report.

19 CAPT RALPH: If that comes up in  
20 therapy?

21 DEAN ANDERSON: Does that come up  
22 in therapy?

1                   CAPT RALPH:  It certainly can.  
2                   They may raise that in session I don't want to  
3                   report this to my command, I will get in  
4                   trouble, too, I was doing this.  And that is  
5                   something that you talk about in process.

6                   You know it is all good fodder for  
7                   good therapy.  In terms of reporting, none of  
8                   that stuff leaves the therapy session.  Now,  
9                   I don't know if that is what you are getting  
10                  at but they are certainly things that are  
11                  topics that come up.

12                  DEAN ANDERSON:  Right.  We are  
13                  sort of trying to grapple with what do to with  
14                  the question of collateral misconduct charges  
15                  against someone who has made an allegation of  
16                  sexual assault and to know that it can come up  
17                  and has come up in circumstances as possibly  
18                  motivator for not reporting, not making a full  
19                  report, is helpful to our deliberations.

20                  Another question I had is we have  
21                  read a considerable amount about tonic  
22                  immobility and peritraumatic dissociation and

1     paralysis.  And I wonder if those things, if  
2     you have seen those things come up as a reason  
3     why individuals engage in self-blame and some  
4     of the very difficult psychological  
5     consequences of self-blame in these  
6     circumstances.

7                     I mean, obviously, they are not  
8     identifying it as tonic immobility and  
9     peritraumatic dissociation but they are  
10    identifying it as well why didn't I; why  
11    couldn't I have.  Do you know what I mean?  
12    Those ways of conceptualizing and self-  
13    critique.

14                    CAPT RALPH:  I don't think I have  
15    ever had a patient who was a sexual assault  
16    victim or a combat victim who didn't engage in  
17    self-blame.

18                    DEAN ANDERSON:  This is helpful.

19                    CAPT RALPH:  So, I don't know if  
20    it is due to those reasons you just said but  
21    self-blame, I think, is almost universal after  
22    a traumatic experience.

1                   CAPT COLSTON:  And dissociative  
2                   phenomena are really common in folks who have  
3                   been traumatized.

4                   COL NEAL-WALDEN:  The issue that  
5                   comes up more frequently regarding collateral  
6                   misconduct is alcohol use, under-aged alcohol  
7                   use.  And so I think, ma'am, you were asking  
8                   a question about prevention.  And so that is  
9                   one of the areas of prevention that we focus  
10                  on doing more education about alcohol use,  
11                  alcohol misuse and how it is handled if you do  
12                  come to mental health for treatment.

13                  Because just because someone comes  
14                  in for that care, it doesn't mean that they  
15                  are necessarily going to be discharged from  
16                  the military or face disciplinary efforts.  
17                  You typically don't face any sort of  
18                  disciplinary punishment, unless you then fail  
19                  alcohol treatment.  And that is usually from  
20                  just refusing to come, continuing to drink,  
21                  continuing to display misconduct in various  
22                  areas.

1                   And so it is a lot about educating  
2                   that victim.

3                   CAPT COLSTON: I think it is  
4                   important to talk about the numbers, too. I  
5                   think the stories about personality disorder  
6                   separations are getting to be almost  
7                   apocryphal now. I mean we had 4,200  
8                   separations for personality disorder out of  
9                   1.5 million troops in 2007. Last year we had  
10                  300. That is 0.02 percent of the force or one  
11                  in 5,000 folks. And personality disorders, I  
12                  think everybody here has been in the workplace  
13                  and has had problem employees. You know, the  
14                  estimate of the prevalence of personality  
15                  disorders in the population is 20 percent, one  
16                  in five. And we separate one in 5,000.

17                  DEAN ANDERSON: And do you see  
18                  personality disorder discharges that you have  
19                  identified as being associated with sexual  
20                  assaults?

21                  CAPT COLSTON: I have never seen  
22                  one, ever. And that is in 15 years of doing

1 this.

2 MS. FERNANDEZ: What qualifies as  
3 a personality disorder?

4 CAPT COLSTON: You know, a great  
5 example, and I will use a female example now.  
6 So Glenn Close in "Fatal Attraction." That is  
7 a person who had a personality disorder.

8 DEAN ANDERSON: What was that  
9 personality disorder?

10 CAPT COLSTON: I would say mixed.  
11 It was some sort of cluster B personality  
12 disorder, a mixture of borderline personality  
13 disorder and some other very dangerous things,  
14 antisocial behavior. But it is just not  
15 something that is happening.

16 Also, ma'am, I wanted to speak to  
17 your sense that hey, we have got folks that we  
18 can make this absolute call on whether they  
19 are a risk to themselves or others or not.  
20 And that is just not the way it is. Our  
21 health-related behavior survey we looked at  
22 folks who have had suicidal ideation in the

1 military. That is ten percent. So, that is  
2 150,000 folks. We couldn't have legions of  
3 psychiatrists take care of that particular  
4 issue. So, there is obviously a continuum.

5           When I deployed with John and we  
6 were taking care of the anterograde troops  
7 going into Iraq, what I would see a lot --  
8 seven times I saw someone who was homicidal.  
9 Well, if you are homicidal towards someone  
10 else and if you are not manic, you are not  
11 psychotic, and you are not delirious, I am  
12 sending you to the brig. I am sending you  
13 over to General McGuire there.

14           And I have a split fiduciary role  
15 and that is what I need to do because of that  
16 split fiduciary role.

17           Now, with regard to suicide, there  
18 is all kinds of things in the continuum. And  
19 judging imminent risk, and we have a fair  
20 amount of literature on that and we are not  
21 that good at it. We are not good at it in  
22 mental health and we are even worse at it as

1 leaders. So, that I just wanted to get out  
2 there.

3 DEAN ANDERSON: If someone came  
4 forward with suicidal ideation or reports of  
5 experiencing that, is that something that  
6 automatically you would decide disqualifies  
7 them from combat duty?

8 CAPT COLSTON: Absolutely not.  
9 No.

10 DEAN ANDERSON: It is just too  
11 common?

12 CAPT COLSTON: Too common and  
13 there are 50 forensic risk factors that are  
14 associated with completing suicide. The  
15 biggest one and the most robust one is being  
16 a male. And 85 percent of our service is male  
17 and a lot of us carry weapons.

18 And you don't even need to have a  
19 mental health disorder. You just have  
20 something bad happen, your girlfriend left you  
21 and you are 18-years-old, and you are  
22 impulsive, and you end up dead.

1                   CAPT RALPH: Yes, and like all  
2 things we are talking about, suicidality is  
3 not a categorical distinction. It is on a  
4 continuum. So many people will have suicidal  
5 thoughts, vague thoughts, no plan, no intent  
6 to carry them out, no real apparent means for  
7 which they may impulsively use. I mean, when  
8 you take into account all those factors, you  
9 take into account the environment that they  
10 are going back to when you leave, and in the  
11 vast majority of cases someone with suicidal  
12 ideation will just go back to work and  
13 continue working and hopefully continue their  
14 treatment regimen.

15                   But again, there are only specific  
16 things that can be revealed and the presence  
17 of suicidal ideation is not one of those  
18 things. Now, it depends if it gets to a point  
19 where they can't perform their duties or can't  
20 go back to work, then that is different.

21                   JUDGE MARQUARDT: Do you all treat  
22 the perpetrators?

1                   CAPT COLSTON:  Yes.

2                   CAPT RALPH:  Yes.

3                   DEAN ANDERSON:  How often?  How  
4 common is it that you see that?

5                   CAPT RALPH:  Again, I should have,  
6 I mean numbers are hard to come by.  But in my  
7 experience the main reason you treat a  
8 perpetrator is because they are in a great  
9 deal of legal trouble, undergoing a great deal  
10 of stress and you are dealing with those kinds  
11 of issues.  I have not experienced a treatment  
12 of a perpetrator who wanted help with a sexual  
13 deviance or something along those lines.

14                  BG MCGUIRE:  Most of that is done  
15 in prison.

16                  CAPT RALPH:  That is right.  That  
17 happens in jail.  But for the vast majority of  
18 perpetrators are under a great deal of stress  
19 and problems and so that is why they would  
20 seek out care.

21                  CAPT COLSTON:  And so the most  
22 common reason I would do that is as a great

1       psychiatrist.

2                   MS. FERNANDEZ:  Meg, did you have  
3       a question?

4                   MS. GARVIN:  I did.  Sorry.  The  
5       phone was still blinking.  I thought there was  
6       a pause.

7                   Okay, my question is not related  
8       specifically to what we were just talking  
9       about.  But it goes back to something that two  
10      of the witnesses I think mentioned.  And that  
11      is kind of the absolute nature of kind of the  
12      privilege over the information that you  
13      received from the folks you are serving from  
14      your clients.

15                  And I am just curious whether any  
16      of you have seen -- and it sounds like the  
17      numbers are relatively low that you have seen  
18      or that anyone has seen a sexual assault  
19      victim who is dealing with a current sexual  
20      assault.  So, I imagine that the number gets  
21      even small of a sexual assault victim that you  
22      are seeing dealing with a current sexual

1 assault whose case is also going through the  
2 court-martial process. But if you have seen  
3 those, have you seen subpoenas for or requests  
4 for your counseling records? And if so, what  
5 is the process in dealing with those? From  
6 prosecution or defense.

7 COL NEAL-WALDEN: I have seen  
8 that. For three years I worked at the United  
9 States Air Force Academy as a psychologist in  
10 the Chief of Sexual Assault Services.

11 So, during that time, you have  
12 college-aged students. Typically there is  
13 alcohol involved. And so I saw a fair number  
14 of victims as well as the alleged perpetrators  
15 who were coming in for coping skills, saying  
16 that they hadn't sexually assaulted someone  
17 because they thought it was consensual. So,  
18 I provided care on both sides.

19 And then -- I'm sorry. What was  
20 the second part of your question?

21 BG MCGUIRE: Have you been  
22 subpoenaed.

1 COL NEAL-WALDEN: Oh, subpoenaed.  
2 Yes. I am trying to remember. I have been  
3 subpoenaed probably at least a handful of  
4 times. In a few of the cases, they ended up  
5 we were all prepared and then it was canceled.  
6 And I think part of that is just because it is  
7 such a sensitive topic. And for victims to  
8 then go forward to trial, it can be very  
9 damaging to them. And just a difficult thing  
10 for them to even want to deal with.

11 COL HAM: That was your personal  
12 appearance. You were requested to appear  
13 personally or --

14 COL NEAL-WALDEN: No.

15 COL HAM: -- you were requested to  
16 bring documents?

17 COL NEAL-WALDEN: No, not  
18 documents. No. I was requested to come and  
19 provide testimony.

20 We do not --

21 COL HAM: For which side. Do you  
22 know?

1 COL NEAL-WALDEN: The victim.

2 COL HAM: So, testimony for the  
3 government?

4 COL NEAL-WALDEN: Yes.

5 COL HAM: Okay. On victim impact.

6 COL NEAL-WALDEN: Yes.

7 DEAN ANDERSON: So the defense has  
8 not subpoenaed you for the records?

9 COL HAM: Defense has no subpoena  
10 power.

11 COL NEAL-WALDEN: No. They will  
12 ask questions and we ask to see those specific  
13 questions and we will usually even ask for  
14 them in writing beforehand and that we can  
15 give them the answers to their questions,  
16 which it is usually very, very minor.

17 DEAN ANDERSON: So Colonel, let me  
18 understand. You said a handful of  
19 circumstances you have been subpoenaed to give  
20 testimony.

21 COL NEAL-WALDEN: Yes.

22 DEAN ANDERSON: And the outcome of

1 those five or so circumstances were that most  
2 of them were the cases were dismissed because  
3 the victim decided not to proceed.

4 COL NEAL-WALDEN: In one case, the  
5 victim decided not to proceed and there was  
6 additional evidence which may have led people  
7 to believe that she consented.

8 DEAN ANDERSON: In the form of  
9 what kind of evidence?

10 COL NEAL-WALDEN: There was sperm  
11 on her shirt. And so it is my understanding  
12 that she did engage in some acts but then  
13 decided not to engage in other acts.

14 DEAN ANDERSON: So your testimony  
15 didn't end up being relevant.

16 COL NEAL-WALDEN: Yes.

17 REP. HOLTZMAN: If nobody has got  
18 another question, I would just like to ask.  
19 Somebody towards the beginning of this session  
20 referred to an article in the Atlantic Monthly  
21 and talked about the need for education  
22 because of the absence or the lack of adequate

1 sexual boundaries.

2 I don't know who made that comment  
3 but could the person who did explain.

4 CAPT COLSTON: It was me. And I  
5 certainly wasn't saying that about the  
6 military. I was talking about fraternities in  
7 America, which was what the article was about.  
8 And the point I was making is that from the  
9 time that I assessed the military in the mid-  
10 '80s and probably John, who is also on the  
11 panel, could say this because we were both  
12 ship drivers before we were docs, the culture  
13 has changed significantly. For me, it was  
14 almost like a line pre-Tailhook and post-  
15 Tailhook.

16 And after 1991, where I think the  
17 Chief of Naval Operations lost his job, it has  
18 just been a different ball game. I mean, we  
19 get trafficking in persons training. We get  
20 sexual harassment training. We get sexual  
21 assault training. And that starts from  
22 recruit training.

1 I ran the psychiatry shop at Great  
2 Lakes and I know that there was a fair amount  
3 of time devoted to that programming, both in  
4 recruit training, which is only eight weeks  
5 long, and then followed on at AIT school,  
6 which is kind of your first, where you learn  
7 technical skills in the military. So, sexual  
8 assault is not okay. Trafficking in persons  
9 is not okay. And we hear that again, and  
10 again, and again.

11 And of course in social research  
12 that speaks to this, it is not hard and fast  
13 finding the Higgs field research but I think  
14 some researchers at either Duke or University  
15 of North Carolina actually looked at okay, we  
16 actually train males who are the overwhelming  
17 percentage of the perpetrators, both straight  
18 and gay. Ninety-nine percent of the  
19 perpetrators are males.

20 And we looked at kind of saying  
21 okay, what is acceptable? What is acceptable  
22 in the workplace? What is acceptable dating

1 behavior? What is acceptable behavior? How  
2 do you comport yourself as an 18- to 25-year-  
3 old male? And training folks seems to help.  
4 It seems to help from a preventative  
5 standpoint. Is it hard evidence? No, but it  
6 is something that we are definitely doing from  
7 prevention standpoint.

8 And we are doing that with  
9 alcohol, too. It is okay not to drink in the  
10 military now. And as everybody here knows,  
11 alcohol is seen in a lot of these incidents,  
12 pretty much all of them.

13 DEAN ANDERSON: Hugely helpful.

14 MS. FERNANDEZ: Thank you very,  
15 very much.

16 (Whereupon, the foregoing matter  
17 went off the record at 2:23 p.m.  
18 and went back on the record at  
19 2:35 p.m.)

20 MS. FERNANDEZ: Scott, why don't  
21 you begin. Let me say -- before I just say  
22 begin -- let me have the members of the

1 subcommittee introduce themselves. And I just  
2 want to thank you for your testimony.

3 JUDGE MARQUARDT: And I'm Christel  
4 Marquardt, former judge of the Kansas Court of  
5 Appeals.

6 MS. FERNANDEZ: Mai Fernandez.  
7 I'm with the National Center for Victims of  
8 Crime.

9 COL SCHENCK: Lisa Schenck. I'm  
10 associate dean of academic affairs at GW Law  
11 School, a retired colonel who was on the Army  
12 Court.

13 BG MCGUIRE: And I'm Colleen  
14 McGuire. And I'm the executive director of  
15 Delta Gamma Fraternity but a former provost  
16 marshal general of the Army.

17 (Laughter)

18 MR. CASSARA: I'm Bill Cassara.  
19 I'm a retired JAG officer and I'm an attorney  
20 in private practice doing criminal defense  
21 work.

22 CDR KING: I'm Sherry King. I'm

1 the branch chief here now for the Victims  
2 Services Subcommittee.

3 COL. HAM: And I'm Patty Ham. I'm  
4 the staff director. It's nice to see you  
5 again.

6 MR. SPRANCE: I'm Bill Sprance.  
7 I'm with DoD general counsel but I'm the  
8 designated federal official for the Response  
9 Systems Panel.

10 MS. FERNANDEZ: Sorry, they're on  
11 the phone. Meg and Liz?

12 MS. GARVIN: This is Meg Garvin.  
13 I'm a law professor at Lewis & Clark Law  
14 School and the director of the National Crime  
15 Victim Law Institute.

16 REP HOLTZMAN: I'm Liz Holtzman.  
17 I'm a former Member of Congress and I practice  
18 law in New York City.

19 MS. FERNANDEZ: Scott.

20 MR. BERKOWITZ: All right. Well,  
21 good afternoon. Thanks for the opportunity to  
22 talk to you today. I know many of you were

1 here last time I talked to the panel so I'll  
2 try not to say all the same things.

3 I'm Scott Berkowitz, the founder  
4 and president of the Rape, Abuse and Incest  
5 National Network, or RAINN which is the  
6 nation's largest anti-sexual violence  
7 organization.

8 We run the National Sexual Assault  
9 Hotline which is a partnership of about 1,000  
10 sexual assault service providers around the  
11 country.

12 We also run the National Sexual  
13 Assault Online Hotline. And then on behalf of  
14 DoD we run the DoD Safe Help line although  
15 I'll be focused here today on our civilian  
16 work.

17 As I'm sure you know, more than  
18 237,000 people are sexually assaulted each  
19 year. The 1,000 or more local sexual assault  
20 service programs respond to an extensive array  
21 of mental health, medical, legal and other  
22 needs.

1                   And have been doing a great job  
2                   surveying both civilian audiences and  
3                   particularly in many centers that are located  
4                   near installations serving the military  
5                   population.

6                   The last few years have been  
7                   really difficult for local rape crisis  
8                   centers. More than 7 percent have gone out of  
9                   business just in the last 5 years. By our  
10                  count those operating 24 hours declined from  
11                  about 1,150 to closer to 1,050 now.

12                  And many more of the survivors  
13                  have ended up merging with local domestic  
14                  violence services which in some cases has led  
15                  to cutbacks in sexual assault services and  
16                  particularly for male victims. Because in  
17                  some places when the domestic violence service  
18                  is based out of a shelter they restrict or  
19                  they scale back their services to men because  
20                  they don't want men at the domestic violence  
21                  shelter.

22                  That's particularly a problem

1 potentially for the military users because  
2 they are disproportionately male.

3 Just for example, about 11 percent  
4 of users of our online hotline for civilians  
5 are male. By contrast, about 34 percent of  
6 the users of the DoD Safe Help line are male.  
7 So those cutbacks really I think potentially  
8 restrict the services available to military  
9 folks who want to go off-installation.

10 Many of the local crisis centers  
11 are also facing funding problems which has led  
12 to long waiting lists and service cutbacks in  
13 many areas. A survey of centers last year  
14 found that almost 75 percent had lost funding  
15 in the previous year. And over half the  
16 programs in the country had reduced staff  
17 through attrition or layoffs.

18 More than 1/3 of the centers said  
19 they had a significant waiting list for  
20 services, in some cases as long as a year.  
21 Typically local service providers run a 24-  
22 hour hotline and have provided free or heavily

1 discounted individual counseling and very  
2 often group counseling to victims.

3           The norm used to be that they  
4 provided an unlimited number of sessions, but  
5 these days many have scaled that back and are  
6 capping the availability of their sessions at  
7 somewhere between 1 and 3 months we've seen  
8 given their reduced capacity.

9           Even with the strong base of  
10 volunteer support many programs are struggling  
11 to meet demand. And with the spotlight on  
12 military sexual assault and demand for  
13 services from -- for off-base services shows  
14 little signs of slowing.

15           So, I think that civilian  
16 providers play an important part here and they  
17 will continue to. But I think that in  
18 thinking about the services available to  
19 members of the military just need to be  
20 cognizant that civilian providers are not in  
21 a position to absorb a significant increase in  
22 demand without any funding.

1                   For members of the military  
2                   community who experience sexual violence,  
3                   concerns about safety and confidentiality are  
4                   paramount, particularly those who have decided  
5                   to go to a civilian provider which is usually  
6                   because they're trying to keep word from being  
7                   known on their installation, or from their  
8                   chain of command.

9                   So the first hurdle in helping  
10                  them is making them feel confident and safe  
11                  and supported. And the next hurdle is making  
12                  sure that civilian providers are equipped to  
13                  provide them appropriate support services.

14                 As we all know, the military has  
15                 its own way of life in many respects, its own  
16                 culture and of course its own laws.  
17                 Community-based service providers that are  
18                 unfamiliar with that culture often struggle  
19                 with working with survivors coming from that  
20                 background. Specialized training I think is  
21                 really crucial for civilian providers that are  
22                 serving military populations.

1                   But training is available now to a  
2 degree. RAINN, for instance, provides an  
3 online course for civilian providers on  
4 helping military victims. The Justice  
5 Department has partnered with DoD to provide  
6 an in-person training course. And I believe  
7 that has been or is going to be expanded to an  
8 online course as well.

9                   Several hundred local rape crisis  
10 centers have put their staff and volunteers  
11 through our training course. But because  
12 there's so much turnover, particularly among  
13 hotline volunteers I would guess that only a  
14 pretty small percentage of people who are  
15 serving military victims and civilian  
16 providers have actually been through the  
17 training. So that's I think somewhere where  
18 there's opportunity to help them better serve  
19 that audience.

20                   Cutbacks play a role here as well.  
21 Some providers have been forced to improvise  
22 a lot. For instance, many have taken to --

1 while their hotlines continue to operate 24  
2 hours a day many have taken to routing their  
3 calls after hours to other response hotlines.  
4 For instance, the local suicide hotline.

5 And often the people staffing  
6 those don't even have extensive sexual assault  
7 training much less extensive military culture  
8 training. So it's another challenge.

9 Many civilian providers are  
10 looking to do more. In California, for  
11 example, they've -- a group of providers have  
12 been lobbying the state legislature for  
13 funding specifically to serve military  
14 victims.

15 And there's also been in a number  
16 of states a push to amend state victim VOCA  
17 regulations, state victim compensation laws,  
18 to allow funding for people in the military  
19 who are assaulted. But these are running up  
20 against the fight for a finite pot of funding.

21 So, I think that continued  
22 partnerships with local crisis centers is

1 ideal and it's important to a significant  
2 percentage of the military population that  
3 wants to go outside of the DoD system. But  
4 there's a lot of hurdles to get there.

5 And I'm happy to answer any  
6 questions.

7 MR. CASSARA: Scott, I have a  
8 quick question. Has there been any breakdown  
9 as to what percentage of perpetrators are male  
10 or female?

11 MR. BERKOWITZ: We do, we have  
12 provided data to SAPRO. But typically the  
13 perpetrator when it's disclosed during a  
14 session is male active duty.

15 MR. CASSARA: Do you know what  
16 percentage? Seventy, eighty, ninety? It's  
17 fairly high.

18 MR. BERKOWITZ: Yes. I think, I  
19 believe it's over two-thirds but I can get  
20 back with a percentage number.

21 REP HOLTZMAN: What was the  
22 question?

1                   MR. CASSARA: I'm sorry, Liz. My  
2 question was on those cases in which the male  
3 was the victim whether there was a percentage  
4 breakdown as to whether the perpetrators were  
5 male or female. Scott's answer was -- I'm  
6 sorry, say again?

7                   REP HOLTZMAN: Was there a second  
8 question?

9                   MR. CASSARA: No.

10                  REP HOLTZMAN: Oh okay, sorry.

11                  MS. FERNANDEZ: Do you have any  
12 idea of how many military are going off base  
13 to get services? Do you have any sense of  
14 that?

15                  MR. BERKOWITZ: I don't have hard  
16 numbers. We've talked to a lot of local  
17 crisis centers. Typically those that are  
18 outside areas where there is a large military  
19 population are seeing very few.

20                  Those who are in the immediate  
21 area of an installation, we've heard anywhere  
22 from a couple a week to a couple of dozen a

1 month.

2 REP HOLTZMAN: To follow up on  
3 that, why do you think military personnel are  
4 seeking services outside the military base?

5 MR. BERKOWITZ: I think it's  
6 usually because they feel the need to really  
7 go to any length to keep it confidential from  
8 their peers and from their command. There's  
9 some reason.

10 I think that, while I don't have  
11 data to support this I think you would find  
12 that men might be more likely to go off-  
13 installation because there's an extra bit of  
14 stigma there to admitting to their colleagues  
15 that they were victimized.

16 We definitely saw -- with our  
17 online hotline we see a significantly higher  
18 percentage of men using that than with our  
19 telephone hotline because there's sort of that  
20 cloak of anonymity.

21 MS. FERNANDEZ: Ms. Haist?

22 MS. HAIST: I'm Patty Haist and I

1 represent a local rape crisis center that  
2 Scott was referring to.

3 And the way I came to be here,  
4 Sherry and two other attorneys with the  
5 military came and visited Grand Rapids last  
6 summer. And they spent the morning with our  
7 prosecutor's office and law enforcement and  
8 then they spent the afternoon at the YWCA.

9 And so I am here to talk about  
10 some of our services that are available. And  
11 also I'm going to speak a bit about trauma-  
12 informed services. That will make sense when  
13 I get there.

14 So, the history that the YWCA of  
15 West Central Michigan, that's Grand Rapids.  
16 Our community, our county serves -- or the  
17 population of the county is close to 1  
18 million.

19 So, the YWCA has been in existence  
20 since 1900 in Grand Rapids. And I came to  
21 work there in 1985. In 1990 we took over our  
22 countywide sexual assault services.

1                   And what we offered at the time  
2                   was a 24-hour crisis line. We offered  
3                   advocacy to go to hospital emergency rooms, to  
4                   meet with victims. We offered crisis  
5                   counseling and support groups.

6                   And we had a quarterly meeting of  
7                   emergency room nurses to make sure that our  
8                   provision of services through the emergency  
9                   room was meeting their needs.

10                  And as a result of one of those  
11                  meetings a nurse brought to our attention the  
12                  concept of sexual assault nurse examiners.

13                  And so in 93 we started examining  
14                  whether this is something that our community  
15                  would embrace. Meaning judges and our  
16                  prosecuting attorneys. And then we got some  
17                  funding to go visit other programs. And it  
18                  was 1996 that we opened Michigan's first  
19                  sexual assault nurse examiner program.

20                  And since then, so over 17 years,  
21                  our nurses have conducted over 4,500  
22                  examinations of sexual assault victims.

1                   We started with the focus of  
2 meeting the needs of victims 13 and older.  
3 And in the last 2 years we have expanded our  
4 services to now include pediatric patients.

5                   Initially the other criteria was  
6 that we would conduct an examination if the  
7 assault happened within the last 72 hours.  
8 And as a result of research that's been done  
9 we have bumped that out to 96.

10                  So, I think one of the reasons  
11 that Sherry wanted me to be here was to talk  
12 about the fact that we are unique in that  
13 we're not hospital-based, the nurse examiner  
14 portion is not.

15                  And it's part of an agency that  
16 provides very comprehensive services. The 24-  
17 hour crisis line, crisis counseling, ongoing  
18 therapy and support groups.

19                  So, the thing that I want to be  
20 clear about is that we do not require a report  
21 to law enforcement for a victim to receive an  
22 examination through the nurse examiner

1 program.

2 Back when we first started there  
3 were programs that had that requirement and we  
4 chose not to and are very proud of that. So  
5 it's not -- the service is not dependent on  
6 reporting to law enforcement, but we certainly  
7 encourage people to do that. And we look at  
8 removing barriers to reporting.

9 And again, initially when we first  
10 opened we incorporated the interview of law  
11 enforcement with the nurse interview at the  
12 same time. And over the years we have found  
13 that even though on the one hand that makes  
14 sense, to eliminate one interview for the  
15 benefit of the victim, we have found that that  
16 really is not best practice anymore. Because  
17 medically the questions that the nurse asks  
18 law enforcement really doesn't get to know  
19 about that. So, we now have separated out  
20 those interviews.

21 The other thing that we have done  
22 in our community with the Grand Rapids Police

1 Department and the county sheriff's  
2 department, those are our largest two  
3 departments, we have a memorandum of  
4 understanding that if a victim does not want  
5 to make a report directly to law enforcement  
6 there is an opportunity for that victim to do  
7 what we're calling an anonymous report.

8           And that has not been used a lot  
9 but when it has it's been really successful  
10 where the victim makes that anonymous report  
11 and then weeks or maybe even months down the  
12 road may convert that report to an actual  
13 standard report.

14           The thing that I think we offer in  
15 having nurse examiner and all of our other  
16 services in the same building is that really  
17 we try to make things as seamless as possible  
18 for victims who use our services.

19           After a sexual assault examination  
20 we have a process by which we make a follow-up  
21 phone call within days after the exam of  
22 course with the victim's permission. And

1 through that phone call just check to see how  
2 she's doing and then offer counseling services  
3 if she hasn't sought that out on her own at  
4 that point.

5 And then another follow-up phone  
6 call is conducted about 4 weeks post assault.  
7 And again, just to check in and then to offer  
8 those services again.

9 One of the things that we feel  
10 that is really important in the process of a  
11 victim receiving the exam through the nurse  
12 examiner program is not only is the nurse  
13 involved obviously but we also have an  
14 advocate who is there.

15 And we see that the nurse has  
16 their specific job to do. They are an  
17 objective collector of forensic evidence.

18 Where the advocate's job is to be  
19 that strong support for the victim. The  
20 advocate can be that hand to hold, or the  
21 shoulder to cry on. And the additional roles  
22 of the advocate providing advocacy in the

1 criminal justice system, connecting that  
2 victim to referral resources in the community.

3 The one thing I wanted to talk  
4 about in terms of crisis counseling that's  
5 available, that is offered, our staff who  
6 provide that are bachelor's level trained.  
7 They also receive very extensive training, a  
8 process that as an agency we offer, we call  
9 new service provider training.

10 About 30 hours of training that  
11 address the issues of sexual assault, domestic  
12 violence and child sexual abuse which are our  
13 areas of competency at the YWCA.

14 So, the population that we serve  
15 are really anyone in the community who calls  
16 and asks for the service. A person does not  
17 have to have started through the nurse  
18 examiner program. Someone can call the crisis  
19 line and be seeking counseling services and  
20 can get in that way.

21 They can be referred by any number  
22 of community agencies. I had a call just as

1 an example on Monday from a husband of a  
2 victim of sexual assault. And he said he  
3 didn't think she was at all ready to start  
4 looking at this and so we talked through the  
5 options that would be available to her.

6 And then I also shared with him  
7 that crisis counseling could be available to  
8 him as well. Because he clearly sounded very  
9 distraught about what was going on for his  
10 partner. And I think he was pleased to learn  
11 that this service could be available to him.

12 CDR KING: And is that one-on-one  
13 counseling or group kind of counseling?

14 MS. HAIST: It is one on one. And  
15 in fact he asked about a group possibility.  
16 And unfortunately we just have not had a  
17 number of men or partners at the same time to  
18 be able to offer that kind of group service.

19 And as far as costs associated  
20 with our programming essentially everything is  
21 no cost to the victim except if they are  
22 interested in ongoing therapy. And in that

1 case if they have insurance that has mental  
2 health coverage and that insurance provider  
3 would pay for our providing that service then  
4 we would charge the insurance company.

5 If not, then we have two different  
6 grants that allow us to provide therapy  
7 services at no cost to the victim. So, if  
8 they don't have that resource then we're able  
9 to work with them and still provide that  
10 service.

11 The piece that I wanted to spend  
12 just a couple of minutes talking about is  
13 trauma-informed services. I don't know if  
14 you've been exposed to that language or have  
15 heard much about that.

16 But as an agency that is something  
17 that we really are educating our staff around.  
18 We have new staff that will be joining our  
19 team in the next few weeks.

20 And it's a matter of helping the  
21 staff understand the unique needs of the  
22 trauma survivor.

1 All parts of the system are  
2 evaluated in light of understanding the role  
3 that trauma plays in the life of that  
4 survivor. And designing services in order to  
5 avoid unintended re-traumatization of the  
6 survivor.

7 And the trauma-informed services  
8 facilitate the survivor participating in the  
9 decision-making that is going on.

10 One example is taking the sexual  
11 assault examination out of the emergency room.  
12 It just slows the process down. It provides  
13 a safe space, a comfortable setting unlike the  
14 hospital emergency room with bright lights and  
15 lots of chaos going on.

16 And it allows there to be more  
17 time and more patience. That's very trauma-  
18 informed, trauma-focused. To be able to let  
19 the survivor know that that person really is  
20 going to call the shots in the examination.

21 And then throughout the service  
22 that they receive that they get to decide.

1 And if something is moving too fast they get  
2 to set the pace of what's going on.

3 We see the need for treatment that  
4 incorporates a thorough understanding of the  
5 profound neurological, biological,  
6 psychological and social effects of trauma and  
7 violence on an individual.

8 And being very strength-based in  
9 our approach. Inspiring hope and resilience  
10 for that client.

11 And understanding the unique needs  
12 of the trauma survivor. The need to feel  
13 safe. The need to have an open and respectful  
14 communication with their service providers.  
15 The need to not be blamed either overtly or  
16 covertly. The need for consistency and  
17 predictability. The need to be provided with  
18 hope. And the need to have their personal  
19 resiliency cultivated. So those are the  
20 elements that we attempt to provide survivors  
21 with who are seeking services through the  
22 YWCA.

1 MS. FERNANDEZ: Thank you.

2 MS. HAIST: You're welcome.

3 CDR KING: As I recall you talked  
4 about some counseling that you often offer to  
5 victims after, maybe after their trial, or  
6 after court. Could you talk about that a  
7 little bit more? That's important.

8 MS. HAIST: We really attempt to  
9 follow that victim as much as they're willing  
10 to engage through the criminal justice  
11 process. And providing that advocacy at trial  
12 and post trial.

13 We've had experiences where it's  
14 been a very positive outcome in the criminal  
15 justice system but for many victims they just  
16 feel a huge letdown, that it didn't provide  
17 them with what they thought it would.

18 And so really having that  
19 connection of someplace to process that with  
20 and kind of move onto what they need to focus  
21 on to continue their healing.

22 BG MCGUIRE: Of the number of

1 examinations you take you said a small number  
2 would be initially anonymous and that possibly  
3 some number of that goes on to be reported.

4 But of the great majority they are  
5 -- they're not reported, right? Or at what  
6 point do they start turning over to be acted  
7 on?

8 MS. HAIST: Of the people who come  
9 for an examination about 80 percent of those  
10 exams are reported to law enforcement. And we  
11 understand that, you know, that certainly is  
12 not the stat in general. But if someone is  
13 coming for a medical exam that makes them so  
14 much more likely to report to the police.

15 BG MCGUIRE: And how long do you  
16 keep your medical exams?

17 MS. HAIST: Right now we --

18 BG MCGUIRE: Or potential  
19 evidence?

20 MS. HAIST: -- we keep the  
21 evidence for 18 months and then our prosecutor  
22 signs off on destroying that evidence. And so

1 it's really kind of a local agreement that we  
2 have. And we may find that we need to keep it  
3 for longer.

4 BG MCGUIRE: I think in fact, I  
5 don't know if we've got testimony to the  
6 point, or some discussion about it, that I  
7 think the military, we keep it either forever  
8 or 50 years. Fifty years. Yes.

9 JUDGE MARQUARDT: Who does your  
10 counseling and are they paid staff?

11 MS. HAIST: Yes. The counseling  
12 is conducted by paid staff, therapists who are  
13 masters degreed either in social work,  
14 psychology, counseling psychology.

15 JUDGE MARQUARDT: And how many do  
16 you have?

17 MS. HAIST: We have a staff -- in  
18 the next month we're hiring two new  
19 therapists. By the end of March we will have  
20 12 full-time therapists.

21 And part of that is parts of their  
22 job include -- we have a large contract with

1 our Department of Human Services. And if a  
2 family is investigated and substantiated for  
3 either child sexual abuse or domestic violence  
4 those cases are referred to us. So those  
5 therapists work partly on that contract.

6 MS. FERNANDEZ: Since you guys are  
7 not located in an emergency room how do people  
8 find out about you if they're not going  
9 through the police or they're not going  
10 through a prosecutor's office? And how  
11 quickly after the event do you see your  
12 patients?

13 MS. HAIST: What happens is if  
14 they come through our crisis line they'll come  
15 directly to us. If they come through law  
16 enforcement they get referred directly to us.

17 If they happen to go to the  
18 emergency room which many do then we have four  
19 emergency departments in our community. And  
20 they do a medical screening exam and make sure  
21 that the victim wasn't knocked unconscious  
22 during the assault, or wasn't pregnant and

1 needs attention because of that. And if they  
2 pass through the medical screening exam then  
3 they will be referred to us.

4 If for some reason they need to be  
5 admitted to the hospital or kept in the  
6 emergency room to have injury addressed then  
7 our nurses are credentialed at the emergency  
8 rooms. And so one of our nurse examiners can  
9 go to that emergency department and conduct  
10 the exam.

11 REP HOLTZMAN: Let me ask you a  
12 question about the outcome of the counseling  
13 that you're providing to the rape victim.

14 To what extent -- I mean what  
15 kinds of counseling are you giving? And are  
16 these -- is the counseling working in the  
17 sense that, well, you define how it's working.  
18 I mean, what kind of success is there? How do  
19 you measure it? How do you keep up to date on  
20 various different treatment protocols? Could  
21 you address that, please?

22 MS. HAIST: Sure. In terms of

1     what we address in the counseling it I think  
2     starts with what that survivor brings in  
3     looking at what symptoms they're experiencing.  
4     You know, they may or may not qualify for a  
5     diagnosis of post-traumatic stress disorder  
6     but they certainly may be experiencing some of  
7     those symptoms.

8                   And so often a person comes for  
9     therapy looking for help with symptom  
10    reduction. And so our goals for therapy are  
11    based on that.

12                   And it's pretty subjective in  
13    terms of the victim telling us that they've  
14    had some symptom reduction. If it's reduced  
15    nightmares or flashbacks, you know, those  
16    kinds of things are -- would tell us that what  
17    we're doing is working.

18                   And in terms of kind of keeping up  
19    to date our staff are trained monthly. We  
20    have monthly in-services and then they also --  
21    we have a training budget that they can go  
22    away to training. And several of us recently

1 attended a trauma training. And I've got a  
2 staff person who in the next week or so is  
3 attending a different training on sexual  
4 assault trauma.

5 REP HOLTZMAN: And what --  
6 assuming that -- well, taking just what the  
7 victim says after they said well, this is the  
8 symptom I've had and I'd like to deal with  
9 that. To what extent are you having success  
10 in ameliorating those conditions? Can you  
11 quantify that in any way? Do you?

12 MS. HAIST: We don't officially.  
13 I mean, I can talk about my own case load. I  
14 supervise all of our --

15 REP HOLTZMAN: Okay, thank you.  
16 Sure.

17 MS. HAIST: -- therapists. And  
18 you know, I hear from them that their clients  
19 are having symptom reduction and they believe  
20 that they're benefitting from the service.  
21 And I think that it's very difficult to  
22 quantify.

1                   But just in thinking about my own  
2 case load I have one client in particular who  
3 came to me for wanting to address a sexual  
4 assault that she experienced at the age of 17.  
5 She is now 39.

6                   And kind of in an offhanded way  
7 she, near the end of the first session she  
8 said oh, and I also had some trauma when I was  
9 seven.

10                   And I said well, I don't really  
11 think that we can just isolate this event that  
12 happened at 17 from that other stuff. And  
13 it's very complicated. She has -- is  
14 suffering from very complex trauma.

15                   I think clients who feel like  
16 they're not being helped, they probably just  
17 drop out of treatment.

18                   REP HOLTZMAN: Thank you.

19                   CDR KING: Unless somebody has a  
20 specific question about this, could I ask you  
21 about your victim advocates? What their role  
22 is and what their training is? And especially

1 with regard to both the support and then as  
2 far as maybe court accompaniment or training  
3 in the criminal justice system since that's  
4 going to lead into next month's topic that  
5 we'll be discussing.

6 MS. HAIST: Okay. We have trained  
7 volunteers who are able to provide that  
8 accompaniment through the examination and  
9 support beyond that. And it could be through  
10 the criminal justice process.

11 It may or may not be the same  
12 person that they originally have contact with.  
13 Often our advocacy at court may be a paid  
14 staff person.

15 And so getting back to the  
16 question about training for the volunteer  
17 advocates it's a training that is about --  
18 between 35 and 40 hours over about a 3-week  
19 period of time.

20 And we have a volunteer  
21 coordinator who is meeting with those  
22 advocates, following up with them once they've

1 had what we call an outreach, coming in and  
2 accompanying a victim through the exam. And  
3 they have monthly meetings where they get  
4 trained on various topics.

5 So we ask those volunteer  
6 advocates to give at least a year commitment  
7 to the program. And ask them to be on call  
8 twice a month. So we have some advocates who  
9 have been with our program for many years.

10 Some are college students. In the  
11 area we have many colleges and so they do this  
12 as something that may fit with their major.  
13 And it may be that they end up not being  
14 around for too long.

15 But in terms of the accompaniment  
16 to court we do some kind of brief training of  
17 the advocates. They go and visit the  
18 courthouse. We have a prosecutor who will  
19 spend time with them and talk them through  
20 what to expect when they do accompany a  
21 victim.

22 They're met with by our victim

1 witness office. We've had kind of a dance  
2 that we've done with victim witness which is  
3 part of the prosecutor's office that we've  
4 assumed that we don't want to step on their  
5 toes. And we've learned recently that they  
6 more than welcome us being a part of this  
7 because they have -- they're very stretched  
8 very thin. And so that's a piece that we  
9 probably need to beef up on some more.

10 COL HAM: How do you determine  
11 whether a volunteer is appropriate? I'm  
12 assuming you don't take anybody who  
13 volunteers, but what are you looking for?

14 MS. HAIST: Correct. They go  
15 through an interview initially. And then  
16 through the training process there are several  
17 staff such as myself who are involved in  
18 pieces of their training.

19 And if we see any red flags then  
20 we'll talk to the volunteer coordinator. You  
21 know, I've got some concerns about this  
22 person, can you keep an eye on them.

1                   And then we have had volunteers  
2                   who at the end of training we've sat them down  
3                   and said this just does not seem to be a good  
4                   fit.

5                   I'm sorry, I did want to bring  
6                   your attention to the two pieces that were  
7                   sent around. The orange brochure is about the  
8                   services through the YWCA, and much of that  
9                   middle panel talks specifically about sexual  
10                  assault.

11                  The other piece that I passed  
12                  around is a publication that is put out by our  
13                  statewide coalition against -- I'm sorry,  
14                  they've changed their name. It's to end  
15                  domestic and sexual violence.

16                  And this is specific to sexual  
17                  assault. And it is really our go-to piece  
18                  that really addresses every aspect of the  
19                  process for a sexual assault survivor. And I  
20                  just share that with you as a good resource  
21                  that we use.

22                  CDR KING: How do you use this

1 booklet? Like when do you give it to them?  
2 And do you answer questions through it? Or  
3 what do you do with it?

4 MS. HAIST: For someone who comes  
5 through the nurse examiner program they leave  
6 with a folder of information in it. And we  
7 try not to overwhelm them with too much  
8 information, but this piece is a part of that  
9 folder.

10 And I mentioned the follow-up  
11 phone calls earlier. And the red folder is  
12 referred to in the follow-up phone calls by  
13 our staff person conducting the call,  
14 reminding the victim of the red folder and  
15 that there's good information in there, you  
16 know, at whatever point they're ready to look  
17 at that.

18 If a person doesn't go through  
19 nurse examiner it may be something that they  
20 get through crisis counseling when they first  
21 come in.

22 CDR KING: I had one more question

1 about the reporting and switching from the  
2 anonymous reports to the law enforcement  
3 reports.

4 Do people get counseling or do  
5 they ask you questions about that? Or how do  
6 they decide? Is there a process or something  
7 you do, talk to them about?

8 MS. HAIST: At the point at which  
9 they're having their exam the advocate will  
10 talk to them about -- you know, usually it's  
11 pretty clear. They're either going to report  
12 or they are very clear that they're not going  
13 to report.

14 So, the advocate can talk to them  
15 about here is another option. Even though you  
16 sound like you're pretty sure you don't want  
17 to report if you would consent to evidence  
18 being collected there is this option of doing  
19 an anonymous report.

20 And then if they engage in crisis  
21 counseling then that can be talked about  
22 further as far as what needs to happen for

1       them to consider changing it. Not that we  
2       would put pressure on them.

3                   And we actually had one recently  
4       where when our sergeant at the Grand Rapids  
5       Police Department saw this anonymous report  
6       she said we have got to get more information  
7       about this.

8                   And then we are in the role of  
9       kind of running interference. We don't want  
10      the police -- they don't have her name, but we  
11      don't want to put that kind of pressure on the  
12      victim. So that's kind of a fine dance that  
13      we do.

14                   CDR KING: So the police get the  
15      reports kind of like saying there was a sexual  
16      assault in this area of town if you know that?

17                   MS. HAIST: Right.

18                   CDR KING: By this  
19      characteristics, you know, of this  
20      characteristics of the victim or whatever. Do  
21      they give you names of suspects ever or  
22      anything like that?

1 MS. HAIST: For the most part no.

2 CDR KING: Okay.

3 REP HOLTZMAN: Can I ask a  
4 question about an area that's been kind of  
5 intriguing to me in some way?

6 And that is in the military we've  
7 been given some information that something  
8 like 45 percent of the people who have been  
9 victims of sexual assault in the military  
10 experience -- had been victimized previously.

11 Is that your experience? Or to  
12 what extent are the victims that you see --  
13 have they been victimized before? And then  
14 I'd like to ask a follow-up to that.

15 MS. HAIST: Well, I think  
16 statistically from what we know about the  
17 frequency of sexual victimization it would not  
18 be surprising that someone who had been  
19 victimized earlier is subsequently victimized.

20 REP HOLTZMAN: And why do you say  
21 that it wouldn't be surprising?

22 MS. HAIST: Just because of the

1 prevalence of this crime, the frequency that  
2 it happens.

3 REP HOLTZMAN: But it could strike  
4 somebody who's never been a victim of any  
5 sexual assault.

6 MS. HAIST: Of course.

7 REP HOLTZMAN: Okay. So you  
8 haven't seen anything that would mimic those  
9 figures in your practice.

10 MS. FERNANDEZ: Liz, I think  
11 Scott's got an answer for you.

12 REP HOLTZMAN: Scott?

13 MR. BERKOWITZ: Just slightly to  
14 build on that. There has been a fair amount  
15 of academic research on this point. So there  
16 are studies out there that have tried to  
17 quantify.

18 And in general they have found  
19 that someone who had a previous victimization  
20 is significantly more likely than the average  
21 person to be victimized again.

22 REP HOLTZMAN: Okay. Well then

1 I'll wait for your testimony to ask a  
2 question. Thank you. A follow-up. Thank  
3 you.

4 CDR KING: He's already given  
5 that, ma'am, so if you have questions for  
6 Scott you can go ahead and ask him.

7 REP HOLTZMAN: Oh, okay. So,  
8 given that experience can there be some way of  
9 helping people who have been victimized to  
10 give them support and strength so that they  
11 can avoid victimization again? I mean, do we  
12 have a strategy? Has anyone studied that?

13 MR. BERKOWITZ: Not that I'm  
14 aware. You know, I think that there's not a  
15 clear answer as to what about their history is  
16 making that event more likely.

17 It could be that the environment  
18 that they are in is similar to what they were  
19 in. For instance, a child who's in an  
20 environment and is abused 5-10 years later is  
21 often still in a similar environment where  
22 abuse has a greater chance of happening. So

1 I think that that could make up part of the  
2 answer. But I have not seen any programs that  
3 address it from the victim's side.

4 REP HOLTZMAN: And have you seen  
5 any further research aside from identifying  
6 that this is a phenomenon? Have you seen  
7 anything trying to explain it? Research on  
8 why this is the case.

9 MR. BERKOWITZ: I've seen some  
10 studies interviewing rapists. And we can --  
11 it's hard to know how reliable a source they  
12 are.

13 REP HOLTZMAN: Right.

14 MR. BERKOWITZ: But, you know one  
15 of the things that is a common theme in those  
16 studies is that they're looking for  
17 vulnerabilities that make them think that  
18 someone is going to be less likely to report.

19 They're looking to know that  
20 they're going to get away with it, or that  
21 they're going to maximize their chances of  
22 getting away with it.

1                   And so they're looking for time  
2                   and place that are going to help their  
3                   chances. And that they're also -- they say  
4                   they look for certain sorts of vulnerabilities  
5                   or people that are removed from their social  
6                   group that they think might make them less  
7                   likely to report or to be believed.

8                   REP HOLTZMAN: In the civilian  
9                   world what is the incidence of people who have  
10                  been previously victimized being re-  
11                  victimized?

12                  MR. BERKOWITZ: I don't know that  
13                  offhand.

14                  REP HOLTZMAN: Is it 45 percent  
15                  that we've heard about in the military? Is it  
16                  less? Is it more?

17                  MR. BERKOWITZ: I believe it's  
18                  less but I can circle back to the committee  
19                  with -- I can look up that and get you some  
20                  more information.

21                  REP HOLTZMAN: Okay, great. I  
22                  would appreciate that. Thank you.

1 COL HAM: Can you talk a little  
2 bit about the Safe Help line? How many -- is  
3 that a military thing only? Is that open  
4 nationwide? Whichever the answer is, how many  
5 people are using it? What are they --are you  
6 tracking what they're calling for?

7 And in the continuum of I guess  
8 mental health services which is kind of a  
9 topic for the day what does something like a  
10 Safe Help line do in the continuum of care?  
11 Is it an emergency thing? You said sometimes  
12 that's all people are doing. But who's on the  
13 other end of the line? And are they trained  
14 to provide that -- I guess I have a whole lot  
15 of questions.

16 (Laughter)

17 MR. BERKOWITZ: I can answer some  
18 of them. As far as specific points of data  
19 SAPRO has asked that I refer those questions  
20 to them. We do have a very extensive data  
21 collection program and so we know in a lot of  
22 detail the topics that are discussed, the

1 issues that they've come to the hotline for.

2 But to give you answers to some of  
3 the more general questions. Safe Help line is  
4 available worldwide just for the DoD  
5 community. So primarily active duty but  
6 certain other categories that fall within  
7 DoD's policy.

8 There's a telephone help line, an  
9 online help line and then an app which the app  
10 is focused on self-care. So it's designed to  
11 sort of capture the -- capture people's  
12 descriptions of their feelings on a number of  
13 emotional issues at that given time. And they  
14 recommend some exercises for them to address  
15 it based on cognitive behavioral therapy.

16 MS. FERNANDEZ: How long has it  
17 been in place?

18 MR. BERKOWITZ: Launched in April  
19 2011. So just under 3 years. And there have  
20 been about 20,000 people that have gotten help  
21 from it so far.

22 COL HAM: And who's at the end of

1 the line or the end of the keyboard?

2 MR. BERKOWITZ: It's all paid  
3 staff out of our office. They're there 24/7.

4 And they've gone through an  
5 extensive training program. The initial  
6 training is 80-plus hours. And then --

7 COL HAM: And they're trained to  
8 do what? Initial crisis response? They're  
9 not psychiatrists and psychologists, are they?

10 MR. BERKOWITZ: About two-thirds  
11 of them are bachelor's level and about one-  
12 third are masters of social work or higher  
13 level. The direct service folks are there  
14 primarily for crisis intervention, emotional  
15 support, get a tremendous number of questions  
16 about reporting issues. That's a big topic.  
17 And then there's -- we have -- at all times  
18 there are supervisors on and they are masters  
19 level. Hence they're helping with more  
20 complex cases.

21 COL HAM: And they're paid by a  
22 contract with DoD?

1 MR. BERKOWITZ: Correct.

2 COL HAM: Okay. So is DoD  
3 specifying the expertise?

4 MR. BERKOWITZ: Yes, and they've  
5 approved the specific training program.

6 BG MCGUIRE: Are you affiliated at  
7 all -- there's also this app called YouAsk.  
8 Is that yours as well? No?

9 MR. BERKOWITZ: No.

10 BG MCGUIRE: Okay.

11 MR. BERKOWITZ: They may have our  
12 hotline number in there but it's separate.

13 BG MCGUIRE: Okay.

14 MS. FERNANDEZ: Anybody have any  
15 other questions? Thank you both very, very,  
16 very much. That was great.

17 If we can take about a 5-minute  
18 break.

19 (Whereupon, the foregoing matter  
20 went off the record at 3:27 p.m. and went back  
21 on the record at 3:35 p.m.)

22 MS. FERNANDEZ: First of all, I

1 just want to say thank you for being here.  
2 Thank you for taking time out of your day, and  
3 we are really happy to hear your testimony.

4 I know that some of the  
5 subcommittee panelists have to be out by 4:30,  
6 so I'm going to ask you to keep your testimony  
7 short so we have time to ask you questions.  
8 So if you have prepared testimony, if you  
9 could give us, you know, the highlights, and  
10 then we can have time to discuss. That tends  
11 to be where we get most of your information.

12 But I'd like the panelists to  
13 introduce themselves, so you know who we are.

14 JUDGE MARQUARDT: I'm Christel  
15 Marquardt, retired from the Kansas Court of  
16 Appeals.

17 MS. FERNANDEZ: I'm Mai Fernandez  
18 with the National Center for Victims of Crime.

19 COL SCHENCK: I'm Lisa Schenck, GW  
20 Law School, Academic Dean, Associate Academic  
21 Dean, and a retired Army Colonel, Army Court.

22 BG MCGUIRE: And I'm Colleen

1 McGuire, and I'm currently the Executive  
2 Director of Delta Gamma Fraternity. And I am  
3 -- but I am a retired Army General and I  
4 retired as the Army's Provost Marshal General,  
5 Military Police.

6 MR. CASSARA: Hi. I'm Bill  
7 Cassara. I'm a retired Army JAG officer. I  
8 am now in private practice doing military and  
9 criminal defense work.

10 CDR KING: And I'm Sherry King.  
11 I'm the Branch Chief for our Victims Services  
12 Subcommittee here.

13 MR. SPRANCE: I'm Bill Sprance.  
14 I'm with DoD, Office of General Counsel, but  
15 I'm the Designated Federal Official for the  
16 Response Systems Panel.

17 MS. FERNANDEZ: And on the phone,  
18 Meg and Liz?

19 REP. HOLTZMAN: Liz Holtzman,  
20 attorney in New York, former U.S.  
21 Congresswoman.

22 MS. GARVIN: And Meg Garvin,

1 Professor at Lewis and Clark Law School and  
2 Director of the National Crime Victim Law  
3 Institute.

4 MS. FERNANDEZ: Ms. Robertson?

5 MS. ROBERTSON: Hi.

6 MS. FERNANDEZ: Do you want to  
7 start?

8 MS. ROBERTSON: Sure. I'm Kathy  
9 Robertson. I'm the DoD Family Advocacy  
10 Program Manager, and I just want to tell you  
11 we appreciate the opportunity to be here today  
12 to talk to you about the Family Advocacy  
13 Program, and also to talk about the  
14 distinctions between the SAPR and the FAP  
15 program.

16 I would say every one of us here  
17 has worked in both programs, knows about both  
18 programs, and so I think, you know, we will be  
19 really able to answer your questions.

20 The Family Advocacy Program has  
21 been around since the early 1980s, and it was  
22 legislated and centrally funded by Congress at

1 that time. It was what we call one of the  
2 three purple programs -- transition  
3 assistance, relocation assistance, and FAP --  
4 where they were centrally funded by Congress  
5 to ensure that the services provided adequate  
6 coverage, that they wouldn't cut anything due  
7 to their budget, since -- and really to focus  
8 on -- we cover both child abuse and neglect  
9 and domestic abuse and intimate partner  
10 violence.

11 And so it is still centrally  
12 funded. It is still the same. OSD gives the  
13 dollars to the services, and they send a  
14 phasing plan at the beginning of the year, and  
15 so we primarily fund prevention. And all of  
16 our personnel -- we have over 900 licensed  
17 clinicians DoD-wide. We have new parent  
18 support home visitors, which are either  
19 master's level social workers or licensed  
20 nurses. We have domestic abuse victim  
21 advocates who have a bachelor's degree in  
22 social sciences and a minimum of two years'

1 experience working in domestic violence.

2 And we have prevention staff. And  
3 as we talk through the services, some services  
4 have educators as prevention staff. Some of  
5 them have master's level social workers. But  
6 we all have staff within our programs to serve  
7 prevention.

8 And then the funding also covers  
9 research and evaluation and automation, and  
10 then of course training. Because we have over  
11 1,900 personnel DoD-wide -- most of them are  
12 licensed -- we need to keep up our clinical  
13 competency, our CEUs, and so training is a big  
14 piece of keeping everybody -- using the best  
15 and most effective practices, but also keeping  
16 your clinical competency. But we look forward  
17 to talking to you about it.

18 About the military demographics, I  
19 added a slide since I -- and I know I sent you  
20 a lot of slides, but I wanted to have an  
21 overview of the program. But we are a really  
22 young force, as you probably know. Seventy-

1 two percent are 30 years or younger; 56  
2 percent are married. And this is 2012, the  
3 DMDC demographic report. And so because of  
4 this young force, our program is really seen  
5 as a support system. We sometimes look at  
6 ourselves as a resiliency program, because for  
7 family advocacy our main goal is  
8 rehabilitation, strengthening families,  
9 helping -- providing effective treatment.

10 What is very unique about us is we  
11 provide treatment for both the victim and the  
12 offender. And so when you talk about domestic  
13 abuse and partner violence, you are generally  
14 talking about a familial relationship or child  
15 abuse and neglect also. And so you are  
16 talking about -- that family tends to stay  
17 together, despite having an incident.

18 So we are really about treatment.  
19 Our focus of course is accountability and  
20 making sure that we work with law enforcement  
21 and legal and command. We're a command  
22 program. But our true focus within FAP is

1 treatment.

2 I gave you kind of a big slide.  
3 We really fall under -- by policy, we are a  
4 coordinated community response program.  
5 Again, we're a command program, but everything  
6 we do within the coordinated community  
7 response -- we have command, medical, legal,  
8 law enforcement, both line law enforcement and  
9 military criminal investigators, and then of  
10 course our coordinated community response is  
11 even broader because a lot of our services are  
12 within the civilian community.

13 Our victims of domestic violence  
14 are helped by shelters in the civilian  
15 community, the local civilian community.

16 Two-thirds of our families live  
17 off the installation, so they are going to get  
18 their services off the installation. So we  
19 work with -- by policy, we have required for  
20 many years for the services to have MOUs with  
21 all of the civilian social service agencies,  
22 child protective services, the local shelters.

1 And if we did have a family that needed to be  
2 separated, or a child that needed to be taken  
3 out of the home, it is all done by the local  
4 child protective services, the family court  
5 system, and the civilian guardian ad litem.

6 So we work very closely through  
7 memorandums of understanding, but we do really  
8 look at ourselves as a coordinated community  
9 response. FAP is not responsible for all of  
10 the -- taking care of every piece of all  
11 domestic abuse, intimate partner violence, or  
12 child abuse and neglect. We work in  
13 collaboration with civilian and military legal  
14 and law enforcement and medical.

15 Our goals are to promote  
16 prevention, identification, reporting, and  
17 treatment of child and spouse abuse; to  
18 strengthen family functioning; provide  
19 effective treatment. Our approach to domestic  
20 violence, intimate partner violence, is  
21 comprehensive. Again, it is addressed as a  
22 family issue.

1           Our frame drives at prevention and  
2           intervention efforts. And we look at the act,  
3           but we also look at the whole family  
4           situation. And because our families tend to  
5           stay together, or they're in a family  
6           relationship, safety and risk are primary for  
7           us.

8           Our clinicians and our domestic  
9           abuse victim advocates are trained to do  
10          safety assessments. The safety is of primary  
11          importance. It's a continual thing that we  
12          work on and check with the victim.

13          And we have -- similar to sexual  
14          assault, we have restricted reporting for  
15          victims of domestic abuse where they can  
16          report to a victim advocate, a FAP clinician,  
17          health care provider, and request to get  
18          services and medical treatment and counseling  
19          without letting command or investigations be  
20          involved.

21          But differently from SAPR, we have  
22          very few victims who choose to do that with

1 domestic abuse. We have a very small  
2 percentage of our victims that choose to have  
3 restricted reports. We started doing it about  
4 the same time, but our program has been in  
5 existence for such a long time and I -- I  
6 don't know why the difference is, but we  
7 really just don't have that many that choose  
8 to have restricted reporting.

9           The domestic -- the Defense Task  
10 Force for Domestic Violence came out with  
11 many, many recommendations for us. We made  
12 lots of improvements to our program since  
13 then. One of their recommendations was to  
14 have domestic abuse victim advocates.

15           So in the early 2000s, by 2004,  
16 all of the services started hiring domestic  
17 abuse victim advocates. Some had them in the  
18 program, but we have implemented them DoD-  
19 wide. They are really crucial to our program,  
20 because it is those victim advocates that are  
21 the -- sometimes the first person who sees the  
22 victim, who walks into the process, gets them

1 to their court appointment, helps them get a  
2 civilian protection order if needed, helps  
3 talk to the command about military protection  
4 orders. They are with them at any location  
5 and help them through that whole process.

6           Again, they really -- we have  
7 hired a lot of people from the civilian  
8 community that have worked in shelters a long  
9 time, and so they know the systems, they know  
10 how to help the victims. And then we also  
11 have a very close relationship with the  
12 Battered Women's Justice Project, and they  
13 have trained our victim advocates for years on  
14 victim advocacy, as well as we have done a lot  
15 of training with them on the military culture.

16           DoD has a very strong -- family  
17 violence does impact -- negatively impacts  
18 families and readiness. DoD has a very strong  
19 stance on the seriousness of domestic abuse  
20 and child abuse and neglect. They are seen as  
21 -- we see them as public health issues.

22           Another recommendation from the

1 task force on domestic violence was that we  
2 needed to look at the prevalence of domestic  
3 abuse and intimate partner violence in  
4 comparison for the general population. So, in  
5 2007, Military Community and Family Policy,  
6 who I work for, signed an interagency  
7 agreement with Centers for Disease Control and  
8 National Institute of Justice, and we did our  
9 first military sample for the National  
10 Intimate Partner and Sexual Violence Study.

11 And it was done in 2010. We used  
12 the same questions they did in the general  
13 population, with the addition of some  
14 questions on deployment. And it was released  
15 last year. We got a military technical report  
16 after the general report was released, and we  
17 are very statistically similar to the general  
18 population.

19 We look a little bit better than  
20 they do as far as intimate partner violence,  
21 but it's still a significant public health  
22 issue. And it's the first time we've had

1 consistent data and been able to look at the  
2 prevalence between the general population and  
3 the military population.

4 We are really having an increased  
5 focus on prevention. Again, all of our  
6 services have always had prevention staff, but  
7 we have increased it even more. We did a  
8 working group with all of the services and CDC  
9 and Administration for Children and Families  
10 within HHS, the Family Violence Division, and  
11 we wrote a draft strategic plan for FAP  
12 prevention -- it is from 2014 to 2018 -- that  
13 we are in the process of implementing.

14 We have a Steering Committee that  
15 we are working on that with. We do a lot with  
16 our federal partners. I go to -- I am on the  
17 Federal Interagency with all of our child  
18 abuse and neglect federal partners, as well as  
19 our federal partners within domestic abuse,  
20 SAMHSA, HHS.

21 What we are trying to do is align  
22 what we do with risk factors, protective

1 factors, our evidence-based programs, along  
2 with what our other federal partners are  
3 doing.

4 COL HAM: Can I ask a question?

5 MS. FERNANDEZ: Sure.

6 COL HAM: Why do you think that a  
7 sexual assault in an intimate partner  
8 situation -- or do you think -- maybe that's  
9 the right work, if you think -- why it should  
10 be handled in a different program than other  
11 sexual assaults?

12 MS. ROBERTSON: That's a good  
13 question. We're asked that all the time now.  
14 You know, our program has been here since  
15 1980, so it has always been handled within the  
16 Family Advocacy Program. We -- if they have  
17 been sexually assaulted by their intimate  
18 partner or their spouse, it is part of their  
19 treatment and their services that they get  
20 within Family Advocacy.

21 And I worked for SAPRO before. I  
22 worked -- six years worked in SAPRO, and I was

1 responsible for SAPRO for the Navy, worked  
2 both programs. When SAPRO came into  
3 existence, it was collaborative relationship,  
4 because it's within the family that -- we've  
5 kept those cases within Family Advocacy  
6 Program, because we have the licensed  
7 clinicians, we have the treatment, and it has  
8 just been in existence and what we've done all  
9 these years and it's working.

10 BG MCGUIRE: So you don't have any  
11 mandated reporting requirements, if, in fact,  
12 there has been an assault or -- you know, so  
13 it's a domestic --

14 MS. ROBERTSON: If it's in a  
15 domestic relationship, if it comes -- it  
16 usually comes out in discussions and  
17 treatment. They come in with another injury,  
18 physical abuse, another injury, and then we --  
19 in doing our clinical assessment, during that  
20 time or a later session is when they generally  
21 come forth and say they have been sexually  
22 assaulted by their spouse or intimate partner.

1                   It is not always something they  
2 walk in the door and tell us, but --

3                   COL SCHENCK: Can they do  
4 restricted reporting?

5                   MS. ROBERTSON: They can, yes.

6                   COL SCHENCK: Okay. And do --  
7 when those people are subsequently tried as  
8 part of a court-martial, are they then -- they  
9 are then charged with the assaultive offenses  
10 of sexual assault or rape. And so, therefore,  
11 they would be registering as sex offenders, if  
12 they eventually get tried. But on the initial  
13 report, they are never tagged as sex  
14 offenders. They are tagged as spousal  
15 abusers.

16                   Do you see my point? I mean, I'm  
17 -- I think there is a -- if a wife reports she  
18 is sexually assaulted to you, or, you know,  
19 within the FAP program, there is no  
20 requirement for any sexual -- sex offender  
21 processing. There is no requirement for  
22 anything, unless she makes a formal, outside

1 the FAP umbrella outside report, like you  
2 would have to send her somewhere else.

3 MS. ROBERTSON: No. We don't. We  
4 don't. We handle it all within the program.  
5 It is handled exactly the same.

6 COL SCHENCK: Okay.

7 MS. ROBERTSON: We notify law  
8 enforcement. We notify command. It is a  
9 command action. They can do an Article 32.  
10 There is nothing different about it. We just  
11 have fewer of them probably. We might not --  
12 because it's from our assessments with them  
13 that it comes out that it has been an  
14 incident.

15 We're seeing them for another  
16 reason, and it comes out in that assessment.  
17 So, but they are not handled any differently.

18 REP. HOLTZMAN: Are they entitled  
19 to a special victims' counsel?

20 MS. ROBERTSON: Yes.

21 COL HAM: I guess maybe this is --  
22 maybe I shouldn't ask this question in

1 uniform, but why aren't the programs merged?

2 Why --

3 MS. HUBBERT: If I can offer --  
4 with the sexual assault victim in a domestic  
5 relationship, the victim usually stays with  
6 the partner, and so -- with their -- the  
7 person that assaulted them. So with that, the  
8 treatment and the things I would offer are  
9 more complex. It's a more complex issue,  
10 whereas a sexual assault victim, usually they  
11 don't have continuous contact with the person  
12 that assaults them.

13 COL HAM: What is an intimate  
14 partner? We heard from JBS, Joint Base Lewis-  
15 McChord, is it 29 days you live with someone  
16 you fall under FAP. But 30 -- I'm sorry, you  
17 fall under the sexual assault programs. But  
18 at 31 days with somebody you fall under FAP.

19 MS. FERNANDEZ: What happens at  
20 30?

21 MS. ROBERTSON: By our policy --  
22 and this was before DOMA, the repeal of DOMA

1 and Don't Ask, Don't Tell -- and our policy is  
2 still the same because we did try to change --  
3 it's someone that you've had an intimate  
4 relationship, but it's a former spouse, you've  
5 had a child in common, or you've had a common  
6 domicile.

7 REP. HOLTZMAN: You've had a what?

8 MS. ROBERTSON: Common domicile.  
9 You've lived together.

10 MS. GRIFFEN: You've shared the  
11 same residence.

12 MS. ROBERTSON: You have shared  
13 the same residence. You have an established,  
14 committed relationship.

15 MS. GRIFFEN: And so that is  
16 identified as a family, and because of that  
17 they would be under FAP.

18 But I do want to say that for the  
19 Navy we do have a tracking mechanism that  
20 occurs for victims of sexual assault with the  
21 military. And if an offender is an active  
22 duty member we have a flagging process where

1       there is a flag that is tagged in the service  
2       member's record preventing him from -- or her  
3       from PCS'ing to another duty station or --  
4       yes, so there is a tracking mechanism and we  
5       have the whole case management process around  
6       ensuring that we are tracking and we are aware  
7       of what activities or what moves may occur  
8       with that service member.

9                   COL SCHENCK: Just me, as the  
10       history -- for those of you who weren't in the  
11       military -- okay, so family advocacy is a very  
12       mature program from the military. I was way  
13       back in the day on the Family Advocacy --  
14       FACMAT, the Family Advocacy Crisis Management  
15       Team. And it was -- they track those cases  
16       whether you move from place to place to place.  
17       This was the sexual assault issue in the 90s,  
18       am I right? I mean, this was -- and so this  
19       is a great program.

20                   I wanted to ask you about your  
21       numbers because now with the sexual assault  
22       numbers your numbers seem to be -- there is no

1       problem.  Is CDC doing your counts?

2                   MS. ROBERTSON:  No, we do our own  
3       count.

4                   COL SCHENCK:  Okay.

5                   MS. ROBERTSON:  We have a central  
6       registry, and I knew someone was going to ask  
7       about numbers.

8                   COL SCHENCK:  Yes.  Because I'm  
9       looking at your slide on page 27 and 28 where  
10      we've got the current DoD --

11                  MS. ROBERTSON:  Our numbers are  
12      much higher than theirs, and they have been.  
13      We are really somewhat under the radar.  And  
14      I can send these to Commander King, but I know  
15      you are more interested in the domestic abuse  
16      ones.  I can give you all our numbers, but we  
17      do -- we have a -- every service has -- we  
18      have clinical case management systems within  
19      the services, and we have a central registry.  
20      Every service has a central registry, and we  
21      quarterly -- they quarterly send their central  
22      registry information to DMDC where we have our

1 DoD central registry. And once a year we  
2 publish a report, an annual report, of our  
3 statistics. So I have FY12. We don't have  
4 FY13 yet.

5 And so for fiscal year '12 we had  
6 8,345 incidents that met our criteria for  
7 domestic abuse, and in our central registry we  
8 had 7,422 victims. And this is out of a  
9 demographic of 734,308 couples. Our rate per  
10 thousand is 11.4, and our victims per 1,000 is  
11 10.1.

12 In fiscal year '11, we are up  
13 slightly. Fiscal year '11 we had 8,386  
14 incidents that met criteria, and 11.1 was our  
15 ratio per thousand. So we went from 11.1 to  
16 11.4.

17 REP. HOLTZMAN: Can you break that  
18 down in some way in terms of sexual assaults  
19 versus other abuse?

20 MS. ROBERTSON: I do. Let me just  
21 give you the intimate partner, which we do  
22 separate.

1 MS. FERNANDEZ: That wasn't  
2 intimate partner?

3 MS. ROBERTSON: This was all  
4 spouse, spouse abuse.

5 MS. FERNANDEZ: Spouse?

6 MS. ROBERTSON: Intimate partner,  
7 we had 909 met criteria reports. So those are  
8 ones that meet criteria for substantiation by  
9 our Incident Determination Committee case  
10 review process, which we used research-based  
11 standardized maltreatment definitions. So if  
12 any incident is brought up at any location,  
13 whether it's Norfolk, Fort Bragg, Camp  
14 Lejeune, we have a research-based decision  
15 tree algorithm that we use, so you'd come up  
16 with the same results.

17 And so we have implemented that  
18 DoD-wide since 2010. So it took away the  
19 objectivity and the -- the subjectivity made  
20 it objective. We have greater inter-rater  
21 reliability. The Air Force has been using it  
22 longer than the rest of us, because it took a

1 while for everyone to implement the process.

2           So when we look at our statistics  
3 or I do a report to Congress, we really look  
4 at 2010 on when you can say that it had -- it  
5 was accurate data and it had good inter-rater  
6 reliability. I can send these to you, but,  
7 really, our rates have gone from in fiscal  
8 year 2001 it was -- our rates per thousand was  
9 16.5, and we are now at 11.4. And that is out  
10 of about 15,000 reports of domestic abuse last  
11 year, and 8,345 went to that case review  
12 process and met criteria to be in our central  
13 registry.

14           And, yes, we do break it down.  
15 For fiscal year '12, we had 85 percent were  
16 physical abuse without sexual abuse. Two  
17 percent was any sexual abuse, so that's really  
18 our sexual assault. And then 13 percent were  
19 emotional abuse or neglect only.

20           And this is a public record. I  
21 can send you the whole data report for FY12.  
22 And that's what we did -- we broke it down, we

1 can do PowerPoints, we give you --

2 COL HAM: Is this your report to  
3 Congress?

4 REP. HOLTZMAN: And is the sexual  
5 abuse sexual abuse of children, too?

6 MS. ROBERTSON: Yes. We have  
7 child sexual abuse in the report also.

8 REP. HOLTZMAN: And that two  
9 percent number, does that --

10 MS. ROBERTSON: No, no.

11 REP. HOLTZMAN: -- two percent  
12 number include children?

13 MS. ROBERTSON: No, it doesn't.  
14 But I can tell you our number for children is  
15 -- we had 15,656 reports of child abuse and  
16 neglect; 7,004 of those met criteria to be in  
17 the central registry for maltreatment; and our  
18 rate is 6.1, which is less than half of the  
19 civilian population.

20 And what is significant about the  
21 child abuse and neglect one is that we use the  
22 same definition -- CAPTA -- that the civilian

1 population does. So we can compare our  
2 numbers exactly in child abuse and neglect.

3 COL HAM: Something that DoD SAPRO  
4 does not do.

5 MS. ROBERTSON: Right. We cannot  
6 do that. We can't do that for domestic abuse  
7 because every state is different. They don't  
8 have standardized definitions of domestic  
9 abuse.

10 And so getting back to your  
11 question -- I'm sorry -- about child sexual  
12 abuse, we had five percent of our cases -- 72  
13 percent were neglect, and neglect is our  
14 highest issue in child abuse and neglect. And  
15 then 23 percent were any physical abuse  
16 without sexual abuse. But I don't want to  
17 take up the time from my colleagues to be able  
18 -- to tell you about how they are implementing  
19 the program.

20 The last thing I just want to tell  
21 you is -- and I have worked in both programs  
22 -- is that we just have a very strong

1 collaborative relationship with the services  
2 and DoD. We work very closely together. We  
3 share a lot of best practices. A long time  
4 ago we would not tell them how -- give them  
5 the money, tell them the requirements. They  
6 determine the evidence-based programs and the  
7 treatment programs they want to use.

8 Now people are -- we are doing a  
9 lot more, "Well, I like this." We're doing a  
10 lot more sharing. They're asking for more  
11 standardization. We just did a priority rapid  
12 review, a Lean Six Sigma process, on child  
13 abuse and neglect and domestic abuse -- it was  
14 in January for domestic abuse -- with all of  
15 our key stakeholders and the coordinated  
16 community response.

17 So we had medical, legal, law  
18 enforcement, command there. And 55 of us did  
19 this four-day process to look at what are the  
20 issues, what can we do to prevent and also  
21 treat and impact our rates of domestic abuse.  
22 And so we really are focusing on moving

1 forward, working together, and we see it as  
2 it's a coordinated community response effort.

3 COL SCHENCK: If you have a sex  
4 offender, you have a spousal abuser who makes  
5 a clear sexual assault, how does that get  
6 cross-referenced if he is cited as a  
7 perpetrator to a non-spousal or intimate  
8 partner assault? Do you see what I mean? How  
9 do these two programs cross?

10 I mean, I think your program is  
11 great. I think it is wonderful. I think two  
12 percent is not big enough to mesh the two.  
13 But I just want to make sure that if I'm  
14 prosecuting a guy who is a drill sergeant who  
15 is sexually abusing these enlisted service  
16 members, and he has a family advocacy case  
17 pending -- do you see what I mean? And he has  
18 that going on, how do I know I don't have to  
19 go around and ask everybody who is remotely  
20 related to --

21 MS. ROBERTSON: Well, we all have  
22 a central registry. And so they could go to

1 the FAP. SAPRO and FAP work very closely, and  
2 so there is not a week that goes by that I  
3 don't get a safe help line -- somebody writes  
4 "safe help line" and it really belongs in our  
5 lane.

6 Last night I got an email from  
7 Major General Snow that he wanted me to help  
8 -- we collaborate even in our responses on a  
9 lot of these. So if there was an incident  
10 like -- a perpetrator like that and they  
11 wanted to know if there was a FAP case, they  
12 would go to their service FAP program, the  
13 installation FAP program, and they could do a  
14 central registry check and they would be able  
15 to tell them if they had -- if there was --

16 COL SCHENCK: The prosecutors need  
17 to go to a national criminal records center  
18 check. They do that anyway. But those FAP  
19 cases sometimes don't come up, because they  
20 are held in this family advocacy program,  
21 which was my concern when I sat on the family  
22 advocacy case management team. I was a

1 prosecutor, and I felt like, well, this guy is  
2 -- nothing is going to happen to him. You  
3 know what I mean? I was dying to go prosecute  
4 him out here. So --

5 MS. ROBERTSON: But if they're in  
6 DIPRS, the law enforcement data system, that's  
7 the other check.

8 COL SCHENCK: Are they going to  
9 be, though? I mean, are they -- in the old  
10 days it was like they wouldn't even get  
11 titled?

12 CDR KING: Well, they didn't have  
13 all of those computer programs that were  
14 working very well that are now much better, so  
15 --

16 COL HAM: I was on the FAP case  
17 management team, too, and one of the reasons  
18 the JAG went was we were supposed to bring  
19 back things that we thought should be looked  
20 at for prosecution.

21 I have two quick questions, if I  
22 could ask? Is the CDC study -- would you

1 characterize that as a public health study?

2 The National --

3 MS. ROBERTSON: Yes.

4 COL HAM: -- Intimate Partner and  
5 Sexual Violence Study?

6 MS. ROBERTSON: Yes.

7 COL HAM: What is the difference  
8 between a public health study and a -- for  
9 example, the national crime victimization  
10 study, which is a crime study? Are you  
11 qualified to speak to that?

12 MS. ROBERTSON: Well, the public  
13 health study, they have a surveillance system.  
14 Everything that CDC does is from a public  
15 health focus. And they use the Institute of  
16 Medicine spectrum of prevention, and it's just  
17 more of a clinical treatment focus. It's just  
18 a total different approach.

19 COL HAM: Would you characterize  
20 the workplace and general relations survey as  
21 a public health survey? Since the CDC study  
22 and DoD SAPRO study came up with the same

1 prevalence numbers, they seem to be the same  
2 type of survey. Is that not a correct --

3 MS. ROBERTSON: You know, I  
4 couldn't answer that. I don't see them as a  
5 public health site. They are more of a --  
6 it's a workplace and gender relations study.  
7 So it's an anonymous --

8 COL HAM: Not a crime study.

9 MS. ROBERTSON: Correct. It's an  
10 anonymous survey, whereas the ones based  
11 through CDC, all -- they are a surveillance  
12 system where they have control trials. I  
13 mean, it is very different.

14 COL HAM: My second quick question  
15 is, again, understanding the long-term  
16 existence of the Family Advocacy Program, have  
17 you compared or are you aware of civilian  
18 comparisons or non-comparisons where domestic  
19 abuse, domestic violence, child abuse, are  
20 handled separately from adult sexual assault?

21 MS. ROBERTSON: In the general  
22 population, they get done that way. We work

1 with Health and Human Services. The  
2 Administration for Children and Families have  
3 a Children's Bureau, and they have a Family  
4 Violence Prevention Bureau that they track  
5 separately. So they are actually even  
6 separated -- they are the same organization,  
7 but they are more stove-piped than we are,  
8 having an all-in-one program, and sexual  
9 assault is handled in another location. So we  
10 are not dissimilar by not being together.

11 COL HAM: Thank you.

12 MS. FERNANDEZ: Before we lose any  
13 more panel members, like I said, if you could  
14 make your comments brief, so that we can get  
15 into a conversation, because we really want to  
16 talk to you guys. Go ahead.

17 MS. ROBERTSON: Marie?

18 COL COLASANTI: Yes. This is she.

19 MS. ROBERTSON: Are you ready to  
20 talk about the Air Force?

21 COL COLASANTI: You want Air Force  
22 to go first. Okay.

1                   Certainly. This is Lieutenant  
2 Colonel Marie Colasanti. I'm the Air Force  
3 Family Advocacy Program Manager, and I also  
4 have Mr. Bill Cannon, our Air Force Domestic  
5 Abuse Victim Advocacy Program Manager here  
6 with me, too, in case you have some questions  
7 in that area.

8                   Our Air Force Medical Operations  
9 Agency acts as the agent for the Air Force  
10 Surgeon General in carrying out the Air  
11 Force's approved and directed policies of our  
12 Family Advocacy Program.

13                   We currently have our FAP  
14 personnel at about 77 locations, CONUS and  
15 OCONUS. We operate within the Air Force  
16 Medical Service, so that makes us a little bit  
17 different than some of the other services.  
18 And within the Medical Service, we are under  
19 the Mental Health Division. We are like an  
20 element underneath them. And so we work  
21 closely with our mental health providers  
22 within all our military treatment facilities.

1                   Our personnel are made up -- we  
2                   have about 77 family advocacy officers, and of  
3                   them 65, give or take, are active duty social  
4                   workers who are licensed clinical with a  
5                   master's degree. We also have about 111  
6                   treatment managers who are licensed clinical  
7                   social workers with a master's degree.

8                   We also have intervention  
9                   specialists we call them, and they are  
10                  licensed clinical social workers with a  
11                  master's degree and can be utilized either  
12                  with -- doing treatment -- that's why we  
13                  credential them -- or if our population is  
14                  large or small, depending on the needs of that  
15                  base, they can also do outreach.

16                  And then we have about 69 outreach  
17                  prevention program managers who are master-  
18                  level social workers, and they do all of our  
19                  primary and secondary prevention for us.

20                  In addition, we have 97 family  
21                  advocacy nurse specialists who are registered  
22                  nurses with two years' experience in community

1 health, and they obviously are running our new  
2 parent support program for expecting parents  
3 and those with -- up to three years of age of  
4 children.

5 We have family advocacy program  
6 assistants, about 124, who have bachelor-level  
7 counseling degrees, and they help manage all  
8 of our databases and help run some of our  
9 programs. In addition, they can help with our  
10 outreach efforts.

11 And then, lastly, we have about 44  
12 domestic abuse victim advocates who have  
13 bachelor-level counseling degrees.

14 We also for -- in terms of what we  
15 provide, our treatment managers and  
16 intervention specialists, along with our  
17 family advocacy officers, do provide  
18 individual, family, and group therapy. We  
19 provide secondary prevention to those at risk  
20 for treatment, so they can come in and get  
21 marital counseling or we can work with them on  
22 parenting, go into the home sometimes and work

1 with them if they are having some difficulties  
2 with their children.

3 We provide treatment, as Kathy  
4 said, to the offenders, and we also  
5 participate in clinics -- staffing, where we  
6 talk about all our cases, where they're at in  
7 their treatment, if they're making progress or  
8 not.

9 And that information we also will  
10 communicate with the commander, so they're  
11 aware, especially with the alleged offenders  
12 who we communicate with, making sure they know  
13 where their member is at in terms of whether  
14 they are complying with our treatment  
15 recommendations or not.

16 In addition, some of the  
17 distinction between SARC and SAPR I think for  
18 the Air Force we have is -- and probably for  
19 the other services -- that our SARC program  
20 provides case management when they get a  
21 referral to working with a victim on what they  
22 are needing. For family advocacy, obviously,

1 if we get a referral, we are going to be doing  
2 safety planning assessments for ongoing  
3 maltreatment and ensuring that they are  
4 getting treatment from the beginning to the  
5 end.

6 I think we both -- you know,  
7 obviously, we both provide case management  
8 from the point of entry to case closure. We  
9 both have established case review meetings.  
10 I know the SARC also addressed their victim  
11 needs and making sure they're referred to the  
12 appropriate services when they do their  
13 monthly meetings.

14 The sexual assault between spouses  
15 or unmarried intimates is domestic abuse and  
16 will be managed by FAP. So that is -- we  
17 created a triage, so we try to educate and  
18 make it very clear to the community, our  
19 medical providers, just to make sure they  
20 understand which one is a FAP referral and  
21 which one is a SARC. And when it's not, we  
22 ensure that the FAO and the SARP are

1 communicating clearly with each other, so that  
2 they are making those referrals back and forth  
3 as needed.

4 And then, obviously, our -- you  
5 know, our domestic abuse victim advocates are  
6 within our clinic family advocacy, so we are  
7 able to walk the victim to them or, if they  
8 get a referral, that they now meet SARP  
9 criteria, they will make sure that we are able  
10 to provide services to them. So it's very  
11 convenient.

12 In terms of what R-DABA does, I  
13 will have Bill quickly, real briefly, just  
14 tell you kind of what -- some of the things  
15 they do.

16 MR. CANNON: Victim advocacy  
17 services are offered to the victims, and the  
18 goal primarily is to increase that victim's  
19 safety and autonomy. Some of the things the  
20 victim advocate does immediately would be the  
21 safety plan with the risk assessment,  
22 emergency needs such as a protective order or

1 a military protective order, possibly  
2 providing shelter information and ongoing  
3 services, such as legal services, and so  
4 forth. And of course we provide supportive  
5 services at all times.

6 A little bit of a difference  
7 between the SARC and the victim advocate in  
8 FAP. First of all, the victim advocate at FAP  
9 works with the victim and often the abuser  
10 stays in the home. And so when you are  
11 working with that victim, you would provide  
12 emotional services and you would talk to them  
13 in an educational component. For example, the  
14 cycle of violence that they would experience  
15 over and over again in the home would be a  
16 little bit different than the SARC would  
17 provide.

18 Also, some resources might be  
19 different. For example, a shelter, financial  
20 resources, legal resources, such as a divorce  
21 or a civilian protective order.

22 Thank you.

1 COL COLASANTI: Any questions for  
2 us?

3 MS. FERNANDEZ: Not right now.

4 COL COLASANTI: All right. Thank  
5 you.

6 MS. HUBBERT: I am Paulette  
7 Hubbert. I'm the Family Advocacy Program  
8 Manager for the Headquarters Marine Corps.  
9 Unlike the Air Force, the Marine Corps FAP,  
10 Family Advocacy Program, is command -- is a  
11 command-managed multidisciplinary program.  
12 And they are located -- our program is located  
13 across 16 installations, and we provide  
14 similar services that Kathy and Colonel  
15 Colasanti have talked about.

16 Some of the differences in what we  
17 do, in FY13 we stood up our community  
18 counseling program, and those victims of  
19 sexual assault now go to -- we separated our  
20 programs from General Counsel. FAP and  
21 General Counsel used to be combined. In FY13,  
22 we separated our programs, and we stood up the

1 community counseling program. And our victims  
2 of sexual assault now go to -- receive  
3 services from our community counseling program  
4 as opposed to FAP. Our victims of sexual  
5 assault within intimate partner violence stay  
6 within FAP and receive services through FAP.

7 Also, some of the differences, we  
8 also have domestic violence victim advocates,  
9 and we required -- last year we required that  
10 all of our victim advocates were certified  
11 through NOVA, which is the National  
12 Association -- National Organization for  
13 Victim Assistance certification. And it  
14 parallels with the FY12 NDAA mandate for  
15 sexual assault victims to -- I mean, sexual  
16 assault victim advocates to be certified.

17 Some of the other differences, so  
18 that I'm not duplicating what has already been  
19 said, also, the Marine Corps in FY13 separated  
20 our victim advocates. Our domestic violence  
21 victim advocates were also servicing sexual  
22 assault victims. We now have instituted

1 sexual assault victim advocates under the SARP  
2 program, so they now have their own sexual  
3 assault victim advocates that provide services  
4 to those victims.

5           Again, we also have implemented  
6 the Campbell's Danger Risk Assessment  
7 instrument that measures for lethality, which  
8 assists with our domestic violence victim  
9 advocates to assess for danger and risk, and  
10 it helps with safety planning. And then we  
11 also collaborate with SAPR and FAP and CCP to  
12 provide the most comprehensive services to our  
13 victims, be it either SAP, FAP, or sexual  
14 assault.

15           And then we have the new parent  
16 support program, and we have instituted -- one  
17 of our initiatives right now is workforce  
18 development. We have instituted several  
19 evidence-based curriculums and treatment  
20 protocols for our Family Advocacy Program  
21 under prevention and education and for  
22 clinicians.

1 I promised to keep that quick.

2 MS. FERNANDEZ: That was awesome.

3 Thank you.

4 MS. ROBERTSON: Please explain new  
5 parent support a little bit.

6 MS. HUBBERT: Who? Me?

7 MS. ROBERTSON: Either of you.

8 MS. HUBBERT: Oh. So new parent  
9 support is our home visitor's program under  
10 the Family Advocacy Program. Actually, the  
11 Marine Corps is the only service that offers  
12 services ages zero to five, families with ages  
13 zero to five. Everyone else does zero to  
14 three. And they go into the homes and they  
15 provide different levels of care for  
16 parenting, developmental issues, help with  
17 nurturing and teaching, those type of  
18 programs.

19 BG McGUIRE: Is that upon the  
20 birth of the child that that is offered or  
21 whenever there is a case?

22 MS. HUBBERT: Both. It is a

1 volunteer program.

2 BG McGUIRE: Okay. Okay.

3 MS. HUBBERT: So parents can  
4 enroll and disenroll from the program at any  
5 juncture. And it is prior to, so zero to --  
6 prior to pregnancy all the way through the age  
7 of five for the Marine Corps.

8 MS. ROBERTSON: And all of the  
9 services do a higher -- a needs screener when  
10 they're expectant parents. And we really --  
11 the program's focus for high-risk parents that  
12 have had a history, maybe even a child -- of  
13 child abuse, neglect in their home,  
14 experienced violence in their home, or maybe  
15 they really need a support system. But it is  
16 really open to anyone that would like it, but  
17 we really hope to get those high-risk couples  
18 in to give them the attention --

19 BG McGUIRE: Would age be a high  
20 risk, like young -- like 18-year-olds? Would  
21 that be considered high risk or no?

22 MS. ROBERTSON: Well, it just

1 depends on the special needs screener, how  
2 they screen. It depends on that individual  
3 person.

4 MS. GRIFFEN: I think she's  
5 talking about age, though. I mean --

6 (Simultaneous speaking.)

7 BG MCGUIRE: Would that be  
8 considered a risk factor?

9 MS. GRIFFEN: Yes. Absolutely.

10 MS. RICHARDSON: Good afternoon.

11 I'm Jackie Richardson. I'm a licensed  
12 clinical social worker, marriage-family  
13 therapist, and a master's level social worker,  
14 working for the Department of the Army in the  
15 Office of the Assistant Chief of Staff for  
16 Installation Management.

17 The Army's program is consistent  
18 with or in alignment with DoD policy, and our  
19 programs and services are pretty consistent  
20 with the other branches of services in terms  
21 of prevention, intervention, and treatment.

22 The Army uses -- unlike the other

1 services, the Army uses kind of a two-prong  
2 approach to executing their FAP program. We  
3 have the medical -- we provide services or  
4 clinical services out of the medical treatment  
5 side of the house, and we provide our  
6 prevention services, life skills classes, and  
7 marital counseling -- sorry, life skills  
8 classes, communications classes, maybe  
9 financial management classes, those are done  
10 in our Army Community Service Center.

11 All of the FAP staff requires a  
12 degree, at minimum a bachelor's degree. And  
13 depending on the types of services they  
14 provide, our treatment providers are licensed  
15 clinical social workers.

16 The family advocacy has  
17 approximately 344 clinicians. Those are  
18 master's level degree, independent, licensed  
19 social workers who provide treatment and  
20 assessment. We have 172 victim advocates; 85  
21 of those victim advocates are civilian, 87 are  
22 contractors.

1                   We also have approximately 75  
2 family advocacy program managers.

3                   MS. FERNANDEZ: Can I stop you for  
4 a second?

5                   MS. RICHARDSON: Yes.

6                   MS. FERNANDEZ: What is the  
7 difference between civilian and contractors?  
8 Aren't they --

9                   MS. RICHARDSON: A civilian is  
10 actually a GS employee, a government employee.  
11 A contractor obviously is --

12                   MS. FERNANDEZ: But none of them  
13 are military.

14                   MS. RICHARDSON: The victim  
15 advocates are not.

16                   MS. FERNANDEZ: Okay.

17                   MS. RICHARDSON: The victim  
18 advocates within the Family Advocacy Program  
19 are not military.

20                   MS. FERNANDEZ: Okay.

21                   MS. RICHARDSON: The clinical  
22 staff, however, are -- 309 clinical staff.

1 Thirty-five of them are active duty military.

2 So they have master's degrees in social work.

3 The FAP training -- our FAP staff,  
4 they are required to have at least two years'  
5 experience in domestic violence, sexual  
6 assault, child abuse, prior to coming on  
7 board. In addition to that, they are privy to  
8 a residential training program that is about  
9 two weeks long that is provided through our  
10 AMEDD Center and School. And that is for 100  
11 percent of our FAP prevention and intervention  
12 and treatment staff.

13 We also has a FASTA, which is an  
14 advanced course, which is -- it's slated for  
15 our clinicians.

16 The population that we serve, we  
17 serve active duty soldiers and their families.  
18 We also serve the Guard/Reserve and their  
19 families when the Guard and Reserve soldier  
20 has been on board for at least 30 days.

21 We have already talked a little  
22 bit about how we compare FAP and SAPR. I

1 would say for the Army it is a little bit  
2 different. I guess the similarities are that  
3 FAP -- when we think about FAP, we are talking  
4 about providing support and services to  
5 enhance families, strengthen family  
6 functioning. And in SAPR we are talking about  
7 sexual offenses that occur outside of a family  
8 or intimate partner relationship.

9 I think the most similar things in  
10 -- between FAP and SAPR are that they both  
11 have a requirement to have a victim advocacy  
12 component within their program. And those  
13 victim advocates primarily provide almost the  
14 same services in terms of crisis intervention,  
15 24/7 response.

16 The difference is that for the  
17 Army the -- the SAPR program, there are some  
18 distinct differences in terms of the  
19 qualifications of our SAPR victim advocates  
20 opposed to our victim -- domestic abuse victim  
21 advocates.

22 And those differences are, for

1 example, for a domestic violence victim  
2 advocate, as we have all said, you have to  
3 have at least a minimum of a bachelor's degree  
4 in social work. For a sexual assault victim  
5 advocate, the requirement is 80 hours of  
6 training and a mandated -- a NOVA  
7 certification.

8 For domestic violence victim  
9 advocates, as I have indicated, we employ  
10 civilians, Department of the Army civilians,  
11 government employees, and we also contract out  
12 that service. For sexual assault, because of  
13 FY12 NDAA mandate, there is a requirement for  
14 full-time civilian and/or military.

15 So in the SAPR program you cannot  
16 have contractors executing the role as a  
17 victim advocate.

18 COL HAM: Are the FAP victim  
19 advocates, whether they're civilian or  
20 contract, deployable?

21 MS. RICHARDSON: That was my  
22 next --

1 COL HAM: Sorry.

2 MS. RICHARDSON: SAPR -- victim  
3 advocates are not deployable. For SAPR, they  
4 are deployable.

5 COL HAM: So --

6 MS. ROBERTSON: The main reason is  
7 our incidents happen in a family relationship.  
8 And so usually we find -- sometimes we find  
9 out about the incident after some -- the  
10 active duty member is deployed. So we are  
11 providing services for the victim. During  
12 that time we'll have our case review process.

13 You know, whereas, an incident of  
14 intimate partner violence or, you know,  
15 domestic abuse is not going to happen in a  
16 combat area.

17 COL HAM: Okay. It might be  
18 revealed in a combat area. So what would that  
19 person do?

20 MS. RICHARDSON: What happens in  
21 that instance is that there is some  
22 coordination between FAP and the command. The

1 command makes FAP aware that the incident has  
2 occurred. For example, there may be -- a  
3 letter may be sent to a spouse that may  
4 suggest the potential of domestic violence.

5 So to mitigate that then -- and if  
6 the soldier is coming home, then there is some  
7 communication between the installation Family  
8 Advocacy Program that makes us aware that this  
9 is happening. So that's when we would ratchet  
10 up our victim advocacy services to help the  
11 victim to first understand the situation and  
12 to make some decisions about his or her  
13 safety.

14 COL HAM: What if the deployed  
15 service member is the abused partner, abused  
16 spouse, and, you know, is having issues or  
17 whatever and goes to see behavioral health or  
18 mental health, deployed, and says, "My spouse  
19 is abusing me, or abused me at home. I'm  
20 really having problems." What happens then?

21 MS. GRIFFEN: Are you just  
22 speaking --

1 COL HAM: Well, it could be  
2 anybody.

3 MS. GRIFFEN: Okay. I will just  
4 jump in because that's one of the premier  
5 programs that the Navy has launched, and it's  
6 the Deployment Resiliency Program. And so we  
7 have DRCs, Deployment Resiliency Counselors,  
8 that are licensed clinicians, and they do meet  
9 that gap. They actually -- we have them --  
10 and this is an initiative that just started,  
11 and so we're in the hiring phase now and have  
12 really been successful thus far.

13 But what they do is they provide -  
14 - they provide the Deployment Resiliency  
15 Counselors on the large amphibious ships, and  
16 those that are large that -- aircraft  
17 carriers, and they actually deploy. They go  
18 to sea. And so if there is a sexual assault  
19 incident that happened at home port, and the  
20 victim is out to sea, then they provide that  
21 support.

22 If there is an incident of

1 domestic violence that occurs, and the victim  
2 is deployed, that DRC person would provide  
3 support and counseling. They do crisis  
4 intervention. They do training. They do a  
5 whole cadre of services that is generally  
6 offered at our Fleet and Family Support  
7 Centers. It is done actually on deck, on the  
8 ship.

9 COL HAM: Are those people  
10 civilians or military people?

11 MS. GRIFFEN: They are civilians.

12 COL HAM: Okay.

13 MS. GRIFFEN: They are civilians.

14 MS. CARSON: Do they help the  
15 sexual assault victims as well?

16 MS. GRIFFEN: Yes. And they also  
17 support that. They have had training in the  
18 sexual assault aspect of the program, as well  
19 as domestic abuse. So they play a dual role  
20 and are dual-hatted in that regard.

21 MS. RICHARDSON: Another  
22 difference between domestic violence and

1 sexual assault is that the domestic violence  
2 victim advocate does not address or work with  
3 victims who file sexual harassment complaints,  
4 while in the Army, unlike the other services,  
5 they have actually integrated their sexual  
6 harassment -- sexual -- prevention of sexual  
7 harassment and sexual assault prevention and  
8 response programs.

9 So we have advocates on the SAPR  
10 side who will respond to persons who file a  
11 sexual harassment complaint. However, on the  
12 domestic violence side of the house, that  
13 victim advocate does not.

14 The other difference is that in  
15 terms of the screening criteria for these  
16 positions, with domestic violence we have  
17 background checks against the Army Central  
18 Registry, the National Agency checks. With  
19 sexual assault, we do those screens in  
20 addition to the screenings against the  
21 National Sex Offenders' Registry and enhanced  
22 screening, which may include behavioral health

1 screenings.

2 MS. GRIFFEN: I will be very  
3 quick, very brief, because a lot of things  
4 have already been discussed. I will not be  
5 redundant. But we have Commander Navy  
6 Installations Command, and that is who I work  
7 for. It is part of Navy headquarters, and we  
8 are the execution branch where we support the  
9 -- we provide shore installation program  
10 management as well as direct the Family  
11 Support Program.

12 We are CNIC, which is Eschelon 2,  
13 and it is under the Chief of Naval Operations  
14 and responsible for Navy-wide shore  
15 installation management.

16 We deliver services to 80 sites  
17 worldwide; 58 sites we deliver a full  
18 portfolio of programs and services. We have  
19 206 clinical counselors, 54 domestic abuse  
20 victim advocates, and 76 prevention staff.

21 For the Navy, we do have  
22 counselors. They are considered generalists.

1 That means that there is no distinction  
2 between their functions as opposed to whether  
3 they provide FAP services versus prevention or  
4 sexual assault services. They provide a cadre  
5 of services from -- for one clinician.

6 Let's see. I won't go into the  
7 core competencies. You've heard most of  
8 those. I do want to say that when we are  
9 looking --

10 CDR KING: You can also provide  
11 your written notes, so that we can get the  
12 details, too, and then we can get them out to  
13 everybody.

14 MS. GRIFFEN: Okay. I do want to  
15 say in terms of initiatives, one of the things  
16 -- and you may already have had some knowledge  
17 regarding the SACMAG, which is the Sexual  
18 Assault Case Management Committee or Group.  
19 And what they do is it's a multidisciplinary  
20 committee where they review cases of sexual  
21 assault, and they -- it's a case management  
22 process where they are reviewing the process,

1 they are tracking, and our family advocacy  
2 clinician, if there is a sexual assault case  
3 of intimate partner violence, they are a part  
4 of that group. And so that coordination, that  
5 continuity of care, happens right there in  
6 that group. So they do participate in that.

7 Also, identified the Deployment  
8 Resiliency Program, which is, again, a gold  
9 medal program that we are really excited  
10 about. And we are hoping to have that program  
11 fully staffed by the end of this FY.

12 MS. FERNANDEZ: A question that  
13 sort of came up when we were talking to the  
14 SAPRO folks was it seems that -- and tell me  
15 if I'm wrong -- the majority of your personnel  
16 are civilian, either contractors or civilian  
17 personnel. And the SAPRO folks for the most  
18 part are almost all military.

19 MS. GRIFFEN: Not for the Navy.

20 MS. FERNANDEZ: Not for the --

21 MS. GRIFFEN: We have all  
22 civilians.

1 MS. FERNANDEZ: You have all  
2 civilians?

3 MS. GRIFFEN: Yes.

4 MS. FERNANDEZ: Then let me ask  
5 you, do you think that there are plusses in  
6 having civilian personnel as compared to  
7 military personnel as far as continuity of  
8 services and also just historical knowledge of  
9 how to deal with these cases?

10 COL HAM: Victim advocates and  
11 SARCs, Ms. Fernandez, or -- can you make a  
12 distinction?

13 MS. FERNANDEZ: Well, both. I  
14 would say both.

15 MS. RICHARDSON: I would say that  
16 the Army has a mixture of civilians as well as  
17 service members executing the SAPR program.  
18 And I think that Dr. Altendorff -- I believe  
19 you guys talked with her a couple of weeks ago  
20 regarding the SAPR program -- and one of the  
21 things that she talked about was the red team,  
22 which the Army deployed to kind of look at

1 their -- assess their SAPR program or SHARP  
2 program.

3           And I was a member of that red  
4 team, and one of the things that we asked the  
5 soldiers and focus groups is whether or not it  
6 made a difference as to whether you're a green  
7 suiter or a civilian. And by and large what  
8 victims -- or what soldiers said was it did  
9 not matter what the person wore. What  
10 mattered mostly was that the person was  
11 compassionate, had integrity, was  
12 professional, was respected.

13           So with that in mind, I would say  
14 that from a soldier's perspective it doesn't  
15 matter. I think that what I am mostly  
16 concerned about is the level of training and  
17 the institutional knowledge that you talk  
18 about. And I think that soldiers, because  
19 they're not trained as advocates, it is a  
20 collateral duty in most instances, that that's  
21 something that is lacking, and victims would  
22 want people who are competent in the area of

1 advocacy.

2 MS. FERNANDEZ: Anybody else on  
3 that? Civilian versus military.

4 COL COLASANTI: This is Colonel  
5 Colasanti again. For the Air Force, we do  
6 have a mixture also, though our active duty  
7 ones are personnelists. And so I know that  
8 something they are looking at is, you know, is  
9 that the right makeup for who we have being  
10 our SARCs out there?

11 So I know for the Air Force we are  
12 actually looking at this issue right now and  
13 look at our options potentially or whether  
14 they are going to keep it the same way.

15 MS. GRIFFEN: I could say with --  
16 and I don't really have anything to compare it  
17 to in terms of the Navy, because this is  
18 something that just happened. I have been  
19 with the Navy for three years, and they  
20 transitioned from a uniformed force to a  
21 civilian population.

22 And one of the things that I have

1 noticed is, again, when you look at collateral  
2 service, you look at that as an additional  
3 duty. But to have an asset that is totally  
4 involved and fully devoted to a function that  
5 is as sensitive and as important as this, then  
6 you want to ensure that that asset is  
7 providing full coverage and has a very  
8 comprehensive understanding of the full range  
9 of issues that need to be a part of that  
10 position.

11 And so when you look at  
12 standardization, you're talking about  
13 continuity. I think all of that works hand in  
14 hand when you are looking at the level and the  
15 quality of services.

16 COL HAM: Do you think that a  
17 victim advocate is necessary at the battalion  
18 level for the Army?

19 MS. RICHARDSON: I think that it  
20 is necessary at the brigade level. I think  
21 the higher you go, the less -- the more  
22 confidentiality that you -- that a victim

1 would have. So --

2 MR. CASSARA: Well, one of the  
3 questions that we've had -- and maybe I  
4 already know the answer, but I'll throw it out  
5 there anyways, is especially in the Marine  
6 Corps where you -- you know, they have a lot  
7 of small bases, so I'll pick, you know, the  
8 one where I live, which is in Albany, Georgia.  
9 I'm assuming you don't have a full-time person  
10 there. Am I correct?

11 MS. HUBBERT: Yes, we do have a  
12 full-time --

13 MR. CASSARA: You do. Okay.  
14 Then, pick a smaller Marine base.

15 (Laughter.)

16 I mean, what do you do when you  
17 have, you know, a small installation with just  
18 a couple hundred troops maybe?

19 MS. HUBBERT: We still have full-  
20 time employees there to provide services to  
21 those --

22 MR. CASSARA: Really?

1 MS. HUBBERT: Yes.

2 MR. CASSARA: Is that the same for  
3 the other services when you're dealing with a  
4 really small installation, or do they have  
5 like an identified other base that they --

6 MS. GRIFFEN: We don't have an  
7 identified other base. Our portfolio of  
8 programs may be smaller because it's conducive  
9 to the population.

10 Like we have small bases like  
11 Singapore, Earle in New Jersey, and so we have  
12 the services that fit the population. But it  
13 would not have the full support that we would  
14 have at large installations.

15 MS. RICHARDSON: And the Army has  
16 their victim advocacy SARCs and they are  
17 embedded in the brigade or brigade-like  
18 commands. So if you have a smaller  
19 installation and the brigade is not there,  
20 that brigade commander is still responsible  
21 for providing support to --

22 MR. CASSARA: Whatever their

1 parent brigade is.

2 MS. RICHARDSON: Exactly.

3 MR. CASSARA: Okay.

4 MS. GRIFFEN: And when I talk  
5 about not a full portfolio of programs,  
6 definitely victim advocacy is a core function  
7 that is going to be available, whether it's  
8 provided by a clinical provider or a  
9 designated domestic abuse victim advocate.

10 MR. CASSARA: Colonel Colasanti,  
11 is that fairly similar with the Air Force?

12 COL COLASANTI: Yes. Basically,  
13 the way the Air Force is, they do not have a  
14 SARC there, because oftentimes those positions  
15 are vacant. They are -- they are deployed.  
16 They will find somebody else to be like an  
17 alternate, and they are trained up, so that  
18 they are able to fill in. And if it's small  
19 enough, it will fall underneath the closest,  
20 you know, installation who will then cover for  
21 that area.

22 MR. CASSARA: Okay. Thank you,

1 ma'am.

2 MS. ROBERTSON: I just want to  
3 point out one of the other distinctions  
4 between the two programs is legislated by  
5 Congress. We have been doing a fatality  
6 review process of anyone that has -- all  
7 fatalities related to maltreatment, whether  
8 it's domestic abuse, intimate partner  
9 violence, child abuse or neglect, and that was  
10 a legislative requirement.

11 All of the services do a Fatality  
12 Review Board, and then they -- we have an  
13 annual Fatality Review Summit, which we  
14 release a report. So we really look at  
15 whether they were in the Family Advocacy  
16 Program or not. If there was a homicide,  
17 suicide, or fatality, we look to see if it was  
18 related to domestic abuse. And those are  
19 reported up to the service headquarters, and  
20 then they report them to our office, and then  
21 we actually are tracking and looking at  
22 trends.

1                   And so we are really able, since  
2                   2005/2006, to now really look at what some of  
3                   the issues are, so we can look at resources,  
4                   we can look at -- like one of the issues we  
5                   have for child abuse and neglect is abusive  
6                   head trauma, shaken baby syndrome. And then  
7                   we had a lot of accidental deaths that were  
8                   not -- you know, the parents fell asleep with  
9                   the child, smothered the child, you know,  
10                  accidental death. And so then we started  
11                  looking at -- we put money into the Purple  
12                  Crime, we put money into programs to help  
13                  parents so that didn't continue to happen. We  
14                  are still -- and we are still doing that.

15                         And for domestic abuse, you know,  
16                         we -- one of the most risk-averse times is  
17                         when they separate or when you go back into  
18                         court. And so we look at where they were in  
19                         the relationship, had they separated, was  
20                         there a civilian protection order, and did  
21                         they have a prior family advocacy case at any  
22                         place, did they complete treatment.

1           A lot of times they are not even  
2 people that have had treatment, but there may  
3 be a homicide/suicide. Active duty husband  
4 kills his wife and then kills himself. And so  
5 we review all of those at the several level  
6 and then at the DoD level.

7           And so I think that's another  
8 thing is we really -- because we have been  
9 around so long and had this comprehensive  
10 program, we have been able to look at trends,  
11 where we need more resources, what we need to  
12 do differently, what process improvements  
13 needs to happen, and I think the fatality  
14 review process has been really important to  
15 that.

16           And like a lot of the services use  
17 that fatality review report when we do our  
18 commander training to say this is a serious  
19 subject. This is how many we had for this  
20 service last year. And so I think that's  
21 another key thing is we really look at what  
22 happens.

1 COL HAM: Do those numbers come  
2 through command channels or through the  
3 military criminal investigative organizations  
4 -- the reports of a suicide or homicide?

5 MS. ROBERTSON: They would come  
6 lots of different ways. We get them through  
7 law enforcement, yes, legal, right. We get  
8 them from wherever -- sometimes we hear it  
9 from the media first, that it was military  
10 involved.

11 MS. GRIFFEN: But I think the most  
12 important thing with fatality review, we are  
13 bringing communities together and looking at  
14 a comprehensive way to approach the issue. So  
15 Kathy, when she talked about the fatality  
16 review process at DoD, not only do we bring in  
17 our federal partners, but we also bring in our  
18 civilian partners to look at it in a  
19 comprehensive, holistic way. And so that's  
20 just one of the things that I definitely value  
21 with the DoD group, that they are able to do  
22 that, and it is very helpful to our process.

1 MS. RICHARDSON: If I may, Colonel  
2 Ham, I'd like to follow up on your question  
3 regarding whether or not we believe that  
4 victim advocacy should be at the battalion  
5 level. And I would add to what I said  
6 previously is that I think victims need to  
7 have options.

8 So not so much as -- I think that  
9 they need to be at the brigade level, but I  
10 think that they should also be -- victims  
11 should also have the ability to go any place  
12 on the installation to get the services that  
13 they need. I think that there should not be  
14 any doors closed.

15 COL HAM: And my question -- there  
16 is no hidden agenda behind it -- it was kind  
17 of if they're at the battalion level, working  
18 through the issue of -- is then it -- I don't  
19 know what the right word is -- practical,  
20 economical, possible to have civilians in that  
21 battalion level? Because will they have  
22 enough to do at that small unit level.

1 MS. HUBBERT: Now, for the Marine  
2 Corps they are uniformed victim advocates at  
3 the battalion level and not civilian victim  
4 advocates. And they are trained -- our UVAs  
5 -- our UVAs are also required to be certified  
6 through NOVA, and so forth, so that is a  
7 difference. We don't have civilians at  
8 battalion and that level.

9 MS. RICHARDSON: But I can tell  
10 you for the Army, from 2004 to 2010, the  
11 sexual assault program was executed out of the  
12 Army Community Services, and actually it was  
13 one of the programs that was supervised by the  
14 Family Advocacy Program Manager.

15 So we were able to provide the  
16 level of services that were needed to support  
17 the force.

18 COL HAM: Without having them down  
19 at that low level -- my understanding, and I'm  
20 a little fuzzy on it -- my understanding is  
21 the battalion -- SAPR BAs is mandated by  
22 Congress.

1 MS. RICHARDSON: Congress.

2 Exactly.

3 COL HAM: I'm asking you all, is  
4 that a good idea? Is that something you would  
5 change? Is that -- I don't know.

6 MS. RICHARDSON: Change the  
7 location or --

8 COL HAM: The level. That's a  
9 small unit level.

10 MS. HUBBERT: For the Marine  
11 Corps, those UVAs are deployable. That's why  
12 we don't have the civilians there at the  
13 battalion level is because those UVAs are  
14 trained and are deployable so that they can  
15 provide services should a sexual assault  
16 happen, be committed in theater.

17 MS. FERNANDEZ: I think we're  
18 starting to lose our own manpower here.  
19 People come from all over the country, so  
20 their flights are out of Reagan.

21 MS. ROBERTSON: So I will send the  
22 data, and they will send their statements. Is

1 there anything else you want us to send you  
2 for future reference?

3 MS. FERNANDEZ: Just if you could  
4 all give breakdowns of military, civilian, and  
5 contract, and where they're at, the location  
6 of military, civilian, and contract.

7 MS. HUBBERT: For family advocacy?

8 MS. FERNANDEZ: Yes.

9 MS. HUBBERT: We don't have it for  
10 family advocacy. We have it --

11 MS. FERNANDEZ: Do you have that  
12 for --

13 MS. HUBBERT: -- for SARPs and  
14 VAs.

15 MS. FERNANDEZ: -- SAPR victim  
16 advocates? Okay.

17 MS. HUBBERT: For victim advocates  
18 or for FAP, all of FAP staff?

19 MS. FERNANDEZ: FAP. All of FAP  
20 staff.

21 MS. ROBERTSON: Including child --  
22 like our home visitors.

1 MS. FERNANDEZ: Sure.

2 MS. ROBERTSON: Okay.

3 MS. GRIFFEN: Okay. So I just  
4 want to be clear, so we are talking about the  
5 new parent support home visitors, we are  
6 talking about the FAP clinicians, and then the  
7 domestic abuse victim advocacy, and then our  
8 clinical counselors.

9 MS. FERNANDEZ: Yes.

10 MS. HUBBERT: And for us we have  
11 prevention and education specialists.

12 MS. GRIFFEN: And you want  
13 prevention and education -- so you're talking  
14 about the whole program.

15 MS. FERNANDEZ: The full program.  
16 I want to be able to, as much as possible,  
17 compare what your personnelists look like.

18 MS. ROBERTSON: And do you want us  
19 -- if we have a vacant position but it's a  
20 position that just -- we'll give you that  
21 number, that we have that position, whether or  
22 not it's filled.

1 MS. FERNANDEZ: Sure. That sounds  
2 good.

3 Ladies, thank you very much, not  
4 for just coming here but for what you do. You  
5 save lives.

6 MR. SPRANCE: Absolutely. You all  
7 are doing the Lord's work. Thank you very  
8 much.

9 MS. FERNANDEZ: Any magic words to  
10 close this?

11 MR. SPRANCE: Just to say that the  
12 meeting is closed.

13 (Whereupon, at 4:45 p.m., the  
14 meeting was adjourned.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Response Systems to Adult Sexual  
Assault Crimes Panel

Before: US DOD

Date: Wednesday, February 26, 2014

Place: Washington, DC

was duly recorded and accurately transcribed under  
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