

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

RESPONSE SYSTEMS TO ADULT SEXUAL  
ASSUALT CRIMES PANEL

PUBLIC SESSION

Thursday,  
June 27, 2013

United States District Court  
for the District of Columbia  
333 Constitution Avenue, NW  
Ceremonial Courtroom No. 20  
Washington, D.C.

1 MEMBERS PRESENT:  
2  
3 HON. BARBARA JONES, CHAIR  
4 MR. HARVEY BRYANT  
5 BRIGADIER GENERAL (RET) MALINDA DUNN  
6 MS. MAI FERNANDEZ  
7 PROF. ELIZABETH HILLMAN  
8 HON. ELIZABETH HOLTZMAN  
9 VICE ADMIRAL (RET) JAMES HOUCK  
10 BRIGADIER GENERAL (RET) COLLEEN MCGUIRE  
11 COLONEL (RET) HOLLY O'GRADY-COOK  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

AGENDA

Page

- 1. Call to Order,  
Ms. Marcia Fried, DFO, 4
- 2. Opening Comments from the Staff Director,  
Colonel Patricia Ham 4
- 3. Opening Comments from the Chair  
The Honorable Barbara Jones 5
- 4. Victim Overview:  
Dr. Lynn Addington, Associate Professor,  
Department of Justice, Law, & Society,  
American University 10  
Ms. Delilah Rumburg, Pennsylvania Coalition  
Against Rape (PCAR) 46
- 5. Lunch 91
- 6. DoD Sexual Assault Prevention and Response  
Overview:  
Major General Gary S. Patton, Director,  
Sexual Assault Prevention and Response  
Office 92

		Page 4
1	AGENDA (Continued)	
2		Page
3	Dr. Nate Galbreath, Sexual Assault	
4	Prevention and Response Office	102
5		
6	7. Break	185
7		
8	8. Military Justice Overview:	
9	Mr. Fred Borch, Regimental Historian, U.S. Army	
10	Judge Advocate General's Corps	186
11		
12	Captain Robert Crow, Navy, Representative from	
13	Joint Service Committee	219
14		
15	10. Comments from Public	5
16	11. Adjourn to Administrative Session	268
17		
18		
19		
20		
21		
22		

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

2 (11:00 a.m.)

3 MS. FRIED: Good morning. I'm Maria  
4 Fried. I'm the Designated Federal Officer for the  
5 Response Systems Panel. I would like to open up  
6 the public segment of the meeting this morning and  
7 introduce the Response Systems Panel staff  
8 director, Colonel Ham.

9 COLONEL HAM: Thank you, Ms. Fried. Good  
10 morning and welcome to the first public meeting of  
11 the Response Systems to Adult Sexual Assault Crimes  
12 Panel established by Section 576 of the National  
13 Defense Authorization Act of 2013.

14 I'm Colonel Patricia Ham. I'm the Staff  
15 Director for the Panel. The Panel Chair is the  
16 Honorable Barbara Jones. I just want to let you  
17 know that C-SPAN is here recording today's public  
18 meeting, but it is not being broadcast live.

19 The agenda for today's public meeting is  
20 divided into three sessions. First, the Panel will  
21 hear from Dr. Lynn Addington, Associate Professor,  
22 Department of Justice, Law and Society, American

1 University, and Ms. Delilah Rumburg, the Chief  
2 Executive Officer for the Pennsylvania Coalition  
3 Against Rape.

4 Second, the Panel will hear from Major  
5 General Gary Patton, the Director of the Sexual  
6 Assault Prevention and Response Office, Department  
7 of Defense, and Dr. Nate Galbreath, the Senior  
8 Executive Advisor, Assessment and Accountability,  
9 of that same office.

10 And finally, today the panel will hear  
11 from Colonel (Retired) Fred Borch, the Regimental  
12 Historian and Archivist for the Army's Judge  
13 Advocate General's Corp and Captain Robert Crow of  
14 the Joint Service Committee.

15 We've not received any written request for  
16 public comment, and as an administrative matter I  
17 request you refrain from photographing during the  
18 presentation sessions.

19 Madam Chair, are you ready to proceed?

20 CHAIR JONES: Yes, thanks. Good morning.  
21 On behalf of myself and my colleagues, I'd like to  
22 welcome everyone to the first hearing of the

1 Response Panel to Adult Sexual Assaults in the  
2 Military and I also want to thank Chief Judge  
3 Lamberth, who has graciously made this courtroom  
4 and his courthouse available to us.

5 A courthouse is a fitting place to  
6 consider the grave problem of sexual violence in  
7 our military, an issue of national importance. It  
8 is in courthouses that important matters are  
9 considered daily, with objectivity, fairness, and  
10 independence.

11 This Panel is committed to investigate, to  
12 hear all sides, and to find the facts necessary to  
13 report thoughtful and sensible recommendations to  
14 Congress and the Secretary of Defense.

15 The Panel, as you know, was created by the  
16 National Defense Authorization Act of 2013. Our  
17 broad mandate is to review and assess the  
18 investigation, prosecution, and adjudication of  
19 sexual assaults in the military, and in doing so,  
20 to study civilian systems, compare results, and  
21 look for effective strategies and best practices.

22 We will do that. But, in addition, and

1 central that work, two specific tasks loom large.  
2 One is to consider how our military may better  
3 protect and support the women, as well as the  
4 significant number of men, who are victims of  
5 sexual assaults, and of course, to identify  
6 effective strategies to prevent sexual assaults  
7 from occurring.

8           The second is to examine the role of our  
9 commanders, not just as the decision makers or  
10 convening authorities for the prosecution of sexual  
11 assaults under the Uniform Code of Military  
12 Justice, but also as those responsible for ensuring  
13 the operational readiness of our military, and  
14 essential to that critical mission, responsible for  
15 creating a command climate with zero tolerance for  
16 sexual assaults.

17           As our study proceeds, we remain acutely  
18 aware that Congress has also asked for our  
19 assessment of the strengths and weaknesses of the  
20 legislative proposals currently being debated in  
21 both Houses and we're committed to working  
22 efficiently to provide timely and thoroughly



1 considered recommendations.

2 For today's hearing our goals are modest.  
3 We know that before we can address the problem of  
4 sexual assaults in the military, we must understand  
5 it. To that end, as Colonel Ham told you, we have  
6 three sets of presenters, Professor Addington will  
7 focus on the civilian sexual assault statistics,  
8 providing us with the demographics, if you will,  
9 the who, what, when, and where of sexual assault  
10 victimization in American society.

11 Where possible, she will also identify  
12 parallels, similarities, and dissimilarities  
13 between the civilian and military survey results.  
14 And although we will be looking at numbers, we  
15 recognize there is no number of sexual assaults  
16 that is acceptable, but that surveys and statistics  
17 can help us to identify the issues.

18 Ms. Rumburg will describe the unique  
19 problems that sexual assaults present for the  
20 victim and the types of support and services that  
21 victims need in the civilian and military worlds.  
22 She is uniquely qualified to discuss these issues

1 as she's not only been the chief executive officer,  
2 as Colonel Ham mentioned, of the Pennsylvania  
3 Coalition Against Rape for over 18 years, but she  
4 was also a member of at least two prior studies  
5 into sexual assaults in the military, one of them  
6 being the 2009 Department of Defense Taskforce On  
7 Sexual Assault, and that particular taskforce  
8 studied many of the issues before us.

9 For our next panel, as you've heard,  
10 General Gary Patton and Dr. Nate Galbreath will  
11 present and General Patton is the head of the  
12 Sexual Assault and Prevention Office, which is the  
13 office within the Department of Defense that is  
14 accountable for the prevention of sexual assaults  
15 and for the creation of policies and programs to  
16 assist victims.

17 He will discuss what is currently being  
18 done in each of those areas across the four  
19 services and together with Dr. Galbreath, will  
20 offer some data relating specifically to sexual  
21 assaults in the military.

22 Lastly, we'll hear from U.S. Army Colonel

1 (Retired) Fred Borch, who currently serves as  
2 Regimental Historian, U.S. Army Judge Advocate's  
3 Generals Corps, and also from Captain Robert Crow,  
4 who's a representative of the Joint Services  
5 Committee.

6 Mr. Borch will discuss the historical  
7 context surrounding today's military justice system  
8 and the Uniform Code of Military Justice, and the  
9 role of the commander in the code. Captain Crow  
10 will take us through a hypothetical sexual assault  
11 case, walk us through its progress within the  
12 military justice system, from the victim's report  
13 of the crime to its adjudication.

14 These presentations are broad and will  
15 undoubtedly generate more questions than answers,  
16 but they will provide a necessary foundation for  
17 the Panel's work.

18 Thank you very much for your attention.  
19 Professor Addington?

20 DR. ADDINGTON: Yes, great. I would like  
21 to thank the Judge and also the Panel for inviting  
22 me to present before you today. My goal and my

1 hope is that I am able to provide some context for  
2 victimization and reporting issues to assist you in  
3 your charge.

4 My focus, as Judge Jones mentioned, is on  
5 civilian crime data, that's my area of expertise  
6 where I do my research and my work, but also at  
7 Judge Jones' request, she asked me to do some  
8 comparisons with the military data that are  
9 available and also to make some comments about the  
10 workplace gender relations survey that was done,  
11 possible suggestions, and future work that can be  
12 done, so I'll be doing that as well:

13 And I'm going to start with a general  
14 overview of our sources of crime data, just to kind  
15 of get us started this morning. For the civilian  
16 crime data we have two main sources of national  
17 crime data, and these include the Uniform Crime  
18 Reporting Program, which basically reports to  
19 police, so the filter is that the crime, the  
20 incident was reported to police by the victim or  
21 somebody else, so that's known to police. These  
22 are local and state crime data that are collected

1 by the FBI.

2 And then we also have a kind of a  
3 complementary data source to the UCR, and that's  
4 the National Crime Victimization Survey. I'll be  
5 focusing my comments on that. Those are survey  
6 data and they really get at one of the weaknesses  
7 of the police data, which is underreporting of  
8 crime, what we call the dark figure of crime, and  
9 to get a better understanding of the crime picture,  
10 and I'll talk more about that in a second.

11 And these complement the military sources  
12 that you'll hear more about, I won't mention too  
13 much about these because you'll be hearing from the  
14 folks from the SAPRO Office, and basically it's the  
15 Department of Defense Sexual Assault Data, which is  
16 based on the unrestricted reports, again, the  
17 filter is that somebody has come forward to give  
18 that information.

19 And then there are two surveys that are  
20 done, one is by the Department of Defense, the DMDC  
21 Workplace Gender Relations Survey, that will be the  
22 focus of my comparison, but also the Centers of

1 Disease Control has done the National Intimate  
2 Partner Sexual Violence Survey, NISVS--everyone has  
3 to have an acronym--and they've done a military  
4 sample and some of that information was provided in  
5 the most recent SAPRO Report.

6 So, those are two surveys that get at,  
7 again, trying to get at the underreporting of  
8 sexual assault issues, and also crime issues more  
9 broadly.

10 And I'm going--as I mentioned, I'm going  
11 to focus on victim and civilian data and I was  
12 asked to do some comparisons and I'll guess what  
13 I'll say is they'll be rather crude, basic  
14 comparisons, and that's because there is a  
15 challenge with looking at two data systems. There  
16 are different ways data are collected that can  
17 affect the results obtained. And so, the issues to  
18 be mindful of--and if I could have the next slide,  
19 this is one of those little wonky slides, I'll  
20 apologize for that but it basically gets at the  
21 issues of the survey design, and there are certain  
22 differences between the NCVS, the civilian data,

1 and the military data, that's the WGRA data, and  
2 probably the largest one is the scope of what's  
3 included. In the civilian data, we're looking at  
4 sexual violence, which is basically completed,  
5 attempted, and threatened rape and sexual assault.  
6 What the military data also includes in addition to  
7 that are the non-consensual sexual touching,  
8 those types of fondling incidents can be included  
9 in NCVS, but what the WTRA survey does, it  
10 explicitly screens for those, so it asks people  
11 about that, so you might get more accounts of that  
12 and I think that's reflected a bit in the data  
13 where you've got about a third of the incidents  
14 that are reported are the non-consensual sexual  
15 touching, about a quarter are attempts for sexual  
16 intercourse, oral, or anal sex, and then another  
17 third are completed sexual intercourse, oral, and  
18 anal sex.

19 And, again, a few of the other  
20 differences, there are differences in mode, that is  
21 how the survey is conducted. NCVS, it's an in-  
22 person/telephone survey. The military survey was a

1 web survey. Again, it's not necessarily one's  
2 better or worse, there's just differences that can  
3 affect the data that are obtained, and the web-  
4 based, actually, probably is one reason that  
5 there's a lower response rate for the military  
6 data. Web-based surveys are kind of akin to mail-  
7 in surveys, they tend to have a lower response rate  
8 than in-person or telephone surveys.

9           The context of the survey, the military  
10 survey is more of a--I would say a workplace  
11 oriented. The title of the survey and actually the  
12 first 30 questions, I was able to obtain a copy of  
13 the survey earlier this week. About the first 30  
14 questions of the instrument are about workplace, so  
15 somebody might be primed more for a workplace type  
16 of response. The National Crime Victimization  
17 Survey is a crime survey. Again, pros and cons  
18 with that.

19           People might think of crime a particular  
20 way, might not think of somebody that they know or  
21 that sort of thing in a crime survey versus a  
22 workplace survey might be more primed to somebody



1 in your workplace, so it's just a different context  
2 there.

3 And then with regard to the identification  
4 and classification of these incidents, that the  
5 NCVS does a pretty extensive screener  
6 questionnaire, asks a lot of specific cues of the  
7 respondent to get them to remember different  
8 things, asks them about did the incident happen,  
9 occurred by somebody that you know, different  
10 locations, different specific behaviors, and then  
11 vets those with a very extensive incident report  
12 that gathers data, and the military survey does  
13 that all in one step where they describe the type  
14 of behavior, did you experience this in the past 12  
15 months, yes or no, and then asks about the one  
16 event with the greatest effect, and that appears to  
17 be a respondent-defined, what they viewed as the  
18 greatest effect, so it's not necessarily the most  
19 recent incident or what maybe on the outside might  
20 seem serious to somebody, but is the most effect to  
21 that particular respondent.

22 And then if I could have the next slide

1 please. So, I talked a bit about the NCVS already,  
2 so I'll just briefly sum up here. Again, it's an  
3 omnibus crime survey, so it's not just about rape,  
4 sexual assault. There are surveys out there that  
5 are just about rape sexual assault, but the NCVS is  
6 an omnibus survey. It covers many different non-  
7 fatal violent crimes as well as property crimes.  
8 It's a household-based survey that's nationally  
9 representative. They ask each household member age  
10 12 and above about their victimization experience  
11 in the past six months, and it gives a lot of  
12 details, again, because of that incident report, a  
13 lot of details about unreported crimes and the  
14 incident itself.

15 If I could have the next slide please.

16 So, in addition to the design issues I  
17 mentioned, there are just a few points I wanted to  
18 mention that might affect comparisons ongoing from  
19 the data that I'm presenting.

20 With the NCVS data, as I mentioned, it's  
21 12 and above. The data I'm presenting are not age-  
22 adjusted. So, the military are all adults, so

1 there's going to be a little bit of slippage there.  
2 And also for the NCVS rape sexual assault data, it  
3 is a relatively rate, I mean, we don't want any  
4 rape and sexual assault to occur, but it is a  
5 relatively rare crime, especially when you're  
6 looking at a six-month reference period. So, the  
7 details that I'll provide are based on female  
8 victims of rape sexual assault and also use a  
9 couple years of data, so that's just a limitation  
10 there.

11 Most of the findings I present are from  
12 the BJS Report, female victims of sexual violence,  
13 1994 to 2010, and all the military data are from  
14 the most recent SAPRO reports.

15 So, now we'll get to--with all that lead  
16 up, I'll get you some data here.

17 So, the next slide is--I like this  
18 introductory slide because it gives a context of  
19 the issues, both the trends over time, this is  
20 serious, non-fatal violent crime reported to the  
21 NCVS, again, this is all ages and both sexes, so  
22 just to provide that context, and you'll see, of

1 the serious violent crime, everything is pretty  
2 much dropping over time. That's pretty consistent  
3 with police data that we've seen, and also that the  
4 most serious violent crimes are aggravated  
5 assaults, so it's about four per thousand  
6 individuals over age 12. Rape sexual assault is  
7 0.9 in 2011, 0.9 per thousand individuals over age  
8 12, and just to provide some context, in 2011, for  
9 property crimes, the property crime of theft, 104--  
10 the rate was 104 per thousand over age 12. So, it  
11 kind of gives you a difference of the--again, we  
12 don't want any serious violent crime to occur, but  
13 relatively speaking, it's a fairly rare occurrence.

14 If I could have the next slide, please.

15 I'm putting these data on the same slide,  
16 but the caveat is that they're not really  
17 comparable, and so we've got civilian--I'm trying  
18 to get a little bit of information for each group--  
19 so, for the civilian NCVS data, the total rate of  
20 sexual violence has dropped over time, so it's gone  
21 from, as I said, five per thousand females over age  
22 12 1.8 per thousand females over age 12, and in

1 2010 we had about--slightly over a quarter of a  
2 million rape sexual assaults, so that's 270,000--  
3 100,000, I'm sorry.

4           But, again, and then the military data,  
5 again, with--it's based on percentages, so it's  
6 slightly different in, one, that we've got the  
7 different ages accounted for, so the NCS, we've got  
8 12 and above, the military data is all adult,  
9 Active Duty females, and then with the scope, we  
10 also have the larger scope of unwanted sexual  
11 contact that's included in the military data as  
12 opposed to the sexual violence in NCVS.

13           And also with the military we're looking  
14 more at a prevalence rate, so the details are based  
15 on the event with the most--the greatest effect on  
16 the victim, so it's just one per that person, so  
17 it's a prevalence as opposed to an instant data  
18 point there.

19           And also with regard to kind of trends,  
20 we've got three points for the military, so it's  
21 kind of difficult to discern a particular trend  
22 when you've got three data points as opposed to

1 several years of data with NCVS.

2 A couple slides about victim demographics.

3 Again, this is one slide I'll show you that shows  
4 male versus female victims. As I mentioned, about  
5 9 percent of all rape sexual assaults from the  
6 years 2005 to 2010 in the NCVS, involved male  
7 victims, and because it's a fairly small rate, it's  
8 hard to do any further disaggregation of particular  
9 characteristics, so this just gives you kind of an  
10 overall picture of the male versus female victims  
11 of sexual violence.

12 And so the victim and offender demographic  
13 characteristics, and again, these are female  
14 victims of all ages over age 12, we find that rape  
15 sexual assault is a crime of younger women, under  
16 age 34, involves people from lower income  
17 households living in rural areas versus suburban  
18 areas, not many differences in race ethnicity that  
19 were found in the rates of sexual violence, and  
20 that offenders tended to be older and tended to be  
21 white, based on the NCVS data for 2005, 2010.

22 Some comparisons here, and again, this is

1 kind of an illustration of whether the differences  
2 are due to design features of the surveys or actual  
3 differences of the underlying populations, or some  
4 of both. So, here we've got, in the civilian data,  
5 they tend to be one offender, so 90 percent involve  
6 one offender. With the military data we found  
7 about a quarter--or the military found about a  
8 quarter that were multi offenders. Question  
9 whether there's a difference in the underlying  
10 population, there's something different going on in  
11 the military, or because the person was responding  
12 to the incident with the greatest effect, one could  
13 imagine that an incident involving multiple  
14 offenders might have a greater effect on a victim  
15 than an incident involving one.

16           Victim-offender relationship. With the  
17 civilian data we find that about a third involve an  
18 intimate partner, that can be a spouse or boyfriend  
19 or girlfriend, and 7 percent involve an intimate  
20 partner with military data. Again, it's not clear,  
21 based on just these numbers, whether there's a  
22 difference because of the design. Certainly the

1 NCVS does cue for intimate partner type of  
2 victimization experiences, whether there's a  
3 difference in the population, whether there's a  
4 difference because of the workplace-oriented nature  
5 of the military survey. And again, both types of  
6 sexual assault areas involved some kind of use of  
7 alcohol; it seemed to be common in both of those.

8           With regard to the location activity, here  
9 it's kind of challenging to compare the data  
10 because there are different questions that are  
11 asked, and so with the civilian data, home  
12 location, particularly the victim's home, is a very  
13 common occurrence or place where rape sexual  
14 assault occurs, and activities, not surprisingly  
15 because you're at home, your sleeping, your  
16 activities around that home, it kind of parallels  
17 that location.

18           What might be most comparable to the  
19 military data is that 12 percent who said that they  
20 were sexually assaulted at work of the civilian  
21 data--again, these aren't age adjusted, so we'd  
22 want to age adjust those for 18 and above to make



1     them more comparable to the military, but again  
2     there might be, and probably likely is, differences  
3     between the military and civilian world and  
4     work/home/leisure activity, depending on where the  
5     person is living and working, especially in the  
6     military. So, that's something that would be worth  
7     exploring.

8             And also with regard to the military, the  
9     activity, 41 percent happening during the work day  
10    or duty hours, question, what does that mean when  
11    you're in combat, when you're deployed and that  
12    sort of thing, how long does that work day expand?  
13    It's not clear from the data, but I think it would  
14    be a worthwhile issue to pursue to better  
15    understand the risk and the exposure that those  
16    individuals have.

17            So, this gives us--this next slide gives  
18    us a context for understanding rape sexual assault  
19    reporting to police in connection with other  
20    violent crime, and I think the big takeaway message  
21    here is for other violent crime, serious violent  
22    crime of robbery and aggravated assault, a majority

1 of those are reported and that with rape sexual  
2 assault, it's kind of the polar opposite, it's the  
3 opposite, so a majority are not reported. So, you  
4 have about 65 percent of those not being reported.

5 Then the next slide I have, it gives a  
6 little bit of comparison between the two groups,  
7 the military and the civilian. I'd caution drawing  
8 strong comparisons based on this, one due to the  
9 age adjustment issue with the NCVS, these are all  
10 females 12 and above, and also with the military it  
11 would be important, I think, to disaggregate by  
12 type of unwanted sexual contact. What's the  
13 difference between reporting for unwanted touching  
14 versus attempted sexual intercourse, completed  
15 sexual intercourse, and that sort of thing? I'll  
16 talk a little bit more about some of the  
17 disaggregation that I'd recommend exploring in a  
18 minute, but I think that those would be important  
19 to look at.

20 When we look at reasons reported to  
21 police, with the NCVS they do ask all reasons why  
22 they've reported to the police and then they follow

1 up saying what was the most important. The  
2 military data is just all the reasons, so that's  
3 why the percentages are a little different here.

4 And so, I think you see some similar  
5 patterns with regard to what's the most important  
6 or why people are--why female victims are  
7 reporting, the idea of wanting the offender to stop  
8 hurting them, not wanting to hurt others, a duty to  
9 report it, and that sort of thing. Again, I think  
10 this is a place where it would be important to  
11 disaggregate based on type of unwanted sexual  
12 contact in the military data to better understand,  
13 you know, who's reporting it and why, their  
14 motivations for reporting.

15 And the next slide gives us some  
16 information about not reporting to police or  
17 military authorities. It's a little difficult to  
18 compare these data because the response categories  
19 are different for the two different data sources,  
20 and so both--actually, probably one response that's  
21 common to both data sets is the fear of reprisal,  
22 and so that's the most important reason, and the

1 civilian data why these aren't reported to police,  
2 and in the military survey, it was 47 percent said  
3 that they feared reprisal from the offender. And,  
4 again, those were all response categories; they  
5 could answer more than one for those answers.

6           And then finally, I wanted to just make  
7 some concluding remarks. I know I've gone through  
8 a lot of information quickly here, but I wanted to  
9 just, one, sum up the civilian data that I provided  
10 to you, which is, rape sexual assault is a serious  
11 crime, but when you look at it in comparison with  
12 other serious violent crimes, the rates are lower  
13 than those serious violent crimes, and it's been  
14 declining over time.

15           It tends to be a crime of younger women  
16 and low-income women. It also tends to be a crime  
17 that involves known offenders and incidents that  
18 occur in the victim's and around the victim's home,  
19 and it's a crime where there's not a lot of  
20 reporting. You've got, as I said, about 65 percent  
21 are not reported to police. When victims do report  
22 it's because they want to prevent the current crime

1 from continuing or to prevent future  
2 victimizations, and not reporting is often due to  
3 fear of reprisal, that's one of the big concerns  
4 for not reporting.

5 One of the things that Judge Jones asked  
6 me to do is to kind of give us some comments about  
7 the current military survey that I received--  
8 actually I received it on Monday. I mean, I guess  
9 I have two thoughts on that, one is that I think  
10 there's a lot that can be done with the current  
11 data that are collected, and I say exploit the  
12 data, and that I mean as a researcher you have to  
13 understand, I want to squeeze as much out of data  
14 sources as you can, and I think that there's a lot  
15 that can be done with the current data given the  
16 caveats of the limitations of the problems and that  
17 sort of thing, that can inform the panel and its  
18 charge.

19 And I would divide those into three areas.  
20 One is that I think you can break out a lot of the  
21 data by type of unwanted sexual contact and I think  
22 that would be very helpful to understand the

1 patterns of what's going on, are there certain  
2 areas where maybe the military is doing a better  
3 job with, is it the unwanted sexual touching, is it  
4 the completed sexual assaults, you know, what's  
5 kind of going on, is there a difference or is it  
6 kind of similar all over. And I think  
7 disaggregating it by those types of behaviors would  
8 be really useful with regard to, for example, where  
9 it occurred, on a military installation, what's  
10 going on there? When the respondent says, well,  
11 there were negative reactions to the incident, they  
12 wanted to leave the military or transfer, is it  
13 more--what we objectively say, more serious,  
14 completed sexual intercourse versus unwanted sexual  
15 touching?

16 Those are definitely doable analyses and  
17 could really inform the reporting, as I mentioned  
18 before, where they reported, on a military  
19 installation, if they're reporting to both military  
20 and civilian, that's telling versus reporting to  
21 just the military if you're kind of following up by  
22 saying, well, I'm also telling the civilians

1 because I don't know if the military sources are  
2 going to help me out here, I think that's an  
3 important thing to look at. Whether they're making  
4 a restricted, unrestricted, or a converted report  
5 based on the activity they experienced, the reasons  
6 for reporting, as I mentioned before, why they  
7 didn't report and the reasons for not reporting,  
8 satisfaction with the services, are female victims  
9 or also male victims more likely to be satisfied  
10 with services if they experience a completed sexual  
11 intercourse versus unwanted touching? It would be  
12 useful to know that to better understand where the  
13 military is maybe doing a better job, maybe where  
14 to pinpoint additional questions, or is it kind of  
15 similar across all types of behaviors?

16 The other thing that I think would be  
17 useful to do is look at rates. There are certain  
18 areas where, it seems to me from the data, that you  
19 had certain percentages of activity occurring that  
20 seemed low, so for basic training it was a fairly  
21 small percentage, but the question is, well, who's  
22 at risk for that? How many women are in basic

1 training that would be at risk? So one could say,  
2 well, it might be a small percentage of the victims  
3 who report it, but there aren't a lot of women in  
4 basic training. That's just me as a civilian, I  
5 don't know the numbers, but it would be important  
6 to know the risk of exposure to different areas of  
7 training, of combat, of, you know, deployment, that  
8 sort of thing, so those areas where it occurred, so  
9 to better understand what's going on there.

10           And then another area that I think would  
11 be, as a researcher who's analyzed these kinds of  
12 data, the survey asks women--well, victims, if  
13 you're dissatisfied with what happened--so, if  
14 you're dissatisfied with certain services, why?  
15 And they are supposed to write out why. That's  
16 juicy information. I'm sorry, as a researcher I'm  
17 saying, but that's really interesting to better  
18 understand, if we want to know why, what's going  
19 on, what the problems are, to hear from the  
20 victims, I was dissatisfied and this is the reason  
21 why. Now, sometimes those narrative data aren't  
22 great, sometimes people don't fill them in, but



1 it's certainly worth looking at. It's something  
2 I've done with my work. I'm a visiting fellow with  
3 the Bureau of Justice Statistics and working on the  
4 National Crime Victimization Survey and when it's  
5 like--some of the questions say "other", looking at  
6 that other gives you a really good context for  
7 understanding and it can provide follow up  
8 information that would be quite useful.

9           Again, also asked the question of, would  
10 you do the same thing all over, so if you've  
11 reported it either as restricted or unrestricted  
12 report, and then they say, if you wouldn't do this  
13 again, why not? And that information is there. I  
14 think that would be very interesting to, again,  
15 explore, exploit, to better understand what's  
16 there. Then that allows--so, if you're looking at  
17 improving an instrument or additional questions,  
18 that gives you some data points to start building  
19 on that, that information, it's all--it's there,  
20 presumably. I haven't seen the data, but my view  
21 of the survey would indicate that those are  
22 possibilities to be explored.

1           And then with the survey itself, you know,  
2 we can talk about kind of more global changes if  
3 you wanted to kind of change the--again, going back  
4 to those design features of the scope, how they're  
5 screened, the mode, focusing on whether it's  
6 specific rape sexual assault survey versus a more  
7 omnibus workplace gender relations survey, as well  
8 as particular questions.

9           And I know I've been going on here for a  
10 little while, but I'd be happy to talk to the panel  
11 more about those kinds of details if you're  
12 interested in that kind of work. So, I don't want  
13 to take up too much time from Ms. Rumburg.

14           CHAIR JONES: Thank you, professor. Any  
15 questions or comments?

16           PANEL MEMBER McGUIRE: I've got a  
17 question.

18           CHAIR JONES: Yes.

19           PANEL MEMBER McGUIRE: Pertaining to the  
20 police data, the--I'm assuming municipal police,  
21 state police, county police and then campus police?  
22 And, you know, I was thinking of the demographics

1 that we're working with here, that 18-34 year old  
2 demographic and given a lot of that demographic  
3 resides on college campuses. The reporting and  
4 jurisdictional threshold of some campuses police,  
5 when it's reported to campus police, they sometimes  
6 retain it there and they're not reporting it  
7 possibly through the municipal. So, that's why I  
8 was just wondering, when you got the police  
9 reports, where did that come from? Is that--

10 DR. ADDINGTON: Sure. And that's a good  
11 question. With a lot of these data sources, you do  
12 have kind of overlapping jurisdictions is what we  
13 might call those, and so for the FBI, the Uniformed  
14 Crime Reporting Program Data, and those weren't any  
15 of the data that I presented, but if you're  
16 interested I could certainly help you out getting  
17 those data, but they do have--they're from local  
18 police, they are from campus, there are campus  
19 police that are included in those data, they're  
20 state police, they're county police, so they're all  
21 different police organizations that are included in  
22 those data.

1           So, depending on where the victim or  
2           whoever is making the--reporting to the police,  
3           making that incident known to police, it could be  
4           through the campus police. And also it depends on  
5           their relationship with municipal police. There  
6           might be certain things that it's reported to  
7           campus police but then the municipal police take  
8           over in the investigation--

9           PANEL MEMBER MCGUIRE: Right.

10          DR. ADDINGTON: --or something like that.  
11          But those data are definitely included in the UCR  
12          data.

13          PANEL MEMBER MCGUIRE: Okay. Thank you.

14          CHAIR JONES: Liz.

15          PANEL MEMBER HOLTZMAN: Thank you very  
16          much for your presentation. Just a couple of  
17          questions.

18                 First of all, if someone were to massage  
19                 the data, as you've asked or suggested be done,  
20                 what kind of task would that be? How long would it  
21                 take for the narratives that you mentioned exist,  
22                 to be analyzed and reported on? Are we talking

1 about a 10-year job?

2 DR. ADDINGTON: Oh, no, no, no.

3 PANEL MEMBER HOLTZMAN: Are we talking  
4 about a couple months? Are we talking about just  
5 push a computer button and get it in a second?  
6 What are we talking about?

7 DR. ADDINGTON: Between a second and 10  
8 years, no. But actually it--well, it depends on a  
9 few things, right, it depends on, in some ways, the  
10 number of people that you have. It's certainly not  
11 going to take ten years. It depends on the number  
12 of--and, again, I don't have--I have the frequency  
13 for the number of dissatisfied that might be in  
14 there, but I don't know the actual numbers on that.

15 Depending on the number of narratives and  
16 then how long they are and how complex, I could see  
17 it taking, you know, maybe a few months with a team  
18 of researchers that are doing coding of those. It  
19 certainly would not be something that would take  
20 ten years or five years or that sort of thing.

21 Unfortunately, because it's what we call  
22 qualitative data, it's not necessarily pushing a

1 button so much as some of the other comparisons I  
2 was mentioning where you're looking at what we call  
3 contingency tables or putting a couple variables  
4 together. That's not quite as easy as pushing a  
5 button, but more relatively, you know, you have a  
6 statistical program that you can utilize there.

7 PANEL MEMBER HOLTZMAN: But this would be  
8 very helpful, do you think?

9 DR. ADDINGTON: Yes.

10 PANEL MEMBER HOLTZMAN: To the military in  
11 terms of understanding how to improve dealing with  
12 victims? Am I correct?

13 DR. ADDINGTON: I completely agree with  
14 that. And, again, the one caveat with narrative  
15 data is it depends on how--you know, what you got--  
16 what the person puts on--decides to write up,  
17 whether they do or not. We all know, I'm sure from  
18 our own experiences, of taking surveys or filling  
19 out forms, we can be more or less detailed,  
20 depending on our interest, our time, and that sort  
21 of thing.

22 But it certainly would be worth exploring

1 to see what information is there, to see--it might  
2 be a complete bust, but I've been impressed with  
3 my--as, again, as I said, with my work with the  
4 NCVS data and looking at some of those other  
5 categories where they're putting in some additional  
6 information, to get patterns, to understand a  
7 little bit better what's going on in the victim's  
8 mind or the paradigms of the responses that we  
9 thought somebody might give to, you know,  
10 particular question and realizing, no, there's a  
11 whole other area out there that we hadn't really  
12 thought about, about why, you know, 'somebody is  
13 dissatisfied or other responses to a question.

14 PANEL MEMBER HOLTZMAN: The breakdown of  
15 the information that you also recommended by the  
16 nature of the sexual misconduct, let's describe it  
17 in that way, could that be done with the existing  
18 data collection?

19 DR. ADDINGTON: Yes. Yes, because--

20 PANEL MEMBER HOLTZMAN: How long would  
21 that take to do?

22 DR. ADDINGTON: That wouldn't take--and,

1 of course, I'm speaking on behalf of the SAPRO  
2 office, sure they can do it in two seconds--

3 PANEL MEMBER HOLTZMAN: Okay.

4 DR. ADDINGTON: But I would think that  
5 that would not take long to do because my  
6 understanding of the data--and, again, I haven't  
7 seen actual--the caveat, I haven't seen the actual  
8 data. I've seen the survey instrument, I've worked  
9 with other surveys and done analyses of other  
10 survey instruments, so this is kind of my  
11 extrapolating on that, but basically the survey  
12 asks a person, did this happen to you, yes or no,  
13 how many times, and then they say, based on the  
14 incident that had the greatest effect on you, what  
15 was the behavior that was involved in that.

16 So, you could get the behavior and then  
17 from that question and then do the analyses with  
18 the other, kind of do a contingency table analyses.

19 PANEL MEMBER HOLTZMAN: I don't want to  
20 take up too much more time, but I just wanted to  
21 ask you, can you make some recommendations about  
22 how you would change this form and why?



1 DR. ADDINGTON: Yeah, I can make--do you  
2 want me to make those right now or do you--

3 PANEL MEMBER HOLTZMAN: If you have some  
4 thoughts now, that would be great.

5 DR. ADDINGTON: Sure. Again, I kind of  
6 would break those down into whether--

7 PANEL MEMBER HOLTZMAN: If that's okay  
8 with the chair?

9 CHAIR JONES: Sure.

10 DR. ADDINGTON: That I think we've got two  
11 areas there, so one is kind of the global large  
12 changes, like if you wanted to change this--again,  
13 the context taking out of that workplace survey and  
14 making it a true kind of rape sexual  
15 assault/unwanted sexual contact survey and focusing  
16 on it, there's been quite a lot of research and  
17 design efforts looking at this area.

18 In fact, National Academy of Sciences had  
19 a panel looking at some of the best practices to  
20 study sexual victimization issues. There's--I  
21 would recommend maybe screening and classifying in  
22 two different steps, so the screening of the

1 particular behaviors. Right now, basically, the  
2 incidents defined for the victim--these are the  
3 behaviors where you could not consent, a lot of  
4 kind of sophisticated--not to say that, you know,  
5 people getting the survey are not bright people,  
6 but, you know, laypeople about consent and those  
7 kinds of things, and so asking, you know, did this  
8 happen to you, yes or no--one of the issues I find  
9 with the consent is that later on in the survey,  
10 people are asked, well, were you drugged, were you  
11 threatened with ruining your reputation, things  
12 that somebody might not have thought about as being  
13 against their consent or kind of a way of forcing  
14 sexual activity, but then you have to make it  
15 through the initial identification that you were--  
16 did experience unwanted sexual activity to get  
17 those questions.

18           So, another survey instrument might kind  
19 of break that out more and put that up front so  
20 that the person knows that we are talking about  
21 somebody threatening to ruin your reputation as  
22 being a lack of consent, we are talking about

1 somebody drugging you. So, bringing those up, up  
2 front so that everyone has a clearer definition, is  
3 thinking about the same thing, and then classifying  
4 those later on, so getting at the behaviors first  
5 and then classifying them as unwanted sexual  
6 activity or touching or sexual intercourse or that  
7 sort of thing so that there's a more uniform  
8 understanding.

9           Also, I would say, maybe changing that--  
10 the incident that has the greatest effect on you,  
11 I'm just not certain what that means. I think it  
12 has different meaning to different people, which  
13 there's some benefits to that if you're thinking  
14 this is the most serious one to these particular  
15 victims, but it's not clear. And it's also not  
16 clear to me how many--how frequently, at least in  
17 the data I got, the frequencies weren't reported  
18 out, so if everyone's reporting one, well then the  
19 greatest effect doesn't really matter too much, but  
20 if people are reporting five or six or seven, what  
21 does that mean.

22           And then there are specific things with

1 questions and that's sort of thing. I mean, that's  
2 starting to get into the weeds a little bit there,  
3 but I'd be happy to make further recommendations.  
4 It might be something that's better done in a memo  
5 or something like that to the panel, but I'd be  
6 happy to work with you further with that if that's  
7 of interest.

8 PANEL MEMBER HOLTZMAN: That would be  
9 great, personally.

10 CHAIR JONES: One last question.  
11 Professor.

12 PANEL MEMBER HILLMAN: Thank you. If I  
13 could just follow up on the surveying issue. One  
14 of our struggles here is that this is an iceberg  
15 that we don't know the shape of, and if we don't  
16 have a baseline, we have trouble comparing data  
17 across time as well as across different  
18 institutions and systems of investigation and  
19 prosecution.

20 How often has the NCVS changed this  
21 surveying, questions, methods?

22 DR. ADDINGTON: And that's a great

1 question because that's always the kicker, right,  
2 so you learn a little bit and you want to change it  
3 because you realize, oh, I should have asked this  
4 question, or something. But with the NCVS,  
5 basically it's had one major redesign that occurred  
6 and that was implemented in 1992 and right now,  
7 actually, I'm part of the current redesign, they're  
8 looking at redesigning it again, so I've been  
9 working--I'm a visiting fellow with BJS right now  
10 and working with them on the crime survey.

11 But actually one of the interesting things  
12 in 1992 that was added was specific questions, and  
13 I said that does screening and then an incident  
14 report, that basically kind of that's the behaviors  
15 that are reported in the screener. Well, one of  
16 the things that changed in 1992 was a screener  
17 specifically asking about, you know, unwanted  
18 sexual activity because before that it was seen  
19 that the federal government shouldn't be asking  
20 about rape sexual assault.

21 So, it was kind of a new--a change, so  
22 when the survey was implemented in the 1970s, those

1 were questions that--rapes and sexual assaults were  
2 reported to the survey, but were reported because  
3 victims were responding to general questions about  
4 assaultive behavior and so in the 1992 redesign,  
5 those questions were specifically asked.

6 And so that's often why you see, if you  
7 look at BJS, data with the NCVS you often see it  
8 starts in 1992 or 1993 with that redesign period,  
9 and implemented a lot of other changes as well, but  
10 basically the questions have remained pretty stable  
11 since 1992.

12 PANEL MEMBER HILLMAN: Thank you.

13 CHAIR JONES: Professor Addington, thank  
14 you very much.

15 DR. ADDINGTON: You're welcome.

16 CHAIR JONES: We're going to take you up  
17 on your offer to help us and I know one of the  
18 questions will also be about--and I don't want an  
19 answer now--whether a computer and online survey is  
20 the best approach. I understand that this survey  
21 had a very low percentage of return rate, if that's  
22 the right way to put it, and that some of the

1 surveys weren't even complete.

2 But, in any event, we will be talking to  
3 you. Thanks very much.

4 DR. ADDINGTON: As I mentioned to you, I'm  
5 more than happy. I think that this is an  
6 incredibly important issue and I'm more than happy  
7 to continue working with the panel and assisting in  
8 whatever way I can. So, thank you.

9 CHAIR JONES: Thanks. Ms. Rumburg.

10 MS. RUMBURG: Yes, good morning.  
11 Chairwoman Jones, thanks for asking me, and it's a  
12 pleasure to be here today with the panel.

13 My name, again, is Delilah Rumburg and I  
14 have been with PCAR for 18 years, and prior to  
15 that, starting in 1981, I was the director of a  
16 battered women's shelter as well, so I have that  
17 experience behind me.

18 PCAR is the oldest coalition in the  
19 country. We were organized in 1975 and our primary  
20 mission is to work for the elimination of sexual  
21 violence and for the rights and needs of victims of  
22 sexual assault.

1           We provide funding and we manage contracts  
2 with 50 rape crisis centers that serve all of the  
3 victims of all ages in Pennsylvania's 67 counties.  
4 We provide resources and training on sexual assault  
5 related issues to professionals across the country  
6 and promote public policy to provide legal  
7 protections for victims to enhance public safety.

8           We also operate the National Sexual  
9 Violence Resource Center and AEquitas, which is a  
10 prosecutor's resource on violence against women.

11           As mentioned, I did serve on two previous  
12 task forces and then in 2009, on the second Task  
13 Force, I visited installations in Iraq, Kuwait,  
14 South Korea, Italy, and bases in Alaska, Texas,  
15 North Carolina, and other continental U.S.  
16 installations to assess the response to sexual  
17 assault.

18           The Task Force did present a report to  
19 Congress and made recommendations on how the  
20 military can improve services to victims of sexual  
21 assault in the Armed Services.

22           I was asked to talk to you in regards to



1 my experience about the issue of sexual violence  
2 and from my 30 years of experience, including that  
3 time on the Task Force, and based on my experience  
4 there are five important things that victims need.  
5 It's pretty simple and I think it could serve to  
6 inform us for everything that we do.

7           Number one, they want to be believed.  
8 Secondly, they want to know that they have the  
9 right to privacy and it will be upheld. Thirdly,  
10 to have access to safe and confidential services.  
11 Then they want to be treated with care and respect.  
12 And also, the last thing is to know that the  
13 offender will be held accountable. If we just let  
14 those five things direct what we do, it will make  
15 everything easier.

16           Sexual violence can seem overwhelming, but  
17 we can take action to prevent it. Sexism,  
18 attitudes and beliefs about gender and sex roles  
19 allow some to be valued over others. To end sexual  
20 violence, we have to end oppression and sexism.

21           Sexual violence is learned and supported  
22 in a larger culture that accepts violence as a

1 norm, male dominance and power over others, and  
2 objectification of women and children. These  
3 cultural norms feed sexual violence in all forms,  
4 from sexual harassment to unwanted touch, to rape  
5 and to death.

6 Most people who perpetrate sexual violence  
7 are people the survivor knows. Eighty percent in  
8 the studies that I've seen of survivors know their  
9 perpetrator and that number goes up to 90 percent  
10 on college campuses.

11 I think it is important to know that this  
12 isn't just a women's issue, and we have talked  
13 about it so much recently in that vein, but the  
14 majority of service members who are sexually  
15 assaulted each year are men.

16 It's my understanding the Pentagon  
17 recently estimated that 26,000 service members  
18 experienced unwanted sexual contact in 2012, up  
19 from 19,000 in 2010. Of those cases, the Pentagon  
20 said that 53 percent involved attacks on men,  
21 mostly by other men.

22 We also have to remember sexual assault is

1 never the survivor's fault. Sexual assault is  
2 never the survivor's fault, ever. The self-blame  
3 survivors feel about what happened to them is a  
4 direct result of internalizing society's mis-  
5 beliefs about how survivors should have done more  
6 to prevent their own victimization. We have to  
7 remember, the fault lies solely with the  
8 perpetrator.

9 An individual perpetrates sexual violence  
10 any time he or she commits or attempts to commit  
11 sexual acts against another person without that  
12 person's consent. This includes an unwillingness  
13 or inability to consent. Perpetrators of sexual  
14 violence target individuals with vulnerabilities.  
15 Less power, less of a voice, isolated, and they're  
16 unlikely to tell, or when they do, they're unlikely  
17 to be believed.

18 Sexual violence can occur once or  
19 repeatedly over time. The methods perpetrators use  
20 to commit sexual violence can be verbal; they can  
21 be physical, emotional, or psychological.

22 In 2013, CDC released the report that you

1 mentioned concerning the 2010 Prevalence of  
2 Intimate Partner Violence, or NISVS as we call it,  
3 that did the comparison. According to the Military  
4 National Intimate Partner Sexual Violence Survey,  
5 the prevalence of sexual violence was similar among  
6 women in the U.S. population, Active Duty women and  
7 wives of Active Duty men. The report also stated  
8 that with respect of deployment history, Active  
9 Duty women who were deployed, the three years prior  
10 to the survey were significantly more likely to  
11 have experienced contact sexual violence during  
12 that time period compared to Active Duty women who  
13 were not deployed.

14           According to NISVS, sexual violence is a  
15 major public health problem. Many survivors  
16 experience physical injury, mental health  
17 consequences such as depression, anxiety, low self-  
18 esteem, suicide attempts, and other health  
19 consequences.

20           Prevention efforts have to start early by  
21 promoting healthy, respectful relationships and  
22 families, by fostering healthy parent-child

1 relationships and developing positive family  
2 dynamics and emotionally supportive environments.

3 Further research would improve our  
4 understanding of the factors that increase the risk  
5 for sexual violence against women and men,  
6 including factors that may be shared between the  
7 military and the general population. Additional  
8 research would be important to improve our  
9 understanding how military specific factors, such  
10 as deployment, might increase the risk.

11 Funding this research should be a priority  
12 for Congress.

13 Survivors of sexual violence need  
14 coordinated services to ensure they're healing and  
15 prevent further victimization. The healthcare  
16 system's response must be strengthened and better  
17 coordinated to help navigate the system and access  
18 to counseling and needed services and resources in  
19 the short and the long-term.

20 Military nurses can receive sexual assault  
21 training, but they are not certified Sexual Assault  
22 Nurse Examiners. The SANE certification has been

1 shown to promote psychological recovery of rape  
2 survivors, provide comprehensive medical care, and  
3 obtain forensic evidence accurately, and facilitate  
4 the prosecution of rape cases. I think our nurses  
5 should be SANE certified.

6           Survivors may be reluctant to disclose  
7 their victimization for a variety of reasons, of  
8 course, including shame and embarrassment, fear of  
9 retribution, or a belief that they may not receive  
10 the support from law enforcement. Laws may also  
11 not be enforced adequately or consistently.

12           It is important to enhance the training  
13 efforts within the criminal justice system and  
14 military justice system to better engage and  
15 support survivors and to hold the perpetrators  
16 accountable.

17           An article by Sadler published in 2003,  
18 American Journal of Industrial Medicine, focused on  
19 factors associated with women's risk of rape in the  
20 military environment. The article stated that  
21 three-fourths of the women who were raped did not  
22 report the incident to a ranking officer. Of

1 these, one-third noted they were uncertain how to,  
2 one-fifth believed that rape was to be expected in  
3 the military.

4 One-fourth of the victims indicated the  
5 rapist was a ranking officer, one-third said the  
6 rapist was a friend of the ranking officer. These  
7 women believed nothing would be done, that  
8 reporting would make the work situation worse, or  
9 their military careers would be adversely affected.

10 As I think I mentioned to you, Judge  
11 Jones, we heard that consistently, that if they  
12 reported, it was a disaster for their future  
13 career.

14 Ranking officer/immediate supervisor  
15 behaviors were strongly associated with the  
16 frequency of rape. Officers allowing or initiating  
17 sexually demeaning comments or gestures toward  
18 female soldiers was associated with a three- to  
19 fourfold increase in the likelihood of rape.

20 The results demonstrated that women had  
21 significantly elevated odds of rape when they were  
22 living or working in environments that were

1 sexualized. Work environments that allow  
2 inappropriate sexual conduct can significantly  
3 increase the woman's risk of rape, suggesting a  
4 continuum of violence with rape being the most  
5 severe form of the coercion.

6 A report in 2009 by Natelson Report found  
7 that sexual harassment while serving is experienced  
8 by 70 to 90 percent of female veterans.

9 In Sadler's findings, again, they  
10 demonstrated the role of leadership or supervisory  
11 behavior in contributing to an environment that  
12 tolerates or even encourages behavior that directly  
13 or eventually result in sexual violence toward  
14 military women. Conversely, officer or supervisory  
15 conduct can promote healthy work environments for  
16 women. And interventions with training and  
17 supervision of those officers are clearly indicated  
18 in those findings.

19 The 2003 Sadler findings mirrored the 2009  
20 Defense Task Force on Sexual Assault in the  
21 Military. In the Task Force, we divided our  
22 assessment into four critical topics; strategic



1 direction, prevention, training, response to  
2 victims, and accountability.

3           The Task Force repeatedly observed that  
4 sexual assault prevention and response program  
5 funding was sporadic and inconsistent. Commanders  
6 and their staffs frequently told us that the Sexual  
7 Assault Prevention and Response was an unfunded  
8 program mandate and they had to resource it locally  
9 and we found that to be a big problem.

10           Predictable and distinct funding is  
11 essential to building a credible and stable  
12 foundation for the Sexual Assault Prevention and  
13 Response Program, which I refer to as SAPR, another  
14 acronym.

15           The Task Force recommended the Department  
16 of Defense revise the structure of the SAPRO  
17 office--of SAPRO to reflect the expertise necessary  
18 to oversee its primary missions of prevention,  
19 response, training, and accountability.

20           SAPRO must establish standards to assess,  
21 manage, and evaluate the program and ensure that  
22 the services comply with these standards. SAPRO

1 must be actively engaged in prevention policy  
2 development or legislation.

3 We support the Senate Authorization  
4 language that calls for SAPRO to more clearly  
5 define the different kinds of unwanted sexual  
6 assault contact in its report, and that's what Dr.  
7 Anderson said that was really critical that we do  
8 as well.

9 The Task Force concluded that permitting  
10 the services to adopt their own policies for sexual  
11 assault prevention and response has adversely  
12 affected the quality and the consistency.  
13 Accordingly, it was recommended that the Secretary  
14 of Defense establish uniform sexual assault  
15 prevention and response terminology, and core  
16 structures at the execution level to ensure  
17 consistency among the services.

18 The Task Force recommended that SAPRO  
19 develop a comprehensive prevention strategy that  
20 encompasses strategic direction, prevention,  
21 response, and accountability. This strategy must  
22 guide SAPRO initiatives, processes, training, and

1 communication plans. Any service-specific policies  
2 must also align with any of DoD's strategy. We  
3 recommend that SAPRO work with the Military  
4 Services and the national experts in sexual  
5 violence prevention.

6           The Task Force found that SAPRO had no  
7 means for assessing the overall effectiveness of  
8 sexual assault prevention and response in training  
9 efforts. We recommend that they develop a plan to  
10 evaluate the efficacy and the effectiveness of its  
11 prevention strategy based on intended outcomes at  
12 the Department of Defense and Military Service  
13 levels.

14           We recommend that SAPRO collaborate with  
15 civilian experts in designing a systematic  
16 evaluation plan. We recommended that SAPRO develop  
17 training policies and exercise oversight over those  
18 Military Service training programs.

19           Sexual Assault Prevention and Response  
20 training must strengthen individual knowledge,  
21 skills, and capacity, to prevent and respond to  
22 sexual assault, and I think you'll find each

1 service has their own plan and their own language  
2 for the Sexual Assault Prevention and Response  
3 Office, and I think consistencies will be one of  
4 the ways that we can do a better job of that.

5 I also noted that the House version of the  
6 National Defense Authorization Act requires the  
7 Secretary of Defense to develop a uniform  
8 curriculum for training members of the Armed Forces  
9 and civilian employees on sexual assault by June  
10 2014, and I hope that's going to happen.

11 The Department of Defense has made  
12 demonstrable progress in providing assistance to  
13 victims of sexual assault. Restricted reporting  
14 was one of the main things that we accomplished  
15 early on that was key, and it permits the victim to  
16 obtain immediate care and counseling without  
17 engaging law enforcement and command authority.  
18 It's an important first step in respecting the  
19 needs of victims of sexual assault.

20 However, we still have a lot to  
21 accomplish. The military has been at the vanguard  
22 of translating new research into practical tools

1 for investigating rape and many detectives and  
2 agents are now taking a regular two-week  
3 interviewing and investigation course. I really  
4 applaud those efforts and I hope Dr. Lisak will  
5 tell you more about that when he is here because  
6 that's groundbreaking information.

7           If I was a victim with a past, I would  
8 want my case to be prosecuted in Pennsylvania and  
9 not by the military. Military appellate courts  
10 have read the term "constitutionally required  
11 evidence" much more broadly than many civilian  
12 courts, including the U.S. Supreme Court.  
13 Basically, the balancing of the victim's privacy  
14 versus the accused's right to cross-examine is gone  
15 as long as the court finds something relevant. I  
16 strongly support Rape Shield policies that protect  
17 survivors' privacy and dignity.

18           I believe also that the alleged  
19 perpetrator's character, as it relates to military  
20 actions, should not play a role in deciding whether  
21 to prosecute.

22           Communications between sexual assault

1 survivors and Victim Advocates are not currently  
2 afforded absolute privilege under military law. In  
3 contrast, 35 states in our nation provide a  
4 privilege for communications between a victim and  
5 an advocate. The absence of a privilege limits the  
6 effectiveness of Victim Advocates in the military  
7 community.

8 Military survivors of sexual assault  
9 deserve comparable services, and I noted that the  
10 certification of the Victim Advocates is now being  
11 required as recommended by the Task Force.

12 One thing that the civilian world is doing  
13 now, we're actually evaluating the outcomes of our  
14 counseling services, including client satisfaction  
15 surveys and the analysis of direct service  
16 outcomes. I recommend this be implemented by the  
17 Department of Defense. I recommend we ask  
18 survivors to evaluate the military justice process.  
19 The NDAA is requiring a review of current  
20 investigation protocols and policy recording  
21 results of investigations, but victim impact and  
22 feedback is critical, as Lynn said in her report as

1 well.

2 I recommend that members of the Armed  
3 forces who recommend that they were sexually  
4 assaulted have access to qualified, permanent  
5 civilians because the victim's rights law is a  
6 highly sophisticated area of law, and this would  
7 enhance the quality of service.

8 The Task Force recommended the Secretary  
9 of Defense establish a Sexual Assault Advisory  
10 Board, modeled after other Defense advisory boards.  
11 This board should include outside experts on  
12 criminal law and sexual assault prevention,  
13 response and training, as well as representatives  
14 from other federal agencies.

15 It is my understanding, what I could find,  
16 that there has been a Sexual Assault Prevention and  
17 Response Working Integrated Product Team developed,  
18 and I don't think that's exactly what the Task  
19 Force had in mind, and I must say, a product team  
20 is not warm and fuzzy if you're a victim, knowing  
21 that that's who's analyzing the work.

22 Empowering SAPRO and improving the

1 visibility of its mission are essential as is the  
2 need to develop a credible data and reporting  
3 system, and to establish consistency in the SAPRO  
4 programs and structures around the services.

5 Creating the Department of Defense billets  
6 for Sexual Assault Response Coordinators and  
7 professionalization of Victim Advocates are  
8 critical for success.

9 I urge the Department of Defense and the  
10 Services to reinvigorate the support programs and  
11 to develop strategic prevention strategies  
12 supported by a clear plan for continuous  
13 evaluation.

14 Sexual assault does occur in all cultures,  
15 but the conditions under which it occurs and the  
16 responses to it differ depending on the values and  
17 the norms of that culture. Military culture has  
18 its own values, rules, customs, and norms.

19 Beyond the physical wounds of sexual  
20 assault, victim's psychological reactions can be  
21 prolonged and deleterious. Common reactions  
22 include PTSD, fear and anxiety, difficulty



1 sleeping, lack of concentration, depression, poor  
2 self-esteem, withdrawal and insecurity, and social  
3 adjustment issues. Military victims of sexual  
4 assault may be unable to perform their assigned  
5 duties due to medical treatment or counseling, or  
6 if they're relocated from the unit to ensure their  
7 safety.

8           Victims who continue to serve in the same  
9 unit with their assailant are likely to have  
10 diminished abilities to perform their duty due to  
11 concerns over personal safety and potential re-  
12 victimization.

13           Whether the victim is a Service Member or  
14 a civilian, sexual assault violates military  
15 cultural values of self-discipline, trust,  
16 selflessness, and honorable conduct. The DoD,  
17 SAPRO, and the Military Services must fully  
18 integrate prevention strategies and training, the  
19 right to receive care and treatment, and the  
20 appropriate legal processes into the military  
21 culture.

22           Sexual violence creates short- and long-

1 term needs for survivors and we have to recognize,  
2 every survivor responds differently to the attack,  
3 and thus, a range of service options is critical.  
4 In addition, services should be available on an  
5 ongoing basis to each survivor so each survivor  
6 will be ready for a particular service at a  
7 different time.

8           They should not be forced to engage in any  
9 service or process they do not feel is right for  
10 them. For example, survivors should have access to  
11 mental health services, even if they are not  
12 interested in pursuing a court-martial or other  
13 legal responses.

14           Finally, all members of the Armed Forces,  
15 their families, and associated personnel, should  
16 have access to these services regardless of Active  
17 Duty status.

18           The military should require commanding  
19 officers to inform the investigative division  
20 immediately after receiving a report of sexual  
21 assault. The commanding officer should also enter  
22 the report into an electronic database within 48

1 hours. Data on the outcome of these reports should  
2 be collected and analyzed on a regular basis in  
3 order to ensure continued functioning of the  
4 system, which should be uniform across the  
5 Department and Services.

6           However, I want to put a caution in here  
7 that victims need not be re-interviewed for the  
8 additional information. They could be completed  
9 with information from the investigation. Re-  
10 interviewing, many times, traumatizes the victim.

11           The discussion on whether and how to  
12 proceed with a court-martial should be taken out of  
13 the chain of command for both the survivor and the  
14 accused. Special prosecutors should be appointed  
15 to handle sexual assault cases within the military  
16 justice system.

17           These prosecutors and investigators should  
18 be trained and certified according to standards  
19 established by a committee of national experts.  
20 The training should address victim interviewing,  
21 neurobiology of trauma, making sure the victims  
22 have the support to enable them to heal, and also

1 to participate in the military justice system.

2 You should have received a copy of the  
3 National Alliance to End Sexual Violence Policy  
4 Statement on Military Sexual Assault that I sent  
5 earlier and I really encourage you to review that.

6 I know how crucial the issue of  
7 confidentiality is to those whom our civilian  
8 network provides services, and there are only two  
9 promises that we as civilian service providers make  
10 to survivors: their information will be kept  
11 confidential and they will be believed. These  
12 promises forge a bond that allows a survivor to  
13 know that as advocates, we hold sacrosanct the  
14 telling of the most heinous crimes.

15 Advocates stand by the survivor as they  
16 navigate through the labyrinth of the criminal  
17 justice system. We owe our service members the  
18 same rights and commitment of privacy and advocacy  
19 that exists in our local communities. Most  
20 important, we need an enforceable victim's rights  
21 statute.

22 Preventing sexual violence and responding

1 to survivors will enhance our military readiness.  
2 Mutual trust and respect are key to service  
3 members' performance and well-being. Sexual  
4 violence is a pervasive problem that transcends  
5 boundaries across the military and general  
6 populations.

7 Preventing all forms of sexual violence  
8 before they begin, stopping further harm to victims  
9 by providing support, services, legal assistance  
10 and protection orders, and holding perpetrators  
11 accountable, are the most important components  
12 necessary to address these important public health  
13 problems.

14 Thank you.

15 CHAIR JONES: Thank you very much, Ms.  
16 Rumburg. Lots to think about there.

17 MS. RUMBURG: Yeah.

18 CHAIR JONES: Questions? Comments?  
19 Professor Hillman?

20 PANEL MEMBER HILLMAN: Thank you, Madam  
21 Chair. Thank you for your comments. I have two  
22 particular questions. You mentioned the good

1 military character that is admitted into the  
2 findings phase of a court-martial. Can you talk  
3 about the impact that that has on a victim's  
4 perception of the trial and also on the outcome of  
5 the trial?

6 MS. RUMBURG: Well, again, the victim  
7 wants to be believed and they don't want their  
8 character brought before the court, and as we all  
9 know, there was a case recently where an officer's  
10 good conduct actually overturned a conviction. So,  
11 that's what it's about. It's about believing the  
12 victim that the perpetrator actually did commit a  
13 crime and that they will be believed and have, you  
14 know, let justice prevail.

15 So, I think that's where that's coming  
16 from is that we shouldn't have the ability to  
17 overturn a case just because that perpetrator is a  
18 good citizen.

19 Most of the perpetrators of sexual assault  
20 appear to everybody as fine, outstanding men or  
21 women. They don't walk around with a sign on their  
22 head.

1                   PANEL MEMBER HILLMAN: Thank you. One  
2 other question, if I might, related to the services  
3 you just mentioned, that victims ought to be able  
4 to access regardless of whether a court-martial or  
5 an investigation ensues.

6                   The restricted reporting option in the  
7 military has come under some fire. What's your  
8 opinion of having that restricted reporting option  
9 for Active Duty service members?

10                  MS. RUMBURG: I think it's critical, and  
11 we did--when we were interviewing, we heard how  
12 like on ships and, you know, in some deployment  
13 areas, that was a real concern and we understood  
14 for the commanding officers, they felt like they  
15 had to know what was happening on their ship or in  
16 that deployment, but still, I think victims  
17 shouldn't have to tell. I think it's really  
18 important. And I think they should have access.

19                  Now, if they were somewhere where there  
20 were like 20 or 30 people, you know, out in the  
21 field and they had to be, you know, flown out by  
22 helicopter, you couldn't keep that quiet, but I

1 think any way that we can preserve that restricted  
2 reporting option is just really critical because if  
3 you don't have that and you try to force a victim,  
4 you're not going to have a good case anyway, so I  
5 think that it's just really clear that that's still  
6 an important option for survivors.

7 PANEL MEMBER BRYANT: Madam Chairman, may  
8 I have a question?

9 CHAIR JONES: Yes, Mr. Bryant.

10 PANEL MEMBER BRYANT: Thank you for your  
11 comments. It's true, though, isn't it, in order to  
12 hold the perpetrator accountable in a criminal  
13 sense, it depends on the evidence that is  
14 admissible to be presented against the person  
15 charged, and a lot of that depends on the actions  
16 of the victim at the time of the act, especially in  
17 rape and violent sexual assaults.

18 And so, I'm just wondering if you have  
19 some recommendations for the military, or maybe  
20 we'll hear from General Patton that this is the  
21 case, that female members are told that if this  
22 happens to them, they need to report immediately,



1 for instance, not wash, save their clothes, save  
2 their bedding, all those sorts of things.

3 Do you have some insight on that?

4 MS. RUMBURG: Again, I think I understand  
5 your question, and you can stop me if I don't. I  
6 think it's critical that--and what happens if that  
7 restricted reporting--if they do a restricted  
8 reporting, they should still have access to good  
9 medical care and counseling right then and there,  
10 and that's why it's critical, and sometimes when  
11 they're ready with good support, they can come out--  
12 -we know we saw a lot then became unrestricted so  
13 that first critical moment of when it happens and  
14 somebody reports and asks for restricted, it's  
15 really critical that they're believed and they get  
16 good care.

17 The one thing we heard consistently for  
18 people that testified before the Task Force is they  
19 were treated with lack of respect. If the system  
20 had believed them and treated them respectfully, we  
21 wouldn't have had a lot of angry soldiers, I mean,  
22 not that anybody ever wanted to be raped, but once

1 it happened, if they were treated with the greatest  
2 care and respect they would have, you know, they  
3 would have been in a much better place going  
4 forward in their healing particularly.

5 PANEL MEMBER BRYANT: I agree 100 percent  
6 they should be treated with care and respect, but  
7 in terms of being believed, I understand and can  
8 accept that a Victim's Advocate will make the  
9 commitment, "I will believe you", but investigators  
10 and prosecutors are necessarily and ethically  
11 inclined and directed to keep an objective view of  
12 their victims in any case.

13 MS. RUMBURG: Absolutely.

14 PANEL MEMBER BRYANT: We don't necessarily  
15 believe or accept as completely true the statements  
16 of robbery victims or malicious wounding victims or  
17 even victims of theft. And so, I'm sure you would  
18 agree that the prosecutor needs to take an  
19 objective view, as do the investigators, in  
20 assessing any case, because frankly, at least in  
21 Virginia, and I think in most states, it's  
22 unethical for us to bring a case to court that we

1 don't believe in and that we don't feel like we  
2 have sufficient admissible evidence.

3 MS. RUMBURG: I will send you an article  
4 that's "Why Don't Cops Believe", in fact, my  
5 assistant gave it to me this week, and it's  
6 excellent, and it's the study talking about--I'm  
7 hoping Dr. Lisak is still coming, that's when I was  
8 talking about that two weeks of intensive training  
9 they're giving prosecutors and investigators now.  
10 They said, as police officers, they couldn't figure  
11 out why some women would just giggle or just have  
12 no affect at all when they had just been raped,  
13 and, you know, that they couldn't understand why  
14 they didn't present like other crime victims.

15 Well, what this study does now, and this  
16 training does, is teaches those investigators and  
17 the prosecutors how to ask the questions. And once  
18 they started asking it a certain way, then they got  
19 to the truth. If they started asking them, talk to  
20 me about the sounds, what do you remember there,  
21 because the trauma of a sexual assault does a lot.  
22 You may not remember the facts right away, or you

1 contradict yourself as they come back, so that's  
2 why I say that training for prosecutors and  
3 investigators is so critical.

4 Because a rape crime is very different and  
5 everybody that's experienced something that  
6 traumatic, the trauma is very different than, you  
7 know, the trauma of somebody stealing your purse or  
8 something. So, that's why that understanding of  
9 how that trauma can impact--is so critical.

10 The other thing I would like to make a  
11 statement on that I saw time after time that I  
12 thought was just nuts was that, you know, you take  
13 your JAGs and sometimes they're prosecutors and  
14 sometimes they're the defense attorney. I  
15 understand how that happens and they get experience  
16 both sides, and from some of the other attorneys  
17 that I've talked to in the JAGs, I think it would  
18 be really critical if we could just make sure that  
19 they did the prosecution before they were the  
20 defense.

21 Because what the anecdotal information is,  
22 when they come in after being a defense attorney

1 first, as a prosecutor, they're almost jaded, they  
2 come in thinking all victims lie because they've  
3 worked with the defense, and many times they'll lie  
4 about their innocence.

5 So, I have heard that pretty consistently  
6 in some of the JAGs and military folks that I've  
7 stayed in contact with, that may be one thing that  
8 would help is because, again, the training, and  
9 maybe flip that around so that before anybody's--  
10 that they're prosecutors first rather than defense.

11 And I don't mean to--I believe in justice,  
12 I'm not trying to tilt it. I'm just thinking, what  
13 can we learn from that and how can we more  
14 effectively try those cases.

15 PANEL MEMBER BRYANT: One more question.  
16 Excuse me for going back; I just did not catch it.  
17 The two week training that you're talking about is  
18 that something the military investigators and  
19 prosecutors are going through?

20 MS. RUMBURG: Mm-hmm.

21 PANEL MEMBER BRYANT: Is that taught by  
22 this man Mr. Straud? Or Strand?

1 DR. ADDINGTON: Strand.

2 MS. RUMBURG: I don't think Russ Strand is  
3 doing that.

4 PANEL MEMBER BRYANT: People are shaking  
5 their heads back here.

6 MS. RUMBURG: Oh, okay, that is Russ. I  
7 didn't have that--

8 PANEL MEMBER BRYANT: Maybe, Madam  
9 Chairman, that's something we want to talk about  
10 because I understand this person, Russ Strand, is  
11 giving all the training, he has a contract to do  
12 all the training for all the prosecutors and the  
13 military investigators and there are some very,  
14 very good training programs outside the military.

15 And I'm not suggesting that he doesn't do  
16 a great job, I've never observed him, but the  
17 National District Attorneys Association repeatedly  
18 has trainings in this area as do most state  
19 prosecutors associations.

20 MS. RUMBURG: Well, AEquitas--

21 PANEL MEMBER BRYANT: Which are open to  
22 military members.

1 MS. RUMBURG: Yeah, and one of the  
2 programs we fund or is our partner is AEquitas, and  
3 they train prosecutors as well, so I'm quite  
4 familiar with Russ. We've worked with him, I  
5 respect him, he's one of the guys that really gets  
6 it, so I think the other thing that I said here  
7 consistently, it still feels like the military is  
8 not listening to us civilians because we all don't  
9 walk around with PhDs and, you know, all these  
10 years of experience as researchers, not being  
11 demeaning, but what we know and what you know most,  
12 and that's what Lynn was saying, we've learned from  
13 the victims.

14 You have got to let the victims inform  
15 what we know and what we do, and that's why the  
16 civilians have that bigger, better perspective,  
17 because we've lived in it, many of us, from ten  
18 years to thirty years, and that's where you really  
19 learn what victims need and want and will help them  
20 heal and become whole again.

21 So, I really encourage you, somehow or  
22 another, to get--find a way, and we tried to

1 encourage that at the Task Force, by, for example,  
2 military installations in 2009 were asked to have  
3 an MOU with your local rape crisis centers near  
4 that installation. That is not happening  
5 consistency. So, if they're contacting with the  
6 local centers, victims service centers in their  
7 communities, they're going to have that access to  
8 that on-the-ground knowledge that will help them  
9 better serve the victims on their installations,  
10 and I think that's really critical. That would be  
11 an important piece to try to standardize.

12 CHAIR JONES: Admiral Houck.

13 PANEL MEMBER HOUCK: Thank you, Ms.  
14 Rumburg, for your work. I wondered if you could  
15 elaborate for just a couple of minutes on your  
16 observations about the role of alcohol in this? I  
17 think the data shows--and it may not be precisely  
18 right--that somewhere between 40 to 50 percent of  
19 the incidents in the military involve alcohol, and  
20 you've--do you have thoughts on this, on what the  
21 military might do differently with regard to  
22 alcohol?



1 MS. RUMBURG: Well, number one, focus on  
2 the perpetrators that use alcohol as an excuse to  
3 perpetrate the sex crimes and we know also that the  
4 education around, you know, we talk about risk  
5 reduction, certainly that needs to be part of it,  
6 you know, the Battle Buddies and everything else is  
7 risk reduction, but the thing that, you know, I've  
8 even told my husband, if you go out and get drunk,  
9 you don't rob a bank if you don't have a propensity  
10 to rob a bank.

11 And this is what people forget. So, these  
12 perpetrators that say, oh, I was drunk and she was  
13 drunk, we didn't know--you know what, no. You just  
14 don't become a rapist because you're drunk. They  
15 use it as an excuse to rape. It doesn't change who  
16 you are when you drink too much, and all of us  
17 should be aware of that.

18 So, I think that it's critical, so you've  
19 got to look at it two ways and say, alcohol isn't  
20 an excuse, and it is no--and you should--just  
21 because the female or the male victim was drunk, is  
22 no excuse to rape them, and they--you know, we just

1 have to focus on the perpetrator who uses alcohol  
2 as an excuse.

3 PANEL MEMBER HOUCK: I think, I mean, one  
4 of the--

5 DR. ADDINGTON: Can I just follow up on  
6 that really, I'm sorry to interrupt --

7 PANEL MEMBER HOUCK: Please.

8 DR. ADDINGTON: --with the data just  
9 because I think this is an important point on two  
10 levels. One is that the questions in the  
11 workplace/gender relations survey, it's together,  
12 so it's like, did you, the victim, or the offender,  
13 were you using alcohol. So, it's not separated  
14 out.

15 In some ways it's kind of good, you don't  
16 want to blame the victim, but it does put those  
17 together. And also, I think this is an important  
18 point, again, to go through disaggregating those  
19 types of sexual offenses or unwanted sexual  
20 contact, to see what's the touching, what's the  
21 attempt, what's the completed, to better understand  
22 that relationship with alcohol and unwanted sexual

1 contact. I think that would be an important  
2 initial step to better understand that issue.

3 PANEL MEMBER HOUCK: And I realize my  
4 question was open-ended, so I ought to clarify it a  
5 bit. I'm not suggesting for a minute that alcohol  
6 use is an excuse. I'm focused really more on the  
7 issue of overall prevention because we've seen many  
8 situations where alcohol--and to your point--it's  
9 difficult to know sometimes exactly what we're  
10 talking about, and I think that--I mean, one of my  
11 interesting concerns going forward is how we--what  
12 prevention methods for alcohol use are going to be  
13 helpful in trying to help diminish these events  
14 going forward? And so I think that's--

15 MS. RUMBURG: Well, that's where again we  
16 need more research dollars to help us figure it  
17 out. I know the Navy, you know, four years ago,  
18 had a really good program. So, I think they've  
19 been trying. I think the services are trying to  
20 find ways to educate and discourage the use of--Dr.  
21 Lisak, again, is the expert on people that use  
22 alcohol to perpetrate, and he probably has some

1 more knowledge in his studies about prevention.

2 But it certainly is a struggle, but we  
3 need more money for research to really get drilled  
4 down for primary prevention of alcohol abuse as  
5 well as sexual violence.

6 DR. ADDINGTON: And I always love that  
7 plug for more dollars for research. That's my own  
8 bias. But I also think that it's important, one  
9 is, again we're talking about the incidents with  
10 the greatest effect, and it would be interesting to  
11 see, are the ones involving--it could be more or  
12 less, right, so somebody might say, 'it had the  
13 greatest effect because the offender was drunk and  
14 that's more fear causing and that sort of thing, or  
15 less because, well, the offender was drunk and so,  
16 you know, maybe they kind of minimize it.

17 So, that would be very interesting to,  
18 again, another research question because we just  
19 know about the one incident that the victim said  
20 had the greatest effect on them. So, that does  
21 skew these a little bit understanding what's the  
22 true issue.

1           And also, I think, by again another way of  
2   disaggregating the data, by saying, okay, these are  
3   the incidents where alcohol was involved in some  
4   way. This is the type of behavior, touching,  
5   attempted/completed sexual intercourse, and then  
6   reporting. How does that affect reporting? Is the  
7   victim less likely to report because they're like,  
8   well, I was drinking or he was drinking? Or was it  
9   really, you know--so, that would be interesting to  
10  see.

11           And I think then that goes to your point  
12  of pinpointing policy or pinpointing where to  
13  direct the efforts, because if people aren't  
14  reporting because of the alcohol issue, that's a  
15  completely different issue than, oh, yeah, I'm  
16  reporting and I don't care whether alcohol is  
17  involved or not or that sort of thing. I think  
18  there's different ways of framing that at that  
19  point, but, again, these are all knowable things  
20  based on the data that we have.

21           PANEL MEMBER HOUCK: Thank you.

22           PANEL MEMBER HOLTZMAN: I want to go back

1 to the issue of the Rape Shield law and your  
2 concern about how it's being utilized in the  
3 military. Could you elaborate on that a little bit  
4 more? Particularly you mentioned the Military  
5 Court of Appeals.

6 MS. RUMBURG: Well, as I was trying to do  
7 my research for this, one of the cases--and I don't  
8 have it in my folder, I have it in my bag here--  
9 that's an example of that is that a woman had had  
10 an affair and then she was sexually--then her  
11 husband--I forget the case, I don't know whether I  
12 have it in my bag or not--and so, her husband found  
13 out about it, beat up the perpetrator, and then  
14 later she was raped, and the fact that she had had  
15 an affair, committed adultery, was entered into the  
16 case.

17 And that impacted the outcome of the case.  
18 So, that's an example of what--

19 PANEL MEMBER HOLTZMAN: And you're saying  
20 that this is different in the military than from  
21 the way it is in civilian courts?

22 MS. RUMBURG: Yes, we have Rape Shield

1 laws where your prior history cannot--that's why I  
2 say, at least Pennsylvania, your history cannot be  
3 brought into court.

4 PANEL MEMBER HOLTZMAN: Well, I wrote the  
5 Federal Rape Shield Law, so I'm very concerned  
6 about this problem and I want to find out more  
7 about it. Thank you.

8 MS. RUMBURG: Yeah. And just, as we said,  
9 in the fact that the perpetrator is an outstanding  
10 officer and has a clean slate is the reverse of  
11 that too, so people's prior experience should not  
12 impact the decision.

13 CHAIR JONES: Ms. Rumburg, since you were  
14 on the Task Force in 2009, have you seen any  
15 changes, positive changes since then?

16 MS. RUMBURG: I think--

17 CHAIR JONES: A lot of your  
18 recommendations, I noted, were about improving  
19 training, for instance.

20 MS. RUMBURG: Training is critical and I  
21 don't think it's where it ought to be, no. I think  
22 there have been many--they're always doing--working

1 on it, but I still don't think it's where it should  
2 be.

3           You know, we still talk to victims and  
4 survivors and hear anecdotal information about some  
5 of the things we had hoped would be changed by now  
6 and they haven't. I think--and I did read SAPRO's  
7 Strategic Plan, I guess, the night before last, and  
8 in there it says, you know, follow all the  
9 recommendations from the 2009 report, and I also  
10 talked with a member that served on that Task Force  
11 with me, and she also recommended that would be a  
12 really good place to start, all those  
13 recommendations really being implemented, because  
14 there's no sense to replicate that work because it  
15 was intense and we had a lot of good experts, just  
16 like Dr. Addington that presented before that panel  
17 and helped make those recommendations, so I think  
18 just going back through that report and trying to  
19 determine how much of it has been implemented.

20           But I think they're trying to make  
21 progress, but we're nowhere where we need to be  
22 yet.



1           CHAIR JONES: I noticed that your Task  
2 Force did interviews and had focus groups and did  
3 your own surveys back in 2009, and we are in the  
4 process of trying to get all the data, which is a  
5 mountain of data--

6           MS. RUMBURG: Yes.

7           CHAIR JONES: --even beyond what your  
8 survey did. What would you say would be the  
9 utility of that for our panel?

10          MS. RUMBURG: You know, maybe Lynn can  
11 answer that, but I think it can't hurt, but I think  
12 the main thing is what I said earlier, is the  
13 victim's input. That input is going to drive more  
14 about what needs to be done than anything. Those  
15 surveys with the people, the boots on the ground,  
16 the people that have been through the system, the  
17 people that have accessed the military medical  
18 care. That's where you're going to get what's  
19 going to make a difference, is just really  
20 surveying the people that have been impacted, that  
21 serve and listen to what they tell you.

22           That's what's informed everything that we

1 have done, all the policies, even with our  
2 relationship with the Centers for Disease Control  
3 and their studies. It informs our work. It also  
4 informs what we're doing around primary prevention  
5 and that's where I haven't seen that connection to  
6 somebody with the military and CDC.

7           The work that we have done over the 40  
8 years as rape crisis advocates, we used to be  
9 crisis response, that's all we were, you know,  
10 hotlines, accompaniment to court, and to the  
11 hospital. CDC is pushing us, making us drill in to  
12 primary prevention. So, instead of us going out--  
13 and we used to brag, we saw--we provided 600,000  
14 students in Pennsylvania received a program from  
15 our rape crisis center and it lasted 30 minutes.  
16 CDC said, nope, time out. It doesn't work anymore.

17           So, we're changing the way we work as  
18 civilians now. When we're talking prevention,  
19 we're saying, go to the community, meet with 12  
20 parents at the PTO and talk about healthy  
21 sexuality. How do you talk with your children?  
22 Talk to them about bullying.

1           So, we have many, many experts right now  
2   that are really focusing on primary prevention, and  
3   it's not anything that the military is doing that I  
4   can see. You really have to go drill down into the  
5   grassroots piece and start--and I mentioned that I  
6   start with families, because the people that are in  
7   the military come from our community, so that's why  
8   the military needs to be working in the  
9   communities. What are we learning there? Congress  
10  needs to support that research on primary  
11  prevention.

12           Those 30-minute to one hour trainings,  
13  they don't prevent sexual assault. And so, I think  
14  everybody gets really proud about all the trainings  
15  they're creating, but they have to be developed  
16  differently. They need to be in small groups where  
17  we're actually having an interaction, talking about  
18  your core ethics, your beliefs, because once you  
19  talk about those kinds of things, then you'll find  
20  out, you know, do you respect women or other men,  
21  those kinds of things.

22           Those big classroom trainings are good for

1 learning some of the facts, but they're not going  
2 to prevent sexual violence. We have to find other  
3 ways to do it.

4 CHAIR JONES: All right. Thank you very  
5 much. We're going to take our lunch break now.  
6 We'll see everybody in an hour. And I really  
7 appreciate both of you coming in today and making  
8 your presentations.

9 MS. RUMBURG: Thank you so much.

10 (Whereupon, at 12:30 p.m., a LUNCHEON  
11 RECESS was taken.)

12

13

14

15

16

17

18

19

20

21

22



1 in some pre-panel discussions, and then there's a  
2 second pack of supplemental materials, and we may  
3 use them during--to address questions and answers,  
4 there's some supplemental data there and we wanted  
5 to provide that to you as well. We may be  
6 referencing them during any questions that may come  
7 up.

8           Again, please, we welcome comments and  
9 questions throughout.

10           So, these are the four areas that we  
11 wanted to touch on during the course of our  
12 overview and our presentation; Dr. Galbreath and I  
13 will alternate between ourselves here in covering  
14 these subjects and we'll move into the first  
15 section on the next slide.

16           Of course, every military briefing has to  
17 start with a mission statement and ours is no  
18 exception. We take our mission very seriously.  
19 The Department of Defense mission here, as you see  
20 stated, to prevent and respond in order to enable  
21 military readiness and reduce with a goal to  
22 eliminate sexual assault from the military. And

1 then our SAPRO mission, I'm the director of the DoD  
2 SAPRO office, and our mission is as stated here,  
3 and this mission is really grounded in the law and  
4 in our DoD policy. The law is NDAA from fiscal  
5 year '11, section 1611, specifies some of the  
6 oversight responsibilities here for my office, and  
7 then our Defense Policy, 6495.02, which was  
8 recently revised here in this year, paragraph 4(c)  
9 of the Defense Policy, also covers some of these  
10 oversight roles as well.

11 So, the thing I'd like to point out is the  
12 two bullets where the DoD-IG has responsibility for  
13 criminal investigative matters and the Judge  
14 Advocate General of the Military Departments have  
15 responsibility for legal processes, and those are  
16 as specified in our Defense Policy as well.

17 So, the next five slides behind this one,  
18 I'm going to provide some baseline information on  
19 reporting of sexual assault and I'll also address  
20 some victim and perpetrator demographics.

21 So, this slide describes some sexual  
22 assault related terminology, but before getting

1 into the elements on the slide, I'd just like to  
2 offer another answer to the question in the upper  
3 right hand corner, which is, what is sexual  
4 assault? Sexual assault, clearly, is an affront to  
5 the values we defend in the military and it's a  
6 cancer to the cohesion that our units demand.

7 Secretary Hagel, in his time as Secretary  
8 of Defense, has described sexual assault in the  
9 military as a top priority and a readiness issue  
10 and I would just like to offer one quotation from  
11 Secretary Hagel, and I quote, "This Department may  
12 be nearing a stage where the frequency of this  
13 crime and the perception that there is tolerance of  
14 it could very well undermine our ability to  
15 effectively carry out the mission and to recruit  
16 and retain the good people we need."

17 And that's a statement from Secretary  
18 Hagel on May 6th of this year.

19 So, when we use the term sexual assault,  
20 this slide then describes the ways that we use it,  
21 and so at the top, sexual assault, we use it as an  
22 overarching term, an umbrella term, if you will,



1 that encompasses a wide range of sexual contact  
2 offenses that are prohibited by the Uniform Code of  
3 Military Justice and characterized by the use of  
4 force, threats, intimidation, abuse of authority,  
5 or when the victim does not or cannot consent.

6 And you see the range of offenses at the  
7 bottom half of the slide that are underneath the  
8 overarching term of sexual assault, and these are  
9 the terms as specified in the Uniform Code of  
10 Military Justice: rape, sexual assault, forcible  
11 sodomy, attempts, aggregated sexual contact and  
12 abusive sexual contact.

13 There are portions in the rest of this  
14 briefing and in the data that we've presented you  
15 and will be presenting you in the months to come  
16 that you may see reference to other charges or  
17 other offenses under the Uniform Code. And so,  
18 that--we'll describe that in a future slide but  
19 there were offenses, sexual assault offenses, under  
20 the Uniform Code, and the Uniform Code changed by  
21 NDAA 12 and it changed in June of 2012.

22 So, the offenses you see here listed on

1 this slide are the current offenses under the  
2 current revision of the Uniform Code.

3 You may see terms also under offenses of  
4 sexual assault as--such as wrongful sexual contact.  
5 That was a former offense under a previous version  
6 of the Code, but not under the current Uniform  
7 Code.

8 And in the shaded box on the bottom right  
9 part of this slide, I wanted to make mention of the  
10 term "Military Sexual Trauma". This is a term used  
11 by the Department of Veteran's Affairs. It  
12 encompasses sexual harassment and sexual assault,  
13 and it's a term used to document medical conditions  
14 for transitioning Service Members.

15 So, just a quick review of reporting  
16 options: unrestricted reporting and restricted  
17 reporting. They all start with the victim making  
18 the very difficult step of coming forward and  
19 making a report. An unrestricted report is made to  
20 a sexual assault response coordinator, a Victim  
21 Advocate, a medical provider, a chaplain, a member  
22 of the chain of command, members in law

1 enforcement, legal counsel, pretty broad range of  
2 folks who can receive an unrestricted report. And  
3 upon receipt of the report, you can see the things  
4 that occur: the receipt of medical care, which  
5 includes the offering of a sexual assault forensics  
6 exam, counseling, and then the assignment of an  
7 advocate, a first line responder, sexual assault  
8 response coordinator, and a Victim Advocate for  
9 that victim.

10 I'd like to also emphasize that with  
11 regard to reporting to law enforcement, all  
12 offenses under the sexual assault overarching term  
13 are passed to our military criminal investigating  
14 officers within the military. The three branches  
15 of the military each have one, the Army has the  
16 Central Investigative Division, the Navy NCIS, and  
17 Air Force OSI, Office of Special--

18 DR. GALBREATH: Investigations.

19 MAJOR GENERAL PATTON: Investigations,  
20 thank you. And those--every sexual assault report  
21 initiates an independent criminal investigation by  
22 those three military crime investigating bodies

1 within the military services.

2 CHAIR JONES: Could I just ask one  
3 question? When you named all those different  
4 individuals you can report to, I gather that each  
5 of them is obligated, then, to go ahead and make  
6 another notification? In other words, they're the  
7 people who--if you told a friend, that's not a  
8 report, but if you tell one of those individuals,  
9 it is?

10 MAJOR GENERAL PATTON: Yes, Ma'am. It's  
11 made to report to a DoD authority, and the ones  
12 that I mentioned are those authorities--

13 CHAIR JONES: Right.

14 MAJOR GENERAL PATTON: And then the next  
15 thing that happens is the victim, if the first  
16 contact is with someone other than the Sexual  
17 Assault Response Coordinator or Victim Advocate,  
18 then the other people refer them immediately to a  
19 SARC or Victim Advocate, at which point they go  
20 over the options of reporting.

21 CHAIR JONES: I see. Okay.

22 MAJOR GENERAL PATTON: And so, the options

1 of reporting are then, there's a formal--there's a  
2 form, it's called DD form 2910, and the SARC is  
3 trained to go through every aspect of the form, and  
4 that's when the victim is informed about the two  
5 options and can make an informed choice as to which  
6 direction the victim wants to go on.

7 CHAIR JONES: Thank you.

8 MAJOR GENERAL PATTON: So, one of the  
9 options is the restricted reporting. It's more--  
10 it's confidential and by its nature we've  
11 restricted the number of people who can receive a  
12 restricted report, and you can see the two listed  
13 there, the SARCs and VAs and similar--and also the  
14 healthcare personnel. Those are the only two  
15 groups of people who can receive a restricted  
16 report.

17 The chain of command is informed, but only  
18 a very general with general information, in order  
19 to protect the victim identity and anything that  
20 could lead you to gaining the victim's identity,  
21 and the restricted report, the victim that makes  
22 that report also receives medical treatment and

1 services, again, the offering of a sexual assault  
2 forensics exam, but there is no law enforcement  
3 investigation initiated by a restricted report.

4           This option was brought in in June 2005.  
5 I'm going to show you how they break out between  
6 restricted and unrestricted reports over time.  
7 Generally every year we see about 15 percent of  
8 reports that come in initially as restricted, but  
9 then the victim chooses to convert it to an  
10 unrestricted report, and we see, like I said, about  
11 15 percent. We see that as a key indicator of  
12 progress and success in our victim support  
13 programs, the metric of how many victims come  
14 forward initially as a restricted report and then  
15 convert their reports to unrestricted over time.

16           And I want to mention here that the form  
17 that I mentioned, the DD form 2910, which is how  
18 the victim chooses to report, those forms are now,  
19 by law and policy, retained for 50 years for  
20 unrestricted reports, and victims are offered the  
21 opportunity to have them stored for 50 years for  
22 the restricted reports, 50 years.

1 PANEL MEMBER HOLTZMAN: May I ask a  
2 question?

3 MAJOR GENERAL PATTON: Ma'am.

4 PANEL MEMBER HOLTZMAN: The restricted  
5 report requirement was offered in 2005. Has that  
6 number, about 15 percent, of restricted reports  
7 switching to unrestricted report remained the same  
8 since that time? Or has it increased or decreased?

9 MAJOR GENERAL PATTON: The 15 percent is  
10 an average. This past year we saw an increase from  
11 that number and it went from in 2011 it was 14.6  
12 percent, and in FY12 it went over 16, I think 16.7  
13 percent. So, 15 percent is an average over time.  
14 We actually have that mapped out for every year.  
15 We can show you what the conversion rate is for  
16 every year.

17 Do we have that in a backup slide?

18 DR. GALBREATH: Backup slide, Sir.

19 MAJOR GENERAL PATTON: Do you want to go  
20 to that?

21 DR. GALBREATH: We can.

22 MAJOR GENERAL PATTON: We'll pull that

1 slide up and we'll refer it to the packet that's in  
2 front of you, and if you could go to the slide  
3 that--

4 DR. GALBREATH: If they go to slide 32 in  
5 the backup section.

6 PANEL MEMBER HOLTZMAN: Well, if it's  
7 there, you don't need to go through it. I don't  
8 want to waste everyone's time.

9 DR. GALBREATH: No problem, Ma'am, but you  
10 can take a look and just see that over time that  
11 the data has remained remarkably static as far as,  
12 you know, the amount of people that are converting,  
13 but you'll notice that this last year we had almost  
14 17 percent. Now, I'm the person that's supposed to  
15 be looking for changes in data that I think are  
16 important and being able to raise that to the  
17 Department's attention and I thought that that was.

18 I can't say that it's statistically  
19 significant, but it's the first time that we've  
20 had--or rather an increase over the average, and so  
21 we'll be watching that closely in the future.

22 MAJOR GENERAL PATTON: So, we'll go back



1 to Slide 7, which is in the main slide deck. It's  
2 a little bit of a busy slide, but it charts the  
3 reports by unrestricted--I'm sorry, by total, at  
4 the top line, unrestricted on the blue line, and  
5 red for the restricted reports on the red line.  
6 So, top to bottom, total, unrestricted, and  
7 restricted.

8 And so, then the years go from left to  
9 right, and then at the end of the top line you see  
10 the figure 3,374. That represents the total number  
11 of reports that we had in FY12, and it's important  
12 to note that reports in this context are reports  
13 that are military perpetrator on military victim,  
14 civilian on military victim, or military on  
15 civilian victim, where the military is the  
16 perpetrator.

17 So, these reports are reports where by or  
18 against military members. So, again, 3374,  
19 military were victims, or the military were the  
20 perpetrator--military member was the perpetrator,  
21 and we can break out those for you in other data to  
22 show you the perpetrators versus the victims.

1           The inset to the right then is the pie  
2 chart that breaks out the type of offenses that add  
3 up to the total number of reports, and like I  
4 referred to earlier, some of the offenses you see  
5 labeling the pie chart are not current offenses  
6 under the Uniform Code, such as wrongful sexual  
7 contact in the purple. That is no longer an  
8 offense and it has been replaced by abusive sexual  
9 contact, but the charge is based on the date of  
10 occurrence, and so we are still dealing with  
11 offenses that occurred under the--some of these  
12 former offenses in the previous versions of the  
13 Uniform Code.

14           PANEL MEMBER O'GRADY-COOK: General,  
15 excuse me, Sir, to elaborate on that, though, with  
16 wrongful sexual contact, which you're saying is no  
17 longer an offense, since it was set out separately  
18 under the old provisions, what was the distinction  
19 between those offenses? And does that mean that  
20 there's going to be some category of conduct that's  
21 no longer offensive at all or has it been subsumed  
22 by another provision in the Code?

1 MAJOR GENERAL PATTON: Yeah, I'll answer  
2 this and ask Nate to amplify on it, but the two  
3 non-penetrating forms of the crime are aggravated  
4 sexual contact and abusive sexual contact. And  
5 they vary in the form of coercion and force applied  
6 to the sexual contact, and so there is no gap, but  
7 now we have different--two different offenses for  
8 the contact crimes, the non-penetrating forms of  
9 the offense.

10 DR. GALBREATH: So, Ma'am, to answer your  
11 question, the behavior that was captured under  
12 wrongful sexual contact is now subsumed into  
13 abusive sexual contact. This occurred on--the  
14 change in law occurred on June 28th of 2012. As a  
15 result, since it happened right in the middle of  
16 the year, we just kind of lumped them together for  
17 tracking purposes.

18 I'm in a room full of military attorneys  
19 and they can tell you better how all those shake  
20 out.

21 PANEL MEMBER O'GRADY-COOK: And I'm sure  
22 Captain Crow may attempt to do that for us later.

1 MAJOR GENERAL PATTON: So, then the other  
2 trend I would point out on this chart is the lines  
3 between the restricted and unrestricted are  
4 parallel, generally parallel, so from year to year  
5 we see about a 25 percent to 75 percent breakout  
6 between the restricted reports and the unrestricted  
7 reports. That's a fairly consistent trend over  
8 time.

9 Now we've broken out the reports, the  
10 restricted and unrestricted reports, only this  
11 chart breaks them out by service. And you can see  
12 the different services here, and then just in a  
13 summary, trend summary, three of the four services  
14 in this past year, between '11 and '12, showed an  
15 approximate 30 percent increase in reporting. And  
16 I'd like to say that we do expect to see an  
17 increase in reporting. We see an increase in  
18 reporting to be a sign of increased victim  
19 confidence. We know this to be an underreported  
20 crime, and we see it as every report that comes  
21 forward is one where a victim can receive the  
22 appropriate care and for the unrestricted reports

1 that come forward, that is a bridge to  
2 accountability where offenders can be held  
3 appropriately accountable.

4 And because we know this to be an  
5 underreported crime, we do see that an increase of  
6 reports to be, A, an indicator of improved victim  
7 confidence and something that we are watching very  
8 closely.

9 PANEL MEMBER HOLTZMAN: Excuse me, isn't  
10 there another interpretation for that increase,  
11 which is that the actual increase in the incidents  
12 of the attacks has gone up--

13 MAJOR GENERAL PATTON: Well, we look at  
14 the--

15 PANEL MEMBER HOLTZMAN: --as opposed to  
16 confidence? I mean, or do you have something that  
17 allows you to draw the conclusion you are?

18 MAJOR GENERAL PATTON: We also look, as a  
19 comparative figure, we look at the prevalence or  
20 incidence rate that we--and we see from surveys, so  
21 we're going to show you in the next section--we're  
22 going to show you what we get from surveys and

1 where we know the crime to be a grossly  
2 underreported in terms of people who come forward  
3 and make the reports, we do see more people coming  
4 forward being a positive in the sense that they get  
5 medical care, and then in the unrestricted case, it  
6 will go to law enforcement and potentially lead to  
7 holding more offenders accountable.

8 PANEL MEMBER HOLTZMAN: Thank you.

9 MAJOR GENERAL PATTON: The next slide and  
10 the last of this section lays out some demographics  
11 for the majority of unrestricted reports, and these  
12 are fairly consistent over the years of examining  
13 the reports. This is not to minimize the fact that  
14 we do have sexual assault occurring with male  
15 victims and sexual assaults occurring with female  
16 perpetrators, but when we look at the majority of  
17 the cases, we see these as the demographic profile,  
18 if you will, for the unrestricted reports with the  
19 victims there at the top, and the subjects at the  
20 bottom.

21 Subjects are not strangers to the victims.  
22 They're already known--subjects are already known

1 to the victims. Alcohol, common use there in these  
2 incidents, and one thing I don't have on this  
3 chart, but I would just add, that the subjects--  
4 another characteristic we know is that they are  
5 very adept at identifying and exploiting vulnerable  
6 people as their victims.

7           And vulnerability such as people that are  
8 new to the unit, vulnerability such as people who  
9 may be in other forms of trouble and in  
10 disciplinary actions being taken on people as  
11 categories of people who could be seen as  
12 vulnerable and exploited by these subjects.

13           All right, we're going to transition to  
14 getting into the survey, methodologies and results,  
15 and at this point I'm going to hand it over to Dr.  
16 Galbreath.

17           DR. GALBREATH: Thank you, Sir. I'm so  
18 glad to have heard from Dr. Addington this morning  
19 and her overview of the different kinds of surveys  
20 that are out there, and I will hope to explain a  
21 little bit of what we do in the Department of  
22 Defense, but I have to make this pitch, and my

1 pitch is, is that the survey experts in the  
2 Department of Defense are from the Defense Manpower  
3 Data Center. They need to come and speak to you  
4 about their methodology, why they picked the  
5 certain variables that they do, and their  
6 capabilities for drill down.

7 I will be able to address some of those,  
8 but they truly are the experts and they need to  
9 talk to you about these things.

10 The nice thing about what Dr. Addington  
11 said this morning is that all of the things that  
12 she recommended that we do, I'm doing. We have  
13 this--we're doing that this summer, and I will be  
14 happy to share the results of that additional  
15 analysis with the panel as soon as I get it, it  
16 just takes a little bit of time, so Ma'am, it will  
17 be a three-month process.

18 So, bottom line is, is that we--why do you  
19 want a survey? What does that give you? I think  
20 when we come to questions of crime; attorneys don't  
21 necessarily like surveys because you don't really  
22 know whether it's an accurate representation of



1 criminal behavior that's out there. And I'll give  
2 you that, it probably might not be, but as a  
3 clinical psychologist, I want to know the depth of  
4 the problem, I need to know that in order to kind  
5 of figure out not only how bad the problem is, but  
6 what I might be able to do to prevent it or respond  
7 better to it.

8 So, when I got to SAPRO in 2007, I was  
9 their first clinical psychologist to be able to get  
10 in and take a look at the program, and Dr. Whitley,  
11 the director at the time, her voice track was  
12 largely, nobody knows how many sexual assaults  
13 there are in the Department, but one is too many  
14 and this is how many reports that we had.

15 And as a clinical psychologist, I thought,  
16 well, I bet you, you know, in the DoD we've done  
17 some kind of data somewhere, we've done a survey or  
18 something, and I began to look around and, sure  
19 enough, I made contact with our counterparts at the  
20 Defense Manpower Data Center and they introduced me  
21 to the Workplace and Gender Relations Survey, and  
22 so we began to use that and have been refining it

1 over time to make it more accurate, to hopefully  
2 make it generalizable from the sample that we get,  
3 to the rest of the Department, and so I'll try and  
4 track you through that a little bit.

5 But, bottom line is, is that that is  
6 really the reason why we want to be able to survey  
7 is so that we better understand the problem.

8 Again, we use the Workplace and Gender Relations  
9 Survey and one of the questions is, why do we use a  
10 workplace survey? I think largely because we're  
11 different from the national population in that we  
12 all live and work together. So, in a general  
13 sense, the Department of Defense is one giant  
14 workplace, whether you are in the dormitory,  
15 whether you are in a duty section or you're on a  
16 flight line or you're working on a tank, whatever  
17 that might be, it's all one big location.

18 And as a matter of fact, Delilah Rumburg  
19 also noted some research from 2003 that documented  
20 that people in units where sexual harassment levels  
21 were relatively high, also experienced higher rates  
22 of sexual assault. Our data supports that ever

1 since. We know that there's a strong positive  
2 correlation between sexual harassment in a unit and  
3 the amount of sexual assaults that are occurring,  
4 and that's about as good--I mean, the correlation  
5 is a 0.5 correlation, so if you remember back to  
6 your college statistics class, in the behavioral  
7 sciences, that's about as good as it gets. You can  
8 get better, but that's pretty strong relationship.

9           So, that's something why we think that  
10 sexual harassment is an important thing to assess  
11 as well, not just the crime that occurs, but also  
12 the whole continuum of harm that's out there is  
13 very important to understand that.

14           So, another thing that we do is, and I  
15 know that this--sometimes critics of surveys say,  
16 well, you're--if you don't ask "have you been  
17 raped?" how do you know that you're actually  
18 getting a number of rapes? How do you know that?  
19 And the answer is, I can't, but the reason why we  
20 don't use legal terms is because other research has  
21 told us that loaded questions or legal terms like  
22 "rape" or "sexual assault" mean different things to

1 different people.

2           And so, we have to use analog terms for  
3 that because laymen, when they experience a crime,  
4 don't tick off the elements of crime that might be  
5 present in a Uniform Code of Military Justice or in  
6 a legal code anywhere. And so, we have to at least  
7 ask a question that makes those behaviors relevant  
8 and salient, you know, that they would remember,  
9 like Dr. Addington talked about, you know, bring  
10 all those factors forward, explain consent, explain  
11 the other kinds of circumstances that people  
12 wouldn't necessarily associate with a crime, and  
13 say, hey, in these kinds of contexts, did these  
14 things happen to you?

15           So, if you take a look at the next page on  
16 page 12, you will see our definition and our  
17 measure of unwanted sexual contact. What the data  
18 says is that if I ask someone, have you been raped,  
19 on a survey, they'll often respond--they might  
20 respond back, no, I haven't. But then if I follow  
21 up with an additional question and say, well, has  
22 anyone ever forced you to have sex against your

1 will when you couldn't consent, they'll say, well,  
2 yeah, that's happened to me.

3           So, you ask, well, what's the difference,  
4 and the difference is, is that a lot of times our  
5 victims don't necessarily perceive what occurred to  
6 them as being a sexual assault, especially in non-  
7 stranger situations where the people that they work  
8 with, that they live with, that they trust, are the  
9 perpetrators, and so it's very hard to think of  
10 your co-workers and your Battle Buddy as a  
11 potential perpetrator of sexual assault.

12           So, that's our measure that you see is  
13 here as far as what we ask. We, of course, have  
14 made the actual instrument itself available to you  
15 so that you all can take a look at it and assess it  
16 for yourself and come to your own conclusions.

17           We think we can refine this a little  
18 better. I really like what Dr. Addington said  
19 about the idea of being able to drill down into  
20 some of these behaviors as far as understanding if  
21 you have experienced a penetrating crime, how is  
22 your experience in reporting different than people

1 who have experienced a non-penetrating crime, like  
2 touch or things like that?

3 One of the things that unfortunately came  
4 out as a little bit of confusion from a hearing  
5 that occurred not too long ago in the Senate was a  
6 question was posed of: do you know how many of the  
7 crimes that occur, either on survey or in the  
8 number of reports that you get? How many of those  
9 are of a particular kind? How many of those are  
10 sexual assaults? How many of those are unwanted  
11 touching? And the answer was that people didn't  
12 know that, but we do have that data in our annual  
13 reports and we're showing it to you now.

14 But in addition to that I've also provided  
15 you a very detailed drill down of the data in the  
16 survey, this is prepared by the Defense Manpower  
17 Data Center. It will help you understand the kinds  
18 of behaviors that we asked about and how many  
19 people we estimate, based on our survey  
20 methodology, may have experienced them in the past  
21 year in 2012.

22 So, that's for you to take a look at and

1 it really kind of answers that question of how many  
2 of what kinds of behaviors or criminal behaviors  
3 did people possibly experience.

4           With surveys, though, I would like to hit  
5 just a couple of points that I'd like you to keep  
6 in mind when we go out and survey. Number one is  
7 survey burden. We can survey our captive  
8 population in the military, and we do, almost to  
9 the point where--well, actually, we have evidence  
10 that they're participating less and less.

11           So, a political psychologist is trained  
12 from a research side and also from a victim--I  
13 mean, from a patient care side, so the research  
14 side of me and my scientific training, I really  
15 want to know all of this stuff, I want to know the  
16 fine points of the data. But the clinical side of  
17 me, the part that treats patients, I have to  
18 respect the fact that when I survey a victim over  
19 and over again, I am potentially re-traumatizing  
20 that person, especially when I get into the very  
21 small points of our population.

22           For example, we survey every service, we

1 survey both genders in the service, and then we  
2 also "stratify" or create separate categories for  
3 rank, for deployment status, for about 21 different  
4 variables that we survey on. In order to make sure  
5 that that data is representative, we have to fill  
6 each one of those buckets with representative  
7 people and it has to be--they have to be filled  
8 randomly.

9 So, when we do all that, we send our  
10 survey out to over 100,000 people, that was our  
11 sample size this last year in 2012, and we got a  
12 rate of return of about 24 percent. That, you  
13 might say, wow, is that good, is that bad? Well,  
14 it's not too bad because that's about 25,000  
15 different responses that we can use.

16 You know, if you look at Harris Poll or  
17 Gallup Organization, they survey 3,000 or so folks  
18 and tell you the outcome of a national election,  
19 plus or minus three or four percentage points. So,  
20 we do--we have way more people than that when we  
21 survey, but we also have to look--everyone wants to  
22 know the fine points and to be able to do that



1 advanced analysis that Dr. Addington talked about.  
2 So, we make sure that we have way more people than  
3 what we need.

4 Well, when we do that, like I said, that  
5 has a potential to turn people off about answering  
6 our surveys. When we did this same survey in 2010,  
7 we had about a 34 percent response rate, it was  
8 very good. When we survey the Military Service  
9 Academies every two years, we have response rates  
10 of about 70--between 67 and 75 percent. Why do we  
11 do that? How can we do that? We round everybody  
12 up in a room and we sit them down and ask them,  
13 pretty please, won't you please take our survey.  
14 They can get up and leave if they want to, but most  
15 of the time they'll at least participate and fill  
16 it out.

17 So, we have better drill down capability  
18 at the Military Service Academies. But when we do  
19 that, just keep in mind that there is a--not only  
20 does the DoD want to know what's going on, but each  
21 of the individual services also want to know what's  
22 going on with their people and they want to survey

1 as well. So, one of the tasks that we have this  
2 summer is to harmonize all of the survey activity  
3 that's going on and all I would offer is that if  
4 you, as the panel, decide that you want a survey as  
5 well, talk to us and maybe there are some things  
6 that we might be able to work with you on, maybe  
7 it's data we already have, something along those  
8 lines, because, again, if we continue to survey  
9 people, we'll be getting fewer and fewer people to  
10 participate, at least at the rate that we are.

11 Now, how are we fixing that? One of the  
12 things that we're going to be doing is we're going  
13 to be doubling or tripling our actual sample size.  
14 So, instead of asking 100,000 folks to participate,  
15 we might be asking 200,000 or 300,000 people to  
16 participate, which will give us better visibility  
17 over those smaller population categories that we  
18 have.

19 For example, one of our smallest category  
20 is Marine women in the ranks of E1 to E4, there's  
21 just very few of them compared to a lot of the  
22 other categories that we have. So, when we survey,

1 there is a very good chance that we are going to--  
2 if we survey frequently, there's a very good chance  
3 that year to year we're going to be asking the same  
4 people, have you been sexually assaulted, and if  
5 I'm taking that survey, it's almost like, well, I  
6 answered your question last year. Why are you  
7 asking me again? It's almost like you're waiting  
8 around to see if I get sexually assaulted, and that  
9 says horrible things to our people, it says--it's  
10 potentially re-traumatizing to our victims, and so,  
11 we just really would caution the over-survey of our  
12 people and to make sure that we're doing this  
13 right.

14 One of the other things, too, that I would  
15 also offer about surveys that I just want to  
16 amplify what Dr. Addington talked about, which is  
17 this comparability factor.

18 When you have a nationally representative  
19 survey, you have exactly that. It's nationally  
20 representative. But the military members and the  
21 Department of Defense are not nationally  
22 representative. We are younger. You know, there's

1 more folks--a lot more younger folks in the DoD  
2 population than there are nationally. So, as a  
3 result, when we go--and we worked with the Centers  
4 for Disease Control to conduct the National  
5 Intimate Partner Sexual Violence Survey, the NISVS,  
6 one of the things that they did for us that had  
7 never been done before was to control for the  
8 differences in demographics between the national  
9 survey and the military population, and also  
10 spouses of military members. And what they were  
11 able to do is identify that age and marital status  
12 are two factors upon which the DoD and the civilian  
13 population are different.

14           And so, once you control for those two  
15 factors what we found is, is that the risk of  
16 sexual contact, sexual violence, is about the same  
17 in the national population for women and also the  
18 female military population, whether you measure in  
19 the past year, the past three years or at the  
20 lifetime.

21           So, those are just things that I would  
22 offer that you take a look at those survey results

1 to kind of understand that we are on the same--  
2 we're on par with what occurs in the civilian  
3 population, but that's not where we want to be.

4 I think everyone expects our military to  
5 be a safer place as far as that goes and that we--  
6 they hold us to a higher standard, as well everyone  
7 should, and so we want to improve.

8 Ma'am, you're looking like you want to ask  
9 a question.

10 PANEL MEMBER HILLMAN: Is there a slide  
11 that shows that data that you just said about--that  
12 it's the same--military and civilian rates?

13 DR. GALBREATH: Yes, Ma'am, if you'd take  
14 a look at Slide 60 in the back, not only have I  
15 included the National Intimate Partner and Sexual  
16 Violence Survey, but I've also included two other  
17 non-standardized surveys, in other words, I've  
18 taken some findings from preexisting DOJ-funded  
19 studies and showed you just kind of how we fall out  
20 with--if I just show you data side-by-side.

21 So, those are the last two. The first one  
22 is the NISVS, and that's available on our website

1 at SAPR.mil, it's also available from the CDC as  
2 well, but you can take a look at that data there.

3 But then in addition to that, Dr.  
4 Christopher Krebs who works with RTI, Research  
5 Triangle Incorporated, conducted the Campus Sexual  
6 Assault Study in 2007. People are pretty familiar  
7 with that, so I've kind of showed you what our data  
8 shows compared with that. And then also, Dr. Dean  
9 Kilpatrick from Medical University in South  
10 Carolina, he did the Drug Facilitated Incapacitated  
11 and Forcible Rape Study in 2007 as well, and  
12 there's some data for you as well and how we roll  
13 out with that 2012 data.

14 PANEL MEMBER HILLMAN: One other question  
15 while I'm interrupting you. Are you using tools  
16 other than the survey--interviews, focus groups,  
17 potentially methodologies that wouldn't have the  
18 same anonymous, re-traumatizing impact on potential  
19 victims?

20 DR. GALBREATH: Yes, Ma'am. We have--as a  
21 matter of fact, specifically at the Military  
22 Service Academies, we alternate, we asked Congress

1 to allow us a different modality than to survey  
2 every year, because that's what is often asked for,  
3 and so, we do focus groups of the Cadet population,  
4 the Cadet Midshipmen, we also do focus groups of  
5 the--also do--of the faculty and staff and other  
6 members that are there at the Academy as well.

7 So, yes, we do inform our information with  
8 the focus groups.

9 MAJOR GENERAL PATTON: We've also had some  
10 survivor summits as well where we bring in  
11 survivors and we spend several days with them, both  
12 individually and as a group, generally about a half  
13 dozen or so, and we do that on a recurring basis  
14 and a lot of the things--several of the things that  
15 we've done here in recent policy changes have been  
16 informed by feedback directly gained from survivors  
17 in those summits.

18 DR. GALBREATH: So if you--

19 PANEL MEMBER O'GRADY-COOK: Dr. Galbreath,  
20 I'm sorry. The studies indicate the risk for  
21 sexual assault is about the same for women in the  
22 military and the civilian sectors. Do the studies

1 have any indication of the satisfaction with the  
2 responses or with the disposition between the  
3 military and the civilian sectors?

4 DR. GALBREATH: I don't have a data source  
5 and maybe Dr. Addington can help us with that, but  
6 I don't--I have never been able to find a survey  
7 nationally that talks about satisfaction with the  
8 services that a victim got downtown with civilian--

9 PANEL MEMBER O'GRADY-COOK: Or you mean  
10 just disposition about once it was reported, what  
11 happened? Is it more likely something will happen  
12 in the military, even though it doesn't appear that  
13 enough is happening--

14 DR. GALBREATH: Right.

15 PANEL MEMBER O'GRADY-COOK: Or whether  
16 more is more likely going to happen in the civilian  
17 sector?

18 DR. GALBREATH: Unfortunately, we just  
19 don't have a lot of data with that. The one study  
20 that was done, and it was done by the--sponsored by  
21 Ending Violence Against Women International, EVAWI,  
22 and they actually got about eight different sites,



1 and they tried to track through a number of  
2 different factors, and what they were looking for  
3 is does a sexual assault response team make a  
4 difference, in prosecution, in victim satisfaction,  
5 and things like that. That is the best source of  
6 data for that.

7 And Dr. Kimberly Lonsway from EVAWI is the  
8 person that you want to talk to about what she  
9 found there. But that's the only really  
10 comparative study that I know of, but even then,  
11 there's not a whole lot of data on that that we can  
12 compare.

13 PANEL MEMBER O'GRADY-COOK: Thank you.

14 MAJOR GENERAL PATTON: We do have survey  
15 data from our Workplace and Gender Relations Survey  
16 where we ask the military members to comment on  
17 satisfaction with first responder services and all  
18 the way through the process and one of the things  
19 we routinely fairly positive reports on the first  
20 responders, and what we hear in terms of  
21 dissatisfaction is a dissatisfaction in lack of  
22 information, not being kept informed, a long, drawn

1 out, intrusive process through the investigative  
2 and judicial processes and so forth.

3 And we can refer you to the several years'  
4 worth of survey data on that element of the survey.

5 PANEL MEMBER O'GRADY-COOK: Thank you.

6 DR. GALBREATH: So if you take a look at  
7 page number 13, what you'll see are the data points  
8 from the three times that we administered the  
9 Workplace and Gender Relations Survey using our  
10 current measure of unwanted sexual contact.

11 We actually tried a couple of different  
12 survey measures and the one that we used has these  
13 behavioral anchors about whether or not it was a  
14 penetrating crime or attempted penetrating crime or  
15 whether it was a touching or a contact crime. And  
16 so what you'll see there is when I first started to  
17 look at the survey, the far left there, that 2006  
18 data, that's what I first saw, and so when I saw  
19 that it was about 6.8 percent of women and 1.8 of  
20 men experiencing unwanted sexual contact in the  
21 year prior to being surveyed, I had to ask myself,  
22 well, okay, I get the percentage, but what does

1 that mean? How many people does that represent?

2 So, I went back to the Defense Manpower  
3 Data Center and I asked, does our survey allow us  
4 to extrapolate what that might mean for our general  
5 population in the military? And what they told me  
6 is, is that, yes, it does, and this is how they do  
7 it, is number one is, when they go out and they  
8 create their survey sample, that random sampling  
9 and stratification of data allows us to replicate--  
10 or make a representative sample of the military  
11 population to 95 percent confidence. Not only are  
12 they able to do that, but one of the things that  
13 DMDC can do that other people can't is we know who  
14 answers our surveys because they're confidential,  
15 not necessarily anonymous.

16 Now, we de-identify the responses of our  
17 respondents because we promised them that we're not  
18 going to--that they won't ever be held accountable  
19 for what they report to us on the survey, but their  
20 demographic information allows us to not only  
21 weight the sample on the front side, in other  
22 words, that we're asking a representative group of

1 people these questions, but on the back side of the  
2 survey, once we get our results, it also allows--  
3 knowing these demographics about who took our  
4 survey and who didn't take our survey, allows us to  
5 make the results representative as well, so they  
6 are able to be weighted up to the general  
7 population of the military.

8 So, these statistical controls, like I  
9 said, to 95 percent confidence, which is typically  
10 what we work with, allows us to have a pretty good  
11 feeling for what we experience, and that's what  
12 these numbers are here for 2012.

13 So, when you take a look, you'll notice  
14 that we had a decrease in 2010 and those were  
15 statistically significant decreases from 6.8  
16 percent of women to 4.4 percent of women in 2010,  
17 and then also from 1.8 percent of men in 2006 to .9  
18 percent in 2010.

19 One thing I would point out is, is that  
20 for men in 2012, the rate of--the prevalence of  
21 sexual, unwanted sexual contact, stayed just about  
22 the same, so that change, that difference, it looks

1 like it went up, but it's statistically non-  
2 significant change.

3 But the change for women, from 4.4 percent  
4 to 6.1 percent, that is statistically significant,  
5 and of course we all want to know why, and that is  
6 the question. Because the survey is a compilation  
7 of the individual experiences of the people taking  
8 it, it doesn't provide us with causality.  
9 Causality would only allow us to know, you know,  
10 what's going on exactly in their environment. We  
11 can ask questions that can help get us to  
12 causality, and we're doing that right now as we're  
13 trying to answer--build things in for our next  
14 survey round in 2014 that will help us get at  
15 causality a little bit better, but right now we  
16 just don't have that.

17 Next slide is broken down the 2012 results  
18 by service and you'll notice that we have--you'll  
19 see the different rates. On the left side of each  
20 of the grouping of data, is the total prevalence,  
21 for example, on the left there that's 6.1 percent  
22 of women, and then you'll be able to see the

1 different service prevalence rates for women right  
2 next to it in green, and you'll notice that the  
3 Army and the Navy had about the same prevalence,  
4 the Marine Corps a little bit higher there, and  
5 then the Air Force had the lowest prevalence.

6           And our increase is somewhat explained by  
7 the increases that--in prevalence of unwanted  
8 sexual contact experienced by women in the Navy and  
9 the Marine Corps. Those are the two data points  
10 that changed from 2010 to 2012 significantly.  
11 There was no change in rates for the Army and no  
12 change in rate for the Air Force, so Navy is  
13 looking very hard at that and working very closely.

14           And over to the right you'll notice--  
15 you'll see the men's groupings and there was no  
16 statistically significant change between 2010 and  
17 '12 for them, as I said.

18           Next slide, if you take a look at these  
19 are the--in a more simple graphic representation,  
20 the same information that I've provided to you on  
21 this detailed blue and white results list there,  
22 but if you take a look at our unwanted sexual

1 contacts and the behaviors that our respondents  
2 told us that they experienced, you'll see that in  
3 red, that's the completed penetrating crimes, in  
4 blue the attempted penetrations, purple, unwanted  
5 sexual touching and in the green section, did not  
6 specify what they experienced.

7 But at the very top, the numbers that you  
8 see, the 13,900 for men and the 12,100 for women,  
9 that's our extrapolated meaning for what 6.1  
10 percent of women and 1.2 percent of men means in  
11 the Department of Defense. That's where we get  
12 that.

13 Once again, sexual harassment, we believe,  
14 is equally as important to measure because we know  
15 it's strongly related to the experience of sexual  
16 assault in the military and you'll notice that  
17 really between 2010 and 2012, our prevalence of  
18 sexual harassment didn't increase.

19 There is a rather detailed formula in the  
20 way that DMDC surveys for sexual harassment.  
21 There's actually four sub-measurements that they  
22 take a look at. I won't jump into those because I

1 know that you all probably want to ask other  
2 questions, but when DMDC comes and talks to you  
3 about that, I recommend asking them how do they  
4 survey for sexual harassment. But one of the key  
5 things is that you can experience a number of  
6 gender-based behaviors, dirty jokes, things like  
7 that that you might hear in environment, but that  
8 doesn't necessarily mean it was directed towards  
9 the individual.

10 In order to be wrapped up in this  
11 prevalence rate, the individual not only says, yes,  
12 I experienced one of the behaviors that you're  
13 asking about, but I also considered that to be  
14 harassing towards me, and so that's how we got to  
15 these numbers that are here.

16 One of the things that we found this year  
17 in our--in a deeper dive is that our victims of  
18 unwanted sexual contact are highly represented in  
19 the sexual harassment experience, so what you're  
20 looking at up above in the top part here is for the  
21 general military population, how many in the  
22 general military population experienced sexual



1 harassment? And you'll notice for women, it's 23  
2 percent, but if I take a look at just the women  
3 that reported unwanted sexual contact, their  
4 prevalence of sexual harassment jumps to 77  
5 percent.

6 So, you can see that they experienced  
7 sexual harassment at a higher rate as well, and  
8 what our data says is that's in general. We also  
9 have data that takes a look at the person that  
10 caused the unwanted sexual contact, did they harass  
11 you before, after, or before and after the unwanted  
12 sexual contact, and 57 percent of our women said  
13 that that occurred to them as far as the sexual  
14 harassment experience went.

15 So, we look at sexual harassment as part  
16 of--

17 PANEL MEMBER HOLTZMAN: Could you just  
18 break that down? I'm sorry, what part of it? All  
19 of it? I mean, they had sexual harassment before  
20 and after? Is that what you're saying?

21 DR. GALBREATH: Yes, Ma'am. You could  
22 answer it three ways and I just gave you it all

1 together. So, before, after, or before and after,  
2 and the sum total of that experience is 57 percent.

3 So, we know that our offenders are  
4 probably engaging in grooming behaviors that are  
5 tantamount to sexually harassing behaviors, and  
6 that's something that in my work with sex  
7 offenders, I know that a lot of times that they use  
8 what we call grooming behaviors as a way to target-  
9 check whether or not an individual or potential  
10 victim can be someone that they can--that they--  
11 will resist them. Number two, it will also see  
12 whether or not a potential victim will keep a  
13 secret and also thirdly as to--to see how hard  
14 they're going to have to work in order to  
15 perpetrate a crime on someone, and we think that  
16 some of those sexually harassing behaviors are  
17 things that give them a key indicator as far as  
18 whether or not they can perpetrate a sexual  
19 assault.

20 On the next slide, slide number 17, if you  
21 take a look at retaliation, this is one of the  
22 things that we're most concerned about as far as

1 what peoples' experience is if they report, but I  
2 want to just draw out a fine point in our data.  
3 When you are not a victim of sexual assault, your  
4 viewpoint is substantively different than someone  
5 who's been through a traumatic experience.

6           So, if I ask the question that you see  
7 here: how many of you would be free to report a  
8 sexual assault in your unit without experienced  
9 retaliation? You'll see that the vast majority of  
10 both men and women say, oh, yeah, I could do that.  
11 That's no problem.

12           But when we go and we ask our victims if  
13 you experienced unwanted sexual contact and you  
14 reported it to a military authority, did you  
15 experience any of these kinds of retaliation that  
16 you see listed here--social, professional,  
17 administrative or some kind of punishment, and 62  
18 percent of our female respondents or victims said,  
19 yes, I experienced one or more of these types of  
20 retaliation.

21           So, just wanted to show that--talk about  
22 that difference between your perception when you

1 haven't experienced something like this versus what  
2 your perception is afterwards.

3 PANEL MEMBER HOUCK: Could you give a  
4 quick definition of professional--

5 CHAIR JONES: Doctor.

6 PANEL MEMBER HOUCK: --retaliation, just  
7 what do you mean by that?

8 DR. GALBREATH: Yes, that they didn't get  
9 a job that they put in for, that they perceived  
10 that their reporting was related to them not  
11 getting that, or a PCS move that they wanted,  
12 something like that.

13 PANEL MEMBER FERNANDEZ: Do we know which  
14 of these retaliations came up the most?

15 DR. GALBREATH: We do. I don't have that  
16 right here, but we do and I can get that for you.

17 PANEL MEMBER HOLTZMAN: Then why do you  
18 say data not reportable for men?

19 DR. GALBREATH: You only saw only 1.2  
20 percent of men reported unwanted sexual contact, it  
21 just means that I have way too many men reporting  
22 to make a statistical analysis that would be valid.

1                   PANEL MEMBER HOLTZMAN: You mean way too  
2 few.

3                   DR. GALBREATH: Way too few, I'm sorry.  
4 That's as far as our survey goes. I'm sorry I went  
5 a little long with that, but I thought I was very  
6 important to just kind of give you a snapshot of  
7 what we do.

8                   General Patton is going to talk about our  
9 strategy.

10                  MAJOR GENERAL PATTON: So we've just  
11 defined the problem and now the next several slides  
12 we'll talk about what we're doing about it. Slide  
13 19, please.

14                  So, our strategy is to take a multi-  
15 disciplinary approach to solving the problem that  
16 crosses several disciplines, and we refer to them  
17 as lines of effort, prevention, investigation,  
18 accountability, victim care, and assessment, and  
19 not one of those or not one single element in each  
20 of these lines of effort we really count as a  
21 single silver bullet solution to combating this  
22 crime, but rather as a combination across these

1 multi-discipline.

2           So, this slide here is--are really the  
3 founding elements or principles of our strategy to  
4 combat sexual assault and a key part of this is a  
5 victim focus for all the reasons we've talked  
6 about, to improve victim confidence, to take care  
7 of our victims, so that more report and that  
8 additional reporting is a bridge to increased  
9 victim care and a bridge to greater offender  
10 accountability.

11           But also recognize that there's a cultural  
12 piece, a culture change has to occur and a cultural  
13 imperative of respect and trust and commitment and  
14 professional values has to be enforced and led from  
15 top to bottom. Culture change starts at the top,  
16 but it has to be enforced at the bottom among our  
17 front line leaders, and it's a culture where the  
18 condoning and the tolerance of sexual harassment,  
19 of sexist behavior and sexual assault cannot be  
20 allowed, they cannot be condoned, they cannot be  
21 tolerated, and they cannot be ignored, this climate  
22 of respect and dignity has to be enforced and with

1 front line leaders leading by example at every  
2 level to where a small unit leader does not walk by  
3 an incident of sexist behavior or sexual  
4 harassment.

5           When you walk by the incident, you've just  
6 set a new standard for your unit and the chance of  
7 recovering and returning to an improved climate has  
8 just diminished. We want a climate at every level  
9 with small unit leaders enforcing climates of  
10 respect and dignity for everyone, and that's a  
11 hallmark of our prevention program. We already  
12 talked about--I'll talk about on the next couple  
13 slides here about an area that Judge Jones asked me  
14 to examine and to address.

15           CHAIR JONES: Can I ask you a question  
16 about climate for a minute first? Climate surveys?  
17 I know there have been questions asked about this  
18 and I gather that they're done routinely when a  
19 commander takes over after another one's just left,  
20 and then at various periods afterwards, but the  
21 surveys themselves don't necessarily pinpoint  
22 sexual assault, at least not at this point. Is

1 that right?

2 MAJOR GENERAL PATTON: There are about--a  
3 standard core set of about 70 to 80 questions on a  
4 Command Climate Survey. It's administered by the  
5 organization--the Defense Equal Opportunity  
6 Management Institute. We have added seven  
7 questions that deal with sexual assault on the  
8 Command Climate Survey. It gets at a lot of other  
9 climate factors, but there are seven specific  
10 questions that we've had a hand in writing.

11 For example, one of them gets at bystander  
12 intervention. It asks the respondent if presented  
13 with these circumstances, would you take steps to  
14 intervene to prevent a sexual assault or an unsafe  
15 act from occurring, and then we get the results  
16 back of those specific sexual assault questions and  
17 the DEOMI analyzes them for us and then we plot how  
18 we're doing.

19 And so, we look at that one particular  
20 question, there's actually two questions on  
21 bystander intervention, and we use that as a metric  
22 as to whether our bystander training is being



1 effective or not.

2 CHAIR JONES: Do you include sexual  
3 harassment when you say sexual assault?

4 MAJOR GENERAL PATTON: There are other  
5 questions on sexual harassment as well on the  
6 survey. I don't know how many, but we can  
7 certainly provide you a copy of the DEOMI  
8 administered Command Climate Survey.

9 CHAIR JONES: And then I guess the  
10 ultimate question is, if there's a bad climate in a  
11 command, what is the ramification in terms of the  
12 commander? What is institutionalized? Or is there  
13 anything institutionalized about how to--you know,  
14 promotion board notice or something along those  
15 lines?

16 MAJOR GENERAL PATTON: Currently, the  
17 Command Climate Surveys are administered and then  
18 the responses and analysis of the surveys are  
19 returned to the surveyed commander. Secretary  
20 Hagel directed just last month that that change,  
21 and it gets at the accountability and greater  
22 visibility.

1           And so, in the future, beginning in  
2   August, the Command Climate Surveys will now go  
3   back to the surveyed commander and one level up in  
4   the chain of command to increase the visibility of  
5   the results of that survey.

6           So, that's one point, to elevate the  
7   visibility of the results.

8           In terms of ramifications, what they  
9   elevation of that survey does, it now allows the  
10   senior commander, who is generally the rating  
11   officer for the subordinate one, to be able to take  
12   those surveys and do a number of things--bring the  
13   subordinate commander in and go, okay, we've looked  
14   through the survey here and you've got a problem  
15   with hazing in one of your units, very clear from  
16   your Command Climate Survey. What are you doing  
17   about it?

18           And the surveys that are being elevated to  
19   the senior commander are the annual surveys and  
20   that's one year after the assumption of command,  
21   it's not the initial survey that's done within the  
22   first 90 to 120 days, and so the answer can't be,

1 well, I inherited that problem from my predecessor.

2           You've now had a year to work on this and  
3 your annual survey says you have a hazing problem.

4 So, the ramifications are that you could have--you  
5 definitely want to counsel and develop a correction  
6 program with that subordinate commander, you would  
7 want to lay some milestones out there for  
8 improvement, and in the case of a brigade that I  
9 commanded, one of my subordinate units did see a--  
10 did have a hazing problem and when that problem  
11 wasn't fixed over time, I relieved the company  
12 commander that was the commander for that unit.

13           And so that, I would say, is a case where  
14 the behavior was not modified, the commander did  
15 not correct the problem, and it required a change  
16 in the commander. And so, there are other things  
17 you can take--other administrative measures you can  
18 take as well in terms of reflecting on the  
19 commander's evaluation and I think the point of  
20 elevating the survey to a higher level of command  
21 sends the message that we're going to take these  
22 surveys seriously and we do expect the senior

1 commander to take them into account when assessing  
2 all the subordinate units and the performance of  
3 those subordinate commander.

4 PANEL MEMBER HOLTZMAN: General along  
5 those lines, do you ask the question in these  
6 surveys about the incidents of sexual abuse in the  
7 units subject to that commander?

8 MAJOR GENERAL PATTON: Subject to the  
9 commander and how the commander--

10 PANEL MEMBER HOLTZMAN: No, no, just what  
11 the incidence is? Is that brought to the attention  
12 of the commander? Does the commander know? Do you  
13 survey that? Is that shown to the--

14 MAJOR GENERAL PATTON: Yes. One of the  
15 questions is, we'd have to--we can give you these  
16 questions, but one of the questions but one of the  
17 questions is--sounds like, do you have faith in  
18 your commander to deal with a reported sexual  
19 assault--do you have confidence that he would deal  
20 with it correctly in terms of taking the victim  
21 seriously and investigating the report, and that  
22 sort of thing.

1 PANEL MEMBER HOLTZMAN: Who fills out  
2 these questionnaires?

3 MAJOR GENERAL PATTON: These go out to the  
4 troops assigned to the unit, large numbers; there  
5 are about 50,000 surveys that are analyzed every  
6 month. So, the--when you look at all the different  
7 units, a unit of about 50 or 60 people as a small  
8 size, and every formation above that, are the ones  
9 administering these surveys.

10 PANEL MEMBER HOLTZMAN: Maybe I  
11 misunderstood what you were talking about, so let  
12 me rephrase my question. Is the--is a commander  
13 held responsible for the incidents of sexual  
14 harassment or sexual assault in his or her command?  
15 And if so, under what circumstances?

16 MAJOR GENERAL PATTON: Yes. I would say  
17 yes, and one the things that Secretary Hagel  
18 directed last month was to do better at that, and  
19 so he directed the Chiefs of the Army, Navy, Air  
20 Force and Marines to take a couple months and come  
21 back to him and tell him what new methods are we  
22 going to employ to better assess, evaluate, and

1 hold commanders accountable on adhering to the  
2 prevention and response principles within their  
3 units. And that's being worked on right now by the  
4 senior leaders in the service so that we can--we  
5 recognize we have to do better in that area.

6 PANEL MEMBER HOLTZMAN: Thank you, Sir.

7 MAJOR GENERAL PATTON: Thank you. I'm on  
8 slide 20 and this is just a visual description of  
9 our strategy. The strategy was founded on guidance  
10 received from the Joint Chiefs a year ago and in  
11 this past May, we published our strategy, the DoD  
12 Revised Strategy on Sexual Assault Prevention and  
13 Response and this is the same mission you saw at  
14 the beginning of the briefing and the lines of  
15 effort are the multi-disciplines that I described  
16 earlier and the objectives on the right are the  
17 goals for each of these lines of effort.

18 Now, Judge Jones asked me to explain,  
19 among the lines of effort, the advocacy and victim  
20 assistance line of effort, that's on the next  
21 slide, and some of the things we've done and are  
22 doing. I have similar slides on the other--the

1 remaining four lines of effort and those are in  
2 your backup section, slides 65 through 68.

3 But just to focus on advocacy and victim  
4 assistance as that line of effort. You can see at  
5 the top the initiatives that we've completed, the  
6 Safe Helpline that is described there went into  
7 effect in April 2011. It's a 24/7 crisis support  
8 staff.

9 To date we've had over 9,500 people who  
10 have been given direct, personal assistance by a  
11 human being on the end of the crisis support line  
12 as a helpline counselor, since that line has been  
13 put into play over two years ago.

14 Recently we've developed another feature  
15 of the Safe Helpline and it's called the Safe Help  
16 Room and I've got that listed here in the fifth  
17 bullet. It's a moderated chat room and it brings  
18 in survivors and they're able to chat together in a  
19 very closely moderated forum and in the two months  
20 that we've been doing it we've had very positive  
21 feedback from the participants. It's a meaningful  
22 forum by which survivors come in and talk to one

1 another.

2 As you can imagine, one of the main topics  
3 of discussion is about reporting. Should I report?  
4 Did you report? You know, how do we move forward  
5 here? And another primary line of support in the  
6 chat rooms is relationships, people that have been  
7 sexually abused and trying to reestablish or get  
8 back into a healthy relationship with someone.

9 And so, those are things that we're seeing  
10 just in the first two months of the Help Room.

11 PANEL MEMBER BRYANT: Chairman Jones, may  
12 I ask a question on that issue? General Patton,  
13 that help line is run, I believe, by the Rape Abuse  
14 Incest National Network. Is that organization also  
15 running the chat room?

16 MAJOR GENERAL PATTON: Yes.

17 PANEL MEMBER BRYANT: And is that having a  
18 similar response, you said 9,500 calls?

19 MAJOR GENERAL PATTON: Yes, the--

20 PANEL MEMBER BRYANT: To the Safe Line.  
21 I'm just wondering what the participation is in the  
22 chat--or the Safe--I'm sorry, what the term is?



1 Safe Help Room.

2 MAJOR GENERAL PATTON: Yes. So, the Safe  
3 Helpline, you have several different options to get  
4 access to the line. You can call, you can text, or  
5 click and get certain information by linking in to  
6 the information.

7 If you call or chat, you have a counselor,  
8 human contact that you get there on the other end  
9 of the line.

10 Separate from that, in a recent phenomenon  
11 is the Safe Help Room, and that's only been in  
12 effect for two months. I think we've run about ten  
13 of them, generally about two a week. We see four  
14 to five to six participants in each chat room, chat  
15 session, and we are looking to increase the  
16 promotion, also the participation in that, but--

17 PANEL MEMBER BRYANT: But is that also run  
18 by the--

19 MAJOR GENERAL PATTON: Yes, it is.

20 PANEL MEMBER BRYANT: --the Rape--

21 MAJOR GENERAL PATTON: Yes.

22 PANEL MEMBER BRYANT: The same group

1 you've contracted to do the safe line.

2 MAJOR GENERAL PATTON: Yes.

3 PANEL MEMBER BRYANT: Okay. All right. And  
4 how is that publicized to military members that  
5 that's available? Posters? Command briefings?

6 MAJOR GENERAL PATTON: Yeah, it's promoted  
7 through the Safe Helpline. It's on our website.  
8 You may be aware of the Sexual Assault Prevention  
9 Response stand down that recently the Secretary of  
10 Defense directed. That stand down is going on this  
11 month. It will conclude at the end of this month.  
12 And as part of that stand down what we did was we  
13 sent messaging out through multiple venues, chains  
14 of command across all the services encouraging them  
15 to promote the Safe Help Room as a new feature for  
16 the--as part of the Safe Helpline.

17 PANEL MEMBER BRYANT: All right. Thank  
18 you.

19 MAJOR GENERAL PATTON: Just a couple of  
20 other things I'd like to point out in the area of  
21 advocacy and victim assistance and that is in the  
22 ongoing and future actions.

1           The implementation of a certification  
2 program. A certification program was specified, it  
3 was mandated in the NDAA '12 and we are in the  
4 midst of that now.

5           After 01 October of this year, you will  
6 have to be a Certified Sexual Assault Response  
7 Coordinator or Victim Advocate in order to practice  
8 and have contact with a victim of sexual assault,  
9 and what that certification entails is there are  
10 training requirements, there is a Code of Ethics  
11 that has to be signed to, there is a commander's  
12 evaluation and assessment, and there's an  
13 experiential element where the Victim Advocate has  
14 to explain how many various cases and the type of  
15 experience they may have, and that gets you into  
16 certain tiers of certification. And that  
17 certification program is ongoing right now.

18           And then just one other thing to point out  
19 is the--not listed on this chart--is that the  
20 Secretary of Defense has recently announced that  
21 Sexual Assault Response Coordinators and Victim  
22 Advocates will be exempted from the furlough and

1 that is in order to ensure continuity of care and  
2 assistance and that there's no gaps in terms of  
3 taking care of victims.

4 And also that the stand down that I  
5 referenced earlier, which has been ongoing through  
6 the month of June, the stand down was really  
7 focused at gaining greater precision in the  
8 screening and the credentials and the selection of  
9 our Sexual Assault Response Coordinators and our  
10 Victim Advocates and also our recruiters. These  
11 are people who are in positions of responsibility  
12 and authority in our military and so the direction  
13 was to go out and review the credentials of these  
14 people, the methods that you're using to select  
15 them, reaffirm your background checks on them, and  
16 also conduct refresher training so that this very  
17 important group of people, our first responders and  
18 our recruiters who have contact with our young  
19 people in the military, are checked again and that-  
20 -like I said, that stand down will conclude here at  
21 the end of this week and we'll report it back to  
22 the Secretary on how the outcome of that stand

1 down.

2 CHAIR JONES: General--

3 PANEL MEMBER DUNN: General--

4 CHAIR JONES: You go ahead.

5 PANEL MEMBER DUNN: I would like to ask  
6 you a question about who are the SARCs and Victim  
7 Advocates. Are we using civilians exclusively or a  
8 mix of civilian and military?

9 MAJOR GENERAL PATTON: Yes, what you see  
10 is a mix and so the NDAA-12 said that we would  
11 expand the number of SARCs and Victim Advocates to  
12 be one full-time SARC and one full-time Victim  
13 Advocate for every brigade or brigade equivalent.

14 Now, the Army--brigade is an Army and  
15 Marine term, there's no brigades in the Navy and  
16 Air Force, so what they've done is taken their own  
17 service application of that. So, in the Navy, you  
18 see as SARC and a VA for about every 4,000 or 5,000  
19 sailors, which is the size of a brigade, and in the  
20 Air Force, they've equated that to the wing level.

21 So, in every installation where you have a  
22 wing base, there's a SARC and a VA that served that

1 wing. And all the services you see a mix of  
2 civilians--not contractors; the law said that we  
3 would have to transition from contractors to DoD  
4 civilians and military, and so that's being done  
5 right now.

6 There's still a handful of contractors out  
7 there, but they will be phased out here in the next  
8 several weeks because by the end of this fiscal  
9 year, we have to be solely DoD civilian and a  
10 military SARC and VA population.

11 PANEL MEMBER DUNN: And have you addressed  
12 the issue of military rank for individuals who are  
13 allowed to serve as SARCs and Victim Advocates?

14 MAJOR GENERAL PATTON: Yes, so you're  
15 really getting at the selection criteria for a  
16 SARC, and we recognize that we want to improve the  
17 status, the nominative and really the status of a  
18 SARC and a VA so that--we know in the military when  
19 you raise something to a nominative status in terms  
20 of assigning it, you're going to raise the caliber  
21 of individual and the degree of selectivity and so  
22 forth for somebody taking that position.

1           Just recently--well, so you get SARCs and  
2 VAs at different ranks based on the organization.  
3 You might see a Major in the Army as a SARC for a  
4 division and you would see a Staff Sergeant or  
5 Sergeant First Class as a SARC for a subordinate  
6 unit, a brigade or battalion, and we also see part-  
7 time SARCs and VAs--Victim Advocates--at those  
8 subordinate levels.

9           But more than the grade breakout, I think,  
10 is the quality that we want to infuse into this  
11 group. I was recently out at Fort Leonard Wood,  
12 Missouri and I had an office with a roundtable,  
13 about a dozen of these military SARCs. They were  
14 all the SARC for a brigade--training brigade, about  
15 4,000 to 5,000 trainees and cadre, and I would say  
16 that in 2012 and 2013 when I witnessed these SARCs,  
17 I have noticed a marked improvement in the quality,  
18 the commitment, and just overall skill levels of  
19 the people that we have now in the SARCs and VA  
20 positions.

21           They're not all that way, but I have seen  
22 an increase in terms of the--of that sort of

1 performance and quality cut.

2           The Secretary of the Army, recently,  
3 within the last couple weeks, Secretary McHugh of  
4 the Army, directed that to be a SARC in the Army  
5 from this point forward, it would require a general  
6 officer selection. That has not been the case in  
7 the past.

8           To be a Victim Advocate in the future in  
9 the Army, you have to have been selected and  
10 approved by a Brigade Commander or an O6 Commander  
11 in the Army. That has not been the case in the  
12 past.

13           So, we're raising the level of selection  
14 in terms of who's making the selection and also  
15 some of the status--you know, gaining nominative  
16 status and so forth that we think will improve  
17 overall the quality people that we have in these  
18 important positions.

19           PANEL MEMBER DUNN: And what about the  
20 term up there, service in the position? How long  
21 do they stay in the position?

22           MAJOR GENERAL PATTON: I think you would--



1 that's why we want civilians in the mix as well  
2 because you see much more continuity from the  
3 civilian workforce there. In the military, I think  
4 you'd probably see a term--a standard term of  
5 service two to three years.

6 We have not made this a career path to  
7 this point. I think that's something that the  
8 services are looking at and need to look at very  
9 closely. But in order to do that, we have to  
10 incentivize the career path so that there's  
11 promote-ability and retain-ability and those kinds  
12 of things associated with it. So, I think that's  
13 an area we need to improve in.

14 PANEL MEMBER DUNN: I have one more  
15 question. I'm sorry, I'm full of them all of the  
16 sudden. My last question is whether you have any  
17 data at all that informs the rank of military SARCs  
18 in terms of the willingness of victims to come to  
19 them. In other words, is it better if you have a  
20 Major because a Private feels like there's somebody  
21 with some authority who will help them? Or is that  
22 too much of a rank gap and a Private is much more

1 comfortable talking to a Staff Sergeant? Do you  
2 have any data on that?

3 MAJOR GENERAL PATTON: I don't think we  
4 have any data on it, but we have been asking the  
5 question and that may be something that we ought to  
6 look at in terms of surveys and things, but I've  
7 been asking that question--when I was over at the  
8 RAINN organization recently we were talking to a  
9 number of care providers and some SARCs and Victim  
10 Advocates and I posed that same question. And what  
11 I heard was that--and the Army's doing the same  
12 thing with regard to--I know they're asking people  
13 the same question--and what we hear back is that  
14 having the mix at some level of a civilian and a  
15 military between the SARC and the VA is really the  
16 right balance so that if you're at the brigade or  
17 you're at the division or whatever the base, the  
18 air base, or the Navy's equivalent, that having a  
19 military and a civilian SARC or VA--so, one of the  
20 two is a civilian and one of the two is a military,  
21 is the right mix because some people feel more  
22 comfortable in going to the civilian side, and

1 other people feel more comfortable in going to the  
2 military side, and then you do look at the rank  
3 differential.

4           So, like at the brigade level, I think in  
5 the Army what you'd see is most times a Senior NCO  
6 and you don't have a civilian, so if you have a  
7 victim come forward, says, well, I'm a Private, so  
8 going to a Sergeant First Class is something I  
9 don't do on a regular basis, so I'd rather talk to  
10 the civilian.

11           Whereas if you see somebody, maybe a peer  
12 or another rank, maybe the Sergeant First Class  
13 would be the right level for that person.

14           And so, I think what we're going to settle  
15 on there is having the mix between the civilian and  
16 military to form that two-person team at the  
17 different levels, something that looks more like  
18 that, and offer the victim those sort of options,  
19 because there's no--it seems to be really a  
20 personal preference manner and there are a lot of  
21 dynamics. And so, having that mix there seems to  
22 be the best approach.

1                   PANEL MEMBER DUNN: And how is the  
2    resourcing in terms of the money for you to pay  
3    civilian employees to do this?

4                   MAJOR GENERAL PATTON: Yeah, well, the  
5    Army, which had the greatest expansion to do this  
6    year because of the NDAA that mandated SARCs and  
7    VAs at every brigade equivalent and above, had the  
8    greatest expansion and they, early on in the fiscal  
9    year, earmarked the resources for that.

10                  I have not heard of an issue with the  
11   other services. They're all working towards  
12   filling all these positions and in the case of  
13   several of the services, they have made exemptions  
14   to hiring freezes that were in play due to other,  
15   you know, fiscal policies and so forth.

16                  So, the feedback I got is that the  
17   resourcing of the full-time civilian is doable  
18   within available resources, and making those  
19   resources available.

20                  Of course, the military, you have a number  
21   of part-time, these full-time SARCs and VAs are  
22   supplemented with part-time that serve at lower

1 levels to increase the accessibility and we're also  
2 requiring that they be, whether you're part-time or  
3 full-time, the certification that I described  
4 applies to all.

5 DR. GALBREATH: And if I might add one  
6 thing, when we went out to the field a number of  
7 different times, what we found also is it's not  
8 just the rank of the individual serving as a Sexual  
9 Assault Response Coordinator, but it's also the  
10 access to the Commander that is equally as  
11 important. They need to have uninterrupted access  
12 to be able to then see and talk to the Commander at  
13 any time that they can.

14 Those units that had to go through several  
15 steps, we found that--to get to a commander, our  
16 SARCs were a lot less effective in those units.

17 MAJOR GENERAL PATTON: So that's one of  
18 the qualities. And then you also have a person  
19 that can be trusted with privacy, you have a degree  
20 of maturity and experience you want in the SARCs  
21 and so there is a degree of selectivity. It's just  
22 not the first person that walks in the door. We

1 want--and I think raising the level of decision for  
2 the selection of these people to a higher level  
3 will help in that area.

4           The other thing is accessibility, that's a  
5 characteristic of the SARCs and VAs, accessible  
6 24/7. And what we're doing is taking the contact  
7 information for all of the SARCs and VAs and over  
8 the course of six months, we're conducting 100  
9 percent calls to these people to ensure that they  
10 are reachable, and you get a primary and an  
11 alternate number and we make several calls and if  
12 we don't reach you on the primary/alternate number  
13 over several calls, you're a no go, and then we are  
14 reporting these statistics in terms of reachability  
15 to the services as a thing to measure.

16           So, when you put enough things together to  
17 measure, reachability of SARCs, certification of  
18 SARCs, retention, continuity of SARCs in the  
19 positions, victim satisfaction feedback and these  
20 type of things, number of victims who not only  
21 convert their reports from restrict to unrestricted  
22 reports, but also another metric we look at in the

1 area of victim assistance is victims who remain  
2 within the investigative and judicial process as an  
3 unrestricted report and then they stay the course.  
4 And we know there's a significant number that  
5 withdraw from that process every year.

6 And so, we see that as another sign of  
7 victims who would remain within that process as an  
8 indicator of progress within our program. So, you  
9 put all these things together and it starts  
10 painting a picture as to how we're doing in the  
11 area of victim assistance.

12 So, those are some of the metrics we look  
13 at.

14 We're moving to the last section--

15 PANEL MEMBER HOLTZMAN: Before you do  
16 that, I just had one question on something you  
17 said, Sir, which had to do with the access to the  
18 Commander was important. Would you explain that?  
19 Important to whom? And if so--and why does it  
20 matter?

21 DR. GALBREATH: It's important to the  
22 victim because part of the provisions in our policy

1 allows the victim to talk directly to the Commander  
2 about their experience and also on a number of  
3 issues that are identified in our policy.

4 So, having a SARC be able to access that  
5 Commander directly facilitates that kind of  
6 conversation.

7 In addition with that, if there is a  
8 safety issue as well, having the individual be able  
9 to go straight to the Commander and talk about  
10 issuance of military protective orders and things  
11 like that against the alleged perpetrator, having  
12 that direct access is important.

13 And also, too, is just overall process of  
14 administration of the program. If the SARC can't  
15 get the funding for certain things or if they--  
16 because they don't have access to the individual,  
17 to the Commander, then it just--the more steps that  
18 you put in place for someone to hop, in other  
19 words, before you see the Commander you have to go  
20 talk to the senior enlisted guy and then the Deputy  
21 Commander. When you put those kinds of steps in  
22 place it just puts unneeded time and burden on the



1 SARC to get through to the people that--to the guy  
2 or the woman that can make the most difference the  
3 quickest.

4 MAJOR GENERAL PATTON: I would add  
5 accessibility also leads to greater command  
6 awareness and potential action, and so you want a  
7 SARC who has the confidence of the Commander who  
8 can come in, you know, at any point in time and  
9 inform the Commander, here's what's going on in  
10 this case. It's not moving fast enough. Or we  
11 can't get the results back on this. Or this  
12 expedited transfer that has been requested by the  
13 victim is not being acted on in a timely manner,  
14 and these kinds of things, and you want that access  
15 to lead to compel action and greater awareness by  
16 the commander.

17 Another one of those--I think it's an  
18 asset that the Commanders have to--also, it's a  
19 two-way street, I mean, a Commander has to  
20 cultivate that access as well and that's a point  
21 that we've stressed in the curriculum for our pre-  
22 commanders. They go to training and one of the

1     curricula items that we've added to all pre-command  
2     courses in all the services is really focused on  
3     sexual assault prevention and response and it gets  
4     at the advocacy services, the support for the  
5     victims, as well as climate and other issues.

6             But that's one of the key parts for the  
7     commander side as well.

8             PANEL MEMBER HOLTZMAN: Thank you.

9             MAJOR GENERAL PATTON: Moving to the last--

10            CHAIR JONES: General, obviously we didn't  
11     leave enough time for you. It's a little after  
12     3:00. I'm happy to sit here for another ten  
13     minutes or so, because I don't want to keep our  
14     next panelist waiting too long. Is that enough  
15     time for you to get through at least what you had  
16     intended?

17            MAJOR GENERAL PATTON: Yes, Ma'am.

18            CHAIR JONES: Okay.

19            PANEL MEMBER HILLMAN: Madam Chair, may I  
20     ask one more question on this SARC issue?

21            CHAIR JONES: Sure.

22            PANEL MEMBER HILLMAN: I promise to make

1 it short. General Patton, your job seems immensely  
2 more complicated by the fact that there is such  
3 turnover among your military SARCs and your  
4 military commanders and you have five branches of  
5 service who are separately training. You're  
6 working to coordinate that now, all of these  
7 responses. Wouldn't this be a function more  
8 comfortably centralized given the rare nature of  
9 this crime, actually? There aren't that many of  
10 these cases that occur under the watch of each one  
11 of these particular coordinators in the process.  
12 Wouldn't it be easier to centralize that in a  
13 civilian process that would give you sort of  
14 resident expertise?

15 MAJOR GENERAL PATTON: Well, what you  
16 gain--what you have is a degree of trust built in  
17 by the fact you're, you know, we want the victims  
18 to come forward to the SARCs and we want SARCs to  
19 have ownership of each and every one of those  
20 cases, and there's a degree of confidence required  
21 there and, you know, confidence is bred by  
22 familiarity, with common shared experiences, shared

1 hardships, and all those kind of things you get in  
2 a military unit, and so, with the NDAA directing  
3 expanded numbers of SARCs, and we thought that the  
4 level that we expanded it to was appropriate, to  
5 the brigade or brigade equivalent level, you know,  
6 I think we have set the conditions for  
7 accessibility.

8           Now, the areas where accessibility is most  
9 problematic is in the training environment, not on  
10 the Navy ship or the--in the military line unit or  
11 in the flight squad or what have you, but in the  
12 training environment where the power differential  
13 between your chain of command and your subordinates  
14 is great. We have new people coming into the  
15 service that are unfamiliar with--that can't spell  
16 SARC even if you tell it to them three times in the  
17 first day, because they're just overwhelmed with  
18 information.

19           And so what we've found is we have to be  
20 repetitive and redundant within the training  
21 environment in order to make these very basic  
22 pieces of information stick. That's information

1 education but also an accessibility. It's a very  
2 formidable environment as a young officer or young  
3 soldier or sailor, marine, airman coming in the  
4 military to be faced with, you know, your Drill  
5 Sergeant and then to know where to go if something  
6 happens within your chain of command, who to report  
7 to, and when we've talked to young trainees, their  
8 first response is, well, of course I'm going to go  
9 to my Drill Sergeant.

10 Well, what happens if the Drill Sergeant  
11 is the offender? You have to--you make sure you  
12 have systems in place for that, and those are some  
13 of the lessons we learned from the investigation  
14 and report from Lackland and the services have now  
15 come together in a regular forum that looks at the  
16 training environment to look at those issues. What  
17 are the special conditions in the training  
18 environment? Could it be accessibility to the  
19 SARC? Oversight of people in power? That sort of  
20 thing, and they look at this on a regular basis to  
21 share really best practices, and we started doing  
22 this in the wake of Lackland so that we never--we

1 don't have any recurrence of those type of things  
2 across the other service training environments.

3 But I think the SARC--long answer to your  
4 question, but my feeling is that keeping the SARCs  
5 within the chain of command gives you a--helps  
6 breed that confidence and trust that we want as  
7 that relationship between the victim and then the  
8 first person they go to being the--that first  
9 responder.

10 PANEL MEMBER HILLMAN: Thank you.

11 PANEL MEMBER DUNN: And General Patton,  
12 isn't it true that in all the military services,  
13 there are systems built in with which the members  
14 become familiar and, you know, if they have an  
15 Equal Opportunity issue or if they have this sort  
16 of issue--I mean, they'd learn the process  
17 associated with that.

18 My sense is you're trying to keep the  
19 SARC/Victim Advocate process similar to that  
20 because we're dealing with a lot of young people  
21 far from home who, you know, learn about a big  
22 organization and I think we want to--my sense is,

1 you want to keep it as similar to all the other  
2 reporting processes they understand, you know, they  
3 know they'd call so and so for this and they'd go  
4 to the SARC and the Victim Advocate for that, and  
5 it's something that's accessible to them very  
6 locally, not just locally in terms of their  
7 installation, but locally--

8 MAJOR GENERAL PATTON: Yeah.

9 PANEL MEMBER DUNN: --in terms of their  
10 unit because they're, you know, they're on foot,  
11 they don't have a lot of ability to get around  
12 during the day and you really want that ability for  
13 them to have that personal contact.

14 MAJOR GENERAL PATTON: Well, absolutely.  
15 We want the command involved. We have to own the  
16 problem. Part of owning it is having the people  
17 and the resources and things that are on hand to  
18 take care of it within the unit and the Unit SARC  
19 is a key part of that when it comes to this  
20 particular crime.

21 PANEL MEMBER DUNN: Thank you.

22 MAJOR GENERAL PATTON: And so, the next

1 slide, which we'll cover in one minute or less--

2 (Laughter.)

3 MAJOR GENERAL PATTON: But really the next  
4 several slides is just a historical review of the  
5 audits that have been conducted on the sexual  
6 assault subject since 2003, and so I'm really not  
7 going to go into each one of those audits. We've  
8 provided the link there to the reports. We do keep  
9 track of the outstanding findings and  
10 recommendations and the ones that we have, there  
11 are a single digit number of recommendations from  
12 the most recent DTF SAMS report that we're still  
13 tracking that are in progress and we have to close  
14 out, but we do keep very close track on those.

15 The thing I would like to add to this data  
16 on these several slides is that we also have, in  
17 addition to the external structure, we also have an  
18 internal structure that is providing oversight and  
19 some degree of self-assessment and senior leader  
20 oversight of our program. And so, I'd just like to  
21 specify and describe a couple of those in very  
22 brief detail.



1           Number one, the weekly Secretary of  
2   Defense chaired accountability meeting. This is a  
3   meeting that Secretary Hagel started about a month  
4   ago. I'm in charge of the agenda and preparing the  
5   Secretary and it includes the Vice Chiefs of every  
6   service, the Under Secretaries of the service, the  
7   Assistant Secretary for Public Affairs, Legal  
8   Affairs, and Legislative Affairs, and the Under  
9   Secretary for Readiness in Personnel.

10           And we meet on a weekly basis and the  
11   Secretary calls it his "accountability meeting"  
12   because he holds those senior leaders accountable  
13   for doing things like recently--well, we review  
14   tasks that are in our strategy, completion of those  
15   tasks, the stand down tasks that he directed, and  
16   so forth, and we use that forum to get at current  
17   issues and hold people accountable to accomplishing  
18   the task in our strategy.

19           We also have a monthly meeting with the  
20   White House, the National Security Staff. It's  
21   chaired by the National Security Staff. It's  
22   called, "The Health of the Force Working Group and

1 Coordinating Group." And we meet on a monthly  
2 basis and we report back and confer on issues.

3 The next meeting, which will be held in  
4 the first part of July, I'll be providing a  
5 briefing on best practices and promising practices  
6 that we see in the area of sexual assault  
7 prevention and response. That meeting consists of  
8 the Vice Chiefs of all the services and the Under  
9 Secretary of Defense for Personnel Readiness and  
10 myself.

11 We also have a bi-monthly Sexual Assault  
12 Prevention and Response Integrated Process team  
13 meetings. I just had one this week. It includes  
14 the Senior SAPR Leads from each of the services and  
15 Health Affairs, Reserve Affairs, and military  
16 personnel. Senior SAPR Leads are generally a one  
17 or two-star general or admiral or an equivalent SES  
18 within the services, and what we do is we also hold  
19 ourselves accountable. We review the strategic  
20 environment, we hold ourselves accountable. In the  
21 weekly meeting we had this week, we reviewed the  
22 tasks that were directed in the NDAA-13 and the

1 progress we were making in terms of implementing  
2 the 19 separate provisions on the Sexual Assault  
3 Prevention and Response that was in the past--just  
4 this most recent NDAA.

5           And finally, we have a quarterly meeting  
6 with the Vice Chairman of the Joint Chiefs, it's  
7 called a roundtable, and from time to time we  
8 invite members of Congress into that session and  
9 also we have a Joint Executive Council on Sexual  
10 Assault Prevention Response. That's chaired by the  
11 Chairman of the Joint Chiefs. Again, we meet  
12 quarterly. It's attended by the Joint Chiefs and  
13 we--I generally have a presentation role in that  
14 where I present various things that the council has  
15 asked me to report back on, such as the next  
16 council I have to report out on measures of  
17 effectiveness, I have to report back on some other  
18 matters, how our program is tailored towards  
19 addressing male survivors as well as female  
20 survivors, and that sort of thing.

21           So, those are the--just to give you a  
22 flavor for the other--the internal oversight bodies

1 that we have in place in the area of Sexual Assault  
2 Prevention Response.

3 PANEL MEMBER O'GRADY-COOK: Sir, I'm  
4 sorry. This will be a short question. On those  
5 meetings, it was interesting even with the hearing  
6 that was recently in the Congress, all those weekly  
7 meetings and the ones at the White House, how are  
8 you integrating the National Guard and Reserve  
9 component? Because even when you had the Chairman  
10 of the Joint Chiefs sitting at that hearing and all  
11 the Chiefs there, National Guard Bureau Chief is  
12 now part of--

13 MAJOR GENERAL PATTON: Yes.

14 PANEL MEMBER O'GRADY-COOK: --the Joint  
15 Staff--

16 MAJOR GENERAL PATTON: I didn't mention  
17 the National Guard Bureau Chief, but in the Joint  
18 Executive Council, he has a seat in that, the Chief  
19 of the National Guard Bureau. In the coordinating  
20 group at the White House, the Deputy Director of  
21 the National Guard Bureau sits next to me, so he's  
22 involved in that. And in the SAPR IPT meeting I

1 described that we have every two months from my  
2 headquarters, the one-star, who's the Chief of  
3 Personnel and a portfolio owner in the National  
4 Guard Bureau headquarters is in that meeting, and I  
5 would answer that question by saying, they're fully  
6 integrated in our program. There are some unique  
7 aspects in the Reserve Component.

8           If you go back to the chart that showed  
9 the reports, the number of reports, 3,374, those  
10 are the reports of sexual assault for the Active  
11 Component or Reserve Component under Title 10  
12 Status, if they're in Title 10. If they're in  
13 other title status, they are not included in those  
14 numbers, and so we went back and looked at them and  
15 there were 201 cases when service members in the  
16 Reserve Component were victims or perpetrators of  
17 sexual assault in FY12 that are not reflected in  
18 the 3,374. So, 201 cases in a Title 32 status.

19           There's a different investigative process  
20 in--for the Title 32 statuses. It's hard to track  
21 all of them because they go--many of them go into  
22 the civilian courts and civilian law enforcement

1 and very hard to track the final disposition of  
2 those cases, and--but we do--because the programs  
3 and policies are common throughout, we include the  
4 Reserve Component senior leaders in every venue  
5 where we're talking Sexual Assault Prevention and  
6 Response.

7 PANEL MEMBER O'GRADY-COOK: Thank you.

8 MAJOR GENERAL PATTON: And Judge Jones,  
9 that's the end of our formal presentation. Thank  
10 you very much for your time.

11 PANEL MEMBER HOLTZMAN: Can I just ask a  
12 quick question?

13 CHAIR JONES: Okay.

14 PANEL MEMBER HOLTZMAN: Sorry. I know,  
15 General, you've been very generous with your time.  
16 Just a quick question maybe you can answer it at  
17 another point. Have you done an analysis of the  
18 extent to which the 2009 Task Force recommendations  
19 have been implemented? Is that written up  
20 someplace and could you provide it to us?

21 MAJOR GENERAL PATTON: The analysis of  
22 those specific findings and recommendations?

1                   PANEL MEMBER HOLTZMAN: Yes. To what  
2 extent have they been implemented?

3                   MAJOR GENERAL PATTON: I know we--I'm  
4 going to ask Dr. Galbreath to help me on that. I  
5 know we've integrated them all into our program  
6 except for, I think, about six or seven that are  
7 still ongoing and in progress. And I don't know  
8 that we've gone out and assessed the specific  
9 recommendations that came from the Task Force.

10                   Can you help me on that?

11                   DR. GALBREATH: Yes, Sir. There were 91  
12 separate recommendations that came out of the  
13 DTFSAMS Task Force. We have implemented all but  
14 six of them where at least that we're tracking that  
15 are still open and we're waiting for some of the  
16 processes that we've put in place a while back to  
17 complete, and once those processes are complete,  
18 then those will be closed as well.

19                   So, we'll be happy to provide that  
20 information to you and kind of give you a drill  
21 down. We also have that for the Government  
22 Accountability Office recommendations as well.

1 PANEL MEMBER HOLTZMAN: Thank you.

2 MAJOR GENERAL PATTON: But I think really  
3 what you're getting at is the effectiveness of  
4 those specific recommendations and have we been  
5 able to measure those kind of standing apart from  
6 the rest of the program? Is that where you're  
7 going with that?

8 PANEL MEMBER HOLTZMAN: General, you're  
9 asking a better question than I did. But you can  
10 answer it, I guess.

11 PANEL MEMBER BRYANT: Madam Chair, I have  
12 a specific survey question for Dr. Galbreath. Ms.  
13 Rumburg made reference to, and The New York Times  
14 has reported that 52 percent of this 26,000 were  
15 male. It may be that it's in here, but I can't  
16 find that reflected anywhere, and if you can tell  
17 me if that's true or not true.

18 DR. GALBREATH: Yes, Sir.

19 PANEL MEMBER BRYANT: That's supported by  
20 the data?

21 DR. GALBREATH: Right there.

22 PANEL MEMBER BRYANT: Fifty-two percent.



1 DR. GALBREATH: Out of 26,000, if you  
2 take--I don't know if that's the exact number, but  
3 it's--whatever the math is, I don't do public math,  
4 but 13,900 over 26,000, whatever that percentage  
5 is, it's over 50 percent.

6 MAJOR GENERAL PATTON: But those are using  
7 the extrapolated figures, the estimates used on the  
8 percentage. So, the percentage of women being  
9 victimized by unwanted sexual contact was 6.1  
10 percent and the men was 1.2 percent, but when you  
11 apply those percentages to the end strength of all  
12 females and all males, what you end up with is  
13 potentially an extrapolation of more male victims,  
14 numerically, than you would female victims.

15 PANEL MEMBER BRYANT: Thank you.

16 PANEL MEMBER HOLTZMAN: Thank you.

17 PANEL MEMBER HOUCK: Chairwoman Jones, do  
18 we have a process for asking questions for the  
19 record?

20 CHAIR JONES: Pardon me?

21 PANEL MEMBER HOUCK: Do we have a process  
22 for asking--maybe submitting written questions that

1 we could get follow ups on?

2 CHAIR JONES: We don't, but we do now. I  
3 think that's a great idea. And if you would be  
4 kind enough to respond to our questions, we'll send  
5 them out to you.

6 PANEL MEMBER HOLTZMAN: Including the ones  
7 he asks.

8 CHAIR JONES: Right.

9 PANEL MEMBER HOLTZMAN: Which was the  
10 better one, right?

11 MAJOR GENERAL PATTON: I'm not going to  
12 ask any more questions.

13 CHAIR JONES: Thank you very much; General  
14 and Dr. Galbreath, and we definitely didn't leave  
15 enough time for you.

16 MAJOR GENERAL PATTON: Thank you, Ma'am.

17 CHAIR JONES: We're going to take a 10-  
18 minute break and then we'll begin our last panel.  
19 Thanks a lot.

20 (Break.)

21 CHAIR JONES: All right, we're going to  
22 proceed with the last presentation now and that

1 will be Mr. Borch and then Captain Crow. I'm  
2 anxious to hear from you, Mr. Borch. I've never  
3 met a Regimental Historian before.

4 MR. BORCH: Your Honor, there is only one  
5 of us.

6 CHAIR JONES: Is your mic on? I can  
7 barely hear you.

8 MR. BORCH: Now it's on.

9 CHAIR JONES: Yes, thank you.

10 MR. BORCH: Okay. Well, good afternoon,  
11 Your Honor, members of the panel. I would like to  
12 spend about 15 or 20 minutes in a prepared  
13 presentation tracing the evolution of the military  
14 justice system over the last 238 years. I really  
15 can do it in 15 or 20 minutes, but I want to focus  
16 on the role of the Commander in the system because  
17 that is what I was asked to do.

18 Necessarily, I should state up front is  
19 that most of my discussion is going to be about  
20 what happened in the Army because changes to the  
21 military legal system mostly occurred in the Army.  
22 There are some historical reasons for this; the

1 Army was larger than the Navy, the role of lawyers  
2 in the Navy was quite different at the time, and  
3 the way the Army was configured and expanded during  
4 World War I and World War II meant that there were,  
5 quite frankly, more problems in the military legal  
6 system.

7           So, I want to talk about these things in  
8 the next 15 or 20 minutes: discipline and justice  
9 and/or justice, and then the two major trends that  
10 occurred in the evolution of the criminal justice  
11 system, which today we call the Uniform Code of  
12 Military Justice (UCMJ), and that's judicialization  
13 and then civilianization, and then some concluding  
14 thoughts as a historian.

15           So, I want to start out by talking about  
16 discipline because the bottom line, at least as a  
17 historian, is that the military's criminal legal  
18 system, just as the system that grew up in the  
19 Navy, was simply part of an overall effort to give  
20 a tool of discipline to commanders to accomplish  
21 the mission.

22           Congress empowered commanders starting

1 with General Washington in The Revolution and they  
2 empowered--Congress empowered George Washington to  
3 win The Revolution and so, discipline should be  
4 seen, at least historically and the need for a  
5 separate military justice system, as part of the  
6 commander's tool to accomplish mission success.

7           And I'd like to, just for a minute, talk  
8 about discipline because you often hear the word  
9 military discipline, and even soldiers and sailors  
10 are not quite sure what that means. It's more than  
11 simply obedience to orders. I can tell you, for  
12 example, that when I was a Clerk of Court in a  
13 Federal District Court, we had discipline in the  
14 organization where I was the Clerk: obedience to  
15 the orders of the Judges, the Deputy Clerks, most  
16 of the time, obedient to me as the Clerk. But  
17 discipline also meant resource discipline. We  
18 always had budgetary issues, and noise discipline,  
19 because you don't talk when you're in court and the  
20 Judge is holding court.

21           So, discipline, all organizations have  
22 discipline. Wal-Mart has discipline, and the Army

1 and Navy are no different, we simply call it  
2 military discipline.

3 I think, and I say this as a historian,  
4 that the military criminal legal system is simply  
5 another aspect of the disciplinary effort for which  
6 we empower commanders and demand accountability,  
7 and so we talk about resource discipline, light and  
8 noise discipline, supply discipline, and because  
9 the commander is responsible for everything that  
10 happens in his or her command, discipline is simply  
11 part of achieving that.

12 And so, the court-martial system grows up  
13 as a way for commanders to administer discipline in  
14 their commands, and that is why the commander is at  
15 the root of the system and remains at the root of  
16 the system, although what I'm going to talk about  
17 now is how the commander's role in the process has  
18 changed.

19 So, from the time that General Washington  
20 took command of the Continental Army in June of  
21 1775 until World War I, the system was pretty  
22 static, both in the Army and in the Navy.

1 Commanders convened or started courts-martial, they  
2 chose the juries or the panels that heard the  
3 cases, and then after the results are in, the  
4 commander decided what to do. Do I approve this  
5 finding? Do I approve the sentence? Or in the old  
6 days, commanders even had the power to send the  
7 case back to the court-martial because the  
8 commander was unhappy with the results. No, you  
9 don't seem to understand, I didn't want an  
10 acquittal, I wanted a finding of guilty. This is  
11 really true.

12 But the problems were, as you see on my  
13 slide, there's an arbitrary action and even  
14 capricious actions on the part of commanders  
15 because all commanders are different, a lack of  
16 uniformity and prosecutions. Some commanders  
17 thought this offense was important and struck at  
18 the very heart of good order and discipline and  
19 other commanders didn't, and there was wide  
20 sentence disparity.

21 But in the system prior to World War I,  
22 all courts-martial started with the commander who

1 began it and ended with that commander. There was  
2 no appellate process, no review process.

3           What really changed the system was the  
4 Houston Riots of 1917 and for those of you who know  
5 your history, African-American soldiers in the 24th  
6 Infantry Regiment were stationed in Houston. They  
7 were very much the victims of racial discrimination  
8 and mistreatment on the part of the locals, and  
9 after they heard one day that a member of their  
10 unit had been shot and killed by a white policeman,  
11 they rioted.

12           It wasn't true. In fact, no one had been  
13 harmed, but the soldiers didn't know this. They  
14 took their weapons, they marched into Houston, and  
15 over the next couple of hours, they killed 15 white  
16 citizens, policemen, and other bystanders.

17           The Army sent in some units to establish  
18 good order and the soldiers who were involved in  
19 the riots were court-martialed at Ft. Sam Houston  
20 Texas in 1917.

21           Sixty-three of the soldiers were  
22 represented by one defense counsel. After a trial



1 that lasted about a week, they were found guilty,  
2 and the following day, 13 were hanged. This caused  
3 a huge uproar in the country because there had not  
4 even been any time for notice of the convictions to  
5 get to Washington, DC, much less a chance for there  
6 to be any clemency. And as a result of this  
7 terrible incident, a split occurred between the two  
8 top lawyers in the Army, Samuel Ansell and Enoch  
9 Crowder.

10 Samuel Ansell, a West Point graduate and a  
11 graduate of the University of North Carolina's law  
12 school said, "We can't have a system like this  
13 anymore. We've got to have some sort of appellate  
14 process." But Crowder said, "Well, no, we don't  
15 need an appellate process. The system works good  
16 as it is. And maybe this was not a very good  
17 result, but after all, you trust us as commanders  
18 to lead troops into battle and you trust us with  
19 the lives of your sons and daughters. Trust us.  
20 The system as it exists is okay."

21 Congress, however, did not accept this and  
22 this is the beginning of the judicialization of the

1 process, taking courts-martial, which were very  
2 much tools of the commander, and beginning to make  
3 them look more like courts.

4 Here's Crowder on the left and Ansell on  
5 the right. Crowder won, essentially. In the  
6 aftermath of World War I there were not many  
7 changes made to the system, but most of Ansell's  
8 proposals were adopted with the enactment of the  
9 Uniform Code of Military Justice in 1950.

10 One of the things that Ansell wanted in  
11 judicialization was he wanted a civilian court of  
12 appeals, which exists today as the Court of Appeals  
13 for the Armed Forces. He wanted a military judge  
14 who would be like a real judge in a court-martial,  
15 and he wanted more lawyer involvement in the  
16 process.

17 And really, by the time we get to 1950,  
18 this is well underway. There is a lawyer who's not  
19 quite called a military judge, but in the 1920s we  
20 have what's called a Law Officer. He makes some  
21 decisions like a judge, but it's really in 1950  
22 with the enactment of the UCMJ that judicialization

1 comes into force. We create a Uniform Code of  
2 Military Justice--for the first time the word  
3 justice is in there as opposed to the Articles of  
4 War, which is what we called it before that--and  
5 for the first time we're saying, all right, the  
6 commander's role is important, but we need to  
7 improve due process for the accused.

8           And a lot of this arises out of the late  
9 19th century, early 20th century ideas of Oliver  
10 Wendell Holmes and realism, law is what judges say  
11 it is, progressivism, reform is good, and so what  
12 we have is Article 36 of the Code, for example  
13 says, that courts-martial are to mirror to the  
14 greatest extent practicable, what's happening in  
15 U.S. District Court.

16           And the result of this is that today, if  
17 you go into a court-marital, it pretty much looks  
18 like a trial before a Federal District Court judge.

19           In 1980 we adopted the Military Rules of  
20 Evidence, again as part of this civilianization.  
21 The Federal Rules had been adopted in 1975. And  
22 so, we adopted military rules in 1980, and those

1 are changed on a periodic basis today as changes  
2 are made to the Federal Rules or by case law  
3 involving evidence.

4           The big change in the system came in 1968.  
5 Prior to this time, every single court-martial in  
6 the Army, the Navy, the Air Force, the Marine  
7 Corps, the Coast Guard, is a jury case. Every  
8 single one is a panel. But in 1968, Congress  
9 creates the Office of Military Judge and that's a  
10 revolutionary change because now we actually have a  
11 judicial officer in charge in the courtroom, and  
12 very quickly our rates of trial by military judge  
13 alone went from zero to 90 percent, and I think  
14 today we're running at about 85 to 90 percent judge  
15 alone cases.

16           The Military Justice Act of 1983 is one of  
17 the last steps in the civilianization process  
18 because we have direct appeal now from the Court of  
19 Appeals for the Armed Forces to the U.S. Supreme  
20 Court. Prior to this time, if you wanted to appeal  
21 your decision at the highest military court, you  
22 had to take a collateral attack into District Court

1 on a writ of habeas corpus. But now we actually  
2 have direct appeal.

3 For the first time also, government  
4 appeals, prior to the time the government was not  
5 able to appeal an adverse ruling from a judge, so  
6 my bottom line on all of this is, the system has  
7 changed over time, first courts-martial made more  
8 like courts, and then because of this desire to  
9 have our system mirror what's going on in civilian  
10 courts, more and more courts-martial look like any  
11 trial in Federal District Court.

12 The last case that I want to talk about,  
13 because it's a very important one, and actually  
14 fits into your work here, Your Honor and members of  
15 the panel, and that's the Solorio case.

16 For many years, for almost 200 years, the  
17 only thing that was important about the trial of a  
18 service member was his or her military status. If  
19 you wore a uniform, then we had both in personal  
20 and subject matter jurisdiction over you at a  
21 courts-martial, but in 1969, Justice Douglas  
22 delivered a very important decision that turned the

1 military justice world upside down, and that's  
2 O'Callahan v. Parker. And Justice Douglas said  
3 soldiers and sailors, airmen, Marines,  
4 Coastguardsmen, are deprived of their right to an  
5 indictment by a grand jury under the Fifth  
6 Amendment and deprived of a real jury trial under  
7 the Sixth Amendment, and I'm not happy with this,  
8 so I'm going to convince the rest of the court, and  
9 the court ruled that you could not try a service  
10 member at a court-martial unless you showed service  
11 connection between the offense and military good  
12 order and discipline.

13 And at the time the case was decided, the  
14 irony is that only just recently had Congress  
15 passed this Military Justice Act of 1968 creating  
16 the military judge and taking this last major step  
17 towards civilianization, which included more  
18 lawyers in the process.

19 But from 1969 until the Solorio case in  
20 '87, you had to plead some connection between your  
21 offense and the military. So, as a general rule,  
22 if it happened off-post, you probably didn't have

1 jurisdiction.

2 In the Solorio case, though, this involved  
3 the sexual abuse of two young girls by a  
4 Coastguardsman named Solorio in Alaska and then  
5 later in Governors Island, New York. The Trial  
6 Judge dismissed the Alaska specifications on the  
7 ground that it happened off-post and therefore was  
8 no service connection. The sex offenses/sexual  
9 abuse that happened on Governor's Island was  
10 sustained because it had happened on-post.

11 Well, the government appealed, as it was  
12 just able to do after 1983, and the Coast Guard  
13 Court of Military Review reversed the Trial Judge  
14 and resurrected the Alaska offenses. It got to the  
15 Court of Military Appeals, as it was then called,  
16 the Court of Military Appeals agreed, now the  
17 defendant, the accused, takes a direct appeal to  
18 the Supreme Court and the Supreme Court in Solorio  
19 overrules O'Callahan v. Parker and replaces the old  
20 standard of military status is all you need for  
21 jurisdiction.

22 Now, I think as a legal historian, Solorio

1 is certainly significant for restoring this  
2 military status, but it also shows that the Supreme  
3 Court, in 1987, was satisfied that enough changes  
4 had been made to the military justice system that  
5 it could be, in this case, trusted to deliver  
6 justice to an accused, and at the same time, the  
7 Supreme Court was well aware of the role of the  
8 commander in the system at the time, and the  
9 decisions made by the commander in getting the  
10 Solorio case to trial, because Solorio could have  
11 had his offenses disposed of in a state court, now  
12 there was overlapping jurisdiction, but Solorio  
13 continues to be a very important case and one that  
14 seems to, at least in my belief as a historian,  
15 endorse the Supreme Court's view that the system is  
16 sufficiently mature that it protects the due  
17 process rights of the accused.

18           The real proponent of the major  
19 civilianization changes was this man, Ken Hodson,  
20 who was the Judge Advocate General in the '60s.  
21 Here he is getting one of the souvenir pens after  
22 Lyndon Johnson signs the legislation.



1           So, a few conclusions, from commander's  
2 disciplinary tool in the days of George Washington  
3 and General Crowder, to a system today of both  
4 discipline and justice, all the changes that have  
5 been made have increased due process for the  
6 accused.

7           Many of the proposed changes are shifting  
8 away from due process or concerns for the accused  
9 and instead focusing on victims.

10           What has happened as we've evolved in the  
11 system, Your Honor and members of the panel, is  
12 that in order to create due process for the  
13 accused, we have, in fact, restricted the role of  
14 the commander in the process. We're very careful  
15 about unlawful command influence.

16           The commander starts the process and he's  
17 involved at the end of the process. He or she does  
18 still select the panel members, but the days when  
19 the commander could say, well, I'm not happy with  
20 this result, go back and do it again, those are  
21 over.

22           The commander ultimately has the real

1 power because only the commander can start the  
2 process, courts-martial or not, courts that have  
3 vitality before a commander starts the process, and  
4 only he or she can start it.

5 So, the question is, if you look ahead as  
6 a historian is, are we going to do future  
7 restriction in the process, are we going to remove  
8 the commander from the system, are we going to  
9 remove the commander for some offenses, these are  
10 all questions that are unanswered, but at least  
11 looking back through history, would suggest that it  
12 would be a radical departure from how the system  
13 has grown and developed.

14 And I'm always concerned with changes that  
15 may unleash the Law of Unintended Consequences.

16 That's it.

17 CHAIR JONES: Go ahead, Admiral.

18 PANEL MEMBER HOUCK: When we talk about  
19 comparative law, sometimes, we're usually talking  
20 about U.S. law versus foreign law, but in this  
21 context I think my question goes to comparing, as a  
22 general rule, U.S. domestic law in the states vis-

1    à-vis the military justice system. From all the  
2    work that you've done, do you see that the military  
3    justice system has a bias in favor of defendants  
4    that is different from what we would see across  
5    state court systems?

6                    There was suggestion this morning that  
7    that might be the case. What is your sense of  
8    that?

9                    MR. BORCH: Well, if anything, probably  
10   more protections for the accused and a much--a bias  
11   in favor of the accused at trials. As some of you  
12   may be aware, every single accused gets counsel  
13   provided free of charge and sometimes you can have  
14   more than one counsel, you can request counsel.  
15   Open file discovery exists in the military justice  
16   system that we simply do not have--having served as  
17   a federal prosecutor, I'm well aware that we don't  
18   have open file discovery, so would say, yes, Sir,  
19   if anything probably more advantages for the  
20   accused in our system than he would have in most  
21   state courts.

22                    And by the way, on appeal, if you're a

1 defendant in a state system and you want to appeal  
2 your case, you're out of luck unless you have the  
3 money to hire an attorney, whereas in the military  
4 system, we provide free counsel on appeal through  
5 our Defense Appellate System.

6 PANEL MEMBER HOUCK: The second question  
7 goes--and last question--goes to your comment about  
8 unintended consequences. Do you have a sense of  
9 what those would be? Or do you raise that as just  
10 a general proposition?

11 MR. BORCH: I am very concerned about  
12 proposals to remove the commander from the system  
13 for some offenses for several reasons. If I  
14 believe that removing the commander might solve the  
15 problem, that would be one thing, but since most of  
16 the proposals are to put lawyers in charge of  
17 making these decisions, I can tell you as someone  
18 who is a lawyer and who practiced for 25 years  
19 before I made a career change, that asking a lawyer  
20 to make the decisions that we now leave up to the  
21 commander is not going to fix the problem, and I  
22 don't meant this to sound flip, Admiral, but all

1 you'd be doing is rearranging the chairs on the  
2 deck of the Titanic. You're not going to prevent  
3 what's coming.

4           Commanders can best solve this problem in  
5 the system as it exists. My only other point would  
6 be that sometimes I'm asked as a historian, well,  
7 have you looked at what other countries are doing  
8 and other nations are doing? And I have, and I've  
9 done some study of that, and my Law of Unintended  
10 Consequences would be that, albeit anecdotally,  
11 where the commander has been taken out of the  
12 system for some decision making, he or she quite  
13 naturally no longer has much interest in what is  
14 going on in that area, and that's quite natural.  
15 Commanders are responsible for good order and  
16 discipline, for what happens in their command, but  
17 if you tell a commander, this is not your  
18 responsibility anymore, we've turned it over to  
19 lawyers, the commander is then perhaps not so  
20 engaged in what's going on in the system.

21           PANEL MEMBER HILLMAN: Could I follow up?  
22 Do you have an historical example of that

1 happening, either here or in another country?

2 MR. BORCH: Yes, Canada. The Judge  
3 Advocate General in Canada has said that he's found  
4 that his commanders are now quite disengaged from  
5 the process because they're no longer involved in  
6 the decision-making.

7 PANEL MEMBER HILLMAN: From the process of  
8 what exactly? They're disengaged from the criminal  
9 part of disciplinary action or disengaged from the  
10 morale and sort of good order of their troops?

11 MR. BORCH: They're certainly still  
12 responsible as commanders for good order and  
13 discipline and morale and the health and welfare of  
14 their commands, but because of certain rulings from  
15 the highest courts in Canada, commanders have been  
16 restricted in actions that they can take in  
17 convening courts-martial and in approving those  
18 sentences and findings that we don't have in our  
19 system.

20 And so the Judge Advocate General in  
21 Canada has said that they are, because of their  
22 removal, less engaged. But I think that's quite

1 natural. If you're told a lawyer is making these  
2 decisions now, then you're probably not going to be  
3 as interested.

4 PANEL MEMBER HILLMAN: One other quick  
5 follow up question. The last change that you sort  
6 of note in the U.S. military justice system is the  
7 Solorio case from 1987 and the last sort of  
8 legislative change is in 1983. We're a ways  
9 removed from that and there have been a lot of  
10 changes in the military itself in demographic  
11 respects, for instance, since that point in time.  
12 You don't see any--the changes that you put out are  
13 largely driven by the Judge Advocates who were in  
14 the services rather than by the soldiers who were  
15 serving, the members of the military themselves,  
16 the sort of missions that they were undertaking or  
17 the responsibilities they had, so you don't have a  
18 sense that the evolution stopped then in the '80s,  
19 really, and hasn't--do you see other changes since  
20 that we should be sort of grappling with? That's  
21 what--

22 MR. BORCH: Well, we certainly have

1 continued to make changes, Professor Hillman, every  
2 time there's a change, say, when the federal court  
3 system on Rules of Evidence, we will update our  
4 rules, but your point is well taken.

5           The past changes have been very much  
6 driven internally by the services trying to  
7 judicialize and civilianize. I guess my comment  
8 would be, I think change is good, I think the  
9 system can be improved. I think reforms are  
10 necessary and I think history shows that change and  
11 reform is coming.

12           The question--the ultimate question is,  
13 are we making changes that in some way, using the  
14 Law of Unintended Consequences, will harm the  
15 rights of the accused? And our focus, for many  
16 years, as lawyers has always been, and certainly as  
17 legal historians, on increased due process for the  
18 accused.

19           So, my concern would always be, are  
20 reforms being driven that even though well  
21 intentioned and maybe good, are going to harm the  
22 accused? And my other point would be, are the



1 reforms going to somehow, if they take the  
2 commander out of the system, then I think you get  
3 to the root question is, you don't need a separate  
4 system if the commander is not in it.

5           PANEL MEMBER HILLMAN: You just said  
6 something really important that you're worried the  
7 unintended consequences would be, in fact, to  
8 diminish the rights of the accused in the criminal  
9 process, and that's something the military justice  
10 system has been very protective of. Isn't there a  
11 risk now, given all the emphasis on aggressive  
12 prosecution of sexual assault, that if we keep the  
13 authority to prosecute in command, that the rights  
14 of the accused will be undone by the fact that  
15 commanders feel obliged to prosecute cases that  
16 actually shouldn't be brought to trial?

17           MR. BORCH: I don't know. You're asking  
18 me to look into the future and I would only say  
19 that possibly, but I think that these are--the  
20 commander's role in the system and the importance  
21 of the commander's decision making in the system as  
22 part of this disciplinary effort, I believe

1 historically, should be retained.

2 But I agree that change is coming.

3 CHAIR JONES: You know, I think the  
4 principle proposal is to take the commander out for  
5 certain--I guess it's--let's just say felonies,  
6 leaving other lower offenses within the control of  
7 the commander, but basically simply swapping out  
8 the commander for the JAG lawyers. That's how I  
9 understand--

10 MR. BORCH: That's how I understand it  
11 too, Judge.

12 CHAIR JONES: --one of the proposals.  
13 From what little I've seen, and I certainly haven't  
14 seen everything that I will and should, it looks as  
15 though the decision making would be very little  
16 different if it's left in the control of the JAG  
17 lawyers. They're advising every step of the way as  
18 it is, and I wonder what you think about that.

19 MR. BORCH: Well, I would say--

20 CHAIR JONES: Would it be vastly  
21 different?

22 MR. BORCH: I would say, as a historian,

1 your observation is correct that commanders do not  
2 make decisions in a vacuum, in the Navy, in the  
3 Army, in any of the services, and their Judge  
4 Advocates are involved at every step of the way,  
5 and I think that's absolutely true.

6 CHAIR JONES: So, I guess what I'm saying  
7 is, I would assume the Judge Advocates would  
8 continue to protect the accused, because I think  
9 they're doing it now, with the commanders, but I  
10 suspect they would continue to do it without them.

11 MR. BORCH: If past history is any guide,  
12 that's absolutely true.

13 PANEL MEMBER BRYANT: May I posit two,  
14 maybe not perfect analogies, but in the context of  
15 what we're talking about? The Chief of Police or  
16 the Sheriff at a jurisdiction is not the one, even  
17 though he's running a paramilitary organization,  
18 who decides whether or not his officers or his  
19 deputies are going to be prosecuted for crimes.

20 It is the district attorney in most cases  
21 or some other entity, or to take a less analogous  
22 situation, but it's got the same parameters of what

1 you're talking about, the Mayor or the city manager  
2 is not the one who decides whether a city employee  
3 is going to be prosecuted. It's another entity  
4 that's also responsible to, sometimes, the very  
5 Mayor, sometimes not, depending on the  
6 jurisdiction.

7           But why does that work in the civilian  
8 world that we don't let the Chief of Police decide  
9 which officers are going to be prosecuted  
10 criminally and which aren't, we don't let the Mayor  
11 and the city manager decide which of their city  
12 employees are going to be prosecuted and which  
13 aren't?

14           MR. BORCH: I really--as a historian, I  
15 just don't have an answer to your question.

16           PANEL MEMBER BRYANT: All right.

17           MR. BORCH: But I appreciate the--

18           PANEL MEMBER BRYANT: Do you agree that  
19 those are maybe not the best in the world, but they  
20 are analogous to the issue that you've addressed  
21 about leaving the commander in that position? And  
22 by these questions and posing these analogies, I

1 don't want you or any other member of the panel to  
2 think that I have made up my mind or reached a  
3 decision or conclusion about which is the best or  
4 not, I'm just asking the question.

5 MR. BORCH: Well, I do think that  
6 militaries, and particularly the American military,  
7 is fundamentally different in the way it's  
8 organized and what its mission is than, say, a  
9 police department, but I certainly agree with you  
10 that we have decided, as a society, that District  
11 Attorney is best able to make these decisions.

12 I guess my only answer back would be, it's  
13 Congress that has said commanders are empowered  
14 under the UCMJ to start these cases, carry them  
15 through, and finish them, and I am a big believer  
16 in the powers of Congress and in the wisdom of  
17 Congress, as a historian. So, I guess that's the  
18 best answer I can give you.

19 PANEL MEMBER BRYANT: Thank you.

20 PANEL MEMBER HOLTZMAN: Just to follow up  
21 on one point. I'm curious about the Canadian  
22 example that you raised because I still don't

1 understand how you--what you mean by the fact that  
2 the commander who's taken out of the judicial  
3 process does--no longer feels involved. Well,  
4 suppose the commander no longer feels involved in  
5 the judicial process. Well, let's assume that that  
6 is correct. Will that affect his or her ability to  
7 lead the troops, to be a commander in every other  
8 respect including dealing with crime prevention,  
9 support of the troops, development of morale?

10 MR. BORCH: I think it will.

11 PANEL MEMBER HOLTZMAN: And explain how  
12 you get to that.

13 MR. BORCH: Historically, I think it will.  
14 Traditionally soldiers look to the commander as  
15 being in charge and responsible for health and  
16 welfare, good order and discipline, safety in the  
17 command, and when decisions are made outside the  
18 command structure, historically at least,  
19 commanders have felt that they were not empowered.

20 I can tell you, for example, during the  
21 Revolution, George Washington complained bitterly  
22 that he was unable to begin a court-martial without

1 getting prior approval from Williamsburg and the  
2 Assembly sitting in Virginia and he said, this was  
3 before he joined the Continental Army, he said, "I  
4 don't have time to wait for a decision by the  
5 legislative body. I need the power now as a  
6 commander to be able to convene courts-martial and  
7 carry these situations through."

8 And certainly if you're talking about  
9 American soldiers, sailors, airmen, Marine,  
10 Coastguardsmen deployed overseas, then the power of  
11 the commander becomes even more important.

12 PANEL MEMBER HOLTZMAN: Well, so it's your  
13 view, just because it's always been done this way,  
14 that if the commander's, for example, power with  
15 regard to the court-martial system is reduced, for  
16 example, I understand there's going to be the power  
17 to overturn decisions of the courts-martial is  
18 going to be removed from commanders, you think it's  
19 a little bit like Samson getting somewhat of a  
20 haircut? All of the sudden he's going to be viewed  
21 as kind of a weakling or she?

22 MR. BORCH: No. No, I don't agree at all.

1 In fact--

2 PANEL MEMBER HOLTZMAN: So, then if you  
3 don't, what is the difference between having your  
4 powers shorn in some respects and having your  
5 powers with regard to the military--the court-  
6 martial system, removed entirely. How will that  
7 affect the extent to which your troops will respect  
8 and follow your lead?

9 MR. BORCH: I think that the commander's  
10 power over 230 years in the process has been  
11 restricted as a natural consequence of giving more  
12 due process to the accused, and I expect that over  
13 time, we will continue to make changes that we  
14 think are necessary to give more rights to the  
15 accused. But I do think, at least historically,  
16 the commander is the one who's at the root of the  
17 system and he needs or she needs that system as  
18 part of a greater disciplinary effort to achieve  
19 mission success.

20 PANEL MEMBER HOLTZMAN: Thank you.

21 PANEL MEMBER O'GRADY-COOK: Mr. Borch--oh,  
22 sorry.



1 PANEL MEMBER DUNN: Go ahead.

2 PANEL MEMBER O'GRADY-COOK: Based on your  
3 research, and I don't know how far you've gone into  
4 the removal of command authority from the  
5 international arena, from the different commanders,  
6 why did they move it? I mean, in the cases that  
7 we're looking at now, it appears that part of the  
8 impetus is dissatisfaction with how certain  
9 categories of cases may be responded to or disposed  
10 of. Is that the same reason it was removed command  
11 authority in Canada or other countries? Or why did  
12 they remove it?

13 MR. BORCH: In the case of our closest  
14 allies or some of our closest allies, the British  
15 and the Canadians, they were forced to modify their  
16 systems because of court cases by their highest  
17 courts, and in the case of the British, it's my  
18 understanding it's the European Court of Human  
19 Rights and some other appellate courts that have  
20 overarching authority who instructed, in this case,  
21 the British to modify their system because in the  
22 case of the British, the European Court said,

1 commanders cannot be part of the system, it's  
2 violating the Convention on Human Rights. And so,  
3 that's why they've made the changes that they've  
4 made. It was externally driven in both cases.

5 PANEL MEMBER O'GRADY-COOK: When you're  
6 saying violation of human rights, was it the human  
7 rights of the accused or the victims'?

8 MR. BORCH: The accused.

9 PANEL MEMBER O'GRADY-COOK: Okay.

10 MR. BORCH: It is all accused focused.

11 PANEL MEMBER O'GRADY-COOK: It's still  
12 accused focus, so there's a lack of due process or  
13 whatever within their system, so they removed it  
14 from that.

15 MR. BORCH: Correct.

16 PANEL MEMBER O'GRADY-COOK: Which doesn't  
17 appear to be the same as far as the due process for  
18 the accused in the American military justice  
19 system. Is that--

20 MR. BORCH: Correct.

21 PANEL MEMBER O'GRADY-COOK: Okay, thanks.

22 MR. BORCH: That would be my

1 interpretation as a historian.

2 PANEL MEMBER O'GRADY-COOK: And that's why  
3 I'm asking. Thank you.

4 PANEL MEMBER HOLTZMAN: May I ask one  
5 further question?

6 MR. BORCH: Yes, Ma'am.

7 PANEL MEMBER HOLTZMAN: If this is a  
8 matter that's been decided by the court under the  
9 Human Rights Convention, does that mean all of the  
10 military subject to the Human Rights Convention in  
11 Europe are--may no longer have commander  
12 involvement in--

13 MR. BORCH: Yes.

14 PANEL MEMBER HOLTZMAN: --in the military?  
15 In the courts-martial system, in every single  
16 military?

17 MR. BORCH: Correct. The European Court  
18 of Human Rights made that decision. I believe,  
19 however, at the time, that the only system that had  
20 the commander involvement to the same extent, say,  
21 we did, was the British.

22 CHAIR JONES: Thank you very much. Mr.

1 Borch.

2 MR. BORCH: Yes, Ma'am.

3 CHAIR JONES: We appreciate it. Captain  
4 Crow.

5 CAPTAIN CROW: Thank you, Judge Jones,  
6 distinguished members. If I talk slow enough I may  
7 be able to dodge 412 and the 120 offense here in a  
8 little bit, but I will try to talk very fast in  
9 order to get through what I do have.

10 I'll say for the first slide, Colonel  
11 Borch has already kind of hit the highlights, one,  
12 commander driven, and, two, due process to the  
13 accused. I think that sometimes gets lost in the  
14 debate.

15 At your request, Judge Jones, I'm going to  
16 try to walk through a case and, again, if anyone  
17 has any questions as I go through different wickets  
18 on this, please jump in, if I throw an acronym out  
19 there unintentionally that you don't understand,  
20 please interrupt me and I'll explain it, but I'll  
21 kind of walk through this and then there's some  
22 more detailed slides for some of the specifics that

1 follow this, and then at your request also, there's  
2 a few different policies that are in the public  
3 debate and I'll address those, though a few have  
4 already been addressed already.

5           So, going first here, a lot of discussion  
6 already on unrestricted report. For  
7 accountability, it has to begin with an  
8 unrestricted report. For restricted, we don't know  
9 who the offender, the alleged offender, perpetrator  
10 is. The case I'm going to walk through, I'll just  
11 go with an E3 sailor against--as a potential  
12 offender, against an E3 victim, 20 years old, 20  
13 years old, alcohol involved, that's a large number  
14 of our cases, those are some of the toughest to  
15 prosecute, and so begin case in the barracks and  
16 two young sailors drinking in a club. They go back  
17 into the barracks, somehow or another, next  
18 morning--and I'm going to use male perpetrator,  
19 female victim. We obviously know that's not  
20 exclusive, but I'll use that as the example here  
21 today, but it is gender neutral and exchangeable.

22           The victim wakes up and says, I don't

1 remember consenting, I think I had sexual  
2 intercourse, I was sexually assaulted. Going into  
3 the unrestricted portion here, that can be reported  
4 to a number of different outlets. There are a lot  
5 of different ways that victims can report offenses,  
6 and it's not just to the chain of command, but upon  
7 a report, one, the chain of command will be  
8 notified, and two, the MCIO, Military Criminal  
9 Investigative Organization, Army CID, Criminal  
10 Investigative Division, NCIS/OSI, as General Patton  
11 said earlier, will all investigate.

12           They will investigate all sexual assault  
13 cases, meaning, when I talk sexual assault, going  
14 back to General Patton, the umbrella term that is  
15 penetration offenses, that is also contact  
16 offenses. So, from a slap on the rear or a grab of  
17 a breast over clothing all the way up through  
18 penetration, those offenses are investigated by  
19 those three, and Coast Guard, CGIS for the Coast  
20 Guard, I didn't mean to leave the Coast Guard out,  
21 but mandatory investigation for those.

22           And they independently report up to the

1 Chiefs or the Secretaries of the departments. So,  
2 to the extent that there's rhetoric out there in  
3 the public that commanders can kind of sweep it  
4 under the rug and not investigate these offenses,  
5 they must be investigated independently and  
6 reported back to the command, and I wanted to kind  
7 of echo that point.

8           Once they do that investigation, as we go  
9 through--and I'll throw out one quick data point  
10 here. A lot of cases we get, and especially as  
11 this board goes on and you get more into the  
12 metrics on prosecutions, convictions, acquittals  
13 and some of the reasons cases don't go forward, we  
14 get a lot of delayed reports.

15           Sometimes there is, as discussed earlier,  
16 a Restricted report that late becomes Unrestricted,  
17 sometimes it's just an Unrestricted report that  
18 happened days, weeks, months ago and we still  
19 investigate those cases, just as if it's a fresh  
20 complaint.

21           Obviously, going with this scenario, if  
22 the victim, the E3 victim reports--for the Navy and

1 Marine Corps it would be NCIS--they immediately  
2 assume the investigation then. If we had that type  
3 of scenario, they're going to be looking for  
4 toxicology if alcohol is involved.

5 They're going to be going and doing a lot  
6 of investigative steps at that point in time.  
7 Obviously, the victim will undergo a safe exam, try  
8 to collect any forensics that come out of that.  
9 Those cases, I'll put in a little--I don't want to  
10 say easy, but easier category, than other cases  
11 where the report is so delayed that we don't have  
12 toxicology, we don't have forensics; and we're just  
13 really back to the word of mouth and hard to go  
14 back and corroborate some of those things.

15 So, just that comment on the investigation  
16 side of it. You see right below that on the slide  
17 it says "Depending upon the evidence." Sometimes  
18 there's just no evidence there to go for  
19 disposition, to go for accountability.

20 Sometimes it just doesn't state a crime  
21 and, you know, it may be what you could call a bad  
22 sexual--



1                   PANEL MEMBER HOUCK: Can I interrupt for  
2 just a second? When you say sometimes there's just  
3 no evidence there, can you clarify that the  
4 testimony, the statement of the alleged victim is,  
5 of course, evidence?

6                   CAPTAIN CROW: Yes, Sir.

7                   PANEL MEMBER HOUCK: So what you really  
8 mean is there may be no additional evidence?

9                   CAPTAIN CROW: Or no crime, I guess is  
10 where I'm going. It may describe something that  
11 was perceived as bad, but there was no force, there  
12 was no lack of consent, there was no alcohol such  
13 that the person was maybe rendered unconscious or  
14 incapable of consenting, and as a data point on  
15 this, I'll throw out an example. We've had, in the  
16 past, in a very aggressive campaign on sexual  
17 assault within the military, a lot of information  
18 put out to troops that one drink means you can't  
19 consent, or if you're too drunk to drive, you're  
20 too drunk to consent to sex.

21                   So, if someone listens to that and  
22 believes that and then has a couple of drinks but

1 not intoxicated such that they couldn't consent,  
2 and then comes forward and says, I know I wouldn't  
3 have had sexual intercourse with this person if I  
4 had been sober. I was told if I had one drink I  
5 couldn't consent, therefore I was sexually  
6 assaulted. I'm not saying there's a lot of those  
7 cases, but there are some of those cases, and  
8 that's where in the disposition decision there,  
9 you're looking at that.

10 PANEL MEMBER HOUCK: The evidence given,  
11 the testimony, the report of the alleged victim is  
12 considered by the system to be evidence?

13 CAPTAIN CROW: Absolutely. Yes, Sir. And  
14 other witnesses, and almost every time, unless the  
15 accused invokes, we'll interrogate the accused as  
16 well, so even in the case where I've got--where  
17 you've got a victim that had enough alcohol that  
18 she doesn't remember what took place, that could  
19 have been a blackout or it could have been a pass  
20 out, you know, pass out intoxication level, a lot  
21 easier to prosecute, the blackout piece, those are  
22 tougher cases, but that's where an interrogation of

1 accused may provide some of that evidence that we  
2 wouldn't have from the victim.

3 And a lot of these cases, both the--you  
4 know, with alcohol involved with both the offender  
5 and the victim, the memory is fuzzy, they don't  
6 make the best witnesses to begin with under those  
7 circumstances, can't recall everything, so they're  
8 tough cases, but we absolutely investigate every  
9 one of them and they're handed off to the command  
10 for disposition based on that.

11 PANEL MEMBER HOLTZMAN: Whose burden is it  
12 to prove the issue of consent? Because the way  
13 you're describing it, it suggests that somehow the  
14 prosecution has to show that there was no consent.

15 CAPTAIN CROW: Consent is a defense and,  
16 Ma'am, we've had three different periods of statute  
17 over the last five or six years that's changed with  
18 that consent. There was a period between 2007--01  
19 October 2007 to 28 June 2012 that was found  
20 unconstitutional with a burden shifting mechanism  
21 on consent. That has been change.

22 So, we're under a new paradigm now with,

1 as General Patton mentioned earlier, four primary  
2 sex offenses going forward: consent or mistake of  
3 facts as to consent are defenses for the accused to  
4 put forward. Once they raise evidence as to that  
5 effect, the government must disprove it beyond a  
6 reasonable doubt. The middle statute in there that  
7 was found to be unconstitutional placed that burden  
8 on the accused and was an unconstitutional burden  
9 shifting mechanism.

10 PANEL MEMBER HOLTZMAN: Okay, thank you.

11 CAPTAIN CROW: So, to go on from the sort  
12 of depending on the evidence, just saying there's a  
13 lot of factors in each individual case. Every case  
14 is case specific and the--as Colonel Borch  
15 mentioned, you know, commanders aren't making these  
16 calls in a vacuum. There's multiple, in my  
17 opinion, Judge Advocates from prosecutors, trial  
18 counsel, Staff Judge Advocates and others that are  
19 advising commanders and, to a certain degree,  
20 investigators along the way.

21 I think one of the things that we're doing  
22 much better today are synching up prosecutors and

1 investigators, be it NCIS, CID, OSI, CGIS, up front  
2 where in the past, as I grew up in this, NCIS did  
3 their thing, handed me a completed investigation.

4 We're now engaged all the way throughout  
5 that process. We were doing this 15 years ago with  
6 a multi-disciplinary approach to children. I think  
7 we're now doing that with adults and in much better  
8 fashion and I think the investigations are  
9 improving as a result of that.

10 So, jumping on through the chart here,  
11 obviously, depending on the severity, so I used the  
12 example of the slap on the rear because we get  
13 asked, you know, why would you send any sexual  
14 assault to non-judicial punishment or to a summary  
15 court-martial or special court-martial, and I  
16 understand you've all had a preparatory session to  
17 kind of understand those differences, but if  
18 there's specific question as I'm talking about  
19 that, please jump in. But I may be that that lower  
20 level conduct that's maybe not even prosecuted out  
21 in a lot of states, we will take to that forum or  
22 that may be considered sexual harassment by a lot

1 of states where we actually treat it as a sex  
2 offense.

3 Under our system--and it was a crime  
4 mentioned earlier, abusive sexual contact or  
5 aggravated sexual contact offenses, if charged and  
6 convicted, are sex offenses, so slap on the butt,  
7 federal--not federal, but depends on the state--Sex  
8 Offender Registration for those. So, that's a  
9 significant consequence in weighing right back here  
10 at this point, the determination as to what's the  
11 appropriate outlet for these.

12 But I think most of the public focus, even  
13 though it gets lost a little bit in translation, is  
14 on the penetration offenses. So, those are the big  
15 ones of the rape, sexual assault, and forcible  
16 sodomy, and we lump in any attempts to commit those  
17 as well.

18 We treat those as kind of the different  
19 category of cases, those are clearly the most  
20 egregious, so walking through this chart, I'll use  
21 that as the example with the two E3s that woke up  
22 the next morning and the victim says, I can't

1 remember anything, I think I was sexually  
2 assaulted. So, based on those, there's a box down  
3 below there that says "Sexual Assault, Initial  
4 Disposition Authority". That's recent, that's as  
5 of last year, we at Secretary of Defense direction,  
6 elevated the ability of a commander to make a  
7 determination on those cases, so I'll use a Navy  
8 example here, but it applies the same in other  
9 services.

10 If you had a destroyer with an O5  
11 commander as the CO or captain of the ship and  
12 those two E3s, or at least the accused E3 belonged  
13 to that commander, in the past he would make the  
14 determination as to what to do with that offense  
15 after NCIS completes their investigation.

16 They hand it back to the command. Army is  
17 slightly different in a different realm on  
18 unfounded, but for the other services, they all go  
19 to the command for determination as to disposition.

20 Once they get there, that commander in the  
21 past would make the decision. Under this Sexual  
22 Assault, Initial Disposition Authority, all cases

1 now have to go up to at least an 06 and an 06 who  
2 has special court-martial Convening Authority.

3 Marine Corps has got withholding on  
4 additional offenses, Coast Guard withholds to the  
5 07 level, so there are some differences within the  
6 service, but the bare minimum is 06 with special  
7 court-martial Convening Authority, and again,  
8 that's for those penetration offenses and attempts  
9 to commit them.

10 So, the commander, going back to Colonel  
11 Borch's comment, that's already a removal of  
12 authority of the commander that didn't have that.  
13 For any case going to a general court-martial, we  
14 obviously elevate to a higher commander anyway, so  
15 those are some examples of where the commander's  
16 authority below are limited, but it's elevated  
17 within the chain of command.

18 So, that SA-IDA, as we refer to it, would  
19 evaluate the evidence and important here, the  
20 example I used was a 20-year-old E3 female victim  
21 who was drinking. That obviously is against the  
22 law as well, so collateral misconduct of a victim,



1 which is discussed quite a bit in the public, also  
2 withheld to that SA-IDA, so that CO can't do  
3 anything with that victim on accountability, it  
4 goes up with the greater offenses against the  
5 accused as well.

6           And we can talk more about that if you'd  
7 like, but my sense, for the most part, is victims  
8 aren't being punished immediately for minor  
9 misconduct or collateral misconduct. That's  
10 typically delayed, and if done, after the fact.  
11 Again, that's not absolute, but that's what I  
12 think--where we've kind of gone in delaying  
13 collateral misconduct with respect to good order  
14 and discipline against that.

15           So, you go forward from there to preferral  
16 of charges, and as mentioned earlier, you know,  
17 four primary offenses. In this one, based on  
18 intoxication, no evidence of force or anything  
19 else, the likely charge would be that of sexual  
20 assault. Up until, for this past five-year period  
21 where we had that, that would have been referred to  
22 as aggravated sexual assault and depending on

1 statute of limitations today, we can still  
2 prosecute cases under the pre-2007 rape, the 2007  
3 to 2012 statute with the exception of the  
4 unconstitutional portions, and there were 14 sub-  
5 offenses within that--I mean, it's tough to  
6 discern, as well as the modern four offenses that  
7 were reformed out of that.

8           So, right now our prosecutors/investigators  
9 are looking at three different stages of law.  
10 Consent differs a little bit in each one, the force  
11 aspects differ in each one, so it's--you know,  
12 we're going through a period of transition going  
13 forward.

14           Obviously, 28 June of '12 is when that  
15 took effect. Those cases that result in conviction  
16 are just now making it to the appellate courts,  
17 which we really don't know what the law means until  
18 those that sit where you're at right now usually  
19 speak as to it.

20           So, we're still going through that process  
21 right now, but in this case, kind of referring  
22 back--and I'll come back to the preferral of

1 charges and it will be my next slide after this  
2 diagram, on the initial disposition, because  
3 there's a lot of discussion about that and it was  
4 even raised earlier on good military character.

5 There's four ways that plays in, and I  
6 think they get merged a lot. In fact, I'll just go  
7 ahead and take it right now. Can you flip to the  
8 next slide and then we'll go back, because I know  
9 we're running a little bit late here.

10 These are the factors a commander looks at  
11 in making a determination that we just talked  
12 about, be it send it to an Article 32 for  
13 investigation under a general court-martial, send  
14 it to NJP or other administrative action, or a  
15 special court-martial where it's capped at 12  
16 months.

17 One thing I would have hit earlier in my  
18 earlier slide, but rushing, is remember that all of  
19 these factors and the manual for courts-martial,  
20 with a few exceptions such as MRE-412, apply to all  
21 offenses, not just those of sexual assault. So,  
22 these rules are written for a number of offenses

1 that are out there. And, again, we do everything  
2 from murder and espionage to child abuse to purely  
3 military offenses such as desertion, AWOL, UA,  
4 Unauthorized Absence for the Navy, so this is a  
5 broad category for all offenses.

6 In this case, what's being really  
7 discussed in the public is that last comment there,  
8 character and military service of the accused.  
9 There's a lot of discussion about why should good  
10 military character be considered in determining  
11 whether or not you send someone to a general court-  
12 martial for rape. So, for rape, for sexual  
13 assault, for forcible sodomy, I don't think any  
14 good military character is going to carry the day  
15 as to that disposition. The evidence will, the  
16 victim's desires will, but if you've got those  
17 offenses, commanders are sending those through an  
18 Article 32 for a general court-martial. That's the  
19 appropriate forum.

20 It's just like murder. You could have  
21 someone who commits murder, may have the best,  
22 outstanding 26, 30 years military service. Murder

1 goes to general court-martial if the evidence  
2 supports it.

3           So, where this comes in are some of those  
4 other offenses, and as an example, if you have  
5 someone that smokes marijuana, that's got 19 years  
6 of service, almost about to reach 20, retirement  
7 eligible, Bronze Star, Purple Heart, multiple  
8 combat deployments in Iraq or Afghanistan, compared  
9 to a brand new E3 kid that's getting in trouble  
10 quite a bit anyway, maybe a non-judicial punishment  
11 or two, you may want to send this one to a higher  
12 forum of court-martial for disposition than this  
13 guy where we know we're not going to probably, for  
14 smoking marijuana one time, maybe post-traumatic  
15 stress disorder--I mean, it depends on those  
16 reasons--this character and military service of the  
17 accused are factors weighed in balance with all  
18 those other factors to determine what's  
19 appropriate.

20           So, I think that's a little bit lost in  
21 the public debate about what that really means, and  
22 I'll go through the other three in a second. Sir?

1                   PANEL MEMBER HOUCK:  Where the rubber  
2  meets the road, are the military rules different  
3  such that it is possible to be acquitted because  
4  you are a good citizen?

5                   CAPTAIN CROW:  Yes, Sir.  And that goes to  
6  the second part.  So, this is on the disposition  
7  determination.  The second part, good military  
8  character, is a defense.  I think in cases such as--  
9  --where we still prosecute just a urinalysis case,  
10 so drug use, no eyewitness, no anything else, just  
11 a urine specimen that comes back and says marijuana  
12 or cocaine, good military character is often the  
13 best defense or the only defense in those types of  
14 cases.

15                   That gives members something to think  
16 about.  Someone 19 years doing all this, would they  
17 have, you know, actually used drugs?  For sexual  
18 assault, is purely good military character by  
19 itself going to be enough of a defense to get you,  
20 I mean, now I don't see that, and I'll address the  
21 point raised earlier post-trial with that, but in  
22 those cases, my opinion--and this is both as a

1 prosecutor and as a defense counsel--if that's all  
2 you've got, good luck. You know, that's not going  
3 to carry the day in my opinion if you've just got  
4 good military character. That's not to say that  
5 it's not a defense and it's not important, but in  
6 those cases I think the focus is on the evidence,  
7 the focus is on credibility of both the victim and  
8 the accused, if the accused testifies, and the  
9 surrounding factors there, not just the fact that  
10 they had good military character.

11           Every case that we bring forward for  
12 whatever offense these days, there's some degree of  
13 good military character. We've drawn down so much  
14 that we're kicking out folks for--that have done  
15 nothing wrong and absolutely great service, so  
16 we're almost into--I don't want to say zero defect,  
17 but these days we don't have--unlike going in the  
18 federal system where you look at the guidelines  
19 based on the number of convictions or arrests that  
20 you have, we don't have that, we don't have  
21 multiple convictions, we don't have multiple  
22 arrested offenders. These are, you know, pretty

1 much unblemished records going forward.

2           So, that's good military character, Sir,  
3 as a defense. The third place that will play in,  
4 kind of jumping to the bottom of that slide, is in  
5 sentencing. Sentencing and good military character  
6 and I'll address that a little bit more in a  
7 moment. And then the fourth is post-trial, which  
8 was raised earlier, where, very notorious case set  
9 aside a conviction on sexual assault of an officer  
10 after reviewing the record at trial/post-trial, and  
11 substituted judgment, and I'll talk a little bit  
12 more about that with Article 60, but in doing that,  
13 in clemency matters, the Convening Authority under  
14 the law as it currently exists, that Convening  
15 Authority had that authority to do that, and he  
16 did.

17           Obviously, I think, there's no secret  
18 that's going to change. What comes out of  
19 legislation, don't know there's competing proposals  
20 out there, but even DoD and the services are  
21 backing a changed Article 60.

22           PANEL MEMBER FERNANDEZ: But isn't that



1 the danger, that the same thing that happened all  
2 the way at the top could happen all the way at the  
3 bottom? The fact that it usually doesn't happen  
4 isn't the issue, the fact is that it can happen.

5 CAPTAIN CROW: When you say top versus  
6 bottom, Ma'am, can you--

7 PANEL MEMBER FERNANDEZ: When that first  
8 weighing it done, you know, let's look at all the  
9 evidence that we have that a rape occurred versus  
10 somebody military record, you're saying, for the  
11 most part, people are going to look at the  
12 evidence. But how about if you come across a  
13 commander that for some reason doesn't? Isn't that  
14 the danger?

15 CAPTAIN CROW: Two things. One, I think  
16 they will look at it in determining the forum, but  
17 if they're making a decision that, no, this person  
18 is such a stellar senior enlisted, senior officer,  
19 whatever the case may be, that I'm not going to go  
20 forward, I don't see that at all.

21 However, if that were to be the case, we,  
22 within that chain of command, have the authority to

1 pull a case or withhold disposition. So, the  
2 immediate superior of that commander looking at  
3 that if that commander says, I don't buy it, or if  
4 that immediate commander thinks, you know, you've  
5 got too close of a relationship. So, for example,  
6 if you've got a commanding officer making the  
7 decision as to his or her executive officer and you  
8 think, no, that's too close, you can pull that case  
9 out that happens. And these cases, from the moment  
10 of reporting through investigation, are briefed all  
11 the way up, for the Navy, to the Chief of Naval  
12 Operations. I mean, he gets a situational or  
13 operational report on these cases.

14 So, they're not happening over here just,  
15 you know, the so-called swept under the rug; lots  
16 of eyes are on these, lots of legal eyes and lots  
17 of commanders' eyes.

18 PANEL MEMBER DUNN: Captain Crow, I think  
19 it might be helpful if you addressed where the  
20 lawyers enter the process, and I don't know if you  
21 can do it across the services. If not, perhaps  
22 Colonel Retired Borch could address where lawyers

1 get involved on the Army side.

2 But I think at the point you're discussing  
3 a GCM and Article 32 referral. I mean, a lawyer  
4 has been involved long before that talking to the  
5 commander, looking at the case, talking to the  
6 investigators, making a recommendation, yes?

7 CAPTAIN CROW: Yes, General. I'd say  
8 where I kind of stated earlier, even in the  
9 investigation stage, I think we're plugged in as  
10 prosecutors, so they're tracking those cases at  
11 that level. When it gets to the command for  
12 disposition, you've got that prosecutor that's  
13 already synced up with the victims, synced up with  
14 the investigators, and commanders get periodic  
15 briefs as the investigations go on, so you've got a  
16 prosecutor in that one, lower level commanders that  
17 have--and that's where we differ a little bit  
18 amongst the services--have a Judge Advocate  
19 assigned or a Staff Judge Advocate, they would have  
20 that attorney in the room as well when that  
21 decision is being made by that CO.

22 Going back to my example of the ship or

1 destroyers and cruisers, they don't have Judge  
2 Advocates assigned, so in that case, they would  
3 reach out to a regional SJA or a command services  
4 attorney along with that prosecutor to make that  
5 determination.

6           But where we're at now with the SA-IDA on  
7 the penetration offenses, there's a mandatory  
8 requirement to consult with a Judge Advocate in  
9 that determination, so these are 06es that probably  
10 have had interactions with attorneys throughout.  
11 So, those big offenses are engaged there, and then  
12 before referral to GCM, there's a statutory  
13 requirement for a Staff Judge Advocate to provide  
14 and for that most service is going to be 05, 06, a  
15 couple deviations on that, providing that advice,  
16 and experienced senior officers doing it, they have  
17 to put in writing their advice to the commander on  
18 three criteria, on whether or not the case should  
19 go forward.

20           So, that's a requirement, and part of that  
21 is a finding of probable cause, in essence, that  
22 the evidence meets the charges there before it goes

1 forward. Even that, if I can back up one step  
2 addressing your point, at the Article 32, which I  
3 understand you were all briefed on, you know,  
4 before going to general court-martial, at that  
5 stage you've got legal involvement there as well.  
6 For all the services except the Army, that's a  
7 Judge Advocate, usually 04 or above, sometimes 03.  
8 Again, there's no hard and fast rules on some of  
9 these things.

10 For the Army, it's typically a line  
11 commander with a legal advisor that's assisting  
12 that line commander. Pros and cons on that, and  
13 again, if the case warrants it, you can pull in a  
14 military judge to set as an investigating officer  
15 or, you know, as senior as you want to go, so,  
16 depending on the complexity of the case.

17 So, that's another set of legal eyes on  
18 this as it goes through providing a recommendation  
19 to a commander. In this case, that Article 32  
20 advice would go back to the SA-IDA, who, if he  
21 chooses to refer it to a general court-martial, or  
22 she, would then send it up to the Flag or General

1 Officer that's convening courts-martial.

2 PANEL MEMBER DUNN: Is it not also the  
3 case that if the officer who appointed the Article  
4 32 does not believe that the case should go  
5 forward, that it's well within the authority of the  
6 lawyer to take it up to the next higher command and  
7 say, hey, I think this should go to a court-martial  
8 and I think you ought to refer it?

9 CAPTAIN CROW: The lawyer or the senior  
10 commander pulling it, but yes, Ma'am. And again,  
11 these aren't done in a vacuum and for the Navy, our  
12 lawyers are under control of commanding officers,  
13 our prosecutors are led by commanding officers, so  
14 in those cases where it's a tough case, you have an  
15 06, 05, and then usually an 04 or 05 prosecutor  
16 looking at that making a recommendation. I mean,  
17 pulling the cases is not done for the faint of  
18 heart, but it's done when it's the right decision,  
19 and that happens on occasion.

20 Some commanders withhold categories of  
21 cases from the onset, so if it's an officer case,  
22 I'm not going to let you make that determination,

1 I'm going to hold that up at my level and pull that  
2 back up. And that boss' boss can do the same exact  
3 thing. Secretary of Defense Panetta recently  
4 withheld some cases, you know, back up, he gave it  
5 to a COCOM four-star level, but withheld them from  
6 different services into one position. So, there's  
7 a way to reach in and pull cases up.

8 Does that fully address--

9 PANEL MEMBER DUNN: Thank you.

10 CAPTAIN CROW: More lawyers, good theme, I  
11 think is part of this. When we get to the--so,  
12 sort of skipping past Article 32 and going to  
13 referral, I believe it's pretty much captured here,  
14 but for a general court-martial, only need five,  
15 for a special court-martial, only need three, and  
16 then when it comes down to verdict, two-thirds.  
17 So, special court-martial, just need two of the  
18 three of you and that's a conviction. No unanimous  
19 verdicts.

20 When we get to sentencing, if you're going  
21 to sentence--so, not at a special, so we're back to  
22 a general court-martial with five--if you're going

1 to sentence more than ten years or give life or  
2 life without parole--now, death is different, I'm  
3 not addressing that because we really don't do that  
4 in sexual assault cases, but for a panel of five  
5 general court-martial, if you're going to give ten  
6 years or give life or life without parole, it has  
7 to go to three-quarters of a vote. Very protective  
8 of the accused, I think something worth looking at,  
9 but going back to the verdict piece, there's not a  
10 unanimous verdict.

11 And I raise that in the sense that  
12 sometimes some of the sentences aren't necessarily  
13 what you would expect, but if you've got five  
14 members, or go with nine members here, voting, two-  
15 thirds carries a conviction. So, six votes to  
16 convict, and so now we've got a conviction. But I  
17 had three outright acquittals over here, do not  
18 believe the case was proved beyond a reasonable  
19 doubt or do not believe the accused was guilty at  
20 all.

21 When we go into sentencing, all nine of  
22 you are voting a sentence. I've got three people



1 thinking he's innocent, and now they're going to  
2 adjudge a sentence. So, sometimes that comes out  
3 in a little bit of a compromise. You know, if that  
4 was a unanimous verdict, who knows which way it  
5 would have come out to start with, we just don't do  
6 that. We have finality upon a vote as opposed to  
7 sending the case back, sending the case back to get  
8 there.

9           So, I raise those as just a couple of  
10 little things that as you look at some of these  
11 different cases, when you go into some of the  
12 reasons things turn out the way they did, that  
13 could be an explanation for some of the different  
14 sentences, some of the different verdicts and so  
15 forth.

16           I'll kind of skip through the arraignment.  
17 I would say pretrial motions, 412 is alive and well  
18 in the military, Ma'am, I think you would find it  
19 strikingly similar to the model you crafted. All  
20 of our rules of evidence are based off the Federal  
21 Rules of Evidence. Little--

22           PANEL MEMBER HOUCK: For everybody's

1 benefit, 412 meaning?

2 CAPTAIN CROW: Rape Shield. I'm sorry,  
3 thank you for--and it wasn't even an acronym, but I  
4 got ahead of myself. Rape Shield Law, very much  
5 similar to the Federal Rule. It's slightly  
6 modified. We take out the civil practice because  
7 we don't have that. We change "defendant" to  
8 "accused", 15 days' notice, we make five because we  
9 usually go faster, so condensed timeline on speedy  
10 trial, we have had a mechanism on weighing, which  
11 is part of the subject of debate.

12 The Court of Appeals for the Armed Forces  
13 decided a case and injected victim's privacy as  
14 part of the balancing test within that, and that  
15 was in 2004, a case called Banker.

16 So, the Joint Service Committee, which I'm  
17 speaking on behalf of, amended Military Rule of  
18 Evidence 412, Rape Shield Law, to reflect what the  
19 court said. We do that periodically, so if we get  
20 a search and seizure or suppression case law from  
21 the Supreme Court or the Court of Appeals for the  
22 Armed Forces, we write that into our rules so you

1 don't just have to quote the law, which is done  
2 more in federal common law or federal practice, you  
3 can actually flip open the book and it's written in  
4 there.

5           Again, there's a little bit of a lag time,  
6 so we did that in 2007. In 2011--and I think the  
7 cases that were intended to be cited, Gaddis and  
8 Ellerbrock, and they're worth reading--U.S. v.  
9 Gaddis and U.S. v. Ellerbrock came out and the  
10 Court of Appeals for Armed Forces overruled itself,  
11 the Banker test that had been the test for Military  
12 Rule of Evidence 412 and said the victim's privacy  
13 doesn't outweigh the rights to the accused.

14           Now, I'm being very broad topic on this.  
15 I mean, the case is pretty extensive. There's a  
16 lot of legal reasoning into it. I didn't come in  
17 to do a deep dive on 412. That's something we can  
18 definitely provide you, but as a broad overview,  
19 they struck down the victim's privacy within that  
20 balancing test and returned it to kind of what the  
21 original 412--which, going back to the Federal  
22 Statute, that additional language is just on top of

1 that, and that's under the constitutionally  
2 required. Where you usually see that is where that  
3 comes down to victim credibility, something about a  
4 victim's past, constitutionally required to give  
5 the accused the right to confront on credibility  
6 type issue. That's my experience.

7 I didn't do extensive case law research on  
8 this, but that's the slight difference on some of  
9 the things between MRE-412 and FRE, Federal Rule of  
10 Evidence, 412. Very similar on other things. We  
11 just militarized it a little bit there.

12 So, 412 motions very common. One of the  
13 slides we'll jump to here shortly, another one very  
14 common these days, and again, I promised I would  
15 address some of the issues out in the mainstream,  
16 unlawful command influence, which was raised  
17 earlier. A lot of motions on that right now for a  
18 variety of different reasons, and I'll address  
19 those briefly here shortly, but then when you get  
20 to contested trial or guilty plea, and I promised  
21 Judge Jones I would talk a little bit about our  
22 pretrial agreement system and our sentencing

1 system, because it is a lot different than most  
2 states and the federal system.

3 For us, going back to this as a commander-  
4 driven process, if that E3 accused says, "I want to  
5 plead guilty", and let's assume the SA-IDA sent the  
6 case to an Article 32, it came out of there and got  
7 referred to general court-martial, so, we're at a  
8 general court-martial, maximum punishment for that  
9 offense is 30 years. Rape is life, but just sexual  
10 assault for the alcohol, 30 years, we probably  
11 would have charged him with drinking under age,  
12 that's another two years, curfew violation,  
13 barracks violation, couple two year offenses, I  
14 throw those in now because I'll use them in a  
15 moment when it gets to Article 60, but the accused  
16 says, "I want to plead guilty."

17 As the prosecutor, I make advice and  
18 recommendations to the Convening Authority, the  
19 commander, but it's the commander's call, and in  
20 this case, it's a general court-martial Convening  
21 Authority, so Air Force, some four-stars, most  
22 other services, I think three-star and down to the

1 one-star level. There are some exceptions to  
2 everything, but we're talking high-level leadership  
3 making this determination.

4 But upon the advice of both the prosecutor  
5 and the Staff Judge Advocate and victim input, I  
6 know we're running over so I'm not going to belabor  
7 that portion of it, but victims have a say in this  
8 process from the investigation stage to the  
9 charging stage to the disposition stage, we give a  
10 lot of latitude on victim's preference and a lot of  
11 latitude to victim declinations if they say they  
12 don't want to come forward.

13 So, with more time, I could give a  
14 different case where solid evidence from an  
15 accused, need the victim to testify, can't  
16 corroborate a confession, victim really doesn't  
17 want to go forward and we have to make a hard call,  
18 do we want to force her. That may be a reason that  
19 a case adjudicates at a lower level or on different  
20 offenses, or we throw the subpoena down and say you  
21 don't have a choice, you're going forward, but it's  
22 raised earlier when you're forcing adult sexual

1 assault victims to testify against their will, they  
2 don't make the greatest witnesses. We just really  
3 don't do that. Child abuse, we do it all the time.

4           So, it's a different scenario where we  
5 give a lot of deference there to victims. And,  
6 again, that's just another factor in the process  
7 when you look at all the numbers of cases that we  
8 do and victims decline for a variety of different  
9 reasons, but in this case if the accused wants to  
10 plead guilty, commander and accused enter into a  
11 pretrial agreement, plea bargain, we call it  
12 pretrial agreement. And, again, drafted by the  
13 prosecutors or SJAs and negotiated on both sides so  
14 it's not done just by the commander, lots of legal  
15 input here.

16           But once they agree, and let's say in this  
17 case the accused says, I will plead guilty to  
18 sexual assault. We'll drop the other charges,  
19 doesn't matter at this point, and I'll take seven  
20 years as a cap on confinement. We can do other  
21 things, we can agree that they'll go judge alone  
22 instead of members or a jury for sentencing. We

1 can make them make restitution as part of that  
2 agreement. Lots of different factors go in, but  
3 the two key big ones typically are how much  
4 confinement are you going to do and are you going  
5 to get a punitive discharge.

6 For us, a dishonorable discharge and a bad  
7 conduct discharge, they're not personnel decisions,  
8 they're a punishment. They can only be awarded at  
9 court-martial and only at a general court-martial  
10 can you give a dishonorable discharge.

11 So, those are actually punishments that  
12 are weighed against forfeitures of pay, reduction  
13 in rank, and other--we've got other restriction,  
14 hard labor without confinement and other things,  
15 but against confinement as well.

16 So, that's also where sometimes you'll see  
17 some--I don't say odd, but just mixed sentences in  
18 that if they give a dismissal for a 19-year  
19 officer, that just took away 19 years of service,  
20 you know, probably you equate it out a year later  
21 retirement, three quarter of a million dollar fine,  
22 I haven't done the calculation lately, but taking



1 that away, huge fine even though that's not a  
2 punishment by that dismissal or dishonorable  
3 discharge, taking that off the table.

4 So, they may then give three years instead  
5 of eight years that, you know, otherwise may have  
6 been. So, that's another factor that they balance  
7 all of those punishments, but in this case, if  
8 there's an agreement to take a seven-year deal,  
9 they agree to that, we go into court, and the  
10 government gets to present a case in aggravation,  
11 full blown, call all the witnesses you want,  
12 introduce evidence, then it shifts over to the  
13 defense, they get to do the exact same thing, so  
14 it's just like the trial on the merits where you  
15 can cross-examine each other's witnesses, the  
16 accused gets three different options on how he or  
17 she puts a statement forward, but in this case, you  
18 know, they can testify sworn or do an unsworn  
19 statement.

20 Once all of that is done, the Judge, after  
21 having heard the plea, and our providence unlike  
22 state and federal, is painful. It's very detailed,

1 it's very methodical, it can go on for hours if not  
2 days depending on the offenses, it's not just a do  
3 you admit you committed the offense, yes, I did,  
4 and on we're on. It's very detailed.

5 So, you go through that first. We're now  
6 in the sentencing stage. Judge goes back, if we  
7 made him go judge alone, or if they chose members  
8 they could have members, and deliberates and comes  
9 back with a sentence. That judge does not know  
10 there's a seven-year deal. That judge knows there  
11 is a pretrial agreement to plead guilty to the  
12 pleas he just took but does not know what the  
13 maximum punishment the Convening Authority has  
14 agreed to.

15 So, in this case, the judge comes back,  
16 and I'm going to go with two different examples,  
17 and says, I award you three years confinement and a  
18 bad conduct discharge. That accused, that E3, gets  
19 three years confinement and a bad conduct  
20 discharge.

21 If, on the other hand--and so, the seven  
22 years, irrelevant. On the other hand, if the judge

1 comes back and says, I give you 15 years  
2 confinement and a dishonorable discharge, then the  
3 judge receives part two of that pretrial agreement  
4 and reads that the Convening Authority has agreed  
5 to seven years. So, when the Convening Authority  
6 takes action, and this ties into one of the future  
7 slides, on that case, the Convening Authority has  
8 to reduce--what did I just say? Fifteen? Fifteen  
9 years down to seven years to affect that pretrial  
10 agreement.

11 So, we call that beating the deal, I call  
12 it second bite at the apple, but the accused, very  
13 protective system, gets to come in and try to beat  
14 it as opposed to, I think, almost every state and  
15 federal system, you talk to the prosecutor, you  
16 agree to ten years, you walk in and you get ten  
17 years.

18 Some judges, obviously, have an ability if  
19 they think shocks of conscious and some other  
20 criteria depending on the state, to invalidate that  
21 and go different, but for the most part, an  
22 agreement between the state and the accused, you

1 get what you agreed to. You don't get a chance to  
2 go in and try to beat it.

3 So, another difference in our system going  
4 forward. That kind of covers most of the flowchart  
5 there. The post-trial action now, where I just  
6 said the Convening Authority will have to reduce  
7 it, that's what's done under Article 60, and Chief,  
8 can you--I think we've covered most of the others.  
9 The Convening Authority at that stage--and this was  
10 going back to the case I gave earlier where the  
11 Convening Authority just tossed it out altogether  
12 and under the rules under Article 60 of the UCMJ as  
13 enacted by Congress has the right to do so.

14 In this case, though, the Convening  
15 Authority, in our case, needs Article 60 to reduce  
16 that sentence to what--from what the judge gave to  
17 what he agreed to as part of the pretrial  
18 agreement.

19 So, pretrial agreements hinge on Article  
20 60. The other thing the Convening Authority can do  
21 is grant clemency. If this E3 had a family and  
22 received forfeitures as a punishment, the Convening

1 Authority could set aside those forfeitures or  
2 waive them for a period of time.

3 So, there's different things that are  
4 done, could take a Dishonorable Discharge turn it  
5 into a Bad Conduct Discharge, I couldn't  
6 distinguish between the two other than Dishonorable  
7 is worse, but that's kind of our pecking order  
8 here--could reduce the punishment. So, the current  
9 proposal on Article 60, to sort of drive this one  
10 home, that's a Convening authority action, it's  
11 after submission, after trial, of different things.  
12 What was done in the particular case that was  
13 described earlier was looking at that accused's  
14 service and record and the record at trial and  
15 everything else compared to--and I'm not going to  
16 speak for that Convening Authority, I never spoke  
17 to him about his decision, there's different things  
18 out in the public obviously on this, but looked at  
19 it and said, I'm not convinced of his guilt beyond  
20 a reasonable doubt. He has that authority to set  
21 that case aside.

22 I think we've agreed we can move past that

1 now because we have attorneys in place, appellate  
2 systems, appellate reviews in place all the way up,  
3 that those cases can get reviewed post-trial  
4 without a Convening Authority having the ability to  
5 do that, and the services agreed we're ready for a  
6 change there and, in fact, you know, proposed  
7 something to Congress.

8 We made an exception going forward--and,  
9 again, there's two or three different versions out  
10 there on this, in Joint Service<sup>3</sup> Committee we spend  
11 a lot of time on this--but we carved out what maybe  
12 should be an exception, and I'll go back to this  
13 case. Let's take our E3, and this time he goes  
14 contested and we charged him with the drinking  
15 underage, which carries two years, and we charged  
16 him with that sexual assault.

17 Members acquit of the sexual assault, say,  
18 we don't believe it happened, but convict of  
19 drinking underage. So, now we've got a felony  
20 conviction for drinking underage that no  
21 jurisdiction would ever indict or take forward as a  
22 felony.

1           So, we've got someone that has to give up  
2     the right to bear arms and vote because they've  
3     been convicted of drinking underage. What Article  
4     60 is often used for is when we've got those types  
5     of cases, we go in and say, you agree to accept NJP  
6     or agree to leave the service under other than  
7     Honorable or--I mean, you name the different gamut  
8     there--and I'll set aside that conviction.

9           So, we're not setting aside a sexual  
10    assault, he was acquitted of that, but we're not  
11    going to have someone with a federal felony for the  
12    rest of their life for drinking underage.

13           So, our proposal on Article 60 and what's  
14    being discussed are to have some so-called  
15    qualified or minor offenses that permit a Convening  
16    Authority to do just that. Under no circumstance  
17    would a Convening Authority under any of the DoD  
18    proposal going forward, or most out there, be  
19    permitted to set aside a major felony, so no sexual  
20    assaults at all, no greater offenses.

21           Irony, within the Uniform Code of Military  
22    Justice, a lot of what may be considered minor

1   misdemeanors in other jurisdictions carry two or  
2   five years, an orders violation, you know, two  
3   years for just not obeying. So, it's difficult to  
4   discern, it's not an easy task, but that's a little  
5   bit of the goal in Article 60, and again, that's  
6   for the benefit of the right of an accused that's  
7   convicted of something minor, theory being if  
8   that's all we had to begin with, we never would  
9   have sent that case forward to a general court-  
10  martial to begin with, we would have disposed of it  
11  back at the special court-martial non-judicial  
12  punishment.

13           Convening Authority doesn't have to do  
14  that, but it would retain that option in doing so.  
15  And I think, Ma'am, that covers most of the points.  
16  The unlawful command influence, I think seeing a  
17  lot out there on that one, and there's lots of  
18  ongoing litigation, cases up on appeal concerning  
19  that right now, that's something we can come back  
20  in the future if necessary, but obviously some of  
21  those are a product of what's being discussed on  
22  this very issue of sexual assault. I can go into



1 that more if that's desired.

2           And then the other slide going forward was  
3 just the victim's rights within the Joint Service  
4 Committee--well, I guess it's been said the  
5 military doesn't have 412 Rape Shield, we clearly  
6 do. It's been said military doesn't have codified  
7 victim's rights. We do not have codified, but we  
8 have them in policy. So, the Title 18 Crime  
9 Victims' Rights Act, we took that and implemented  
10 in policy--and this goes back to 2004, I think it  
11 was, two of them were left out. We are now  
12 revising that DoD instruction to put those two  
13 rights in and we're also studying other civilian  
14 jurisdictions to see are there any best practices  
15 on a remedy or an enforcement mechanism for victim  
16 if those rights aren't adhered to.

17           So, we've got a study group called  
18 The McKeon Study Group that was chartered by the  
19 Secretary of Defense, Secretary Panetta before  
20 Secretary Hagel, to go around and look at civilian  
21 jurisdictions. They're looking at a number of  
22 different things with respect to sexual assault.

1 They just came back from New York where they  
2 visited Four Boroughs and even the differences  
3 there we're kind of looking at almost identical to  
4 some of our differences between services, what  
5 works for the Navy may not work for the Army and  
6 other things.

7 But taking those best practices, and I  
8 expect that's something, as data calls come forward  
9 from this board in the future, you know, they'll be  
10 standing by--I'm volunteering them right now--to  
11 come in and present that evidence. But just to let  
12 you know, we're moving that.

13 And the last point on my last slide is  
14 kind of going back to--we've had some significant  
15 changes in the UCMJ and the Manual for Courts-  
16 Martial over time, but every year we have this  
17 standing committee that looks at things and adjusts  
18 it, one of which is victim-victim advocate  
19 privilege. We just implemented that back in 2012.  
20 That's now--we did that with psychotherapist  
21 privilege, I believe ahead of the Supreme Court,  
22 I'm not positive on that, but I know we recognized

1 that at that point in time, and so anything from  
2 law to implementing regulations and so forth,  
3 that's a constant review cycle where we're looking  
4 to improve the UCMJ.

5 So, I know I went well beyond my time.  
6 I'll stop there unless there are any questions.

7 CHAIR JONES: You started late. So, I  
8 appreciate it. I had one quick question, there may  
9 be others, I assume that the Department of Defense  
10 proposal with respect to Rule 60, or Article 60,  
11 still leaves the plea bargain function of the  
12 commander intact. Is that right?

13 CAPTAIN CROW: It does, Your Honor, and I  
14 think even--I've spent a lot of time on the Hill  
15 and I'm not going to speak for whatever Senators  
16 and Congressmen may come out with, especially as  
17 they go in the House debate and conference, but I  
18 think there's a lot of support to keep that in on  
19 the plea bargain and the punishment side and the  
20 clemency side, just not setting aside the  
21 conviction itself.

22 And part of that, kind of going back to

1 that case, it's often described--kind of back to  
2 the--in this case, up front, the Convening  
3 Authority did what the Convening Authority should  
4 have done, fully investigated, sent the case to an  
5 Article 32, referred it to a court-martial,  
6 selected members to sit in judgment, and they  
7 rendered a judgment.

8 The only criticism is what took place on  
9 the back end. So, in essence, one person got to  
10 substitute their judgment for that of that jury,  
11 those members.

12 So, that's what we've agreed. I called it  
13 in the slide factual insufficiency. We've agreed,  
14 that authority can be withheld others to the  
15 appellate courts and to take it out of the role of  
16 that commander there.

17 The commander's other option is still in  
18 play. One thing in our legislation, and I think it  
19 will be picked up amongst others, is a requirement  
20 for the Convening Authority to--I won't say  
21 justify, but explain his or her decision, both if  
22 he sets aside a minor offense like the drinking

1 underage, or if reduces, forfeitures, for example,  
2 the rationale may be upon the request of family who  
3 didn't know this was coming, for six months I'm  
4 going to, you know, not cut off that benefit while  
5 the accused is in the brig.

6 So, a modification to sentence or  
7 modification to findings for those qualified  
8 offenses must be explained in writing. More  
9 transparency in the system.

10 CHAIR JONES: All right, thank you very  
11 much, Captain. Were there any other questions?  
12 All right, then we're adjourned.

13 Thank you, again, Colonel Borch. We very  
14 much appreciate both of you coming in and staying.

15 We're adjourned.

16 MS. FRIED: Yes, this concludes our public  
17 portion and the panel recedes to the Administrative  
18 meeting.

19 CHAIR JONES: Thanks, Maria.

20 (Whereupon, at 5:07 p.m., the public  
21 session of the Response Systems to Adult Sexual  
22 Assault Crimes Panel concluded.)