

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

SYSTEMS TO ADULT SEXUAL ASSAULT  
CRIMES PANEL

PUBLIC SESSION

Friday,  
November 8, 2013

U.S. District Court for the District of Columbia  
333 Constitution Avenue, N.W.  
Courtroom 20, 6th Floor  
Washington, D.C. 20001

Alderson Court Reporting  
1-800-FOR-DEPO

1 PANEL MEMBERS PRESENT:

2 THE HONORABLE BARBARA JONES, Chair

3 COLONEL HOLLY COOK (RET.), USA

4 MS. MAI FERNANDEZ

5 PROFESSOR ELIZABETH HILLMAN

6 THE HONORABLE ELIZABETH HOLTZMAN

7 VICE ADMIRAL JAMES HOUCK (RET.), USN

8 BRIGADIER GENERAL COLLEEN MCGUIRE (RET.), USA

9

10 OTHERS PRESENT:

11 COLONEL PATRICIA HAM, USA, Staff Director

12 MARIA FRIED, Designated Federal Official

13

14

15

16

17

18

19

20

21

22

	AGENDA	
		<u>Page</u>
1		
2		
3	1. Comments from the Panel Chair	7
4		
5	2. Sexual Assault Survivor Perspectives	
6	Command Sergeant Major Julie Guerra,	
7	U.S. Army	7
8	Mr. Brian Lewis	17
9	Ms. BriGette McCoy	27
10	Ms. Ayana Harrell	35
11	Ms. Sarah Plummer	45
12	Ms. Marti Ribeiro	65
13		
14	3. Services Special Victims' Counsel Programs	
15	Colonel James McKee, U.S. Army, Special	
16	Victims' Advocate Program	104
17	Colonel Carol Joyce, U.S. Marine Corps,	
18	Officer in Charge, Victims' Legal	
19	Counsel Organization	115
20	Captain Karen Fischer-Anderson, U.S.	
21	Navy, Chief of Staff, Victims' Legal	
22	Counsel Program	128

1	AGENDA (Continued)	
2		<u>Page</u>
3	Captain Sloan Tyler, U.S. Coast Guard,	
4	Director, Office of Special Victims'	
5	Counsel	133
6	Colonel Dawn Hankins, U.S. Air Force,	
7	Chief, Special Victims' Counsel Division,	
8	Air Force Legal Operations Agency	140
9		
10	4. Civilian Perspectives on Victim Participation	
11	in Judicial Proceedings	
12	Mr. Chris Mallios, Attorney Advisor	
13	For AEquitas: The Prosecutors'	
14	Resource on Violence Against Women,	
15	Washington, D.C.	198
16	Ms. Theo Stamos, Commonwealth Attorney,	
17	Arlington, Virginia	213
18	Ms. Marjory Fisher, Chief, Special	
19	Victims Bureau, Queens, New York	217
20	Ms. Keli Luther, Deputy County Attorney,	
21	Maricopa County, Arizona	234
22		



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

AGENDA (Continued)

Page

Mr. David Court of Court & Carpenter in	
Stuttgart, Germany	320
Mr. Jack Zimmermann of Zimmermann,	
Lavine, Zimmermann & Sampson, P.C.,	
Houston, Texas	330
Ms. Bridget Wilson, Attorney, San Diego,	
California	349



1 morning.

2 CHAIRWOMAN JONES: I'm sorry to stop you.

3 SERGEANT MAJOR GUERRA: Yes, ma'am.

4 CHAIRWOMAN JONES: But there's a blower  
5 behind us. So it's very hard to hear. So if I  
6 could ask each of you to speak right into that  
7 mike?

8 SERGEANT MAJOR GUERRA: Yes, ma'am.

9 CHAIRWOMAN JONES: Okay.

10 SERGEANT MAJOR GUERRA: Is that better?

11 CHAIRWOMAN JONES: Yes, much better.

12 SERGEANT MAJOR GUERRA: Okay. Judge  
13 Jones and members of the Panel, good morning, and  
14 thank you for the opportunity to speak here this  
15 morning.

16 This is not easy, but it is important.  
17 My experience as a victim and a survivor and a  
18 senior leader working with victims in my formations  
19 has taught me one thing. That the caring  
20 involvement of commanders is the key to earning  
21 victim trust and helping victims not just recover  
22 but pursue their Army goals and a full, rewarding

1 career.

2           As a note, I have signed a Privacy Act  
3 waiver so that the Army may provide you with a copy  
4 of the record of trial and investigation in my  
5 case. I think it is important that you have the  
6 full context of my experience.

7           Today, I sit before you as a leader, a  
8 command sergeant major at a military intelligence  
9 battalion, responsible, alongside my commander, for  
10 the health, safety, and welfare of over 500  
11 soldiers and civilians. But 18 years ago, I was a  
12 statistic.

13           As an E-3 private first class, within the  
14 first 12 months of enlistment, I was sexually  
15 assaulted in my barracks room on a Friday night by  
16 a fellow soldier between the hours of 2200 and 0200  
17 hours, and there was alcohol involved. From the  
18 very moment I ran screaming from my barracks room  
19 that I had been attacked, my command stood behind  
20 me, supported me, and gave me the opportunity to be  
21 who I am today.

22           Although my assault occurred long before

1 the SHARP program and mandatory sexual assault  
2 training, my command immediately reported the crime  
3 to CID. They helped me get counseling in a group  
4 setting with other survivors that was critical to  
5 my recovery. They sent me to alcohol counseling  
6 not as punishment, but as an education that I still  
7 needed at that age. They helped me understand the  
8 military justice process and my role in it, from  
9 the Article 32 hearing all the way through the  
10 subsequent court martial and sentencing phase of my  
11 perpetrator.

12           When he was released from confinement 30  
13 days later, I was notified of the release by the  
14 prosecution and encouraged to consider continuing  
15 with the counseling that I was currently in. Most  
16 important, my leaders never doubted me. They never  
17 blamed me. They encouraged, supported, and  
18 mentored me to ultimately be successful in the  
19 Army.

20           But the most important thing my command  
21 gave me was mentorship. My supervisors and the  
22 people directly around me still treated me like I

1 was a valued member of the team. I was given  
2 duties and responsibilities, just like every other  
3 soldier in my unit.

4           At first, I felt that because I was  
5 victimized, people would treat me in a different  
6 way, allowing me to sleep in, not go to formations,  
7 and generally do my own thing. But the best thing  
8 that they did and what every command needs to do is  
9 make sure that every victim understands they are  
10 still a soldier and that the chain of command will  
11 continue to hold them accountable to meet the Army  
12 standard.

13           For me, this was critical not just to my  
14 recovery, but to my career. My command made me  
15 understand that I was still a contributing member  
16 of the team. I used my experience and lessons  
17 learned throughout my career with both victims in  
18 my formations and with leaders at every level of  
19 the chain of command.

20           The advice I give to victims is report it  
21 and then trust the process, and I believe in that.  
22 I tell victims you're going to have to tell your

1 story over and over again. It will be grueling.  
2 It will be ugly, and it will not be comfortable.  
3 But it's part of the process.

4           And I have tried to help victims set  
5 goals. After my assault, I wanted to go to  
6 college, drill sergeant school, airborne school,  
7 and having friends around me that supported me  
8 throughout it, good or bad, was something that was  
9 very important to me.

10           I recently stood in front of a roomful of  
11 senior leaders at my installation and told my  
12 story. It led to a fellow battalion command  
13 sergeant major reaching out to me to provide  
14 mentorship and guidance to a victim in his  
15 formation that is still going through the process.  
16 What I tell her every time I speak to her is to  
17 find things that are positive in your life, hang  
18 onto those things because it is a very long  
19 process, but one that is necessary.

20           I think that it's not -- I'm sorry. I  
21 think that it is important not just to get the  
22 victim the services they need, but to allow them to

1 continue their service if that is what they so  
2 desire. As much as you possibly can, you should  
3 not change their daily battle rhythm because it  
4 provides a sense of normalcy and reminds them that  
5 they are still contributing to the force as a  
6 whole.

7 I consistently reinforce into my company  
8 command teams that their job is to take care of the  
9 soldiers and that they have to remember that every  
10 single person in your formation could be a victim.  
11 And that same victim could someday be a garrison  
12 commander, a battalion commander, or a battalion  
13 command sergeant major.

14 How we take care of that soldier now is  
15 going to dictate and shape how they take care of  
16 people in their formations in the future. It is an  
17 education process from the top down, and the  
18 message can never stop. We have to keep up the  
19 drumbeat.

20 Had my leaders not taken care of me 18  
21 years ago, I would be another statistic that left  
22 the force with yet another ugly story to tell.

1 Because I had caring, compassionate leaders, I am  
2 who I am in the United States Army today.

3 Over my career, I have watched the Army  
4 transform the services that are available to sexual  
5 assault victims. My sexual assault occurred in a  
6 culture where we didn't talk about the assaults.  
7 Now we educate, inform, have the tools necessary to  
8 support victims, and different avenues of  
9 reporting.

10 We have training at every level within  
11 the Army that has an open dialogue about how these  
12 actions of one affect the force of many, how it  
13 affects the trust within an organization when one  
14 perpetrator chooses to assault another member with  
15 whom they serve. When I was assaulted, I benefited  
16 from my support group. Now victims have the  
17 services of victim advocates and counselors at the  
18 unit and installation level, hotlines, behavioral  
19 health counselors, and we have specifically trained  
20 investigators and prosecutors who work only these  
21 crimes.

22 I see the resources that the Army has

1 poured into the fight against sexual assault. I  
2 have seen the change in the way we educate soldiers  
3 about this crime and about the Army values. I have  
4 also seen the emphasis our leaders put into  
5 training and accountability.

6 In many ways, this is not the same Army  
7 that existed when I was assaulted 18 years ago.  
8 But one thing has stayed the same. The commander  
9 sets the tone for how soldiers treat each other and  
10 how victims will view their leadership.

11 I am not naïve. I am very aware of the  
12 challenges for female soldiers in the Army. When I  
13 was a junior E-5 sergeant, I had just been promoted  
14 and was assigned to an all-male platoon. It was  
15 very important for me that I fit in because I was a  
16 minority as a female, and they had already built a  
17 bond in their team.

18 At that time, I thought I'd have to put  
19 up with a lot of crude and vulgar language and  
20 behavior because I wanted to be part of that team.  
21 I don't put up with that now, and I tell every  
22 junior soldier I meet, male or female, that they

1 can't either. You will be part of the team on your  
2 own merit by being physically fit, knowing your  
3 job, and being where you are supposed to be.

4           You must never put yourself in a position  
5 where you're allowing people to say inappropriate  
6 things to you, and the best course of action is to  
7 speak up right away. You must never sacrifice your  
8 professionalism as a means to fit into a team.

9           I shared my story today because somebody  
10 needs to talk about what the Army has done in a  
11 positive manner, and from my perspective and my  
12 experience was completely different than what you  
13 hear in the media, what you see on movies and TV.  
14 I emailed the Sergeant Major of the Army, who was  
15 formerly the Commandant of the United States Army  
16 Sergeant Majors Academy when I was a student there,  
17 and I told him that I had a different story to  
18 tell, one of mentorship.

19           I knew that the Army took care of me, and  
20 my chain of command took care of me. And I think  
21 that while this was a very horrible, tragic thing  
22 that happened, look where I am today. I am a

1 senior leader, a battalion command sergeant major  
2 that 19 years ago I trained in to be a  
3 counterintelligence agent.

4 I was able to overcome, and I want  
5 victims to know that they can, too. And I want all  
6 soldiers to know that counseling, supportive  
7 leadership, mentorship got me here today, and that  
8 is what we owe every soldier.

9 Thank you.

10 CHAIRWOMAN JONES: Thank you very much.

11 Mr. Lewis?

12 MR. LEWIS: Good morning, Your Honor.

13 And may it please the Panel, thank you for  
14 including a male survivor in the voices testifying  
15 about the scourge of sexual assault in the  
16 military. This committee, this Panel is truly  
17 demonstrating a commitment to equality between male  
18 and female survivors of military sexual trauma and  
19 deserves to be commended for its efforts.

20 It's very important for male survivors to  
21 be included in this discussion. In the 2012 survey  
22 that was recently conducted, 53 percent or

1 approximately 14,000 out of the 26,000 estimated  
2 sexual assault cases involved male victims.

3           One of the biggest hurdles today for male  
4 survivors in the military to face is the lack of  
5 recognition of their status as survivors. One of  
6 the most offensive awareness campaigns a few years  
7 ago was the "Ask Her When She's Sober" campaign.

8           This poster campaign truly marginalized  
9 the experiences of male survivors, and even today,  
10 the posters for sexual assault awareness mostly  
11 feature women and do not feature male survivors at  
12 all. This devalues the experience of male  
13 survivors.

14           More recently, the Marine Corps training  
15 film "Lost Honor" has interviews with three  
16 convicted perpetrators of sexual assault, all male.  
17 This ignores the reality of female perpetrators.  
18 The Department of Defense can do better. They need  
19 to include men in their marketing as survivors and  
20 include women as perpetrators to drive home the  
21 message that sexual misconduct is a crime, and  
22 either gender can be a victim or can be a

1 perpetrator.

2           Another and possibly the biggest hurdle  
3 facing survivors of military sexual trauma is the  
4 continued involvement of the chain of command in  
5 prosecuting these crimes. Commanding officers have  
6 many tools at their disposal to ensure that formal  
7 written complaints or formal allegations are never  
8 made. These include, but are not limited to,  
9 alleged orders to maintain silence in regards to  
10 the attack, downgrading evaluation reports of  
11 survivors who report incidents, and failure to  
12 maintain the confidentiality of the complainant.

13           Currently, the Department of Defense has  
14 an initial disposition of authority policy in place  
15 that limits the authority of commanders below the  
16 level of O-6 to decide the appropriate action on  
17 these cases. This supposed reform is really a  
18 distinction without a difference.

19           In my case, I was attacked on a command  
20 that was headed by an O-6. Had this reform been in  
21 place when I was a survivor, the issue still would  
22 not have left my chain of command. I'm sure the

1 same is true for many survivors in all branches of  
2 the service, and like me, they will not receive the  
3 alleged benefit of the impartial review that was  
4 the intent of this policy.

5           There are currently several bills pending  
6 in Congress that would reduce or eliminate the role  
7 of the commander, both of which should be familiar  
8 to the Panel -- the Military Justice Improvement  
9 Act and the Sexual Assault Training, Oversight, and  
10 Prevention Act.

11           I am very familiar with how the command  
12 failed me as a survivor, ordering me not to report  
13 the trauma any further, marginalizing me as a  
14 survivor, taking me out of my normal duties, and in  
15 essence, not having any support for me. I strongly  
16 urge this Panel to recommend to Congress the  
17 passing of one or both of these bills as soon as  
18 possible.

19           As I alluded to earlier, the commanding  
20 officer has these tools to prevent survivors from  
21 reporting. And while Congress and the public have  
22 been focused on what happens in the adjudication

1 process, we really need to look at why over 90  
2 percent of victims apparently choose not to report  
3 this crime at all.

4           One of the major reasons is retaliation.  
5 And unfortunately, as I learned in my -- in my  
6 battle to overcome the trauma, the current legal  
7 options are insufficient. Survivors are very  
8 fearful of reporting the misconduct not only of  
9 their perpetrators, but also of the senior officers  
10 and noncommissioned officers who enable them by  
11 acting improperly on their reports.

12           Ordinarily, this would be a cause under  
13 the Military Whistleblower Protection Act.  
14 However, this act has been held to not confer any  
15 private cause of action. Survivors need strong  
16 legal protections and remedies to give them comfort  
17 and support in coming forward.

18           As was alluded to yesterday, another huge  
19 battle and another barrier facing all survivors is  
20 the use of unfounded and stigmatizing mental health  
21 diagnosis by military mental health professionals.  
22 I was discharged in 2001 with a personality

1 disorder after being diagnosed with post traumatic  
2 stress disorder resulting from my rape.

3           Even though the "bible" for the  
4 psychiatric profession, the Diagnostic and  
5 Statistical Manual of Mental Disorders strongly  
6 encourages mental health professionals not to  
7 diagnose personality disorders after an incident of  
8 post traumatic stress -- i.e., rape, sexual  
9 assault, or otherwise -- military mental health  
10 professionals do so on a regular basis. And I know  
11 I am not alone in that regard. These weaponized  
12 diagnoses are often used as a shortcut to avoid  
13 paying disability benefits to military sexual  
14 trauma survivors who are disabled by reason of post  
15 traumatic stress disorder.

16           Unfortunately, the use of these disorders  
17 has only continued in recent years, despite current  
18 policies to not -- excuse me, to not assign these  
19 diagnoses. That policy only applies to combat  
20 veterans. To address this problem, Congressman Tim  
21 Walz introduced the Service Member Mental Health  
22 Review Act. This legislation requires the

1 Department of Defense to identify former service  
2 members who were victims of these scandals and give  
3 these survivors an independent look at their  
4 discharge by the Physical Disability Board of  
5 Review.

6 Survivors, as I said, because they are  
7 not considered -- not necessarily considered combat  
8 troops, are disproportionately affected by these  
9 discharges and need the passage of this legislation  
10 to ensure they can seek redress for these erroneous  
11 discharges.

12 As was alluded to in the panels  
13 yesterday, survivors of military sexual trauma are  
14 neither blind nor deaf. Current survivors learn by  
15 what has happened to those who have come before.  
16 As soldiers, sailmen -- yeah, excuse me. As  
17 soldiers, sailors, airmen, and Marines, we learn to  
18 listen to a lot more than the official word coming  
19 down about alleged zero tolerance for sexual  
20 assault.

21 Survivors see what's happened to prior  
22 people who have reported, and they read our

1 accounts on social media and in the news.  
2 Survivors know if they are unsuccessful at stopping  
3 the retaliatory discharges before they occur, they  
4 will carry that stigma through the rest of their  
5 lives. The easiest way to stop that retaliation is  
6 not to report.

7           An example from my current life. I have  
8 applied to Hamline University School of Law and  
9 William Mitchell College of Law to attempt to go to  
10 law school in the next year. I had to explain that  
11 wrongful discharge in my application for admission.  
12 I had to tell people why my DD-214 says  
13 "personality disorder" and retraumatize me all over  
14 again.

15           I will probably have to explain it again  
16 when I apply for admission to the bar. I will  
17 probably have to get an independent evaluation and  
18 pay thousands of dollars to convince the Board of  
19 Bar Overseers that my discharge was wrong, and  
20 that's not right.

21           Even though the Department of Defense  
22 says that if we believe an error occurred during

1 the discharge we are free to pursue a remedy  
2 through the Boards for Correction of Military  
3 Records, in practice this solution does not work.  
4 The boards take favorable action on less than 10  
5 percent of petitions submitted for their  
6 consideration.

7           The Department of Defense needs to show  
8 and needs to publicly show that it is committed to  
9 acknowledging its past erroneous discharges and  
10 providing an effective remedy if it is to begin  
11 building a trust with current troops, as several  
12 panels stated yesterday morning.

13           To give the committee some brief  
14 background on myself, even though it should not be  
15 necessary, I was assaulted while serving aboard a  
16 ship in the United States Navy. My command ordered  
17 me not to report the crime any further. I was  
18 taken off the ship. I was sent to the naval  
19 hospital in San Diego. I was misdiagnosed with  
20 that personality disorder, and I was discharged.

21           I have turned my life around, and it is  
22 in no small part due to my partner and the veterans

1 who surround me. I currently hold an Associate of  
2 Applied Science from Anne Arundel Community College  
3 in paralegal studies. I hold a Bachelor of Science  
4 degree from Stevenson University in paralegal  
5 studies, which is an ABA-accredited institution.

6           And I hold -- I will obtain my Master of  
7 Science in forensic studies in the coming weeks.  
8 While there, I wrote my long paper on military  
9 sexual trauma, which was nominated for  
10 consideration to be published in the Stevenson  
11 University forensics journal.

12           I know military sexual trauma. I also  
13 know that the Department of Defense needs to do a  
14 lot better job providing services for male  
15 survivors. Currently, male survivors have access  
16 to very few groups where we can process our  
17 emotions.

18           We have access to only one residential  
19 treatment facility run by the Department of  
20 Veterans Affairs where we can seek intensive  
21 treatment, and that is in a coed basis. Just as  
22 the women surrounding me deserve their privacy and

1 their place to tell their stories in a single-  
2 gender setting, males deserve that same setting,  
3 too.

4 I currently volunteer on behalf of  
5 Protect Our Defenders, and with the help of other  
6 survivors, we are starting a new nonprofit, Men  
7 Recovering from Military Sexual Trauma, because  
8 there is a definite need for an organization  
9 dedicated to the help and ideals of male survivors.

10 Your Honor, that concludes my remarks,  
11 and I look forward to the questions from the  
12 commission.

13 CHAIRWOMAN JONES: Thank you very much,  
14 Mr. Lewis.

15 Ms. McCoy?

16 MS. MCCOY: Good morning, and thank you  
17 for inviting me to speak on subject matters  
18 concerning sexual assault, rape, and sexual  
19 harassment in the military.

20 For those of you who do not know me, my  
21 name is BriGette McCoy, and I'm a nationally  
22 invited public speaker. I am also a conference

1 facilitator and a veteran community leader.

2           My experience has been requested on  
3 multiple networks, and I've spoken and been  
4 interviewed in a documentary, which is called  
5 "Servicewomen Come Marching Home" that chronicles  
6 the lives of women veterans after they return from  
7 the military and how they transition.

8           I'm a Gulf era veteran who served in the  
9 U.S. Army from 1987 to 1991, and I held a top  
10 secret clearance. I was a data telecommunications  
11 systems operator. And I am a service-connected and  
12 compensated for PTSD because of military sexual  
13 trauma.

14           I personally have experienced  
15 difficulties reintegrating into civilian  
16 infrastructures, such as chronic homelessness with  
17 dependent children, challenges maintaining a career  
18 with multiple disabilities, and after-effects from  
19 multiple sexual traumas in the military.

20           I -- I volunteer extensively. I  
21 collaborate with multiple organizations, trying to  
22 make sure that we get the word out and get help to

1 those who are not in the forefront, people who  
2 don't have the ability to speak for themselves.

3 I founded Women Veterans Social Justice  
4 as an education technology company, and it's a peer  
5 support network system supported by social media.  
6 And basically, we seek to remove barriers from  
7 connecting women veterans to communities of  
8 support, and we've successfully built peer support  
9 networks, strategic nonprofit collaborations, and  
10 nontraditional community collaboratives, bridging  
11 services and resource gaps and empowering women  
12 veterans of all eras and service times and branches  
13 of service.

14 When I testified before the Senate  
15 previously, I explained how my command handled my  
16 written report. I did write a written report about  
17 sexual harassment from a senior enlisted soldier in  
18 my unit. That information was taken to my command.  
19 They came and questioned me and, at the end of it,  
20 sent me to my first sergeant, and my first sergeant  
21 wanted to know what I wanted out of this situation.

22 I had no, you know, premise. I didn't

1 want anything but to get out of that situation with  
2 that particular service member and not be harassed  
3 anymore. From that point forward, I was expedited  
4 out of the military. So within a very short amount  
5 of time, I lost my career because I reported sexual  
6 harassment.

7           Now, mind you, if you don't know my  
8 story, not only was I sexually harassed, but I had  
9 been raped twice before, and I never reported that.  
10 So my experience is very different. I didn't have  
11 a system of support. I did not have anyone that  
12 came alongside me, and I was ostracized.

13           The people who were in my unit that were  
14 -- reported to me no longer were reporting to me,  
15 and I was set aside from my specific job duties. I  
16 was given the opportunity, and I'm using air quotes  
17 here, to leave the military with an honorable  
18 discharge if I chose to leave the military without  
19 pressing any charges or moving forward.

20           Because I've been very vocal about my  
21 personal experience, people in the community come  
22 to me. They send me emails. They send me letters.

1 They send people to me to find out what type of  
2 services are available, how they can get mental  
3 health treatment, and how we can help them  
4 transition in some cases within the military  
5 because there are still cases going on right now  
6 where women are being abused sexually in the  
7 military, and there is no remedy.

8 I'm angry that more hasn't been done.  
9 This community is stretched thin. The resources  
10 are few, and the need is so great. Could we  
11 honestly think the numbers of those assaulted would  
12 go down when the numbers of those who are  
13 assaulting hasn't?

14 There are still barriers to reporting,  
15 and even after reporting, there are barriers to  
16 receiving supportive services while serving. We  
17 need more trained sexual assault nurse examiners,  
18 more trained litigators to help process men and  
19 women who have experienced sexual assault, rape,  
20 and sexual harassment in the military.

21 And let me point to you, I keep saying  
22 all of those terms. I spread them out because when

1 we use MST, it, for some reason, has given people  
2 this idea that it is some, you know, nebulous idea.  
3 We don't have to deal with it. The military is  
4 going to handle it.

5           But when you bring it and you explain  
6 that it's sexual assault, rape, and sexual  
7 harassment, and you go back and you explain what  
8 that is and just put "military" in front of it, it  
9 gives people a whole different point of view.

10           It has become an absolute necessity for  
11 us to become an interconnected community of service  
12 providers because the level and intensity at which  
13 sexual assaults are happening in the military and  
14 the -- and how much it takes on the survivor's  
15 life, in some cases, six months later, we're still  
16 dealing with situations where someone has been  
17 raped or sexually assaulted in the military, and  
18 we're still case managing that person.

19           In one case -- excuse me. In this  
20 particular case, a young woman decided to stay in  
21 the military. She was sexually assaulted, and they  
22 put her on the psychiatric ward because she

1 reported that she had been assaulted. They took  
2 her personal belongings and hid them from her when  
3 she was discharged from the ward. So she had no  
4 way of being able to contact her family or her  
5 friends. She had no record of her medical  
6 documentation.

7           These things are happening right now,  
8 right now as we're sitting here. And we need to  
9 move forward with passing some type of legislation  
10 that is going to protect survivors. But even more  
11 so, we need to stop rape and sexual assault in the  
12 military. We are fixing something that is broken  
13 that could easily be done away with.

14           It's troubling to me that parents of  
15 service members have to seek support and leave  
16 their jobs to support their sons and daughters who  
17 have been raped or harmed in the military because  
18 the remedies that are available are not sufficient  
19 to protect them while they're serving. Attacking  
20 the root cause to these issues should be paramount.  
21 We would not have rape or sexual assault if there  
22 were no one perpetrating these crimes.

1           Utilizing the UCMJ, changing Article 32  
2 so that we're taking this out of the chain of  
3 command should be paramount. There shouldn't even  
4 be a discussion. The levels of retaliation that  
5 people receive when they report a crime that  
6 happens to them is -- has been a tremendous  
7 challenge. It causes people who see the crimes to  
8 not come forward, and this is another issue.

9           As a community -- as a community -- I'm a  
10 survivor. But as a person who goes out to advocate  
11 for others, it's very challenging to me to have  
12 events where we're going to socialize, just to have  
13 an afternoon out, and to have women come to the  
14 event and within 20, 30 minutes of being at the  
15 event, break out in tears because it's the first  
16 time they've ever been able to be around other  
17 women who served and other women who served and had  
18 an MST situation happen and be welcomed into the  
19 community.

20           We've got to change how we connect all of  
21 the pieces to support the veterans and the  
22 military. We have the infrastructures. We just

1 need to bring them all together and make this a  
2 better situation for everyone.

3 Thank you for your time.

4 CHAIRWOMAN JONES: Thank you, Ms. McCoy.

5 Ms. Harrell?

6 MS. HARRELL: Good morning, Your Honor --

7 CHAIRWOMAN JONES: Good morning.

8 MS. HARRELL: -- and other Panel members.

9 My name is Ayana Harrell. I'm married, and my  
10 husband currently serves in the Army. He's active  
11 duty. We have five children, and we live in  
12 Ludowici, Georgia. It's right outside of Fort  
13 Stewart, which is about 45 minutes outside of  
14 Savannah, Georgia.

15 Currently, I am training with my service  
16 dog, Sir Grayson. He's here with me today. And we  
17 are due to graduate next Thursday from the K9s for  
18 Warriors program, another nonprofit that serves  
19 service members and veterans, specifically those  
20 suffering from PTSD and TBI.

21 When I first found out last February that  
22 I was going to be paired with a service dog to

1 mitigate my disabilities, that prompted me to find  
2 out more, and I wanted to learn -- I wanted to  
3 learn more about service dogs and PTSD and just  
4 everything that it would help me with, with  
5 mitigating my disabilities. And I learned that  
6 there was nothing in my community to teach me about  
7 service dogs or that even teaches or supports  
8 veterans with service dogs.

9           So I created Paws on Duty, which is to  
10 help teach others and provide educational and  
11 resource support for veterans seeking service dog  
12 information and ADA law information. I'm sorry.  
13 I'm nervous.

14           Eventually, I would like to get nonprofit  
15 status. But for now, I am telling my story for  
16 other veterans, and me and Sir Grayson's story on a  
17 path of a new life.

18           Both my parents are retired Army of the  
19 OIF and OEF wars. I am a military brat. My love  
20 for the military started when I was a military brat  
21 growing up in Europe. I always knew that this was  
22 what I was going to do. Throughout high school and

1 junior high, I participated in Air Force and Army  
2 JROTC.

3           When it came time for basic training  
4 graduation, my grandmother and my uncle -- rest in  
5 peace, Uncle Louis -- they drove my two children  
6 from Florida to Fort Leonard Wood in Missouri for  
7 my graduation. My mother flew in from her tour in  
8 Korea. I didn't think anyone would be there. So I  
9 was very proud that day.

10           My mother showed up, and surprisingly,  
11 she outranked all my drill sergeants. And I got a  
12 good chuckle from that. One, because I hid my  
13 parents' military careers from everyone while I was  
14 training because they teach -- they teach -- they  
15 taught me that before I left to not tell anyone  
16 that my parents was in the military because they  
17 give you a little bit more responsibility because  
18 your parents are in the military.

19           And two, because my mom wasn't my mom  
20 that day. She made me do push-ups, told me to  
21 recover, and she was the very first military person  
22 that handed me my first military coin. AIT was a

1 different culture with more freedoms. Within my  
2 first three weeks, I was pushed to a mental break  
3 from my peers.

4           It's a lot of high school drama that goes  
5 on in AIT. This guy wants to flirt with, you know,  
6 a few girls, and that girl wants to date that one  
7 guy. So, you know, I was married. I had two  
8 children. So I didn't mingle with the females who  
9 were younger than me and straight out of high  
10 school, and so I got along more so with the guys  
11 because I was a tomboy at that time.

12           And that caused problems, such as  
13 bullying and being ostracized. And coming from  
14 being a military brat standpoint, I get along with  
15 everyone. So that was a difficult time, and I  
16 suffered just a breakdown.

17           My bed was moved out of my room into the  
18 barracks common area, and the same people who were  
19 bullying me was placed on buddy watch. I was shown  
20 from the very beginning of my training that it was  
21 not okay to speak out. And in December, they  
22 decided to let me go home. So I went home for

1 Christmas. They decided to let me go home and get  
2 my mind right and return in January to train, which  
3 is called recycle.

4           So I was placed in fifth or sixth  
5 platoon. This is the platoon which is usually the  
6 broken-out privates, the ones that are on the  
7 crutches and on profile and things. And while in  
8 this platoon, which is covered by the senior drill  
9 sergeant, you have even more freedoms than the  
10 regular platoons. You basically -- you're at free  
11 will.

12           So one evening I heard of and was offered  
13 to attend a party, and I decided to go because the  
14 other five females -- the other three females  
15 needed one more female to go to make it even. I  
16 hadn't been off post, and the senior drill sergeant  
17 told us that whatever we do on the weekend, just be  
18 back by 1600 formation on Sunday, boots shined and  
19 uniform pressed.

20           I had to be back on Sunday for CQ duty.  
21 So we left. Immediately arriving, the girls said  
22 one by one that they were going off to hook up with

1 other guys in other rooms. There was a main room  
2 where I was, but they wanted to go spend time  
3 before being shipped off to their first duty  
4 stations.

5 I figured I was in the room where  
6 everyone was coming to for the party. So I stayed,  
7 trusting in my battles. These were soldiers just  
8 like me in my mind. We all went through the same  
9 training -- loyalty, duty, respect, selfless  
10 service, honor, integrity, and personal courage.  
11 If anyone knew about that acronym and its meaning,  
12 I figured that those soldiers knew what leadership  
13 was.

14 I got some fruit punch, and I sat down  
15 while watching TV and listening to the guys in the  
16 back bathroom doing keg stands. They all came to  
17 the front. So I got up to go to the bathroom, and  
18 when I returned, I was a little drowsy. So I told  
19 one of the guys I was going to go lay my head down,  
20 and he said, "Sure, go ahead," and he even told  
21 some of the rest of the guys to come back and to  
22 shut the door.

1           At some point, I remember going in and  
2 out of being awake, and a guy who had a huge crush  
3 on me from the Marines -- because at Redstone  
4 arsenal, we have a few different branches training  
5 for ammunition. I was an ammunition specialist.  
6 He wanted me to leave with him, but I told him no  
7 because I thought that he was trying to get me to  
8 go off and, you know, lay in the hay. I do not  
9 know if that is real, but I dream of that very  
10 often.

11           When I came to, I was completely naked  
12 and on the edge of the bed. I slid off the bed to  
13 my knees, and I felt pain. I remember seeing two  
14 guys in the dark and saying no. I brushed the  
15 thoughts off and began looking for my things, and  
16 then it hit me that I had CQ duty. I had to get  
17 back.

18           So I looked around for the room phone and  
19 the cord, and it led out of the room, and I walked  
20 out of the room filled with men. And I stepped  
21 over them, saw the phone under the couch, and I  
22 reached down to pick it up. I grabbed my shoes off

1 the floor, my purse -- and I'm skipping a few parts  
2 here because I don't want my testimony to be too  
3 long. I'm sorry.

4           But when I got back to the barracks, I  
5 was late, and the CQ sergeant yelled at me. And my  
6 old drill sergeant heard him, and she came down the  
7 hallway yelling. I had no time to be a victim. I  
8 had to be a soldier at that moment. So that was  
9 what I was trained to do, and I did it.

10           It has been said that separate training  
11 should be considered for women in the military.  
12 The contributions should be considered, but that is  
13 not the answer -- or separate training should be  
14 considered. That's not the answer.

15           The military culture has to change.  
16 Either by more aggressive training at the beginning  
17 stages of training and/or an overhaul of toxic  
18 leadership overlooking and most time enabling the  
19 behavior and the culture. There is no room for the  
20 "boys will be boys."

21           You now have a military with women in  
22 positions of great importance, and we are serving

1 with distinction and courage through performance.  
2 So women have our place. MST isn't happening  
3 because women are in the ranks. Sexual assault is  
4 occurring at an alarming rate to men and women of  
5 our military. Let me make that clear.

6           Before OIF and OEF, it was thought and  
7 said that women had no place in the military, and  
8 speculation circled about how women would hold up  
9 in real-world combat situations. None of these  
10 speculations have held. The numbers of women in  
11 the military are growing, which means on the  
12 backend, numbers of veteran women are seeing growth  
13 also.

14           This is just how I feel. I feel left  
15 behind, and many of the ways I am here today is  
16 because I sought help for myself. Every veteran  
17 isn't going to do this, and it hasn't been easy.  
18 After five years, I finally -- on the 25th of  
19 October, on my daughter's birthday, I was seen at  
20 Veterans Affairs for a C&P exam. And I still may  
21 be denied.

22           I found Service Women's Action Network,

1 or SWAN, whom has helped me find my voice. I found  
2 K9s for Warriors, which is helping me to regain my  
3 independence and my place back into society. These  
4 two organizations together have helped me to decide  
5 to share my story with other veterans who may be  
6 going through what I am going through, which is  
7 another reason that I decided to start and create  
8 Paws on Duty.

9           Passage of the Military Justice  
10 Improvement Act and more attention and emphasis on  
11 policy for military sexual assault, such as today,  
12 is important, or we will be right back here again.  
13 Sexual assault cases have to be out of the chain of  
14 command's hands.

15           My story never got to my commander. My  
16 senior drill sergeant told me to handle my problem  
17 on my own. He told me to go off post, get a battle  
18 buddy, and to get an abortion. I did not have the  
19 money or the resources to get an abortion, to get a  
20 rental car, to do everything I needed to do, and to  
21 be back into formation by Sunday, four days to get  
22 an abortion. I did not have those resources. I

1 used my command, and it failed me.

2           We have got to stay on this. This year,  
3 I had to tell my daughter -- my 12-year-old  
4 daughter -- how she came to be 8 months after I was  
5 assaulted. I wouldn't wish that on anyone. She  
6 was the result of a terrible crime, but she is now  
7 my blessing. And I will keep advocating for myself  
8 and others because my daughter told me, "Mom, you  
9 have to keep doing what you are doing. Because if  
10 you don't, it's going to happen again."

11           Thank you for listening.

12           CHAIRWOMAN JONES: Ms. Harrell, thank you  
13 very much.

14           I think you said you were nervous, but  
15 you communicated very effectively. Thank you.

16           Ms. Plummer?

17           MS. PLUMMER: Good morning, Your Honor  
18 and all the Panel members.

19           My name is Sarah Plummer. Thank you for  
20 having me here this morning. It's, I'm sure, very  
21 nerve-wracking for all of us because it's a great  
22 honor, and I think we feel responsibility for being

1 able to advocate for ourselves and for others.

2           So I hope that sharing a small piece of  
3 my story, as well as some suggestions for all of  
4 you, I have the hope that they'll improve the DoD's  
5 handling of these types of cases and help other  
6 veterans coping with similar challenges in the  
7 future.

8           There are three main areas I'd like to  
9 try to briefly address today. One is the  
10 inadequacy of the military system to support  
11 victims throughout all phases of incident reporting  
12 process. Part two is provide some recommendations  
13 on the role of commanders in the military justice  
14 system, and point three, I'd like to address some  
15 victim services.

16           So I'm a University of Virginia graduate,  
17 a former Marine Corps intelligence officer, and  
18 five-time military Olympic athlete. I'm a  
19 registered yoga instructor, a certified integrative  
20 nutrition counselor, published author, and small  
21 business owner who continues to serve my fellow  
22 veterans in a variety of ways. I mention these

1 things because -- precisely because what happened  
2 to me in the military is what's driven me to do  
3 what I do now professionally.

4           And although I was raped by a fellow  
5 service member weeks before my commissioning and  
6 suffered a host of kind of crazy physical injuries,  
7 to range from being struck by lightning to having  
8 14 traumatic brain injuries, 7 herniated disks,  
9 scoliosis, arthritis, a whole bunch of different  
10 things -- all of those happened while I was in the  
11 Marine Corps -- I'm still very, very proud to have  
12 served.

13           And I look back on those years of  
14 training and active duty service with a fondness,  
15 while recognizing that I exercise agency now in  
16 making choices as I evolve. So a part of that  
17 agency is acting on my ability to advocate for  
18 others, precisely because I can empathize so  
19 closely with many of the challenges that they face.

20           And that being said, I'd like to address  
21 the first point, the inadequacy of the military  
22 system to support victims throughout all phases of

1 the reporting process. So I have many examples of  
2 lack of coherent, consistent, and intelligent  
3 support provided to me as a victim. I'll pick one.

4           The most tangible example from my  
5 personal history is that I was not allowed to  
6 complete flight school because of my having sought  
7 counseling after being raped. So while undergoing  
8 the initial legal proceedings of my case, the JAG  
9 in charge was rude, flippant, failed to keep me  
10 well informed about my case.

11           And I'm sorry, I'm forgetting your name,  
12 and I can't read it from here. But the first woman  
13 who shared, you know, how well informed she was  
14 throughout the process, I had the exact opposite  
15 experience, where I felt very confused because I  
16 just wasn't provided information throughout the  
17 process, which it's, you know, can be a complicated  
18 process to begin with.

19           So I was effectively left to the wolves  
20 to kind of handle the after-effects of grueling  
21 questioning sessions behind closed doors, then sent  
22 back out into my training environment with no

1 mention of what the next steps would be legally or  
2 what resources of support I had available.

3           Independently, I approached my platoon  
4 commander at the time to disclose the nature of  
5 what I was dealing with. He assured me that I  
6 could seek psychological counseling because it was  
7 a modern Marine Corps, and it wouldn't have  
8 negative effects on my career, especially because I  
9 such a strong Marine and doing well academically  
10 and physically.

11           I think he was acting with good intent to  
12 tell me that, you know, it was a modern Marine  
13 Corps and I could go ahead and utilize these  
14 resources, which I did, and then I was subsequently  
15 punished for. Although I graduated at the top of  
16 my class at the basic school, the six months of  
17 kind of infantry, you know, style training that all  
18 Marine Corps officers must complete, when I  
19 reported to Pensacola, Florida, afterwards in order  
20 to pursue my next stage of military training to  
21 complete flight school, even after having already  
22 acquired the equivalent of my private pilot's

1 license, I was informed I was medically  
2 disqualified from moving forward in the flight  
3 pipeline simply because I had been to counseling  
4 for having been raped.

5           Take note I was not taking any  
6 psychological medications. I wasn't suicidal. I  
7 wasn't homicidal. I was physically healthy. I was  
8 at the top of my class, physically outscoring most  
9 of the men, and a top performer by all accounts.

10           I note these things not to talk about  
11 myself, but as an example because I feel like there  
12 tends to be a generalization that it's just people  
13 who are already low performers, for instance, who  
14 have these things happen. So, yes, I was  
15 distressed. I had been raped, and there was  
16 emotional fallout from the subsequent  
17 investigation. But I was actually having a  
18 completely a normal response to what had happened  
19 to me.

20           I wasn't in denial, and I proactively  
21 sought guidance to healthfully navigate rough  
22 waters. Yet I was told then, at that point in my

1 career, it would be impossible to become a Marine  
2 Corps aviator.

3 I then spent nearly nine months appealing  
4 this decision by the medical board and doing  
5 everything they told me to do that would supposedly  
6 enable me -- enable the waiver required to move  
7 forward as a pilot. I did have the support of my  
8 commanders at the time, for which I was grateful,  
9 but the system that was supposedly there to support  
10 me was just penalizing me for using, you know, what  
11 I was told was available to me and for being honest  
12 about what services I needed and used.

13 I jumped through every proverbial hoop  
14 placed before me to no avail. So, eventually, I  
15 requested a new MOS, a new military occupational  
16 specialty, and I went to intelligence school and  
17 deployed to Iraq twice.

18 So my desired career path was cut short  
19 from the outset. I see this as a lack of support  
20 in all ways because I used the victim services and  
21 then was subsequently effectively punished for  
22 having done so, both directly by a disrupted career

1 path and then moving forward because I was labeled  
2 with the "rape victim" moniker at every command I  
3 went to afterwards.

4           So examples like this are exactly why  
5 people are deterred not only from reporting, but  
6 also from seeking appropriate aftercare.

7           The second issue I'd like to address is  
8 providing some recommendations on the role of  
9 commanders in the military justice system. So if I  
10 had to boil it down to one metaphor, I would say  
11 that when you're raped by a fellow service member,  
12 it's like being raped by your brother and having  
13 your father decide the case. Because even with the  
14 best of intentions, commanders are not impartial.

15           Therefore, I disagree with the claim that  
16 many top military leaders have argued before  
17 Congress that removing a commander's authority over  
18 criminal cases, including those involving sexual  
19 assault, would disrupt discipline and undermine  
20 their authority. In fact, I believe it would  
21 improve good order and discipline because it would  
22 remove undue pressure from commanders to get

1 involved in heated legal battles and bogged down by  
2 intricacies that pull them away from the main  
3 effort of their command duties.

4           Commanders are clearly not impartial  
5 judges in these cases and often get looped into  
6 things in a way that is often chalked up to "he  
7 said, she said" case instead of being approached in  
8 a legal light without bias.

9           Senators in both parties appear extremely  
10 reluctant to take a position on what is constantly  
11 referred to as such an emotionally charged and  
12 complex legal issue, and military leaders often  
13 erroneously refer to the cases in a similar tone.  
14 And yes, these are complex issues, but more than  
15 that, they're violent crimes. And clearly, people,  
16 both civilian and military alike, have a hard time  
17 addressing them as such, let alone impartially  
18 deciding a case, which I don't think a commander  
19 can do.

20           In civilian courts, judges must recuse  
21 themselves if they so much as make comments of a  
22 biased nature within years of a thematically

1 similar particular case. Yet we allow military  
2 commanders with vested interest in individuals, who  
3 know them personally and intimately, to be the  
4 final say so of complex legal proceedings? That  
5 doesn't make sense to me or sound like good order  
6 and discipline to me.

7           So I support Senator Gillibrand's  
8 measure, which would take sexual assault cases  
9 outside the military chain of command and give  
10 military prosecutors, rather than accusers'  
11 commanders the power to decide which cases to try.

12           Senator McCaskill's approach would strip  
13 commanders of their ability to overturn jury  
14 verdicts and mandate dishonorable discharge or  
15 dismissal for anyone convicted of sexual assault,  
16 but it would keep control of court martial  
17 proceedings within the chain of command.  
18 Therefore, her proposed changes are good, but I  
19 don't believe simply -- that they don't go far  
20 enough.

21           My experience was one in which my rape, I  
22 mentioned earlier, effectively followed me

1 throughout my seven-year career. I'm going to try  
2 to paraphrase a small example of that.

3 I think that although many factors --  
4 although many factors play into this, one factor is  
5 that commanders talk. They're people. So they  
6 talk to each other. So confidentiality is  
7 constantly a gray area. It's violated. Steps are  
8 taken back. Steps are crossed over. It's kind of  
9 a murky area there.

10 And I find this especially problematic  
11 because they don't have the legal training to fully  
12 understand these cases, yet they discuss them as if  
13 they do. In particular, I had a flight doc who  
14 violated HIPAA and shared the story of my rape with  
15 and that I had sought counseling because of a  
16 personal matter totally unrelated to what was going  
17 on. But it was then used as evidence to discredit  
18 me in a case that had literally nothing to do with  
19 me having been raped.

20 But it then was drawn out of my file,  
21 shared inappropriately, unprofessionally violating  
22 my confidentiality to just say, oh, yeah, let's

1 discredit her. So, again, I'm taking a large story  
2 and trying to boil it down. But one example of how  
3 the history of my rape was taken out of context.

4           And I would say, you know, it's great to  
5 hear the good examples of getting command support.  
6 I agree that's crucial to have command support  
7 where people address things professionally and  
8 appropriately. But I still don't think that that  
9 means that commanders need to be like the final  
10 legal say so and be handling them to the degree --  
11 handling these cases to the degree that they are  
12 now.

13           So part three that I wanted to discuss  
14 today has to do with victim services, and I would  
15 say that the one consistency I saw in victim  
16 services was inconsistency. There was and is a  
17 lack of continuity of care, both while active duty  
18 and within the VA hospitals afterwards.

19           I saw over a dozen different counselors  
20 from the first time I sought care to the time I  
21 left the Marines. When I did finally find a doctor  
22 with whom I meshed, a couple months later, I

1 received orders to move to a new base, where I  
2 subsequently started the process all over again.  
3 And often, too, the providers themselves were  
4 frequently moved or burned out, disabling them from  
5 providing quality care to those in need.

6           And so, the process that I had to go  
7 through multiple times was to check into a command,  
8 know that you need counseling, be told by, you  
9 know, generally speaking now, saying, "Oh, we're a  
10 modern military. You can get counseling. It's  
11 okay." So you then have to explain to your  
12 commanding officer why you need the counseling  
13 because they always ask why, even though,  
14 technically, I suppose you didn't have to say, but  
15 they always just wanted to know why.

16           You go to the hospital, explain to them  
17 why you need counseling, wait weeks or months to  
18 see a counselor, and then tell your life story and  
19 vivid account of the rape all over again, and hope  
20 that the standard of care is one of which you  
21 approve, which it often wasn't. Psychological  
22 counseling was the only option I was ever given.

1 Well, that and medication.

2           And although I never took medication, I  
3 was constantly offered narcotics for things as  
4 minor, comparatively speaking, as TMJ and told to  
5 take three valium a day for TMJ. Yeah, I wouldn't  
6 have TMJ because I'd be drooling on myself if I was  
7 taking three valium a day.

8           And we know the negative psychological  
9 ramifications of narcotics. So coupling these  
10 narcotics with severe trauma and PTSD is a recipe  
11 for disaster, and we're seeing that overwhelmingly  
12 in the numbers of suicide rates right now. And I  
13 don't think that that's -- it is interrelated, the  
14 over-prescription of these opiate narcotics that  
15 we're seeing now.

16           So I had to hunt down alternative  
17 therapies. Chiropractic care was available once a  
18 month. Yoga was occasionally available on base as  
19 a gym class or something I had to pursue and pay  
20 for out of my own pocket. Nothing about nutrition.  
21 Counseling took weeks to get into. Acupuncture was  
22 available if I was willing to be part of an

1 experiment. The list could go on.

2           So I just -- I do want to hone in on yoga  
3 a little bit more for both personal and  
4 professional reasons. Personally, yoga saved my  
5 life. At a time when my stress levels were at the  
6 highest they could be, both because of being in a  
7 combat setting and at that same time dealing with  
8 the history of my rape getting brought back up in  
9 my command, all of that kind of happening at the  
10 same time.

11           But it's not just like hippy-dippy new  
12 age stuff, which I think is great that we now have  
13 evidence-based studies that empirically validate  
14 its benefits, especially for those suffering from  
15 post traumatic stress disorder, which accompanies  
16 many sexual assault and rape victim/survivors. So  
17 yoga, meditation, integrative nutrition -- I could  
18 lump them together as mindfulness therapies -- can  
19 make the lives of veterans happier, healthier, more  
20 better functioning, all of the benefits without  
21 having to take expensive pills with heinous side  
22 effects or have invasive surgeries or years of

1 ineffective cognitive behavioral therapy.

2 I believe, by all accounts, I should be  
3 dead or dysfunctional, and I'm not because of yoga  
4 and integrative nutrition. And these aren't  
5 expensive. They're not overly complicated tactics  
6 for health, and I haven't even listed all of my  
7 traumas today because it would be depressing.

8 So the neurological evidence that  
9 mindfulness therapies rewire our brain for the  
10 better are there, and longitudinal studies from  
11 institutions like Columbia, Johns Hopkins, the  
12 Uniformed Services of the University of Health  
13 Sciences, American University here in D.C., and  
14 some of the research efforts are explicitly  
15 clinical and apply rigorous perspective, mixed  
16 method models.

17 And the researchers are studying yogic  
18 interventions also at the War-Related Illness and  
19 Injury Study Center, where they're analyzing the  
20 treatment of chronic pain in veterans with  
21 traumatic brain injury and PTSD. And the studies  
22 are already showing that meditation alone can

1 reduce physical symptom complaints and improve  
2 emotional functioning in patients suffering from  
3 chronic pain and PTSD.

4           Another element of what I think should be  
5 added to victim services, too, and some of the  
6 other members have already mentioned their  
7 different efforts with starting businesses and  
8 support groups and things like that, is because of  
9 the military culture of insularity and then this  
10 lack of communication between bureaucratic  
11 treatment agencies, programs that seek to  
12 collaborate and bridge gaps and use peer leadership  
13 will be met with real success. And there's also  
14 clinical studies that are showing that, too. One  
15 in particular from the University of Michigan from  
16 2010. So these are recent studies.

17           So, you know, when we're talking about  
18 alternative care, I think of the example -- and  
19 I've had this happen both with the work that I've  
20 done and then peers who are doing similar work --  
21 Marines in particular, Marines coming to them and  
22 saying, you know, "I'm really excited. I thought

1 this yoga stuff" -- again, just as an example. It  
2 doesn't have to be yoga. "But this yoga stuff was  
3 going to be weird, but it's cool. I've been doing  
4 the class, and now I'm not taking, you know, 14  
5 different narcotics. Now I find that I can manage  
6 my pain with yoga and meditation."

7           And I hear that more often than I hear,  
8 "Wow, I had a really great therapy session with my  
9 counselor yesterday and took three valium to go to  
10 sleep." I mean, you're not proud to say like I  
11 have to take medication to try to function and then  
12 have all these crazy side effects that then  
13 actually end up hurting you.

14           I just think that the availability of  
15 alternative therapies is something that needs to  
16 continue to grow. It's something I've had personal  
17 success with and have seen through others and well  
18 beyond that. Again, the evidence is there now in  
19 modern longitudinal studies that are showing its  
20 positive effects.

21           So, in general, I would say that I'm  
22 grateful for my experience. In some ways, it did

1 get better later in my career. My final command  
2 did know because, again, the news of my rape and  
3 having sought counseling got passed from command to  
4 command.

5           The last command, I had wonderful  
6 leadership. It sounded a little bit more like the  
7 first story where they were very supportive and  
8 said, you know, when you need to go to counseling,  
9 go. I was still -- I was in a leadership position  
10 that I was never taken from, and that was very  
11 helpful to remain within the system and continue to  
12 fulfill your duties and your responsibilities.

13           So, in summary, though, I believe that  
14 the military needs to address the challenge of  
15 adequately addressing violent crimes like sexual  
16 assault and rape as a cultural one that although  
17 large scale and seemingly impossible to fix is one  
18 that absolutely must be undertaken. The DoD must  
19 be more consistent in actually supporting victims  
20 who report through administrative and legal  
21 matters, as well as in healthcare.

22           Sexual assault and rape cases should not

1 remain within the chain of command where impartial  
2 commanders are forced to sacrifice good order and  
3 discipline in order to fulfill roles for which they  
4 are not equipped. And beginning now, more  
5 alternative therapies need to be available to  
6 active duty and veteran service members for victim  
7 services, both in partnership with government  
8 organizations, nonprofits, and regular service  
9 providers, but especially, too, with peer-led  
10 models.

11 I started a company called Semper Sarah,  
12 LLC, to serve people on an individual basis through  
13 health and lifestyle coaching and yoga and speaking  
14 and also founded a larger company called Just Roll  
15 With It Wellness to teach integrative health and  
16 wellness tactics precisely to active duty,  
17 veterans, their spouses, and their families.

18 I feel like I saw a gap. I've tried to  
19 address it, and I'm just one person. And I think  
20 well beyond my personal effort, just being able to  
21 better support those type of businesses and  
22 organizations that are peer-led models would be

1 very, very helpful.

2           So I think the livelihood of our country  
3 literally depends on adequate legal and healthcare  
4 for our military members. Because although our  
5 veterans are a microcosm of our nation, they lead  
6 the way and can pave the path for the whole country  
7 to be better served.

8           CHAIRWOMAN JONES: Thank you, Ms.  
9 Plummer.

10           MS. PLUMMER: Thank you.

11           CHAIRWOMAN JONES: Is that Ms. Ribeiro?  
12 Is that the right pronunciation?

13           MS. RIBEIRO: Yes. Can you hear me?

14           CHAIRWOMAN JONES: Yes.

15           MS. RIBEIRO: Good morning.

16           CHAIRWOMAN JONES: Good morning.

17           MS. RIBEIRO: My name is Marti Ribeiro.  
18 I'm a former staff sergeant in the United States  
19 Air Force. I spent eight years on active duty as a  
20 public affairs specialist. I'm also a survivor of  
21 military sexual assault.

22           I want to tell my story by breaking down

1 the myths that are associated with MST and offer a  
2 few recommendations on how I personally think we  
3 could improve the system.

4           The first myth -- is that better? All  
5 right. The first myth is that sexual assault only  
6 happens to problem service members, aka dirtbags,  
7 which is where I believe some of the victim-blaming  
8 culture comes from.

9           I was not a dirtbag. I was a  
10 professionally accomplished NCO and absolutely  
11 loved my job. I earned the Airman Leadership  
12 School Levitow Award, given to the student who  
13 demonstrated outstanding leadership and scholastic  
14 qualities. I'm also a combat vet, awarded the  
15 Army's combat action badge for returning fire under  
16 fire in a skirmish in eastern Afghanistan.

17           I earned countless awards for my  
18 journalism and public relations work, even earning  
19 the Air Force Association Airman of the Year. I so  
20 loved the Air Force that I hoped my professional  
21 accomplishments, coupled with the completion of my  
22 bachelor's degree, would lead me to becoming an

1 officer some day.

2 I'm actually third generation Air Force.  
3 My grandfather originally joined the Army Air Corps  
4 during World War II, reentering the Air Force at  
5 the start of the Korean War, later retiring with 32  
6 years of service. My father spent 28 years in the  
7 Air Force as an active duty officer. You could say  
8 that the Air Force is my family business.

9 I remember when I was younger, my  
10 grandfather telling me that the armed forces  
11 doesn't train service members to fight for their  
12 country, to fight for their family, or fight for  
13 their freedom. They train them to fight for the  
14 person standing next to them. Unfortunately, for  
15 some of us, the person we're supposed to fight for  
16 is sometimes just horrible as the enemy we're  
17 fighting against.

18 The second myth that I'd like to address  
19 is that the victim was asking for it by dressing  
20 provocatively and drinking. I wasn't either of  
21 those.

22 In 2006, I filled a joint billet at

1 Bagram Airfield Afghanistan, being assigned to the  
2 Army 10th Mountain Division. A few months into my  
3 deployment, I was directed to pull night guard  
4 duty. All of the junior NCOs took turns pulling  
5 guard duty for the Joint Operations Center, which  
6 is a small compound within the perimeter of Bagram.

7 I had pulled guard duty before. So it  
8 wasn't new. But what happened that night was new.

9 During the middle of the night, I found  
10 myself at one of the guard posts alone. I put my  
11 rifle in the wooden rack, my two-way radio in the  
12 charging cradle, and walked a few feet from the  
13 shack to smoke a cigarette. I never should have  
14 left my weapon or my radio, but it happened.

15 After a few drags on my cigarette, I  
16 found myself placed in a chokehold and dragged  
17 behind power generators by a male figure much  
18 larger than me. He told me he'd kill me if I made  
19 a sound, and I'm sure the large hum of the power  
20 generators would have drowned out any sound I made  
21 anyway. Middle of the night. Nobody was around.

22 He pinned me with his hand and eventually

1 his forearm. I fought as hard as I could, but it  
2 was not enough. I was raped.

3 He then released me, telling me that he  
4 would kill me if I told anyone. I did not ask for  
5 this by dressing provocatively, flirting, or being  
6 intoxicated. I was standing guard in full uniform,  
7 stone sober, with thoughts of my family back home.

8 After the attack, I didn't know what to  
9 do. I finished my shift and tried to find the  
10 sexual assault response coordinator. I remember  
11 consciously thinking that I couldn't wash my hands  
12 so someone could scrape underneath my fingernails  
13 when they did a rape kit.

14 The civilian I found to report my  
15 incident asked what she could help me with.  
16 Through huge tears, I tried to tell her my story.  
17 At some point, she interrupted me and asked why  
18 didn't I use my weapon? I told her I'd left it in  
19 the guard shack.

20 She then told me that if I proceeded to  
21 file a report that I needed to understand that I  
22 would be charged with dereliction of duty for

1 leaving my weapon in a combat zone. I screwed up.  
2 I made a mistake. But it didn't warrant me being  
3 raped.

4           She then told me that I would have to  
5 remain in country for the duration of the  
6 investigation, and I'm sure you can understand that  
7 at that point, that's the last place I wanted to  
8 be. The thought of staying there longer was a  
9 punishment pretty much worse than death at that  
10 point.

11           I went back to my B-hut and showered,  
12 knowing the evidence was gone. I dealt with the  
13 physical pain for week. It hurt to sit, and my  
14 sergeant major questioned the bruises on my neck,  
15 which I explained away. But the emotional pain  
16 stays with me every waking moment.

17           I didn't tell anyone for six months. I  
18 struggled through life, trying to forget it ever  
19 happened. There was a lot of shame and a lot of  
20 how could I have let this happen to me? I quietly  
21 separated from the military at the end of my  
22 enlistment and never applied for officer training

1 school.

2           The third myth is that military leaders  
3 want to believe that this is not happening in their  
4 units, but it is. Through the years, I've gone  
5 back and forth on telling my story publicly. I've  
6 watched DoD have knee-jerk reactions to repairing  
7 the problem with MST. They've thrown a million  
8 initiatives at the issue, to include training,  
9 victim advocates, special victim agents, PR  
10 campaigns with posters telling bystanders to  
11 intervene, new SARCs. But yet sexual assaults  
12 continue. How can we change this?

13           I'm a DoD civilian now. With the release  
14 of "The Invisible War," I decided to come out to my  
15 military leadership and tell my story. I decided  
16 it was time to put a face behind the statistics.  
17 The numbers we see in our annual sexual assault  
18 training don't have a face. They don't have a  
19 name. They don't have a family, and I don't think  
20 that they tell the entire story.

21           The response after telling my story was  
22 overwhelming as far as support. But the scary

1 thing is that in the following weeks, as word got  
2 out about what had happened to me, I had three  
3 females approach me, telling me the same thing had  
4 happened to them. Different circumstances, but it  
5 had happened, and none of them had reported it.

6 That's at least four incidents that are  
7 not counted for the MST stats for those years. I  
8 really think this issue runs deeper than anyone  
9 realizes.

10 We have to change the culture. I believe  
11 we need a three-pronged approach of prevention,  
12 survivor protection, and proper prosecution.

13 Two weeks ago, my local Air Force  
14 newspaper published an article about an airman  
15 who'd been convicted of rape. He didn't see any  
16 prison time, and the sad part is that a third of  
17 the article only addressed the bad stuff that the  
18 victim had done and the stuff she'd done to get  
19 herself into that situation. Did she make  
20 mistakes? Maybe. But so did I. But it didn't  
21 warrant being sexually assaulted.

22 I have an absolutely wonderful 12-year-

1 old daughter. She is a straight A student and an  
2 amazing athlete. Remaining on this trajectory  
3 would make her an ideal candidate for military  
4 service, continuing the family business. But at  
5 this point, I could not recommend she join the  
6 armed forces.

7           If my daughter is ever ready to raise her  
8 right hand and join the military, I would love to  
9 be able to wholeheartedly support her. She  
10 deserves the chance to serve her country without  
11 the fear of being sexually harassed by a fellow  
12 service member. And if she is assaulted, that the  
13 service doesn't abandon her in a time of need.

14           Here are my recommendations for change.  
15 First, in a deployed environment, I didn't have a  
16 clear understanding of who my SARC was or how to  
17 contact them. So all the services that SARCs  
18 provide are only good if the person assaulted knows  
19 how to get in touch with them.

20           Second, while I never submitted evidence,  
21 the armed forces need to ensure that rape kits are  
22 stocked in deployed locations and that medical

1 personnel know how to collect evidence that can  
2 hold up in court. I've heard countless stories of  
3 how evidence was compromised or lost in the  
4 shuffle.

5           Third, proper training of SARC personnel  
6 so they can distinguish between the major crime of  
7 rape and a minor lapse in judgment. Training that  
8 helps SARC personnel understand that the armed  
9 forces are better served by the aggressive pursuit  
10 of the truth concerning accusations of sexual  
11 assault versus disciplinary action for a minor  
12 offense.

13           I left my weapon in a combat zone, a  
14 charge easily dealt with via counseling or  
15 disciplinary paperwork, not a potential UCMJ courts  
16 martial. Whether it's drinking too much and acting  
17 foolish or leaving your weapon in a combat zone,  
18 the punishment should never be rape. Give  
19 survivors the ability to come forward.

20           We're grooming a generation of women who  
21 have served honorably, fought bravely. But in  
22 return, we've torn away their self-esteem and

1 dignity. And at this point in my life, I don't  
2 know if we ever get it back.

3           The armed forces is taking these  
4 wonderful women and molding them into well-trained,  
5 highly skilled, disciplined, and phenomenal  
6 military professionals freely making sacrifices in  
7 the service of our country. But in exchange,  
8 you're taking something from them. You're taking  
9 something that never should have been part of the  
10 price of admission. You're taking away their self-  
11 respect, their confidence, and in some cases, their  
12 sanity.

13           I implore you as a panel to change the  
14 culture, change the way things are handled, so that  
15 when my daughter is ready to raise her right hand  
16 that the service is exactly what it should be, a  
17 place anyone can serve without fear of sexual  
18 assault.

19           Thank you.

20           CHAIRWOMAN JONES: Thank you.

21           I know I speak on behalf of the entire  
22 Panel when I say how important each of your

1 statements was to us. And at this point, I wonder  
2 if there are any comments or questions from the  
3 other Panel members?

4 BRIGADIER GENERAL (RET.) MCGUIRE: I just  
5 have a couple of comments, ma'am.

6 CHAIRWOMAN JONES: Mm-hmm.

7 BRIGADIER GENERAL (RET.) MCGUIRE: Just I  
8 wanted to address your experience and your outlets  
9 for resilience building and applaud that as well.  
10 I know that from my experience in the Army, that  
11 they've done well to recognize resilience centers  
12 in large military installations, and I hope that we  
13 continue to promote that because it addresses many  
14 of the things you just said as well.

15 And then that's all I had right now.  
16 Thank you, ma'am.

17 CHAIRWOMAN JONES: Mr. Lewis? Oh, go  
18 ahead, Ms. Holtzman.

19 CONGRESSWOMAN HOLTZMAN: Of course, your  
20 testimony raises so many issues, and I want to  
21 thank you for the -- for coming here and going  
22 through the personal and psychological stress of

1 sharing the story with us. But I hope that we'll  
2 be able in some way to make some changes that will  
3 prevent a recurrence of what you have gone through.

4 I'd like to ask a little bit about the --  
5 the help or services available to you after you are  
6 leaving the military and the quality of those  
7 services. I gather, first, that for those of you  
8 who did have services during the time that you were  
9 in the military, there was no continuity after you  
10 left and sought those services. Is that correct?

11 Is that -- that's correct. Okay.

12 Anybody disagree with that? Okay.

13 Secondly, what is the quality of the  
14 service that you're getting when you've left the  
15 military and you haven't reported? I mean, for  
16 example, the last witness talked about attacks on  
17 how self-esteem has been taken. And of course,  
18 that's one of the consequences.

19 MS. RIBEIRO: Right.

20 CONGRESSWOMAN HOLTZMAN: But is there an  
21 available resource for you to address this, and  
22 have you availed yourself of this?

1           MS. RIBEIRO: I've fought through the VA.  
2 The VA system is severely broken. We have to fight  
3 tooth and nail to get any benefits that are  
4 technically owed to us.

5           They have counselors. You know, when I  
6 started with the VA years ago, they had family  
7 counselors. They had divorce counselors. They  
8 didn't have, you know, people that dealt with rape  
9 or PTSD. They are getting better about that.

10           But the VA also does the "cure in a box."  
11 You know, they give you an antidepressant and  
12 sleeping meds, and it's not tailored to you. So  
13 you fight an addiction to a medication. There's no  
14 consistency in the counseling. The counseling is  
15 not available when it would work for you.

16           Or, you know, like for me, I'm a single  
17 mom. It'd be really nice to, you know, have  
18 resources available to help me to get to counseling  
19 or to have child care during counseling, that kind  
20 of stuff. But in a word, it sucks really bad, the  
21 continuation. There is no continuation of care  
22 whatsoever.

1           CONGRESSWOMAN HOLTZMAN: And you're  
2 saying also that the quality of care is  
3 insufficient at the VA?

4           MS. RIBEIRO: It's getting better. It's  
5 gotten better in the last probably five years, but  
6 it's still -- it's probably not where it should be.

7           CONGRESSWOMAN HOLTZMAN: Anybody else  
8 want to comment on that?

9           MR. LEWIS: If I may? Thank you, Ms.  
10 Holtzman.

11           I will both agree and disagree with my  
12 distinguished panelists. I do agree that the  
13 services are woefully inadequate. However, I would  
14 disagree that they are getting better, at least on  
15 behalf of the male population, and I'm sure some  
16 females will share this concern as well.

17           The VA has begun hiring trained mental  
18 health workers. However, their idea of a trained  
19 mental health worker is one that may have seen a  
20 case of PTSD. It is not specifically trained in  
21 military sexual trauma.

22           I would also refer the commission to the

1 July 19th hearing of the House Veterans Affairs  
2 Committee for further information on the quality of  
3 VA healthcare for military sexual trauma. But to  
4 try to put it into a shortened version, I think the  
5 best place to start is with your prior question of  
6 getting out of the military.

7 My experience getting out was that the  
8 psychiatrist brought me into his office, put me at  
9 the position of attention, and told me that I had  
10 lied to him and lied to everyone about my rape.  
11 That psychiatrist is now in charge of an Echelon  
12 III command in the Navy. He never faced any  
13 professional discipline over that, and it has  
14 colored my experience with subsequent mental health  
15 providers.

16 There was a one- or two-month supply of  
17 pills given to me going out of base, and that was  
18 about it.

19 CONGRESSWOMAN HOLTZMAN: Well, you said  
20 there was a physician whom you believed acted  
21 improperly. Did you take action vis-à-vis him?

22 MR. LEWIS: Yes, I did. I filed a

1 complaint with the patient care reps. I filed an  
2 Article 138. I did everything I could, and there  
3 was no professional discipline that was ever taken  
4 on this provider.

5           Once I got out of the military, I found  
6 that the pills they had given me were making my  
7 gums bleed. My grandmother, who's sadly now a  
8 multiple stroke survivor, practically loaded me in  
9 her car and took me to the VA because every time I  
10 opened my mouth, the pills they prescribed me -- I  
11 want to say Atarax -- made my gums bleed. Every  
12 time I opened my mouth, I looked like I had a  
13 little red waterfall.

14           Fast forward a few years, currently, as I  
15 stated in my opening remarks, the VA -- I was  
16 offered intensive therapy through the VA at the VA  
17 medical center in Bay Pines, Florida. However,  
18 that, as I said, is a coed facility.

19           There are certain physical aspects,  
20 certain mental aspects that even though I know  
21 several of the panelists here very well, I would  
22 not share with them that aspect of my trauma

1 because I just feel it's too much information, as  
2 much as I care for the women. And VA has not taken  
3 the appropriate steps to address single-gender care  
4 for both men and women.

5           They also have not -- they also have  
6 outpatient groups that meet infrequently, if at  
7 all. And very often, male survivors are excluded  
8 from these outpatient groups because they are set  
9 up through the women's health clinic. As a male  
10 survivor, I should not have to go through the  
11 women's health clinic to receive care for military  
12 sexual trauma.

13           I ask each Panel member to think about  
14 how inappropriate that would be, both for the male  
15 and the female survivor, for a man to walk into a  
16 women's health clinic and be there to receive  
17 services. That's a nightmare, and the VA has never  
18 gotten any better with that to address it.

19           CONGRESSWOMAN HOLTZMAN: Thank you, Mr.  
20 Lewis.

21           Any other -- Ms. McCoy?

22           MS. MCCOY: So I used -- utilized the VA

1 system for a number of years for -- and I still  
2 utilize the VA system. I'm continuously there  
3 hoping that through going there, asking questions,  
4 trying to get -- you know, let the people know that  
5 there are some issues with the way that they're  
6 treating us, that something will change.

7 I have seen some things change, and those  
8 things are good. But when a system is so deficient  
9 and they improve a slight amount, I don't know that  
10 you can necessarily call it an improvement. So  
11 I'll start there.

12 With the mental health services that are  
13 received at the VA, initially I went through the  
14 trauma recovery program, and because I had  
15 extensive issues, I had multiple issues, multiple  
16 upon multiple issues -- homelessness. You know, I  
17 have children, struggling with arthritis and things  
18 of that nature. When you go into those clinics,  
19 the only thing that they want to talk about is the  
20 trauma. That's it.

21 When you go to the women's clinic, if you  
22 have 12 issues, they want to talk to you about one

1 issue that day, and they give you an appointment  
2 for 4 or 5 months down the road to talk about the  
3 other issue. So if you have these cascading issues  
4 that are on top of each other, and in my case, I  
5 did. I had -- you know, I had fibromyalgia and  
6 arthritis and all of these other things. You can  
7 never get any real remedy.

8           And then I had a Target bag that I  
9 disposed of, a Target bag full of medication. At  
10 one point, I was taking 40 or 50 pills a day, and I  
11 had them on a timer to remind me to take them at  
12 one point in my life. And that's how -- that was -  
13 - and that was when I was going to the VA every  
14 day, utilizing their services, having conversations  
15 with the mental health, having conversations with  
16 the women's clinic. Going consistently.

17           I don't necessarily utilize all of the  
18 services from VA anymore. I, much like the  
19 panelists, utilize a holistic, you know,  
20 therapeutic arts, you know, all kinds of modalities  
21 for healing. I personally perceive them to work  
22 better for me.

1           I do continue to utilize mental health,  
2 but only on a check-in basis. I'm also part of the  
3 vet center. I love the vet center. They are  
4 grossly understaffed.

5           CONGRESSWOMAN HOLTZMAN: Now what's the  
6 vet center? I'm sorry. I'm not a military person.

7           MS. MCCOY: It's a -- the veterans center  
8 is a -- is a -- they have counseling services.  
9 They run alongside of the VA, but they are not the  
10 VA. So the system is set up separately. The notes  
11 in the system and the mental health providers are  
12 just -- they're not as -- they're not as stringent  
13 as the VA because the VA is kind of cookie cutter.

14           CONGRESSWOMAN HOLTZMAN: But it's paid  
15 for. You don't pay for it?

16           MS. MCCOY: I don't pay for it.

17           CONGRESSWOMAN HOLTZMAN: Okay. Paid for  
18 by the government.

19           MS. MCCOY: I don't pay for anything.  
20 And so, they offer services for my family. So my  
21 daughters can go in and get counseling as well, and  
22 it's a much less stressful situation going into the

1 vet center.

2           They have community programs. They do  
3 things, you know, more outreach, and then we have  
4 group. So I -- you know, I suggest that anyone who  
5 has had, you know, military sexual trauma as part  
6 of their history that they seek mental health  
7 services, absolutely. And you need to be in a  
8 couple times a week if you're really reactive.

9           But if you can manage it once a month  
10 with the VA, sometimes you can't even get an  
11 appointment for three to six months. So how are  
12 you going to get an appointment to treat this  
13 situation if you have to go into the emergency room  
14 and say, you know, "I'm in crisis" to get immediate  
15 care? That's problematic.

16           So there's a lot of -- there's a lot of  
17 issues. I mean, we could take the whole day to  
18 discuss multiple issues that are going on with the  
19 healthcare.

20           CONGRESSWOMAN HOLTZMAN: Thank you.

21           I'm sorry. Ms. Harrell?

22           MS. HARRELL: My care is currently --

1 with my VA care, all of my care is under my husband  
2 because my husband is currently active duty. So  
3 I've been fighting the VA. My PTSD did not kick  
4 into full gear, should I say, until 2007 when I had  
5 a psychotic break. Everything just hit -- hit the  
6 ceiling, and I had to be hospitalized in 2007.

7           So that's when I initially went to the VA  
8 and I first filed my first claim. And at that  
9 time, MST really wasn't being talked about as much  
10 as it is now. So when I first filed, you know,  
11 they kicked it back. You know, "You've never been  
12 to a war zone. There's no possible way you could  
13 have PTSD."

14           So all of the care that I am having now,  
15 like I said, it's under my husband's TRICARE, and  
16 he's due to get out of the military. So I'm in  
17 that in-between space right now. When he gets out,  
18 I don't know what I'm going to do.

19           But I'm on 10 pills right now that are --  
20 two are twice a day, and then the other ones are --  
21 the other, I've got to take those, too. I'm not  
22 high now, though.

1                   (Laughter.)

2                   CONGRESSWOMAN HOLTZMAN: Ms. Plummer, did  
3 you want to add something or --

4                   MS. PLUMMER: I was just going to give an  
5 example of part of the process I went through at  
6 flight school when I reported down there after the  
7 basic school, and they said, okay, you know, kind  
8 of like the security questionnaire where you're  
9 asked like have you ever received counseling?

10                  Like, obviously, it's a pretty intensive  
11 medical screening before you start, you know, full  
12 scale start flight school. And I had answered  
13 honestly, yes, that I had received counseling.

14                  One of the hoops they made me jump  
15 through, they said, okay, well, we need to -- even  
16 though all of the counseling that I had received  
17 the previous months all effectively checked out,  
18 like I said, you know, had a normal response,  
19 anxiety and some stuff like that, but was  
20 healthfully resolved, functioning well, yada, yada,  
21 yada. At Pensacola was told, well, we need you to  
22 go back to counseling, just do it. Once you do a

1 couple months of that, then we'll let you start was  
2 what I was told.

3 I was then sent to a group of people with  
4 OCD, like that was my group therapy. It made no  
5 sense. I was in a mixed gender --

6 CONGRESSWOMAN HOLTZMAN: OCD? Could you  
7 -- what's OCD, please?

8 MS. PLUMMER: Obsessive-compulsive  
9 disorder. Sorry. And so, basically, it wasn't --  
10 it wasn't even sexual trauma. There was no -- the  
11 group dynamic didn't make any sense. But at the  
12 time, I'm a young lieutenant and, okay, yes, I'll  
13 go do, you know, what you're telling me to do.

14 After months of thinking, okay, I'm  
15 checking the box for them, then once I finish this,  
16 I can start flight school. They said, oh, well,  
17 now you're disqualified from starting after this  
18 counseling ended. If you're lucky, you'll get a  
19 waiver in a year, and that's when I was like, okay,  
20 I did exactly what I was told. I have been honest  
21 through the process.

22 I know the military is a system by which

1 you have ratings, academically, physically,  
2 leadership. I was at the top. I mean, giving  
3 those examples of like it's not the dirtbag. I  
4 wasn't trying to get out of anything. I wanted to  
5 start my career.

6           And you know, you're only human. After  
7 waiting around and fighting that for a while, I  
8 said, okay, fine. Let me -- let me go, you know,  
9 do some work. Give me another MOS. I'll go  
10 deploy. If I want to try to come back to flight  
11 school later, I'll try that. In the Marine Corps,  
12 there's like one or two people a year through the  
13 Fleet Accession Board, I think was what it was  
14 called, where you could come back.

15           So, anyway, that was for me the medical  
16 treatment at the time, yeah, it just didn't make  
17 any sense. Since I've been out, I would say I'm  
18 probably a positive example of not having had  
19 trouble getting -- filing my claim with the VA and  
20 getting a disability rating that I felt like was  
21 fair and made sense. So I would say that I  
22 personally have had a positive experience where my

1 disability payments have been very helpful during  
2 my transition time after leaving the military.

3           And I know that I have the VA available.  
4 But when I have gone, it can usually be an awful  
5 experience. I just -- I mean, I went last week for  
6 the first time in a long time, and I was in a  
7 waiting room with all men who were part of some  
8 other group that were literally screaming at each  
9 other, and one guy was beating his service dog.

10           And I was just trying to -- and I moved.  
11 And I was just trying to check in and be like,  
12 well, so then that way, when I do want a mental  
13 health appointment, maybe I won't have to wait six  
14 months. I'll come in now and, like, establish care  
15 or connect or whatever, and it's just I don't want  
16 to go back. I mean, and I'm pretty well adjusted  
17 right now, and that was hard.

18           I mean, it just -- sorry, I'll just end  
19 there that it was an unpleasant experience.

20           CONGRESSWOMAN HOLTZMAN: Thank you.

21           CHAIRWOMAN JONES: Ms. Harrell, go ahead.

22           MS. HARRELL: Just to add what I was

1 trying to say, and I completely forgot to say it,  
2 I'm on all the pills that I'm on now. But with the  
3 program that I'm on with the K9s for Warriors, in  
4 the time that I've been with them, for the two  
5 weeks that I've been training, I've actually come  
6 off of two of the pills that I've been on.

7 I'm not having to take the sleeping pills  
8 because I'm having to get up and walk the dog. You  
9 know, I'm not suffering through the insomnia.  
10 There is a purpose for me to get out of the house.  
11 I'm not zoning, you know? On some of the pills,  
12 they make you get into a place where you are zoning  
13 as a veteran.

14 So, you know, we all have tried different  
15 approaches -- holistic, exercise, yoga, all these  
16 other different things -- and I think the VA has  
17 said it for -- they've been saying this for a  
18 couple of years now about considering service dogs  
19 for PTSD, and it keeps getting shut down. It's a  
20 wonderful resource, you know?

21 You can kill 10, 15, 20 pills off of a  
22 service dog. It gives you confidence when you are

1 going out in public that you have -- just having  
2 that confidence of, you know, not having that  
3 anxiety, you know, and not having to take or pop  
4 that Clonazepam or, you know, or whatever.

5 That's what I wanted to add. Thank you.

6 MR. LEWIS: If I might on the backend of  
7 this? A lot of the -- a lot of us have talked  
8 about healthcare in the traditional model where we  
9 go in and we see a provider, and that's the idea of  
10 healthcare. And another aspect that I want to talk  
11 about or at least bring up is the fact that those  
12 of us that have gone back to the military through  
13 the Boards of Correction and say we want to change  
14 our discharges, we want the PTSD retirement.

15 What these boards usually do is ask, in  
16 the Navy's case, the Bureau of Medicine for an  
17 advisory opinion. And my mental health record from  
18 the military was sent to a doctor that I had never,  
19 ever heard of before, at the Naval Medical Center  
20 in Portsmouth. And without interviewing me,  
21 without laying eyes on me, he was able to in the  
22 space of how -- maybe a few days or whatever, scan

1 my records and say, oh, yes, we approve of the  
2 Navy's decision.

3           And that's healthcare, too, and that's  
4 wrong. If you want to make an informed medical  
5 decision, doctors, nurses, whoever, need to be able  
6 to lay eyeballs on the patient, interact with the  
7 patient because, in my case, that correction board  
8 decision was a traumatic revictimization.

9           I personally know a former soldier who is  
10 still repaying an enlistment bonus because she was  
11 improperly discharged with a personality disorder.  
12 And we see in her case, the Army Board for  
13 Correction of Military Records had an advisory  
14 opinion that blessed that, and she was stuck  
15 continuing repaying it.

16           So healthcare is not strictly limited to  
17 the traditional interaction. It can be limited --  
18 it can also encompass record reviews that also have  
19 a current impact.

20           For instance, when you go back to the VA  
21 and they get your records, when it comes time to  
22 reevaluate your rating disability, they can say,

1 oh, well, the Board for Correction said that you  
2 have a personality disorder vice of PTSD. We're  
3 going to cut your -- we're going to cut your  
4 disability. And that's healthcare mismanagement  
5 also.

6 Thank you.

7 MS. FERNANDEZ: Madam Chair?

8 CHAIRWOMAN JONES: Yes, go ahead, Ms.  
9 Fernandez.

10 MS. FERNANDEZ How -- how -- does  
11 everybody know, is it wildly known that you can  
12 receive a disability payment if you've been  
13 sexually assaulted in the military, or is this  
14 something that you had to figure out, like  
15 everything else? I mean --

16 MS. MCCOY: In 2008, when I went into the  
17 VA, this was the first time that I even heard of a  
18 screening for military sexual trauma, and I didn't  
19 even know what they were talking about, other than  
20 the questions that they asked me.

21 Probably around 2006 or '07 was the first  
22 time I actually heard the term MST, and I heard it

1 from a veteran advocate, Susan Avila-Smith, who was  
2 -- again, because I do a lot of things on the  
3 Internet and on social media and things like that.  
4 And she was -- you know, had a page, and basically,  
5 it was a social network of women and men who had  
6 been, you know, traumatized in the military. And  
7 she was the first person to ever explain it to me.

8           And then I found out that there was a  
9 compensation. When I applied, I was denied once  
10 and twice, and then a third time. When I applied  
11 the third time, they denied me. But because, I  
12 believe, in 2011, '12 -- at the end of 2011, the  
13 beginning of 2012 -- the laws or the way that they  
14 were doing the MST claims was changing the  
15 information that they would receive.

16           And so, I had information in my medical  
17 records and in my military records that were  
18 considered a marker. And because I had those  
19 markers in my military record, I went from doing  
20 very, very well to being, you know, a problem child  
21 in the military with different issues, those  
22 markers, and I also had an abortion in the very

1 short amount of time that I was stationed at my  
2 duty station.

3           And so, those things were markers that  
4 corroborated me saying that, yes, I was raped at  
5 this particular time, and here's some medical  
6 documentation to go along with it. But I still had  
7 to fight.

8           And then many people, they don't know or  
9 they perceive that their situation is not bad  
10 enough, that it has to be "bad enough" to even  
11 apply for the benefits. So there's this concept  
12 that someone harassed me or said something and it  
13 made me feel uncomfortable or put me in a situation  
14 or they raped me, but they didn't penetrate me. So  
15 it's not rape, and so it doesn't meet the  
16 requirement for MST.

17           If you go to that page on the VA's Web  
18 site where they describe MST, it is ambiguous as I  
19 don't know what. It does not even clearly tell you  
20 what MST is. It says some words about "could be,"  
21 "might be." I mean, it's very ambiguous.

22           I can go to [rainn.org](http://rainn.org) and look at their

1 description of what sexual assault is, and it's  
2 clear. So it's -- so the messaging is problematic  
3 because they're asking you questions in a little  
4 room and saying, you know, "Did someone harm you?  
5 Did you feel safe?" or whatever. But nobody tells  
6 you on the backend what they're even asking that  
7 for.

8           Again, I didn't know until I ended up in  
9 the mental health clinic. I was severely  
10 depressed, but I'm thinking I'm there for  
11 depression, and they're talking about PTSD. I'm  
12 like, well, what does that have to do with  
13 anything? Where is all this coming from?

14           And they said, "Well, based on your --  
15 the questionnaire, you answered these questions.  
16 Did these things happen?" I said yes. "Well,  
17 that's MST."

18           So now because a crime has been  
19 perpetuated against me, now I have to carry a  
20 mental health diagnosis? Are you serious? So  
21 there are some problems with that, but that's part  
22 of that process, like the panelist was saying, you

1 know, the services are available, but you have to  
2 kind of bow down to whatever the DSM says to even  
3 get your benefits. And in that process, you're  
4 retraumatized.

5           So even though it's there, it's  
6 available, people don't know it's there. And the  
7 explanation of what MST is, is ambiguous as it  
8 relates to the VA. Still in that process, you're  
9 being retraumatized. So I wanted to answer that  
10 question, but I wanted to also bring that point,  
11 too.

12           SERGEANT MAJOR GUERRA: If I may? I have  
13 one point on that. As a member currently serving  
14 in the active component, I will say that it is not  
15 wildly known that this is something that's out  
16 there for victims. But recently, at senior leader  
17 training from the brigade SHARP rep, she has  
18 started to educate the company-level leadership and  
19 higher on what is available as far as VA payments  
20 and services for when service members exit the  
21 military, which up until six months ago was not  
22 something that was really being discussed.

1           So from my perspective as somebody who's  
2 still on active duty, this is -- this is something  
3 that I believe that the SHARP program is trying to  
4 get in front of in the education process for the  
5 senior leaders. That way, for the soldiers that  
6 are exiting the force, that they know what is  
7 available to them once they are complete.

8           MS. FERNANDEZ: Just as a follow-up, in  
9 order to get the benefit, do you need to have the  
10 mental health diagnosis?

11           SERGEANT MAJOR GUERRA: There is a  
12 screening process that you have to go through, yes,  
13 ma'am, as part of the VA benefits. There is a  
14 screening process that you have to go through.

15           MS. PLUMMER: I was just going to add  
16 that because I mentioned that I felt like I was a  
17 positive example of having gotten the benefit, I  
18 didn't know I was going through the screening  
19 either. I just thought I was just in the VA  
20 answering a bunch of questions.

21           And then, when I got my -- the whole  
22 packet of info back was honestly kind of surprised.

1 Knowing what I know now, even within the last few  
2 years, I'm like, wow, I'm really lucky that I was  
3 covered. Yet it is kind of a double-edged sword  
4 because then you also have to get stamped with  
5 having PTSD to get that.

6 But, yeah, so it's been interesting to  
7 see that.

8 MR. LEWIS: And if I might? I also want  
9 to be very clear that there are two separate  
10 disability retirements that we can talk about in  
11 this context, and my apologies to Dean Hillman if  
12 I'm covering ground that you already know.

13 There are -- there is a disability  
14 retirement under Title 10 if you have an injury or  
15 an assault that occurs that can -- that renders you  
16 incapable of performing your duties through PTSD,  
17 and there are disability benefits under Title 38,  
18 which apply to the Department of Veterans Affairs.

19 The process is now under the integrated  
20 disability evaluation system. So soldiers getting  
21 out now may potentially have that, although it's  
22 not clear -- it would not apply in the case where a

1 soldier is being discharged for misconduct or other  
2 physical, mental conditions not constituting a  
3 disability. They would simply be limited to Title  
4 38 benefits.

5           And in regard to that, the Court of  
6 Appeals for the Federal Circuit has repeatedly said  
7 that regardless of what rating you receive from the  
8 Department of Veterans Affairs, it is not binding  
9 on the military department. So, for instance, if,  
10 in my case, I received 100 percent rating for PTSD  
11 from the Department of Veterans Affairs. When I  
12 showed that to the Board for Correction of Military  
13 Records, their response was that it is not legally  
14 binding upon us.

15           And that's a problem because they're both  
16 using -- they're supposed to be using the same  
17 disability evaluation system. And that's also a  
18 point for survivors who have gone down that route  
19 is that they don't understand how they're eligible  
20 for benefits and payments under Title 38, but yet  
21 the military under Title 10 can say, whoops, that's  
22 never happened, and we're not responsible for it.

1           And that avenue, the Title 10 disability  
2 benefits, is somewhat known. However, as I stated,  
3 the process for getting it is long and involved.  
4 The military claims it's not adversarial, but in  
5 reality, it's very adversarial and it's very rigged  
6 against the participant. So wider knowledge of  
7 both of those and how they interact with each other  
8 is definitely required.

9           Thank you.

10           PROFESSOR HILLMAN: Madam Chair?

11           CHAIRWOMAN JONES: Yes, Professor?

12           PROFESSOR HILLMAN: I just wanted to  
13 thank each of you for coming forward and for  
14 standing for so many people behind you with as  
15 disparate as your experiences have been during and  
16 then for some of you after, still in the service.  
17 And I want to thank you -- Monday is Veterans Day,  
18 and I'm grateful for your service.

19           CHAIRWOMAN JONES: We didn't leave enough  
20 time to speak with all of you, but we do have to  
21 recess now. And you mentioned some studies, and  
22 you also mentioned a couple of documentaries other

1 than "The Invisible War." We may have them. I'm  
2 not completely caught up on all of my reading, but  
3 I would be pleased to receive those if you could  
4 send them along.

5           And I think we'll take that 10-minute  
6 recess, and then we'll begin the next panel. And  
7 I'm sure a number of us would like to speak with  
8 you for a few minutes.

9           Thank you very much.

10           (Whereupon, a recess was taken.)

11           CHAIRWOMAN JONES: All right. We're now  
12 moving to presentations about the new Special  
13 Victims' Counsel Programs, which originated with a  
14 pilot project in the Air Force and now has become  
15 service wide. If we could, I'd like to begin with  
16 Colonel McKee.

17           COLONEL MCKEE: Yes, ma'am.

18           Your Honor, distinguished Panel members,  
19 I would like to thank the Panel for inviting me --

20           Your Honor, distinguished Panel members,  
21 I would like to thank the Panel for inviting me to  
22 speak about the Army's Special Victims' Counsel

1 Program. As the program manager of the Victims'  
2 Counsel Program, I am excited to implement this  
3 program across the Army, thereby ensuring that the  
4 victims of sexual assaults will have a voice in our  
5 military judicial and administrative systems.

6 As the Army TJAG stated to this Panel,  
7 the crime of sexual assault in our ranks is a  
8 threat to the Army's ability to maintain readiness.  
9 Sexual assault is a crime that degrades esprit de  
10 corps, undermines morale, and destroys unit  
11 cohesion. I believe our program, in conjunction  
12 with the entire process to get after this threat,  
13 will be value added to the Army's approach.

14 I would like to inform the distinguished  
15 Panel about my background. I enlisted in the Army  
16 in 1989 and earned both my Bachelor and Juris  
17 Doctorate from Syracuse University, after which I  
18 transferred from the enlisted ranks to the Judge  
19 Advocate General Corps in 1994. I have served as  
20 both a trial defense attorney and a trial counsel,  
21 and I have an Army skill identifier as a military  
22 justice expert.

1           I have served at all levels in the Army  
2 from the squad level to the Army staff. I am truly  
3 honored to be the first program manager of the SVC  
4 program. In this role, I am responsible for the  
5 strategic operations and policy updates for the  
6 Army Special Victims' Counsel Program.

7           I work directly for the Assistant Judge  
8 Advocate General for Military, Legal, and  
9 Operations, Office of the Judge Advocate General.  
10 I coordinate all aspects of the Special Victim  
11 Counsel Program with OTJAG Legal Assistance Policy  
12 Division, OTJAG Criminal Law Division, OTJAG  
13 Personnel, Plans, and Training Office, and the  
14 Judge Advocate General's Legal Center and School.

15           Finally, as the program manager, I  
16 coordinate with the Headquarters Department of the  
17 Army G-1 on the development and delivery of legal  
18 services for victims in conjunction with the Sexual  
19 Harassment/Assault Response Program and provide  
20 reports on the progress of the Special Victims'  
21 Counsel Program as mandated by Congress.

22           I am responsible for ensuring that each

1 victim of a sexual assault is provided with a  
2 special victim counsel if requested. I will ensure  
3 that we establish and deliver the finest legal  
4 representation for special victims.

5           On 3 October 2013, the Army Chief of  
6 Staff approved the concept plan for the Army  
7 Special Victim Counsel Program. SVCs will be  
8 specially trained Army Judge Advocate legal  
9 assistance attorneys. The goal was that we would  
10 have 45 trained and ready to serve by IOC, initial  
11 operating capability.

12           In fact, at IOC, we have 53 trained Judge  
13 Advocates. They are located at 33 installations  
14 throughout the Army. Those installations without a  
15 resident SVC have an identified installation to  
16 turn to for SVC support.

17           The SVC program manager has the ability  
18 to allocate assets as needed to ensure every Army  
19 special victim has access to an SVC if desired.  
20 There are a number of unique factors contributing  
21 to the decision to utilize this structure.

22           First, the Army already has a very robust

1 legal assistance program. In a 2011 survey of the  
2 Army legal assistance offices, many responded that  
3 they were providing services to eligible clients  
4 who were victims of crime.

5           Second, the Army legal assistance  
6 attorneys routinely see clients whose interests are  
7 adverse to the local command. This includes  
8 clients with adverse duty evaluations, facing a  
9 determination of the financial liability due to  
10 equipment loss, and facing a filing determination  
11 concerning adverse information. This is unique, as  
12 other services provided such representation through  
13 the trial counsel office.

14           Our legal assistance attorneys are used  
15 to representing clients with interests adverse to  
16 the command, and our SJAs respect their  
17 professionalism in providing quality legal  
18 representation in such cases. It was determined  
19 that it was unnecessary to create a separate legal  
20 structure for SVCs, as the legal system's model was  
21 already working efficiently.

22           SVCs are selected by the Staff Judge

1 Advocate based on their military justice  
2 experience, sound judgment, and their maturity.  
3 They will work under the direct supervision of  
4 their chief of legal assistance.

5           As the program manager, I will have  
6 technical supervision over all Army special victim  
7 counsels. The program manager, along with the  
8 local chief of legal assistance, is directly  
9 responsible for the adherence of each attorney to  
10 their Army professional responsibility  
11 requirements, and each SVC's individual state rules  
12 of professional responsibility.

13           After selection of quality Judge  
14 Advocates, providing them with specialized training  
15 required in this unique position becomes critical  
16 to their success. In September 2013, 13 Judge  
17 Advocates and 20 legal assistance supervisors  
18 received SVC training. In October 2013, an  
19 additional 54 Army Judge Advocates -- 39 active  
20 Army, 13 Army National Guard, and 2 U.S. Army  
21 Reserve -- received SVC training.

22           This training included the unique aspects

1 of dealing with special victims, existing programs  
2 on and off the installation that support special  
3 victims, and specialized training on legal issues  
4 involved in sexual assault court martials. The  
5 SVC's primary duty is to zealously represent the  
6 best interests of their clients, as required by the  
7 attorney-client relationship, even if their  
8 client's interests do not align with those of other  
9 interested parties to include the government of the  
10 United States.

11           The SVC also helps build and sustain  
12 victim resiliency. SVCs will provide the following  
13 services to their clients: accompany and advise  
14 the victim during interviews, examinations,  
15 hearings, and court martials; represent the victim  
16 in court martial proceedings, as permitted by law;  
17 refer the victim to Trial Defense Service if there  
18 are allegations of collateral misconduct; advocate  
19 the victim's interest with government counsel  
20 and/or commanders on the disposition options;  
21 assist the victim with post trial submissions to  
22 include victim impact statements; advise the victim

1 on collateral civil issues arising from the crime;  
2 provide the victim with legal assistance services  
3 as needed; and answer any questions that the victim  
4 may have about the court martial process.

5           The SVC will also coordinate with the  
6 victim/witness liaison and the victim advocates to  
7 ensure that the victim is informed of their  
8 reporting options, on their rights as a victim, on  
9 their eligibility for military and VA benefits, on  
10 their right to request an expedient transfer, their  
11 ability to obtain a military protective order  
12 and/or a civilian protective order, and the nature  
13 of the military justice system and victims' rights  
14 and duties.

15           While the defense bar has raised some  
16 concerns that the SVC will become a second  
17 prosecutor in trials, this is clearly not the case.  
18 The SVC is representing the victim's interests. In  
19 many cases, those interests will coincide with the  
20 successful prosecution of the case. However, in  
21 others, the interests will not align, and the SVC  
22 will advocate for the victim's interests.

1           The Army SVC program achieved initial  
2 operating capability on 1 November, and we will be  
3 at full operating capability by 1 January 2014.  
4 The Army News Service ran an article on 1 November  
5 2013 publicizing the Army's SVC program and the  
6 services that SVCs will provide to victims of  
7 sexual assault. There will also be a story in the  
8 Stars and Stripes this week, and there will also be  
9 an article in the Army Times next week highlighting  
10 this program.

11           As noted previously, at IOC, the Army had  
12 53 active Army SVCs trained at 33 installations.  
13 Those installations without a resident SVC have an  
14 identified installation to turn to for SVC support.  
15 The SVC program manager has the ability to allocate  
16 assets as needed to ensure every Army special  
17 victim has access to an SVC if desired.

18           In fact, our first attorney to make a  
19 court appearance on behalf of a victim occurred the  
20 day prior to 1 November. At Fort Bragg, a victim  
21 requested services from an attorney. The counsel  
22 notified the judge, the trial counsel, and the

1 defense counsel. The SVC obtained copies of the  
2 client's statement to CID, the charge sheet, the  
3 CID investigation, and the pending MRE 412 motion  
4 and response.

5           On 31 October, the military judge heard  
6 the 412 motion and asked the SVC to appear. At the  
7 start of the 412 motion, the SVC moved from the  
8 gallery to the podium, and the judge asked the SVC  
9 a series of questions about when the SVC began  
10 representing the victim, the attorney's state bar  
11 membership, and their Judge Advocate General  
12 qualifications. The attorney was then sworn before  
13 the court.

14           Witnesses were called by both the defense  
15 and the government, and both the defense and the  
16 government made their arguments. The SVC was then  
17 called back to the podium to address the court.  
18 The attorney cited a case to the court supporting  
19 the client's position.

20           This example demonstrates our program is  
21 already working and that our independent trial  
22 judiciary has adopted the SVC into our system.

1           As we move towards IOC by 1 January 2014,  
2 we are planning both additional online training for  
3 our already-trained attorneys and an annual course  
4 for those who will assume their duties in the  
5 future as special victims' counsel. In addition to  
6 the face-to-face training and online training, we  
7 have established a JAG university presence, a legal  
8 assistance military suite Web site for  
9 collaboration, and a document library where our  
10 attorneys can share forms, briefs, and other  
11 documents to provide the best legal services to our  
12 clients.

13           Our attorneys have been given a draft of  
14 our SVC handbook to guide them in their practice.  
15 This handbook includes sample templates and process  
16 flow charts. All of the material, to include  
17 instructional -- instructional material at the  
18 face-to-face Judge Advocate General Legal Center  
19 and School, will be provided to the Panel.

20           The Special Victims' Counsel Program is  
21 only part of one aspect of the Army's comprehensive  
22 program to combat sexual assault, but I believe it

1 will become a cornerstone program for victims of  
2 sexual assault because it will provide them with a  
3 voice in the process. With this simple action of  
4 empowerment, regardless of the outcome in a  
5 judicial or administrative process, victims will  
6 know that our military justice system supported  
7 them and gave them the best opportunity to be heard  
8 and the best chance at justice.

9           Thank you all for allowing me the  
10 opportunity to address this most distinguished  
11 Panel on such an important topic.

12           CHAIRWOMAN JONES: Thank you, Colonel.

13           Next, we'll hear from Colonel Carol  
14 Joyce, who is the victims -- is the officer in  
15 charge of the Victims' Legal Counsel Organization  
16 for the Marine Corps. Colonel Joyce?

17           COLONEL JOYCE: Thank you, Your Honor.

18           Your Honor and distinguished Panel  
19 members, as stated, I am Colonel Carol Joyce, and I  
20 am the officer in charge of the Marine Corps  
21 Victims' Legal Counsel Organization. I thank you  
22 for this opportunity to appear before you today.

1           I would like to just first share with you  
2 a little bit about my background as well before I  
3 explain to you the Marine Corps program. First of  
4 all, I've been serving continuously on active duty  
5 with the Marine Corps for over 32 years now. I  
6 started out as a supply officer, and I was then  
7 later accepted into the Marine Corps law program in  
8 1986. So I've been serving as a Judge Advocate  
9 since I graduated from Suffolk University Law  
10 School in Boston in 1989.

11           I've had the opportunity to hold a lot of  
12 military justice billets, and I'd like to highlight  
13 just a few of those. As a litigator, I've had the  
14 opportunity to be a prosecutor as a chief trial  
15 counsel and even as a special assistant U.S.  
16 attorney representative for the Eastern District of  
17 North Carolina. I also had the opportunity to be  
18 defense counsel as both the regional defense  
19 counsel of the Pacific region, as well as the chief  
20 defense counsel of the Marine Corps.

21           I was later selected to be the Deputy  
22 Chief Prosecutor for Military Commissions in

1 dealing with the detainees down at Guantanamo Bay.  
2 Recently, I was also an appellate court judge for  
3 the Navy/Marine Corps Court of Criminal Appeals.

4           As a Staff Judge Advocate and legal  
5 advisor, senior legal advisor, I had the  
6 opportunity to provide legal advice to senior  
7 commanders of three major commands, one being a  
8 combatant command commanded by a four star, that  
9 being with U.S. Strategic Command in Offutt Air  
10 Force Base in Nebraska. I then also provided legal  
11 advice to a three-star commander with the 2 Marine  
12 Expeditionary Force, that being one of three major  
13 commands in the Marine Corps.

14           And then I had the opportunity to deploy  
15 for a year in a combat environment as the senior  
16 legal advisor to the commander of Regional Command  
17 Southwest in Helmand Province. So I had the  
18 opportunity to be out on deployment, observing some  
19 of the issues and matters that we're addressing  
20 today.

21           And lastly, I had the distinct privilege  
22 of also being a commanding officer. As some may

1 know, in the Marine Corps, we get the opportunity  
2 to have line officer billets, and I commanded a  
3 Marine wing headquarters squadron for two years in  
4 Okinawa, Japan.

5 I believe that my background and  
6 experiences have given me the opportunity to see  
7 firsthand from different perspectives how sexual  
8 assault and other serious crimes impact our ranks  
9 and to appreciate where the gaps are and where we  
10 can do better.

11 With that, I'd like to explain to you a  
12 little bit about how we got to where we are and how  
13 we organized this Victims' Legal Counsel  
14 Organization with the Marine Corps. Just a week  
15 ago today, and consistent with the Secretary of  
16 Defense's memo of 14 August, is when the Marine  
17 Corps officially stood up this organization.

18 As the officer in charge, I'm located  
19 here at Headquarters Marine Corps, and I am  
20 responsible for the supervision of all the Marine  
21 Corps victims' legal counsel, as well as to ensure  
22 the delivery of the victims' legal counsel services

1 throughout the Marine Corps. I work directly for  
2 the Staff Judge Advocate to the Commandant of the  
3 Marine Corps, Major General Ary.

4           It was he that directed that an  
5 operational planning team get together and decide  
6 how we were going to do this and how we were going  
7 to set up our structure, and we brought together  
8 not only trial prosecution experience and defense  
9 experience, but we also asked for representatives  
10 from the SAPR program, as well as from the Family  
11 Advocacy Program.

12           And we also had uniformed victim  
13 advocates as part of this OPT, and we also had a  
14 representative from the Air Force and the Navy, as  
15 well as an instructor from the Army school to take  
16 part in this planning so we could better decide how  
17 we were going to set this program up.

18           I'd like to explain to you how it was for  
19 the Marine Corps. The legal assistance attorneys  
20 were the ones that were advising or providing  
21 counseling to victims of crimes. The problem was  
22 is that traditional legal assistance in the Marine

1 Corps, the mindset always is, is that they deal  
2 with powers of attorneys, wills, estate planning,  
3 family matters.

4           So what was really happening here is that  
5 victims of crime were not really going to the legal  
6 assistance officers in the Marine Corps. And they  
7 did not have the authority or the ability to  
8 actually represent these victims beyond the mere  
9 advice and counseling.

10           So we knew we had to do something  
11 different. We needed to highlight this program and  
12 this structure, and that's why we've made it, one,  
13 autonomous, and we've mirrored it with our Defense  
14 Services Organization. And we've made it separate  
15 and distinct in order for individuals to realize  
16 that this is out there and not to be confused with  
17 the traditional legal assistance that we've always  
18 provided. And that's why it's called Victims'  
19 Legal Counsel Organization.

20           In our Marine Corps, we have four major  
21 regions. We have east coast at Camp LeJeune, west  
22 coast at Camp Pendleton, and overseas Okinawa,

1 Japan, as well as representatives at Quantico, a  
2 legal service support section at Quantico with the  
3 National Capital Region.

4           So, with that, each of those regions have  
5 a regional trial counsel and a regional defense  
6 counsel. So we thought it best to have a regional  
7 victims' legal counsel in order that it would be in  
8 line with the fact that, again, this autonomous  
9 organization would have its own structure and be  
10 identified within each of the regions.

11           They're all field grade officers, and for  
12 those that are victims' legal counsel, they  
13 administratively are assigned to those legal  
14 service support sections there in those major  
15 regions. But they are operationally under my  
16 control, and they report to me, and I evaluate on  
17 them.

18           I think this allows the victim -- as  
19 yesterday there was a comment about victims' rights  
20 in the Manual for Courts Martial, and victims have  
21 the right to be heard. They have the right to be  
22 present during hearings, and they also have the

1 right to knowabout pretrial negotiations. But I  
2 really think that this program is going to give  
3 them the voice that they always needed because  
4 while those rules were in the manual, they did not  
5 really surface enough for them to be acknowledged  
6 and recognized.

7           The Marine Corps, with regards to  
8 eligibility, the Marine Corps sees the Victims'  
9 Legal Counsel Organization primarily intended for  
10 active duty members and Reservists on active duty  
11 that are victims of sexual assault. However, the  
12 Marine Corps is taking an approach that not only  
13 are we providing assistance to victims of sexual  
14 assault, we are also providing assistance through  
15 this organization for victims of other crimes.

16           Also we are looking at the eligibility of  
17 victims based on what's already in the statute that  
18 has given us the authority with regards to legal  
19 assistance eligibility to all of those same  
20 individuals identified in 10 U.S. Code 1044, then  
21 emphasized in 10 U.S. Code 1565(b). And that is,  
22 is that we will also include dependents.

1           And the Marine Corps has decided not to  
2 distinguish its eligibility based on the age of  
3 these dependents. So the Marine Corps will look at  
4 victims not only of sexual assault, but all crimes,  
5 other crimes, as well as all individuals that are  
6 eligible within the statutory authority.

7           The scope of representation is that these  
8 victims' legal counsel will provide confidential  
9 legal assistance to these eligible victims of crime  
10 in place of these legal assistance attorneys, and  
11 they will fully advise the victims of their rights  
12 in the military justice process. And actually,  
13 based on what my Army counterpart said, on all  
14 those matters, including explaining restricted and  
15 unrestricted and all of the other options that they  
16 have.

17           So I won't list all of those same things  
18 that Colonel McKee listed, but when these  
19 individuals are detailed, they will then represent  
20 them in the military justice proceeding in  
21 accordance with the statutes, regulations, and  
22 again, case law.

1           If a victim has been involved in  
2 collateral misconduct, it's really imperative that  
3 we start with the victim legal counsel again. Let  
4 me explain one thing is that we really felt that  
5 there was some confusion with regards to this  
6 collateral misconduct, that as soon as a victim  
7 identified some involvement with collateral  
8 misconduct, the mindset was to send them to the  
9 Defense Services Organization.

10           Our Marine Corps message traffic last  
11 week highlighting and announcing this program  
12 clearly emphasized that any individual who claimed  
13 to be a victim that had any collateral misconduct  
14 mentioned would still see the victims' legal  
15 counsel and only then would the victims' legal  
16 counsel decide and determine when appropriate to  
17 refer that individual to a defense services  
18 organization. That's the same with also  
19 traditional legal assistance, should there be those  
20 matters as well when discussing matters with the  
21 victim.

22           We also emphasize the importance that's

1 already drawn out in the statute -- that, again,  
2 being 10 U.S. Code 1565(b), allowing legal  
3 assistance to sexual assaults -- to emphasize the  
4 importance of the SARCs, the victim advocates,  
5 victim/witness liaison representatives, military  
6 criminal investigators, and trial counsels, that  
7 they must inform this victim that there is a legal  
8 counsel available and that they should allow this  
9 victim to consult with an attorney should they want  
10 to.

11           This is a statutory requirement, and  
12 again, we emphasize it. We are not trying to take  
13 the place of all those services provided by the  
14 SAPR or Family Advocacy Program, but only to  
15 augment it.

16           For honest representation, duration of  
17 representation will be involved. The -- excuse me.  
18 The duration of representation is considered  
19 basically complete when the convening authority  
20 takes action. That is that phase when the  
21 commanding officer has made his final decision with  
22 regards to the disposition of the case, and unless

1 it's resolved sooner. But also that there may be  
2 exceptions, and those exceptions would have to be  
3 addressed by me or my boss, the Staff Judge  
4 Advocate to the Commandant of the Marine Corps.

5 I'd like to take this opportunity that  
6 the Marine Corps officers and enlisted legal  
7 specialists have all been properly trained in  
8 preparation for this assignment. And I have to  
9 give some credit to both the Air Force and the Army  
10 for this.

11 It was during the shutdown that we were  
12 scheduled to have this training, and while we were  
13 able to get the approval for travel, they  
14 definitely had the difficult task of ensuring that  
15 we got all the right people to give us this  
16 training and the experts that showed up for this.  
17 I can't tell you enough how important I think this  
18 training was with regards to the victimology aspect  
19 and ensuring that people who take on this  
20 responsibility understand exactly what this job and  
21 this assignment will entail.

22 So, again, I thank my counterparts for

1 that and ensuring that we were ready by 1 November  
2 not only to have the individuals, but to have them  
3 specially trained in this case.

4           With that, we have an operating case  
5 tracking system. We are keeping track in the last  
6 week of what we are getting in as consultation or  
7 contact with victims. Again, we're in the very  
8 early stages. I wouldn't say this is anything at  
9 all as something that will track the actual or  
10 measure the actual success of this program. I  
11 think that's a big challenge that we still have  
12 ahead of us.

13           So on 1 November of last week, we've had  
14 all of our regions stood up, both with the regional  
15 victims' legal counsel, as well as some of the  
16 victims' legal counsel, and we will be providing on  
17 1 January additional outlying commands to be  
18 covered.

19           So I thank you for this opportunity and  
20 look forward to your questions.

21           CHAIRWOMAN JONES: Thank you, Colonel.

22           We're now going to hear from Captain

1 Fischer-Anderson, who is Chief of Staff for the  
2 Victims' Legal Counsel Program in the Navy.  
3 Captain?

4 CAPTAIN FISCHER-ANDERSON: Judge Jones  
5 and distinguished members of the Panel, good  
6 morning.

7 CHAIRWOMAN JONES: Pull the mike closer  
8 to you, please.

9 CAPTAIN FISCHER-ANDERSON: How's that?  
10 Better?

11 Judge Jones and distinguished members of  
12 the Panel, good morning, and thank you for the  
13 opportunity to discuss the Navy Victims' Legal  
14 Counsel Program. I'm very excited to be part of  
15 this tremendous effort to assist victims of sexual  
16 assault.

17 By way of background, I am the Chief of  
18 Staff for the Navy Victims' Legal Counsel Program.  
19 I am headquartered in Mayport, Florida, and my  
20 deputy, Commander Andy House, is headquartered in  
21 Washington, D.C.

22 In my role as Chief of Staff, I'm

1 responsible for leading, mentoring, training, and  
2 equipping 29 specially trained, independent Judge  
3 Advocates and 10 administrative support personnel.  
4 I report directly to Admiral James Crawford in his  
5 role as Commander, Naval Legal Service Command.

6           Prior to assuming duties as Chief of  
7 Staff for the Victims' Legal Counsel Program, I  
8 served as Chief of Staff for the Navy Defense  
9 Counsel, and before that, I was in command of Naval  
10 Legal Service Office Southeast. Prior to that, I  
11 was the Staff Judge Advocate to the Superintendent  
12 of the United States Naval Academy.

13           In previous tours over the past 26 years,  
14 I've been assigned to both sides of the court  
15 martial aisle. In my first two tours where I was  
16 stationed overseas, first in Guam and then in Holy  
17 Loch, Scotland, I performed duties as defense  
18 counsel. I defended sailors charged with sexual  
19 assault.

20           And when I first joined the JAG Corps,  
21 both trial and defense counsel were assigned to the  
22 same command. So, as a result, I had the

1 opportunity to prosecute sailors charged with  
2 sexual assault. As I became more senior, I was  
3 assigned as a Staff Judge Advocate and as a Force  
4 Judge Advocate to two- and three-star line  
5 commanders.

6 Military justice was always part of my  
7 portfolio, and as a result, I had many  
8 opportunities to advise commanders on sexual  
9 assault cases, both pretrial and post trial. I am  
10 happy to report today that the Navy Victims' Legal  
11 Counsel Program is off to a fantastic start. Our  
12 program is made up of 29 victims' legal counsel.  
13 Eleven of our counsel are Reservists, and the  
14 remaining 18 are active duty Judge Advocates.

15 Every victim legal counsel was carefully  
16 vetted and professionally recommended for the  
17 program. Criteria for selection to be a victim  
18 legal counsel was based on the individual's desire  
19 to serve in that role, their experience level,  
20 professional maturity, and most importantly, their  
21 people skills.

22 Our goal was to choose third tour and

1 junior fourth tour Judge Advocates with both trial  
2 and defense counsel experience. Twenty out of 29  
3 of our counsel met as a group for the first time  
4 during the week of 14 October in Montgomery,  
5 Alabama, where the Air Force provided some terrific  
6 training.

7           We were exposed to experts on sexual  
8 assault that discussed victims' issues throughout  
9 all facets of the military justice process. A huge  
10 benefit of the course was the ability to roundtable  
11 with some of the Air Force special victims' counsel  
12 on best practices and issues that they had faced  
13 over the past 10 months of their practice.

14           Admiral DeRenzi, our Judge Advocate  
15 General, flew to Montgomery and personally  
16 addressed the Navy and Marine Corps counsel. Aside  
17 from her message, Admiral DeRenzi's appearance at  
18 the venue set the tone of the importance of the  
19 victims' legal counsel mission and her unequivocal  
20 support of the program.

21           On November 1st, consistent with  
22 Secretary of Defense's direction, the Navy met

1 initial operating capability. Twenty-one of 29  
2 victims' legal counsel have been trained and  
3 certified, and 9 of our counsel are in place  
4 delivering legal services. Locations where  
5 victims' legal counsel are currently assigned  
6 include the Naval Academy, Oceana, Mayport, Great  
7 Lakes, Coronado, San Diego, Bremerton, Pearl  
8 Harbor, and Guam.

9           Six additional victims' legal counsel  
10 will report for duty later this month and will  
11 provide services in Washington, D.C., Norfolk,  
12 Gulfport, Pensacola, Everett, and Rota, Spain.

13           The decision on where to place our  
14 victims' legal counsel throughout the fleet was  
15 based on statistical averages generated from the  
16 defense sexual assault incident database for the  
17 period covering FY '12 through FY '13. The Navy  
18 expects to meet full operational capability by  
19 January 2014. This includes completion of all  
20 remaining VLC training and certification and  
21 additional VLC presence in Groton, Jacksonville,  
22 San Diego, Lemoore, Ventura, and Bahrain.

1 Additional deployment of VLC will continue until  
2 July of 2014.

3 I'd like to just add by telling you that  
4 during my naval career, I have not seen a more  
5 enthusiastic group of attorneys, ready and eager to  
6 go out and meet the mission. They're ready. They  
7 are prepared to assist, advise, and advocate as  
8 appropriate on behalf of victims of sexual assault.

9 Once again, I'd like to thank you for the  
10 opportunity to speak on behalf of the Navy Victims'  
11 Legal Counsel Program, and I look forward to your  
12 questions.

13 CHAIRWOMAN JONES: Thank you, Captain.

14 I'd like to skip the seating order at  
15 least and now go to the Coast Guard. And this is  
16 Captain Tyler, Director of the Office of Special  
17 Victims' Counsel. And then we'll hear from the Air  
18 Force last.

19 Thank you.

20 CAPTAIN TYLER: Can you hear me?

21 Good morning, Madam Chairperson and  
22 members of the distinguished Panel. I have a short

1 prepared statement, and I'll answer questions  
2 afterwards.

3           My name is Captain Sloan Tyler. I am the  
4 Coast Guard's Director of Special Victims' Counsel  
5 Program. I have been -- I have over 22 years of  
6 active and Reserve service. I have been assigned  
7 as a Staff Judge Advocate for more than seven years  
8 and served as a base legal officer for the largest  
9 military installation in the Coast Guard in Kodiak,  
10 Alaska.

11           I taught military justice at the Coast  
12 Guard Academy for several years and have been  
13 assigned in nonlegal roles as a border security  
14 officer in the Office of Law Enforcement and as the  
15 first Coast Guard liaison officer to the Royal  
16 Canadian Mounted Police. I have a number of years  
17 of experience working with my DoD counterparts in  
18 the realm of disaster response and DSCA.

19           Today, I'll present the Special Victims'  
20 Counsel Program currently implemented by the Coast  
21 Guard. The Special Victims' Counsel Program is a  
22 new program that was initiated in the summer of

1 2013 as part of the Commandant's strategic plan to  
2 address sexual assault prevention and response in  
3 the Coast Guard.

4           The goal of the program is to provide  
5 appropriate legal support to victims of sexual  
6 assaults and to ensure the member understands their  
7 rights in the legal process and feels respected and  
8 included. And as one of the survivors put it, we'd  
9 like to provide a coherent, consistent, intelligent  
10 response.

11           The Special Victims' Counsel Program was  
12 initiated with a working group. They developed an  
13 initial concept of operations with operating  
14 procedures and policies that were modeled after the  
15 Air Force program. The program -- the concept of  
16 operations was also designed to support the  
17 Commandant's goal of improving the availability and  
18 quality of response support for sexual assault  
19 victims.

20           Initially, we trained and employed a  
21 volunteer legal force. We are in the process of  
22 validating the initial operating procedures and

1 finalizing the aspects of the program. Several new  
2 military and civilian positions have been  
3 authorized. The positions will include  
4 administrative support, junior and senior legal  
5 staff, and management staff positions.

6 We intend to have a permanent staff or  
7 some of the permanent staff in place by the summer  
8 of 2014. I anticipate filling some of the legal  
9 billets in June.

10 Exactly where the Special Victims'  
11 Counsel Program will fit in within the entire Coast  
12 Guard legal program is still being deliberated.  
13 I'll briefly touch on the role.

14 Special victim counsel are military  
15 attorneys who receive specialized training to  
16 provide support to sexual assault victims. Special  
17 victims' counsel assist the member in negotiating  
18 the legal process, thereby reducing the anxiety  
19 associated with being a witness in the military  
20 justice system. We provide an additional resource  
21 to ensure the victim understands their rights and  
22 feels respected and included in the process.

1           The assistance provided varies based on  
2 the needs of the member. In the initial phase,  
3 special victims' counsel are a source of  
4 information about the military justice process and  
5 facilitate victims' interactions with other  
6 professionals who are involved in the  
7 investigation, treatment, and prosecution.

8           Some examples are counsel can provide  
9 assistance with obtaining victim support services  
10 and can engage and interact with the sexual assault  
11 response coordinator, with trial and defense  
12 counsel, and commands to help protect victim  
13 interests. Counsel can assist with obtaining  
14 alternative housing or work location for the member  
15 during the proceeding. Counsel can assist the  
16 member in obtaining therapeutic services, such as  
17 obtaining a companion dog or services related to  
18 that.

19           The special victims' counsel role may  
20 morph as our program matures. Currently, in  
21 appropriate circumstances, counsel may establish  
22 attorney-client relationships with sexual assault

1 victims. Counsel may travel to the member's  
2 location when appropriate and be present with a  
3 member during military justice proceedings,  
4 interviews, and investigations or other events, to  
5 provide insight into the legal process and answer  
6 questions on the aspects of the military criminal  
7 justice system. Counsel may be authorized to  
8 represent victims in military justice proceedings.

9           Coast Guard active duty and Reserve  
10 members who are in an active or drilling status at  
11 the time of the offense are eligible, as well as  
12 family members who are eligible for the legal  
13 assistance program, pursuant to the statutes  
14 already cited. The process works in the Coast  
15 Guard if a Coast Guard member reports that they are  
16 a victim of sexual assault, they are notified  
17 through the SARC that they are eligible for special  
18 victims' counsel.

19           At that point in time, the sexual assault  
20 victim may notify the SARC that they would like  
21 counsel, and at that -- all notification will go  
22 through the SARC to counsel. Counsel's contact

1 information will go back to the SARC, which will  
2 then be provided to the victim so that the victim  
3 may initiate the contact with their counsel.

4           We are treating the communications  
5 between a special victims' counsel and a victim as  
6 confidential and privileged, as described by  
7 Military Rule of Evidence 514. Since the program  
8 inception on July 15th, there have been 25 counsel  
9 detailed as special victims' counsel.

10           We currently have 21 cases that are  
11 active. A case becomes inactive at this time when  
12 the victim no longer requires services. For  
13 example, when the military justice process is  
14 complete or all avenues of response have been  
15 exhausted.

16           So far, special victims' counsels, we  
17 have 14 who are trained at this point in time, have  
18 had 3 cases, at least 3 cases each. Two have  
19 appeared at an Article 32, and one has appeared at  
20 a trial.

21           And that's all I have. Thank you.

22           CHAIRWOMAN JONES: Thank you very much,

1 Captain.

2 Colonel Hankins, we'll hear from you.

3 COLONEL HANKINS: Judge Jones, members of  
4 the Panel, thank you so much for inviting us to  
5 testify today.

6 First of all, I want to thank the  
7 survivors who testified earlier this morning. I  
8 think it's critically important, especially for  
9 those of us in uniform who are providing services  
10 to survivors of sexual assault, for us to hear  
11 their stories so that we can improve upon the  
12 responses that they had when they were sexually  
13 assaulted. So I really appreciate the opportunity  
14 to hear from them earlier today.

15 I'm Colonel Dawn Hankins. I'm the Chief  
16 of the Air Force Special Victims' Counsel Program.  
17 In that capacity, I lead a team of 24 special  
18 victims' counsel and 10 paralegals at 22 operating  
19 locations worldwide. So we're in CONUS and as well  
20 as OCONUS in Germany, England, and in various  
21 places within the Pacific.

22 Our mission is to provide victims of

1 sexual assault with world-class representation.  
2 That's attorney-client privileged legal  
3 representation throughout the investigation and  
4 prosecution processes. And I have had the  
5 privilege of running this program from its  
6 inception in January of this year.

7           Just to give you a little bit of  
8 background about myself, prior to this assignment I  
9 was the Chief of Justice and Courts Activities in  
10 our Military Justice Division. So in that  
11 capacity, I was involved in developing military  
12 justice policy for the Air Force.

13           Prior to that assignment, I served as a  
14 Staff Judge Advocate for an operational fighter  
15 wing in Holloman Air Force Base in New Mexico. And  
16 in all of my assignments as a Judge Advocate in the  
17 18 years that I've been in the Air Force, I have  
18 served as a trial counsel, defense counsel, and an  
19 advisor to a convening authority on numerous sexual  
20 assault cases. So that's the background that I  
21 bring to this program.

22           To give you guys just a little bit of

1 background as to why the Air Force decided to  
2 establish an SVC program on our own, in mid 2012 of  
3 last year, the Chairman of the Joint Chiefs of  
4 Staff issued a strategic direction to the force  
5 that basically indicated, you know, dissatisfaction  
6 with the progress that the services were making  
7 with regard to reducing sexual assault and that  
8 gaps basically continued to remain in the full  
9 implementation of the SAPR program at all levels of  
10 command from the highest level all the way down to  
11 the lowest.

12           The Air Force Chief of Staff, General  
13 Mark Welsh, called upon all of us in the Air Force  
14 to do more to protect one another from the crime  
15 and to strengthen the support that we were giving  
16 to victims of sexual assault and making a culture  
17 of respect and trust a reality for everyone in the  
18 Air Force. And he charged us with that basically  
19 in I want to say mid November of last year, and  
20 that, in turn, led us to the development of the SVC  
21 program.

22           The Judge Advocate General of the Air

1 Force, Lieutenant General Richard Harding, proposed  
2 the creation of a Special Victims' Counsel Program  
3 in March -- or basically in November of last year.  
4 So just a short year ago, although it seems maybe  
5 some days longer than that, the Air Force SVC  
6 program was implemented on the 28th of January of  
7 2013. So we've been in business for about 10  
8 months.

9           And initially, it was a pilot program for  
10 the Department of Defense. And of course, as you  
11 know, this type of program providing legal  
12 representation to victims of sexual assault has  
13 been directed by the Secretary of Defense for all  
14 the services on the 14th of August of this year.

15           Initially, we fielded our program with  
16 part-time special victims' counsel. We had 60  
17 Judge Advocates serving part time while still  
18 performing their other legal duties. One of the  
19 reasons we did it that way is because we wanted to  
20 immediately field the capability. And so, in order  
21 to do that, we had to use folks that, you know,  
22 essentially still had other jobs to do.

1           In June of this year, we stood up a new  
2 division within our Air Force Legal Operations  
3 Agency that does provide an independent chain of  
4 command for the 24 special victims' counsel and  
5 paralegals that are assigned to my division. So I  
6 now lead that division.

7           In the Air Force, our victims' counsel  
8 services are provided by highly trained legal  
9 professionals hand selected by the Judge Advocate  
10 General. All SVCs must be certified as trial  
11 counsel, which means they have to have a certain  
12 level of military justice courtroom experience,  
13 trial experience, and they have to attend an SVC  
14 training course. And as mentioned before, we've  
15 actually hosted three now since we've gone into  
16 business.

17           Our special victims' counsel teams are  
18 JAG paralegal teams. They're organized basically  
19 into 10 regions worldwide, with each region  
20 covering about 4 to 12 different installations. We  
21 simply don't have enough Judge Advocates to assign  
22 an SVC to every installation that the Air Force has

1 because we have over 100 worldwide.

2           We truly believe that providing the  
3 service to victims of sexual assault will result in  
4 a more robust opportunity for victims to be heard,  
5 to take advantage of the rights that they already  
6 have as crime victims, and ultimately will enhance  
7 the military justice system as a whole. Since its  
8 inception in January, the Air Force's SVC program  
9 has assisted 555 victims of sexual assault,  
10 providing legal representation in 93 courts martial  
11 and 92 Article 32 hearings.

12           SVCs have participated in over 700  
13 interviews with investigators, defense counsel, and  
14 trial counsel. SVCs have spent over 18,000 hours  
15 asserting victims' privacy rights in various  
16 portions of the process ranging from protection of  
17 their mental health records from disclosure and  
18 admissibility of their prior sexual history at  
19 trial to something seemingly minor, yet so  
20 important to victims with regard to limiting  
21 seizures of their cell phones, personal journals,  
22 and diaries.

1           SVCs are empowering victims by providing  
2 a voice in the justice process, helping them to  
3 submit victim impact statements during the post  
4 trial phase. We actually have a regulation in the  
5 Air Force that gives them the right to submit a  
6 post trial statement during the clemency process.  
7 Enforcing their rights as a crime victim, whether  
8 it's the right to be present, the right to be  
9 consulted, the right to be notified, and various  
10 things of that nature.

11           They've been addressing safety concerns  
12 that they have. I think that was an issue that  
13 came up yesterday as to how do victims get notified  
14 that they could have a military protective order.  
15 They've been advocating for expedited transfers for  
16 our victims who want to be transferred, and I'm  
17 happy to talk about transfer of the accused and  
18 things of that nature that are going on later on.

19           They've been helping them with collateral  
20 misconduct, and I think about the survivor that  
21 testified earlier today and the conversation that  
22 she had with the SARC. And I think to myself, boy,

1 I really wish she had had an SVC because that legal  
2 counsel really could have helped her with that  
3 situation.

4           They've been addressing workplace and  
5 unit concerns, which you hear a lot about, this  
6 issue of ostracization. You know, people in the  
7 unit taking sides. And really, simply at the end  
8 of the day, taking care of their needs. That's one  
9 of the things that we discussed at the training  
10 course was doing a holistic legal intake where  
11 really the whole point of the intake is to find out  
12 what does the client need and what can we do to  
13 help the client?

14           Not surprisingly then, the client  
15 concerns are similar to victims in the civilian  
16 sector. Protection of their privacy being probably  
17 -- it's the number-one thing. I think 82 percent  
18 of our clients have requested SVC support to  
19 protect privacy in some way. Respectful treatment,  
20 feeling alone and afraid like they're the only ones  
21 out there and that there's no one there to support  
22 them.

1           And really, other civil legal matters  
2 that they might have, like, for instance, if the  
3 sexual assault took place where they live, they  
4 have an apartment, and they want to be able to  
5 break their lease because they don't want to live  
6 in that situation anymore. So our SVCs are helping  
7 our clients with those things as well, which are  
8 very similar to concerns of civilian victims.

9           Our clients also have issues and concerns  
10 that are unique to the military, such as this issue  
11 of collateral misconduct because really that, more  
12 so than any other job that you have, can really  
13 impact your career in a very devastating way if  
14 collateral misconduct isn't addressed  
15 appropriately.

16           The integration of their private life  
17 with their work life and how a sexual assault can  
18 unravel essentially all aspects of your life. I  
19 think that really is a difference between, in some  
20 ways, the military life and the civilian life  
21 because you live and you work with the exact same  
22 people. It's all one community.

1           Unit impact is also a huge thing, and the  
2 loss of control that our victims have that can  
3 really be compounded by military life and the fact  
4 that they're subjected to military orders. The  
5 other example given by the survivor was, you know,  
6 "I had to be at work at a certain time, and if I  
7 wasn't, then essentially I'm AWOL." So I think a  
8 lot of those things are very unique to our military  
9 victims, and those are the things that our SVCs are  
10 able to help our clients with.

11           We knew we would be asked: is this  
12 program value added or just more resources being  
13 thrown at yet another program with regard to the  
14 SAPR program? But yet there's no measurable  
15 results to be able to show for it? To answer those  
16 questions, we fielded a victim impact survey at the  
17 very beginning of our program, which we provide to  
18 our clients at the close of our representation.

19           So we have 555 clients now. About 124 or  
20 so we've actually terminated -- "terminated" sounds  
21 like such a bad word when you're talking military  
22 speak. Where we've ended the attorney-client

1 relationship, and that's at the point in time that  
2 we give them the survey. Some of the questions are  
3 objective in nature, and then some are very  
4 subjective. How did you feel about various parts  
5 of the process?

6 We modeled some of our questions that we  
7 asked on an impact evaluation study that was  
8 conducted by Rand, who did this on various crime  
9 victims' rights clinics hosted by the National  
10 Crime Victims Law Institute, NCVLI. We asked  
11 questions such as, you know, "I felt I understood  
12 my rights as a crime victim." "I felt I was able  
13 to exercise my rights as a crime victim during the  
14 military justice process," and questions such as  
15 "My rights as a crime victim were respected." And  
16 then we give them a chance to say, you know, yes,  
17 no, and other options.

18 And then we also ask about their  
19 satisfaction with the services of their SVC, which  
20 I do think is very important to find out. You  
21 know, you can have a service, but how do you know  
22 if the service is any good or not?

Comment [KM1]: RAINN??

1           The feedback has -- in my opinion, has  
2    been overwhelmingly positive that we've received.  
3    Ninety-two percent indicate that they were  
4    extremely satisfied with the advice and support of  
5    their SVC provided during the Article 32 and court  
6    martial.

7           We did have one client submit a survey,  
8    in the interest of full disclosure, where she said  
9    she was dissatisfied with the advice of her SVC  
10   during the Article 32, and we found out the reason  
11   for that was the SVC couldn't be present. The  
12   legal office had scheduled the Article 32 hearing  
13   during a period of time where we were actually  
14   having our SVC training course, and it was  
15   mandatory for the SVC to be trained during that  
16   week.

17           The SVC requested that the case get  
18   delayed, and ultimately, that request was not  
19   honored. And the end result was, you know, a  
20   victim who was not satisfied that she got the  
21   representation that she had wanted during that  
22   process.

1           Ninety-eight percent would recommend that  
2 other victims of sexual assault get an SVC.  
3 Ninety-three percent have indicated that their SVC  
4 advocated effectively on their behalf, and 96  
5 percent indicated their SVC helped them understand  
6 the investigation and court martial process, which  
7 is essentially one of the goals that we have of our  
8 program.

9           Even more importantly than sort of the  
10 numbers of satisfaction -- and I do think it was  
11 very interesting to me -- we asked them about not  
12 only are you satisfied with your SVC, but are you  
13 satisfied with the trial counsel, with the  
14 investigator, with the SARC, and the victim  
15 advocate? And overwhelmingly, the most positive  
16 satisfaction that they have of everybody involved  
17 in the process is their SVC.

18           But to me, even more importantly is the  
19 anecdotal feedback that they've provided to us.  
20 I'm constantly amazed that people even complete a  
21 survey. I, for one, don't like them, and I have to  
22 be forced to fill them out. But I'm the one who

1 clicks the button to get through to the end, and  
2 I'm amazed that our clients not only click the  
3 buttons and fill out all this data, but then they  
4 also take the time to explain their answers and  
5 provide us with anecdotal feedback on how they feel  
6 about the process and how they feel about their  
7 SVC.

8           And just to hit a couple of the  
9 highlights, I mean, I could give you hundreds, but  
10 I'll just give you a couple. "My SVC made me feel  
11 comfortable and safe. I knew I had someone to help  
12 just me and no one else, someone to speak on my  
13 behalf. When you're a victim, you don't know who  
14 to trust. My SVC gave me that trust that I  
15 needed."

16           "At the time of the Article 32, an SVC  
17 had been appointed to me, and I was confident  
18 during the interview and not intimidated. The same  
19 thing goes for testifying as well. Since having an  
20 SVC, I felt much more a part of both the legal and  
21 investigative process."

22           "Not everyone fully understands the legal

1 process --" and in fact, I'm sure if you asked some  
2 civilian attorneys where we try to explain the  
3 military justice process, they go "huh?" So I can  
4 only imagine what our young airmen who are 18 years  
5 old to 20 years old understand about the criminal  
6 justice system.

7           But anyway, one quote was, "Not everyone  
8 fully understands the legal process, and not only  
9 is the emotional support important, the legal  
10 support is important, too. I would have been lost  
11 without the help of my SVC during trial."

12           And like I said, I have a lot of other  
13 great quotes that I could give to you. I think  
14 this is really important. This particular quote  
15 was really important to me, too, because, you know,  
16 we started the program and we basically said no  
17 matter where you are in the process, you are  
18 eligible, and you can have an SVC.

19           So we had some folks who got an SVC at  
20 the very beginning, you know, when they first  
21 reported, and then we had other folks that had gone  
22 through the interview, the investigation, an

1 Article 32, and now are at trial, and those folks  
2 received an SVC. And one of the comments from one  
3 of these clients was, "After testifying at two  
4 other Article 32 hearings and one other court  
5 martial, I can say wholeheartedly that my SVC made  
6 the utmost difference in making my final testimony  
7 an experience I could walk away from without  
8 feeling revictimized again."

9 Over 90 percent of our clients are  
10 female. We do represent -- about 10 percent of our  
11 clients are males. Over 80 percent are active  
12 duty. So that's essentially the main -- main set  
13 of our client base. We do have some dependents of  
14 active duty members, as well, that make it up and  
15 of course, some Reservists.

16 And 90 percent of our clients that we  
17 represent had filed an unrestricted report. So  
18 these are people that are actually going through  
19 the investigation and court martial process. For  
20 those 10 percent that are -- or have a restricted  
21 report, they basically represent 59. We have 59  
22 clients who had filed a restricted report and had

1 asked for an SVC.

2           So of those 59 clients, almost 50 percent  
3 have converted from restricted to unrestricted  
4 after consulting with an SVC. And I think the  
5 reason for that is a lot of them were interested  
6 already in the idea of conversion, but they just  
7 didn't know and they really wanted to talk to an  
8 attorney in a confidential setting where their name  
9 would still be anonymous, where they could really  
10 find out, no kidding, what am I going to get myself  
11 into if I decide to go unrestricted?

12           And to me, I think this is a huge benefit  
13 of the program is being able to reach out to those  
14 folks who really have a lot of questions and that  
15 they can talk to an attorney who can explain to  
16 them exactly what an investigation is going to look  
17 like and exactly what a prosecution process is  
18 going to look like.

19           Now we do have some of our restricted  
20 clients -- you know, it's only a 50 percent  
21 conversion rate. So we do have some of our clients  
22 who have elected to remain restricted. They don't

1 -- they don't want to convert. They don't want to  
2 file an unrestricted report, and I know this was a  
3 question that was being asked yesterday.

4           Why do people not want to report? Why do  
5 they not want to file an unrestricted report? What  
6 I can tell you from our clients is, of those who  
7 have not converted, what we do know is that  
8 everyone's reason is personal, and so there is no  
9 "one size fits all" response as to why people don't  
10 report or do report. It's all very, very personal  
11 to them.

12           But I think I can kind of tell you  
13 overall the reason that they don't report falls  
14 under the umbrella of privacy. They don't want  
15 others to know the details about their personal  
16 life. Some have concerns over collateral  
17 misconduct that they were involved in, and they  
18 simply do not want their family members to know  
19 that they might have done some other things.

20           They don't want to be treated differently  
21 once they come forward and report. So it's that  
22 social stigma that comes from being the victim, a

1 rape victim or a victim of sexual assault. For  
2 some, they don't want to report because they just  
3 don't want to be a burden onto others for various  
4 reasons.

5 I think some of it has to do with self  
6 blame. You know, they think "I should have done  
7 something differently." "If only I had not had so  
8 many drinks." "If only I had left the party with  
9 my friend when she left or he left." And for some,  
10 I think it's the process, the criminal justice  
11 process. Not just the military justice process, to  
12 be clear on this.

13 The criminal justice process is just so  
14 hard and so difficult for victims of sexual  
15 assault. And some of them simply just aren't  
16 willing to go through that process. They just  
17 don't want to do it, particularly when they're  
18 afraid that at the end of the day, there's not  
19 enough evidence to convict the offender, and so why  
20 do I want to put myself through that?

21 So those are the reason that I can tell  
22 you about our clients who have decided not to

1 convert to an unrestricted report.

2 Well, I could speak for hours on this  
3 subject, but to conclude and save time for  
4 questions, I just want to highlight that I think  
5 the initial success of our program really has to do  
6 with the 110 percent dedication that our SVCs and  
7 paralegals have brought to this new program and  
8 have really broken new ground within the military.

9 To think that we never even had this  
10 practice area a year ago, and here they are doing  
11 just phenomenal work for their clients that is  
12 being seen and increasing their satisfaction with  
13 the process, and I think anytime that we can do  
14 that, then that's a good thing. And I'm really so  
15 incredibly proud of the people that I am so  
16 privileged to lead in this endeavor.

17 I think also important to our success has  
18 been this continuing outreach that we've done with  
19 other outside organizations to include NCVLI that  
20 I mentioned before, who's been extremely helpful to  
21 us, the Victims' Rights Law Center, and the Office  
22 of Victims of Crime through the Department of

1 Justice. We've really teamed with all of them.

2           And I think that robust partnership and  
3 extensive policy development at -- and commitment  
4 really at the Headquarters level. We've had 110  
5 percent commitment not only from the leaders within  
6 the JAG Corps, but also our commanding -- our  
7 commanders within the Air Force.

8           And so, I really appreciate the  
9 opportunity to come here today and answer your  
10 questions. Thank you.

11           CHAIRWOMAN JONES: Thank you, Colonel  
12 Hankins.

13           Admiral Houck?

14           VICE ADMIRAL (RET.) HOUCK: Good morning.  
15 So, resources. There was testimony yesterday from  
16 one of the witnesses, Admiral Buck from the Navy,  
17 who spoke with some striking candor about the fact  
18 that resources have been moved quickly to this  
19 project in the Navy and that there are now things  
20 that aren't being done in the Navy because of this.

21           And what I'm interested in is from each  
22 of you, your sense of the permanency of the

1 program. And I realize to some extent, these  
2 questions may be considered above your pay grade,  
3 but you're here. So what I want to know is your  
4 sense of the commitment of the services to this,  
5 number one.

6 And number two, to what extent you think  
7 this is going to pressurize the rest of your  
8 community in terms of providing legal services  
9 elsewhere, back to Admiral Buck's point, the things  
10 that aren't being done because of the relatively  
11 quick movement of resources to these programs.

12 Can -- I don't want to call on anybody in  
13 particular, but anybody want to speak to that?

14 COLONEL JOYCE: Yes, sir. I could  
15 address that first for the Marine Corps.

16 With regard to resources, first of all,  
17 when the Marine Corps decided to set up the  
18 Victims' Legal Counsel Organization, we decided  
19 that we wanted to start out by going into the  
20 active duty side. It was really important to force  
21 the structure into the Judge Advocate community  
22 structure and not start with the Reserve side of

1 the house because we needed to also force the  
2 request for additional Judge Advocates from our  
3 higher Headquarters.

4           And so, we had to go in, though, with the  
5 assumptions that we would not affect by way of  
6 doing this those cases that -- those complex cases  
7 that were already being tried and ensuring that we  
8 didn't diminish the capability with regards to  
9 cases from the trial and defense side of the house.  
10 So it was really difficult because in the Marine  
11 Corps, we're very small. Our Judge Advocate  
12 community is very small.

13           But the SJA to the Commandant of the  
14 Marine Corps has a request in that has been  
15 approved for additional manning into the Judge  
16 Advocate community, even when we have to cut  
17 manning across the board in the military. So  
18 that's one of our first --

19           VICE ADMIRAL (RET.) HOUCK: If I could  
20 interrupt, because I think that's really what I was  
21 getting at. Do the rest of you have specific  
22 insight as to if there's going to be additional

1 resources to cover this important mission and the  
2 backfilling that's required behind it?

3 COLONEL HANKINS: Sir. Yes, sir. In the  
4 Air Force, we initially took this capability out of  
5 hide, out of the JA hide, which meant that these 24  
6 SVCs were formerly in installation level legal  
7 offices doing work for a wing commander that were  
8 now doing our work.

9 We were fortunate enough that the Air  
10 Force counsel actually provided us with some  
11 manpower billets to be able to go back to the  
12 field, but it wasn't a one-for-one backfill for  
13 those folks that are gone. But I can see that as -  
14 - I don't think we're at the end state yet. We  
15 don't know exactly how many Judge Advocates we're  
16 going to need. To me, I think it's going to be  
17 based on the caseload.

18 We don't even have a year's worth of data  
19 yet to know are we going to have a 600, you know,  
20 person caseload every year and is it sustainable or  
21 not. And so, I think that there's a willingness,  
22 at least within the Air Force, to be able to

1 continuously look at this and be able to go back to  
2 our Air Force corporate structure to ask for  
3 additional resources.

4           During that interim phase, basically, I  
5 think some services were limited and mainly in the  
6 legal assistance area. And so, longer wait times  
7 to get an appointment to be seen if you had -- if  
8 you needed a will or other types of civil law legal  
9 matters is really where we sort of cut the line on  
10 what services would we either reduce or maybe just  
11 not have as available as they had been in the past.

12           COLONEL MCKEE: Sir, for the Army,  
13 General Darpino, our TJAG, feels this program is so  
14 important that she also addressed all of the SVCs  
15 at the course in October. When she briefed the  
16 Chairman, the Joint Chiefs -- the Chairman of the  
17 Army, she authorized 20 Reserve component Judge  
18 Advocates to be put on active duty to backfill  
19 legal services as we pulled active duty Judge  
20 Advocates from the legal assistance office to  
21 perform these services. So --

22           VICE ADMIRAL (RET.) HOUCK: That sounds

1 pretty temporary.

2 COLONEL MCKEE: What we're doing right  
3 now, sir, is we're conducting a yearlong manpower  
4 study, and at every SVC and every legal office has  
5 a manpower sheet where they're going to document  
6 the minutes and the hours that they spend on these  
7 services.

8 After that year, we're going to come back  
9 and we're going to go back to the Army and we're  
10 going to say, you know, based on these number of  
11 hours that we've performed services for these --  
12 for victims, for clients, we need X amount  
13 attorneys to fulfill this requirement. This  
14 program is here to stay, and we're planning on it  
15 staying, and after one year, we're going to go back  
16 to the Army and say we need X amount attorneys to  
17 provide this service.

18 Thank you, sir.

19 BRIGADIER GENERAL (RET.) MCGUIRE: Madam  
20 Chair, I have question as well.

21 VICE ADMIRAL (RET.) HOUCK: I want to  
22 allow them to -- yeah.

1           CAPTAIN FISCHER-ANDERSON:  Sir, from my  
2 perspective, and I'll be happy to take this back  
3 for the record, I'm unaware of any legal missions  
4 not currently being met.  Attorneys are doing more  
5 with less.  I will say that.  Their portfolios may  
6 be a little more varied than it used to be.

7           But the Navy has proposed increasing the  
8 JAG Corps end strength through the DoD budget  
9 process by 30 billets.  That's the 30 billets that  
10 we have already brought online for the Victims'  
11 Legal Counsel Program.  When the program was  
12 initially mandated to be stood up, the Chief of  
13 Naval Operations said we will help get 30 more  
14 billets to the JAG Corps.

15           Initially, though, because we had to meet  
16 an aggressive implementation guideline for the  
17 program, we reached back to our Reserve force.  And  
18 as I said during my opening remarks, 18 of our 30  
19 or 29 VLC -- I count one of them as the Chief of  
20 Staff, the 29 -- 11 of them are Reservists who have  
21 come onboard and will remain with us, some for only  
22 a year, and then we had recently a recall board

1 where we could have up to 3 of those Reservists  
2 remain with us for 3 years.

3 VICE ADMIRAL (RET.) HOUCK: And has the  
4 Coast Guard made a commitment to fill this mission?

5 CAPTAIN TYLER: Yes, sir. And the Coast  
6 Guard has already had billets created and approved.  
7 So the Commandant of the Coast Guard is committed  
8 to eradicating sexual assault in the Coast Guard  
9 and committed to this program.

10 VICE ADMIRAL (RET.) HOUCK: So you're all  
11 saying that each of your services has made a  
12 commitment to you in one way or the other to  
13 provide at least at the part of after some analysis  
14 is done in some cases to providing additional  
15 resources to fill this mission?

16 THE WITNESSES: Yes, sir.

17 VICE ADMIRAL (RET.) HOUCK: Thanks.

18 BRIGADIER GENERAL (RET.) MCGUIRE: Thank  
19 you, Madam Chair.

20 The question I have and is to either or  
21 any of you is who, on behalf of the victim, helps  
22 them navigate through all of the legal process

1 piece, but then there's also the counseling  
2 services piece. You've got the personal and  
3 professional guidance piece.

4           The linkages between all of these  
5 different services that we're hearing about and now  
6 this new service, it's almost -- it can be  
7 overwhelming for a victim, "Who do I go to?" And  
8 who takes the lead in navigating this so somebody  
9 doesn't fall through the cracks?

10           COLONEL HANKINS: I can take a shot at  
11 that one. What we've found is that a lot of it has  
12 to do with who the victim, client in our case, you  
13 know, is the most comfortable with. And so, if  
14 they are the most comfortable with our victim  
15 advocate, then the victim advocate might be the one  
16 that sort of guides them through the various parts  
17 of the process.

18           But I think in our experience what we've  
19 found is, for the most part, it's been the SVC. So  
20 they've come to the SVC, and the SVC is sort of  
21 that central person that they use to be able to  
22 access all of these other services.

1           And so, I think it's one of these things  
2 that we have to bear in mind that this is a team  
3 approach to providing services, and that really we  
4 see the role of our SVC to be in there to kind of -  
5 - you know, you have all these services available,  
6 and it's the SVC that's filling the gap amongst all  
7 those services and making sure that they are  
8 getting all the services that they want and need,  
9 whether it's medical care or mental health  
10 services, issues with education, training problems,  
11 et cetera.

12           So, at least in our experience, we've  
13 seen that there's a comfort level with their  
14 attorney that they have, that they do tend to turn  
15 to them to help them access services. Our SVCs  
16 aren't providing them with counseling, per se, but  
17 they are the ones that to be able to call the  
18 victim advocate or maybe to call the SARC or even  
19 to call directly to the provider to say, you know,  
20 we need to get this person some services.

21           CAPTAIN TYLER: I'll say the Coast Guard  
22 has been doing this for four months. So we don't

1 have a long time. But we view this as a  
2 collaborative effort. Really, it does depend on  
3 what the victim/survivor member desires.

4           We do quite a lot of communication with  
5 the SARC and quite a lot of working with the SARC  
6 to ensure that, one, they've -- the victim has been  
7 provided the information that they can get counsel  
8 if they want. So once that determination has been  
9 made and once that victim wants special victims'  
10 counsel, we tend to work as a team to try to  
11 address all of the needs of the individual.

12           And for the 25 cases that we've had, most  
13 of the issues are very unique to the member. I  
14 haven't seen a lot of consistency. We haven't had  
15 a lot of cases yet, but I haven't seen a lot of  
16 consistency with respect to what each member  
17 desires. They have individual needs based on the  
18 facts and circumstances, and those are up to the  
19 special victims' counsel to make sure that they use  
20 their skills to advocate on behalf of the client to  
21 get what they need.

22           PROFESSOR HILLMAN: Madam Chair?

1 CHAIRWOMAN JONES: Professor?

2 PROFESSOR HILLMAN: This is a tremendous  
3 ray of hope. I want to thank you for your work on  
4 this, and this is not a topic that always inspires  
5 a lot of confidence in the way we're addressing it.  
6 And your commitment to this and the freshness of  
7 this approach is actually very compelling. So I'm  
8 grateful for that.

9 I have two specific questions for you,  
10 and it's based in part on reading the Secretary of  
11 Defense's letter that set this out and also the  
12 Title 10 provision that Colonel Joyce specifically  
13 referred to, that 1565(b) piece. The first is  
14 about duration.

15 And in part, this is inspired by the  
16 victims' testimony earlier today about the  
17 difficulty of continuity with respect to services  
18 provided through a transition out of the military,  
19 if that's, in fact, what happens after an incident  
20 like this. And the SecDef's directive said it  
21 needs to be legal assistance throughout the justice  
22 process.

1           And Colonel Joyce, I think you said that  
2 it terminates at the convening authority's action.  
3 Colonel Hankins, I'm not sure when it terminates in  
4 the Air Force, which has the greatest experience  
5 with this. So you could share that, too.

6           But I wonder what you think that means  
7 right now, "throughout the justice process," and if  
8 you've thought about how to make that handoff.  
9 This would be a client losing representation based  
10 on a policy we're setting out that is counter to --  
11 that is unusual in our experience with attorney-  
12 client relationships.

13           And then my second question is about the  
14 military or civilian piece in terms of who this  
15 person ought to be who provides legal assistance  
16 because the Title 10 specifies military or civilian  
17 legal assistance, and to what extent, I wonder, as  
18 you were standing up these programs -- you've  
19 articulated the reasons for having military counsel  
20 here. But given the resource considerations that  
21 Admiral Houck pointed to, and you all are working  
22 hard, I'm sure, to make sure you're staffed

1 appropriately, I wonder how much you considered the  
2 use of civilian advocates in this process?

3 COLONEL HANKINS: Sure. I'll take that,  
4 too.

5 Generally speaking, the duration of our  
6 attorney-client relationship is from the time that  
7 they come in and they decide they want to be  
8 represented, then we have them sign a  
9 representation agreement that kind of outlines the  
10 scope of representation that we have. And our rule  
11 is, generally, representation will terminate when  
12 case disposition is complete.

13 So whether that's the decision that the  
14 case is not going to trial or it's the decision  
15 that we're going to trial. We get them through the  
16 trial process. Convening authority has taken  
17 action. At that point in time, we have our SVCs  
18 talk to the clients to find out do they have  
19 continuing legal needs? Do they have continuing  
20 concerns? Because if they do, then that  
21 relationship continues.

22 So we actually have them terminate,

1 officially terminate the relationship by signing a  
2 document. You know, just like any other  
3 representation that you have with a lawyer, once  
4 your legal services are done, then your  
5 representation is complete.

6           So I don't think it's a "one size fits  
7 all," and we've certainly trained our SVCs, please,  
8 you know, whatever you do, do not, you know, the  
9 day after the acquittal say, "Hey, we're done,"  
10 right? That's not a -- that's not a good way to  
11 approach your client, not to say that any of our  
12 SVCs would do that. They're very sensitive.

13           But I think it's definitely a discussion  
14 that is had with the client on what needs do you  
15 have? Are there things that I can still help you  
16 with? What are your concerns? And generally, we  
17 find that our representation actually terminates,  
18 you know, months after the final disposition is  
19 over, that it is a discussion, an ongoing  
20 discussion that is had over several weeks just to  
21 make sure that that client is okay and is in a good  
22 place.

1           And at that point in time, I think really  
2 where we decide, okay, we don't -- I'm not going to  
3 continue to have a legal obligation, an ethical  
4 obligation to you, to ensure that they still have  
5 the services of their victim advocate or whoever it  
6 was that they chose to utilize. Some may not have  
7 a victim advocate by their choice, or maybe they  
8 were really comfortable with the SARC. Then we  
9 just make sure that there's someone still there to  
10 be able to take care of their needs.

11           And the last thing that we tell them is,  
12 hey, if you ever have another problem or another  
13 need or another concern, just because I'm no longer  
14 your lawyer right now doesn't mean that you can't  
15 come back in and you can come in and see me. So  
16 just because the official representation is over  
17 for that particular incident, if something else  
18 happens or they have some other legal concern, then  
19 they can come back in, just like they could today,  
20 and go in and see a legal assistance attorney to  
21 address their needs. So that's -- that's how we've  
22 dealt with that.

1           VICE ADMIRAL (RET.) HOUCK: Over the  
2 short run, that seems reassuring, but over the  
3 medium and long run, it's less reassuring to me in  
4 that -- I mean, I think an analogy to think about  
5 here are wounded warriors and the progress that the  
6 services have made in understanding and realizing  
7 that the complexity of these issues last a long  
8 time. And you do. You clearly understand that.

9           But as -- and we are not going to be in a  
10 situation where budget pressures don't exist, and  
11 as resource pressures increase, continue to be  
12 severe, this is the kind of thing that is left to  
13 policy that in terms of the scope of representation  
14 and the length of representation, it can get  
15 watered down and it can get diluted that way.

16           So everything you say is reassuring, but  
17 leaving this to informal mechanisms in policy is a  
18 little bit less so.

19           COLONEL HANKINS: Well, sir, I just have  
20 to also point out, you know, our attorneys will go  
21 on to do other jobs in the Air Force. They will  
22 not be victims' counsel forever. And so, they do

1 have to be able to have the freedom to be able to  
2 go and deploy, deploy for a year, if that's what  
3 the Air Force needs for them to do.

4 Or maybe they actually move into a  
5 different job, such as a defense counsel job. And  
6 in those circumstances, it can be very difficult  
7 for them to still have ethical legal  
8 responsibilities to someone and a job where they  
9 can't fulfill that because of the job demands that  
10 they have.

11 VICE ADMIRAL (RET.) HOUCK: I don't  
12 think, though, that survivors are going to be  
13 impressed by the needs of the Air Force to transfer  
14 people. So I think the services are going to have  
15 to come to grips to some extent with the way  
16 Professor Hillman is talking about with integrating  
17 civilian counsel into this process for some  
18 continuity.

19 COLONEL MCKEE: Just to add on the Air  
20 Force's testimony in terms of we -- at our course,  
21 we told our special victims' counsel how to  
22 advocate on behalf of the client in the parole

1 system. So we do envision their advocacy going  
2 beyond action. So that the victim can get matters  
3 before the parole board for someone who's been  
4 convicted of this crime. So we envision it going a  
5 little farther.

6 COLONEL (RET.) COOK: Madam Chair? Thank  
7 you.

8 Thank you all for being here because this  
9 is new, and for even those of us who have military  
10 experience, it would be something we've never  
11 experienced. So getting the benefit of what the  
12 Air Force has done for the last 10 months and  
13 listening to what the other services are planning  
14 is incredibly helpful, and the comparison of all of  
15 you sitting side by side is interesting.

16 And where my questions, the first couple  
17 of questions I'm going to ask are going to be short  
18 questions. Do I understand that for the Air Force  
19 -- I think the Marine Corps, you said it's for all  
20 offenses. This isn't just sexual assault offenses  
21 that this special victim counsel will be available.  
22 Is that true?

1 COLONEL JOYCE: For the Marine Corps, it  
2 is victims of sexual assault and other crimes.

3 COLONEL (RET.) COOK: How about the other  
4 services? Is it other crimes as well?

5 CAPTAIN FISCHER-ANDERSON: No, ma'am.  
6 For us, it's sexual assault.

7 COLONEL (RET.) COOK: No. How about Air  
8 Force?

9 COLONEL HANKINS: It's limited to sexual  
10 assault victims at this point in time. I think  
11 that's an issue that we are willing to look at in  
12 the future, but we wanted to make sure we fielded  
13 this capability first.

14 COLONEL (RET.) COOK: And Army?

15 COLONEL MCKEE: For Army, the legal  
16 assistance for other crimes and for victims of  
17 sexual assault, the SVCs.

18 COLONEL (RET.) COOK: Okay. And in the  
19 Army, it's where I have a small concern. In the  
20 Air Force and the Marine Corps, you both said you'd  
21 set up separate organizations to do this. You have  
22 separate rating commands. In the Air Force, a

1 special victim counsel, if I understood you  
2 correctly, if there is collateral misconduct,  
3 rather than referring them even to TDS at any  
4 point, that special victim counsel becomes the  
5 victim's counsel. They help them through all of  
6 it. There is no referral.

7 In the Marine Corps, I think, Colonel  
8 Joyce, what you said was it's up to the victim.  
9 They'll see the special victim counsel. They've  
10 got somebody they can speak to, and if they choose  
11 -- if there is misconduct, then it would be the  
12 special victim counsel that gets that victim to  
13 TDS?

14 COLONEL JOYCE: Yes, that's right.

15 COLONEL (RET.) COOK: Okay. Okay?

16 COLONEL HANKINS: Just to clarify for the  
17 Air Force, our SVCs can represent them for  
18 collateral misconduct. And if it's significant  
19 enough, then we would refer them to an area defense  
20 counsel who is very experienced in representing  
21 someone, say, for example, if they turn out to be  
22 the accused in a court martial case. But our SVC

**Comment [KM2]:** minor collateral  
misconduct???

1 could actually stay on the case. So they would  
2 represent them jointly.

3 COLONEL (RET.) COOK: All right. Colonel  
4 McKee, I may just not -- have misunderstood. I  
5 think I heard you say it's legal assistance  
6 counsel. One of the qualifications is whether  
7 they've got -- what their military justice  
8 experience is. Please inform me, are you using  
9 only Judge Advocates even in the Army?

10 COLONEL MCKEE: Yes.

11 COLONEL (RET.) COOK: Okay. Because my  
12 experience has been usually legal assistance  
13 attorneys, it may be one of their first jobs. They  
14 usually don't have a lot of justice experience,  
15 although some of our civilian legal assistance  
16 attorneys are former military, they might. So I  
17 know the statute allows both.

18 But if it goes to a legal assistance  
19 attorney, I think you said if there is collateral  
20 misconduct, that will get referred to TDS. Do you  
21 envision at some point then a victim could have two  
22 counsel -- the special victim counsel, a TDS

1 attorney -- and then who resolves those conflicts?

2 COLONEL MCKEE: Yes, ma'am. In terms of  
3 for collateral misconduct, that does not bar the  
4 SVC from serving, from still seeing that, from  
5 representing that client through the system. It's  
6 going to have to be -- we're in discussions with  
7 Trial Defense Service in terms of trying to work  
8 out a Memorandum of Understanding as to how that's  
9 all going to work out.

10 So we still need to do some work on in  
11 terms of -- in terms of that, whether the trial  
12 defense attorney will take it if it's collateral  
13 misconduct in terms of the seriousness of it. But  
14 the client is entitled to a special victims'  
15 counsel no matter what, collateral misconduct or  
16 not.

17 COLONEL (RET.) COOK: Right. But I'm  
18 sitting here thinking of -- since I didn't know  
19 anything about the programs, hearing the Air Force  
20 and what you've done was really helpful. But even  
21 when you were saying that you've had a couple of  
22 cases where one person has been asked at the

1 request of the judge to appear at the Article 32,  
2 present evidence on a rape shield type of motion  
3 412, I have this image, even if they're going to  
4 just an interview, you know, at what point does an  
5 SVC start advising if there is -- if they refer to  
6 collateral misconduct someplace else and the SVC is  
7 sitting there, and they want to advise them to keep  
8 -- or advise you to keep your right to remain  
9 silent from an SVC.

10 Or do they not advise that because that's  
11 the TDS role, and I'm wondering where that line is.  
12 I'm also interested in knowing I heard how you said  
13 the Army in the three cases, how far have special  
14 victim counsels gone in their presentation or  
15 advocating the victim's views in a court martial in  
16 the Air Force so far?

17 I mean, on a motion, it's one thing, and  
18 I think you said, Colonel McKee, you had given us  
19 three cases recently. I thought one was they've  
20 appeared in an Article 32, and for two of them  
21 they've presented post trial matters?

22 COLONEL MCKEE: That was all one case,

1 ma'am.

2 COLONEL (RET.) COOK: All one case.

3 COLONEL MCKEE: Yes, ma'am.

4 COLONEL (RET.) COOK: How about the Air  
5 Force? How far does the -- I mean, that conflict  
6 is something that you may not be able to answer it.  
7 It may be something that's out there. I will tell  
8 you, sitting here, that's a concern that I have,  
9 just the way it's structured.

10 Or the rating chain. If you have a  
11 mirror organization to trial defense and your  
12 victim counsel all rated separately, except maybe  
13 the Navy. In the Army, they're not. They're rated  
14 through the legal assistance, and what if they do  
15 have to come forward and voice something contrary  
16 to the command. Has that been considered?

17 COLONEL MCKEE: Yes, ma'am, it has been  
18 considered. I am their technical supervisor. So  
19 if there is a conflict or there is some kind of  
20 adverse relationship, they come directly to me, and  
21 I will -- I will raise that issue with the SJA and  
22 bring that to the forefront.

1           But our TJAG has considered that, and she  
2 believes that using the legal assistance model is  
3 the correct model, and they do have direct access  
4 to me. I talk to the SVCs every day. They email  
5 me every day. We talk about professional  
6 responsibility issues every day. We talk about  
7 these conflicts that they may have.

8           So that is being done, and our TJAG does  
9 understand, you know, the difference between -- she  
10 does understand the pros and cons of having a  
11 stovepipe organization and the pros and cons of  
12 having it in the legal assistance office.

13           COLONEL (RET.) COOK: Including the  
14 military justice background if they're a direct  
15 commission and that's a first assignment, but then  
16 that might not be the person you choose.

17           COLONEL MCKEE: Yes. And the SJA has  
18 directed in her TJAG sends that SVCs should have  
19 military justice experience, either trial defense  
20 or trial counsel, and they must be mature and have  
21 sound judgment.

22           COLONEL (RET.) COOK: And for my fellow

1 panel members, a TJAG sends within the Army, when  
2 the Judge Advocate General wants to send a message  
3 to the field on a new initiative or something of  
4 importance, they'll usually write a one-page  
5 statement that will go back to -- go out to all  
6 Judge Advocates and tell them, hey, look, this is  
7 what we're doing. This is why we're doing it, and  
8 here is my guidance on it initially.

9           And it's a companion or a complement to  
10 whatever the new policy is. Okay?

11           CAPTAIN FISCHER-ANDERSON: Ma'am, just  
12 for clarification, VLC with the Navy is an  
13 independent chain of command. I will be the  
14 reporting senior, and our victims' legal counsel  
15 will handle collateral misconduct that has a direct  
16 nexus to reported sexual assault.

17           CONGRESSWOMAN HOLTZMAN: Madam Chair?

18           CHAIRWOMAN JONES: Yeah. Ms. Holtzman?

19           CONGRESSWOMAN HOLTZMAN: Thank you very  
20 much, Madam Chair.

21           Thanks to all the panel members for  
22 coming and sharing this really important experience

1 with us. I personally am very grateful.

2 Colonel Hankins, I think you looked at me  
3 when you mentioned the issue of satisfaction of the  
4 -- of the victim.

5 COLONEL HANKINS: I might have heard you  
6 ask that question a couple of times.

7 (Laughter.)

8 CONGRESSWOMAN HOLTZMAN: And so, I really  
9 appreciate what you've done about that, and I  
10 wanted to ask the other services whether they have  
11 included victim satisfaction surveys based on the  
12 model of the Air Force or based on any model?

13 COLONEL MCKEE: Yes, ma'am. Actually,  
14 we've modeled our survey after the Air Force's.  
15 So, yes, we are doing that also.

16 CAPTAIN FISCHER-ANDERSON: We are in the  
17 process of modeling ours, yes, ma'am.

18 COLONEL JOYCE: And the same here, ma'am.

19 CAPTAIN TYLER: We don't have a survey  
20 that I'm aware of right now, but it would be great  
21 to get that feedback. So we'll look into that as  
22 well.

1           CONGRESSWOMAN HOLTZMAN: Excellent. The  
2 second question I have is with regard to the  
3 Marines. If the special victims' advocate service  
4 ends at the time that the matter is referred for  
5 court martial, how can that special victim advocate  
6 help the victim with regard, for example, to the  
7 victim impact statement?

8           COLONEL JOYCE: Well, I just want to  
9 clarify that when I said that --

10           CONGRESSWOMAN HOLTZMAN: Maybe I'm not  
11 understanding the testimony?

12           COLONEL JOYCE: Right. The intent is  
13 that we were looking at with regards to policy  
14 where do we at least try to draw some line here?  
15 And I think Colonel Hankins said it well is that  
16 because of the transfer, reassignment of military  
17 members, so we definitely knew that we would look  
18 at the convening authority's action, the completion  
19 of the convening authority's action as a possible  
20 area.

21           I mean, our focus with victims is  
22 twofold. One, we want to empower them with the

1 ability to have an attorney. And secondly, we want  
2 to continue to ensure we give them confidence in  
3 the military justice system.

4           So we are not saying really that it's the  
5 fine line. It will be case-by-case, and that's why  
6 I prefaced it with that those exceptions or those  
7 cases that have to go beyond CA's action would be  
8 evaluated by myself as the OIC or my boss, the  
9 Staff Judge Advocate to the Commandant, because we  
10 do have the appellate review process, which could  
11 be very significant.

12           Right now, our manual does not address a  
13 victim's rights with regards to the appellate  
14 review process, per se, kind of like what I had  
15 addressed with being heard in a court martial for,  
16 you know, the motions hearing with regards to the  
17 rape shield act. Or being heard or being able to  
18 be present in the proceeding.

19           So these are things that we need to see  
20 changed also so that we can ensure that we can  
21 exercise those types of rights. But right now, at  
22 the appellate review process and the boards that

1 follow involving the accused, we clearly would like  
2 to have it. And if it requires a change of  
3 counsel, we want to make sure it's a warm handoff  
4 and ensure that we can keep that confidence in that  
5 victim.

6 CONGRESSWOMAN HOLTZMAN: Great. Going --  
7 this question really arises from the testimony this  
8 morning where one of the witnesses mentioned that  
9 she had gone to the SARC and the issue of having to  
10 not -- of having to stay in the unit and also that  
11 would be the issue of collateral misconduct.

12 I'm trying to understand, and my opinion  
13 was that that advice was problematic, if I could  
14 just be diplomatic about it. Where -- where in the  
15 new system does a special victims' advocate get  
16 inserted so that if misinformation is given or  
17 improper information is given, that's -- you know,  
18 that's not an ending of the process, that the  
19 victim will be able to get the benefit of  
20 alternative advice from the get-go so that --

21 COLONEL HANKINS: Yes. Yes, ma'am. I'd  
22 like to take that one.

1           Well, first of all, that should never  
2 happen today because there is a regulation in place  
3 that says if someone comes in and reports a sexual  
4 assault, you must refer that to the criminal  
5 investigative agency. So my understanding was that  
6 happened in 2006. Whether or not that person was a  
7 full-time SARC who's gone through all the training  
8 that we've had since then, I don't know.

9           But I would like to think that today, in  
10 2013, that scenario would never happen. And if the  
11 SARC did say something like that today and did not  
12 refer the member to a criminal investigator, then  
13 that SARC should be disciplined, and I would expect  
14 that to happen, number one.

15           Secondly, how an SVC gets interjected  
16 into the process. The SARC, the first person who  
17 comes in contact with a victim of a sexual assault,  
18 someone who reports a sexual assault, whether it be  
19 a SARC, victim advocate, commander, law  
20 enforcement, trial counsel, legal office, whoever,  
21 you know, the first responder team, they are  
22 required to notify the victim that they are

1 eligible to have a victims' counsel appointed to  
2 them. And if the victim says, "Yes, I would like  
3 to have an SVC," then they make that referral over  
4 to us.

5           So that's one way they get interjected  
6 into the process. The second way that they can do  
7 it is simply to call us directly. We have gone on  
8 a media blitz over the last several months where we  
9 have put posters up at every installation and the  
10 bulletin board of every unit that says this is the  
11 SVC for this installation, and you can call me  
12 directly. And it has their phone number.

13           So, for the most part, we get referrals.  
14 You know, they go in and report to the SARC and  
15 then the SARC brings them over for the appointment.  
16 But we do have a very small number of our clients  
17 who have actually called us directly, and we really  
18 were the first person that they contacted and  
19 called directly. So there are multiple ways to  
20 actually get the SVC involved in the process.

21           CONGRESSWOMAN HOLTZMAN: Thank you,  
22 Colonel.

1           Do the other systems, services, does it  
2 work the same way?

3           CAPTAIN TYLER: Typically, we've been  
4 seeing them coming through the SARC, but it works  
5 the same way in the Coast Guard. They can call  
6 directly.

7           CONGRESSWOMAN HOLTZMAN: Right. But at  
8 the minute that this is reported or to the very  
9 first person the very first time that it's  
10 reported, that first receiver of that information  
11 in the Coast Guard is required to alert the victim  
12 --

13           CAPTAIN TYLER: Provide them notice that  
14 they are entitled to call a special victims'  
15 counsel. Yes, ma'am.

16           CONGRESSWOMAN HOLTZMAN: Is that true  
17 also for the Marines?

18           COLONEL JOYCE: Well, that's definitely  
19 true because it's a statutory requirement, and it's  
20 in 1565(b) that they must inform a victim that  
21 comes in through the SARC, the victim advocate, the  
22 victim witness liaison, the military criminal

1 investigator, and trial counsel must inform the  
2 victim that they can have an attorney, and now we  
3 would be referring to it as a victim legal counsel.

4 COLONEL MCKEE: That's the same for us,  
5 ma'am.

6 CONGRESSWOMAN HOLTZMAN: Okay, great.  
7 Now also derived from today's testimony, what  
8 happens to somebody who's left the military and  
9 hasn't reported and never received the services?  
10 Would they be eligible for yours if they say, for  
11 example, I'm not talking about this person, but  
12 hypothetically, someone who left the service a year  
13 ago and had been the victim of rape and never  
14 reported it, what would happen?

15 COLONEL HANKINS: Ma'am, the authority to  
16 provide the service under the legal assistance  
17 rubric is based on 10 U.S.C. 1044, and so the  
18 person has to have some sort of status in order to  
19 be eligible for legal assistance. And in those  
20 circumstances, if the person has just separated,  
21 they're not a retiree, for instance, then they're  
22 not eligible for any legal assistance by any

1 military, you know, Judge Advocate or civilian  
2 attorney.

3           So there is simply no way for us to be  
4 able to provide this service to them legally. We  
5 have no legal authority to do that. So, in those  
6 circumstances, if I were to get notified that a  
7 separated member of the services wanted to have a  
8 victims' counsel, well, we have all these  
9 wonderful, fantastic civilian resources available,  
10 and I would try to refer them to a pro bono  
11 attorney through the NCVLI clinics, from the  
12 Victims' Rights Law Center. We have such a great  
13 network that we've established.

14           And in fact, I've had a couple of people  
15 that haven't met the eligibility criteria for our  
16 program but really kind of needed the help of an  
17 attorney, and they've really stepped in and helped  
18 out those clients that we weren't able to help.

19           CONGRESSWOMAN HOLTZMAN: Thank you very  
20 much.

21           CHAIRWOMAN JONES: Mai?

22           MS. FERNANDEZ: Just one question, would

1 it be easier for you to litigate for victims'  
2 rights if their rights were embedded in the UCMJ?  
3 COLONEL HANKINS: I'm a strong proponent  
4 of clarifying whether or not the Crime Victims'  
5 Rights Act, the CVRA, explicitly applies to the  
6 military or not because I think that is an issue  
7 that is unclear. The military appellate courts  
8 have not made a -- there has been no final ruling  
9 on that.

10 And while we have incorporated many of  
11 the rights by regulation -- I think all but two are  
12 actually incorporated by regulation -- there are  
13 still the two rights that don't apply or arguably  
14 don't apply, and there is no enforcement mechanism  
15 to enforce those rights. So if there is a  
16 violation, then how do we go to the courts system  
17 to enforce the violation of those rights?

18 So I do think that that is a gap that  
19 still remains as to whether or not the CVRA  
20 explicitly applies to the military and how it  
21 should apply to the military.

22 CHAIRWOMAN JONES: The only thing I'd

1 like to say, I guess, here at the end is, you know,  
2 this is a program, even though it's only been going  
3 for a year in the Air Force and now it's service  
4 wide, that has the likelihood of being a  
5 tremendously popular program among victims.

6           It sounds like it is empowering the  
7 victims who have had these services and will  
8 continue to do that, and it's also strengthening  
9 their confidence in the system, which are extremely  
10 important purposes, obviously. But I echo the  
11 concerns of Admiral Houck and others that the  
12 resources are going to have to keep coming because  
13 if you are a success, you're going to have a much  
14 larger caseload.

15           And I really also have concerns about  
16 continuity and wonder if you might all think about  
17 a civilian cadre to handle these particular -- this  
18 particular service. It would be a tragedy if a  
19 terrific program were developed and then it  
20 couldn't be carried through on.

21           Thanks very much, every one of you, and  
22 it's been wonderful to hear from you. Terrific

1 program, and I admire all of the efforts that  
2 you're putting into it.

3 I guess we'll take our lunch break. Be  
4 back at 1:00 p.m.

5 (Whereupon, a luncheon recess was taken.)

6 CHAIRWOMAN JONES: All right. I think  
7 we're ready to begin. Our next panel is called  
8 Civilian Perspectives on Victim Participation in  
9 Judicial Proceedings, and it's a perfect segue to  
10 the panel that we had earlier.

11 So let's get started. We've delayed  
12 everybody. I apologize. And we'll start. Is that  
13 Mr. Mallios?

14 MR. MALLIOS: Yes. Thank you.

15 Good afternoon, and thank you for  
16 inviting me to speak. I am an attorney advisor at  
17 AEquitas, which is a resource center based in  
18 Washington, D.C., funded by the Department of  
19 Justice, and our mission is to improve the quality  
20 of justice in sexual assault, dating, and domestic  
21 violence cases, as well as stalking, elder abuse,  
22 and human trafficking.

1           We have six former prosecutors. I am a  
2 former prosecutor, and I travel around the country  
3 providing training and technical assistance to  
4 prosecutors, police, advocates, medical  
5 professionals in the response to violence against  
6 women. I have also trained hundreds of military  
7 prosecutors through contracts that AEquitas has had  
8 with the different branches of the armed services,  
9 and I've been to -- a faculty member at the Navy's  
10 Institute on the Prosecution of Alcohol-Facilitated  
11 Sexual Assault.

12           And I'd like to speak a little bit about  
13 some of my observations, what we found successful  
14 in my practice in Philadelphia at the district  
15 attorney's office there, what some of the best  
16 practices are around the country, and also some of  
17 the comparisons that I've seen between the civilian  
18 justice system and the military justice system  
19 regarding the rights of victims.

20           Starting with investigations, it seems to  
21 me that there are some differences in the way the  
22 military conducts its investigations, especially

1 with respect to these collateral crimes, or what I  
2 like to call petty crimes. Most civilian  
3 prosecutors are very eager to make it clear that  
4 victims will not get in trouble for admitting to  
5 things like underage drinking or smoking marijuana  
6 when they are victims of serious crimes such as  
7 rape or sexual assault.

8           And it's so important for a victim to be  
9 able to make a truthful disclosure the first time  
10 they meet with a law enforcement officer without  
11 worrying about -- about those charges being filed  
12 against them. And I've heard again and again that  
13 that is a recurring problem in the military justice  
14 system. And it also discourages people from  
15 reporting or disclosing.

16           It's a very similar problem to what we  
17 see on college campuses where violations may  
18 constitute petty crimes, as well as violations of  
19 university policy. And universities also are very  
20 fast to offer some sort of amnesty to victims who  
21 come forward to make sure that they will not get in  
22 trouble and that they don't have to worry about

1 getting in trouble.

2           And when there is a coordinated response  
3 in a jurisdiction, when the advocates know, when  
4 the people answering the telephones at the rape  
5 crisis center, the medical professionals, when they  
6 all know that this is the policy, then they can all  
7 explain that to victims in a way that does  
8 encourage reporting, and it encourages truthful,  
9 honest disclosures.

10           I also worked in a large office in  
11 Philadelphia with 300 prosecutors. We had 20  
12 prosecutors in my unit. I was the Chief of the  
13 Family Violence and Sexual Assault Unit, and  
14 specialized prosecutors are by far one of the best  
15 ways to protect the rights of victims and ensure a  
16 higher level of offender accountability.

17           In order to get into my unit, someone had  
18 to really excel in working their way up through the  
19 district attorney's office, two or three years of  
20 trying misdemeanor cases, a large volume of  
21 misdemeanor cases, before they could apply to come  
22 to my office, to my unit and have an interview with

1 me and other supervisors to make sure not only that  
2 they had the legal skills that we were looking for,  
3 but also the type of sensitivity that told us that  
4 they were willing to learn about the dynamics of  
5 sexual violence and that they were willing to  
6 modify their approach to cases to work with victims  
7 of sexual trauma in a way that ensured that the  
8 criminal justice process, as much as we could, did  
9 not victimize them any further.

10           There were lots of excellent prosecutors  
11 in our office in the Homicide Unit and the Major  
12 Trials Unit that I would never have let try one of  
13 my cases in the Family Violence and Sexual Assault  
14 Unit. And I can't help thinking -- I like to think  
15 of the district attorney's office as a law firm,  
16 and I think that maybe the JAG Corps of the armed  
17 services are law firms.

18           And if there were some way to carve out  
19 some specialized prosecutors who are attending  
20 national trainings and local and regional  
21 trainings, who are collaborating closely with  
22 medical professionals, mental health professionals,

1 and victim advocates, that's such a powerful way to  
2 improve the justice response for victims and make  
3 the system work better.

4           Another significant difference between  
5 the civilian justice system and the military  
6 justice system, as I understand it, are these  
7 Article 32 hearings. We -- most jurisdictions do  
8 either grand jury indictments or preliminary  
9 hearings. And for strategic reasons, a prosecutor  
10 at a preliminary hearing wants to keep that  
11 testimony as short as possible.

12           We want to establish a prima facie case,  
13 get the case held over for court. Victim  
14 credibility generally is not an issue at a  
15 preliminary hearing. The prosecution is entitled  
16 to that presumption that the victim is credible.  
17 There would be absolutely no reason for rape shield  
18 questions to be asked or any attempt at pierce of  
19 rape shield at a preliminary hearing. Any  
20 embarrassing or private information in the victim's  
21 past would be -- would just simply be irrelevant.

22           And as I understand it, the Article 32

1 hearing is both a test of the evidence for a prima  
2 facie case and also a sort of discovery deposition  
3 for the defense. And I just can't imagine putting  
4 a victim through that, that type of adversarial  
5 extensive cross-examination at such an early stage  
6 in the proceedings and then let -- with the  
7 understanding that they're going to have to go  
8 through even more of that at a later date.

9           And I'm not advocating that there be a  
10 different system just for sexual assault cases. I  
11 would suggest, humbly, that perhaps this is an area  
12 where the military justice system needs to look at  
13 the way the civilian system does it and keep the  
14 hearings, the test for prima facie case short and  
15 then have some later proceedings for dealing with  
16 discovery the way the civilian justice system does.

17           In sexual assault cases, I think it would  
18 be especially important because victims do need  
19 those protections, and these cases are so  
20 adversarial, and victim credibility is such an  
21 issue. When you're dealing with non-stranger cases  
22 where the victim and perpetrator know each other,

1 the issue is always going to be the credibility of  
2 the victim.

3           And when there is a blistering attack on  
4 the victim's credibility at such an early stage in  
5 the proceedings, that really can have a chilling  
6 effect, and it's something that perhaps could be  
7 avoided if the system mirrored the civilian justice  
8 system a little bit more than it does now.

9           With respect to victim rights attorneys,  
10 one of the questions that was presented to us as  
11 panel members is what is our experience in the  
12 civilian world with victims' rights attorneys? And  
13 I have to say that my unit prosecuted rape, child  
14 abuse, and domestic violence. And in the area of  
15 child victims, we had a lot of victim rights  
16 attorneys because there were frequently parallel  
17 proceedings in dependency court. When children  
18 were victims of sexual assault or physical abuse,  
19 there were family court proceedings as well as  
20 criminal justice proceedings.

21           But in the area of adult sexual assault  
22 victims, it was fairly rare in my experience to

1 have victims' rights attorneys or victim attorneys  
2 in our cases. If there was a civil case, if the  
3 victim was seeking damages from someone, an  
4 employer, from the perpetrator, from a landlord,  
5 from a university, we might have a civil attorney  
6 in those cases. But their role really was to  
7 advise the victim on the civil consequences, you  
8 know, on all aspects of civil litigation, as well  
9 as to act as a liaison to the prosecutor on the  
10 consequences of the prosecutorial decisions on  
11 civil cases.

12           Sometimes we would have victims who were  
13 reluctant, and it's not uncommon for a sexual  
14 assault victim not only to not want to report, but  
15 to at some point become uncooperative in an  
16 investigation or a prosecution because they realize  
17 that private, personal, embarrassing information  
18 may be revealed, and frequently that victim wants  
19 to just stop the process. They don't want to go  
20 forward.

21           And we would always do our best to try  
22 and encourage victims to go forward. Sometimes

1 their desire not to go forward would take the form  
2 of a recantation. And in those cases, sometimes a  
3 judge would appoint an attorney if the victim was  
4 recanting because there are then Fifth Amendment  
5 issues.

6           It was our practice in Philadelphia not  
7 to force victims of sexual violence to testify if  
8 they didn't want to. But we would persuade them,  
9 try to persuade them to change their mind and  
10 persuade them to recant sometimes their  
11 recantations. And we would work closely with civil  
12 attorneys, actually criminal attorneys appointed  
13 for victims in those cases.

14           Another area where we saw victims' rights  
15 attorneys would be in situations where victims'  
16 personal, private information was being subpoenaed  
17 usually by the defense, almost always by the  
18 defense. But a couple of times, prosecutors sought  
19 information, the victims' attorneys stepped in to  
20 help with.

21           There were lots of times when the  
22 prosecutors -- as prosecutors, we would ask that

1 subpoenas be quashed, and we would try and protect  
2 victims' privacy in those ways. But when a victim  
3 has an attorney, either appointed or hired or, more  
4 often than not, a pro bono attorney from one of the  
5 antiviolence against women agencies in our city,  
6 they have confidentiality with that person, and  
7 they could talk very frankly with their attorney  
8 about what information was in those records,  
9 whether they were mental health records, medical  
10 records, sometimes school records.

11           They could talk to their attorney very --  
12 with the protection of attorney-client privilege  
13 about what information they did not want to be  
14 released. And I think that that's appropriate. I  
15 think that they need that level of confidentiality  
16 because there are some things that they may not  
17 want the prosecutor and, frankly, that I don't want  
18 to know.

19           I do not represent the victim. I  
20 represent the state, the government -- in my case,  
21 the Commonwealth of Pennsylvania -- and there would  
22 sometimes be personal, private information that

1 would be better protected by someone who had that  
2 confidentiality with the victim that I could not  
3 offer them. And that was fairly common.

4           That was probably the most common reason  
5 that we would come into contact with a civil  
6 attorney or a victims' attorney was when there was  
7 a subpoena for personal, private information.  
8 Sometimes in an attempt to discredit a victim, the  
9 strategy will sort of shift into trying to make the  
10 victim appear unlikeable. And bringing out things  
11 in the victim's past like prior drug abuse or bad  
12 mothering, maybe there had been family court  
13 involvement, any type of neglect, really these  
14 issues have nothing to do with the crime that the  
15 perpetrator committed against the victim.

16           But if an attorney can make these  
17 proceedings so unpleasant and so embarrassing for  
18 the victim that they, you know, in balance decide  
19 they don't want to go forward, then that's a way to  
20 further the rights of the accused. And it's not  
21 uncommon, in my experience, to see that happening.

22           With respect to post trial review, I'm

1 astounded by the fact that appellate -- military  
2 appellate courts are able to reweigh credibility in  
3 the post trial phase based on a cold record. I did  
4 two appellate clerkships myself, and you just can't  
5 make those types of credibility determinations.

6           If a panel has looked someone in the eye  
7 after they have been subjected to adversarial  
8 cross-examination, and that panel has found proof  
9 beyond a reasonable doubt that they're credible and  
10 that the elements of the crime are met, these --  
11 that type of review and that type of reassessment  
12 of credibility, it's just so counterintuitive to  
13 everything I learned in law school and everything  
14 I've ever seen in the practice of law, especially  
15 in the case of sexual assault cases.

16           Sometimes the facts of these cases are,  
17 frankly, very unusual. They may seem implausible.  
18 Sex offenders, especially repeated sex offenders,  
19 whether they've been caught before or not, become  
20 very crafty in how to create situations that seem  
21 implausible. They pick victims who they think  
22 perhaps are not likely to report. They pick

1 victims who perhaps are not likely to be believed  
2 if they do report.

3           And they sometimes say things and do  
4 things where they are essentially playing to the  
5 audience, and they create situations where when you  
6 look at a police report or an investigative report,  
7 you just think, wow, this doesn't make sense. No  
8 one would do this. Or why would someone do this?

9           And then you sit down and you meet the  
10 victim, and you look the victim in the eye, and  
11 that cold report is just changed, and it becomes  
12 real when you -- when you're able to hear it from  
13 the victim, when you're able to ask questions.

14           So the thought of either an appellate  
15 court reweighing and reviewing evidence or even a  
16 commander making the just word in favor of the  
17 accused after the trial, these are things that  
18 would not happen in the civilian world. And both  
19 aspects, the appellate review and the commander's  
20 power to adjust cases in favor of the accused, they  
21 only provide additional obstacles for victims to  
22 obtain justice, and they're additional obstacles

1 for offender accountability that do not exist in  
2 the -- in the civilian justice system.

3           So I don't know what the powers of this  
4 Panel are to change those types of things, but  
5 having personally tried hundreds of rape cases and  
6 having supervised the prosecution of thousands of  
7 rape cases, I can say these are difficult cases.  
8 But they are cases where with the right approach,  
9 with the right staffing, and with the right  
10 training, and also a high level of experience, we  
11 can obtain justice for victims in an adversarial  
12 criminal proceeding with the high burden of proof  
13 of proof beyond a reasonable doubt.

14           My understanding is that frequently the  
15 prosecutors that I train, the military prosecutors  
16 that I train, are only there for a three-year  
17 assignment. And in my office, at three years,  
18 they're just learning how to try cases. I had -- I  
19 worked in an office with career prosecutors. I was  
20 a prosecutor for 16 years. But we had 20-, 25-,  
21 and 30-year prosecutors.

22           And of the 20 prosecutors in my unit, I

1 had about 4 or 5 go-to people in my bullpen that I  
2 could, when I assessed a case and I determined that  
3 I needed one of my heavy hitters, I had those  
4 people to go to. And I think that all branches of  
5 the military need that level of experience for the  
6 most serious cases, and I think that these types of  
7 cases should be within the group of the most  
8 serious cases that are going to the most  
9 experienced prosecutors.

10 That's my testimony. I'd be happy to  
11 answer any questions you have.

12 CHAIRWOMAN JONES: Thank you very much.

13 MR. MALLIOS: You're welcome.

14 CHAIRWOMAN JONES: Next we'll hear from  
15 Ms. Theo Stamos, who is a commonwealth attorney for  
16 Arlington, Virginia. Ms. Stamos?

17 MS. STAMOS: Thank you.

18 Good afternoon, and thank you for the  
19 invitation to appear today before this important  
20 Panel. My name is Theo Stamos, and I'm the  
21 commonwealth's attorney for Arlington County and  
22 the City of Falls Church, just about a 10-minute

1 drive across the Potomac from here.

2 This afternoon, I thought I would take a  
3 few moments to talk about my experience as a sex  
4 crimes prosecutor, discuss some of the issues that  
5 I believe are of interest to this Panel, and then  
6 answer any questions that you might have.

7 I've been a prosecutor for almost 27  
8 years, and for a good portion of my career, I was  
9 the lead sex crimes attorney in my office. The  
10 most significant development in the prosecution of  
11 sex crimes during my tenure has, of course, been  
12 the introduction of DNA evidence.

13 Arlington County was among the first  
14 jurisdictions in the nation to successfully use DNA  
15 evidence against a serial rapist named Timothy  
16 Spencer, who was convicted of rape and capital  
17 murder in the late 1980s.

18 The second most significant development,  
19 in my view, has been the creation of victim witness  
20 programs, which have grown up alongside the  
21 victims' rights movement. My office has a staff of  
22 seven victim witness specialists, who work

1 alongside our prosecution staff in preparing sexual  
2 assault victims for the rigors of a criminal trial.

3           My director, Autumn Jones, addressed this  
4 Panel yesterday on the work of her unit. I can  
5 tell you from a prosecutor's perspective, that the  
6 victim specialist is an invaluable ally. They  
7 routinely introduce our victim to the criminal  
8 justice system. They explain to our victims what  
9 their rights are, and they provide the guidance on  
10 the often complicated court process that they are  
11 about to embark upon. And they create a critical  
12 bond between the prosecution team and the victim.

13           In short, they allow us, the prosecutors,  
14 to focus our energy on trial preparation and  
15 strategy while at the same time allowing  
16 prosecutors to know that our victims are well cared  
17 for. I understand that there is much discussion  
18 about victim attorneys as perhaps the next step in  
19 the victim rights movement. I have to say, quite  
20 bluntly, that this strikes me as a bad idea.

21           The first concern is a very practical  
22 one. In Virginia, as elsewhere, the Code of

1 Professional Conduct prohibits a lawyer from  
2 communicating with an individual about the subject  
3 matter of the representation if that individual is  
4 represented by counsel. In order for me to meet  
5 with, interview, and prepare a rape victim for  
6 trial, I would first have to get the consent of the  
7 victim's lawyer.

8           And while that might sound simple enough,  
9 in my view, it injects an unnecessary wedge between  
10 my victim and me. I understand that the military  
11 setting is, in many ways, different than the  
12 civilian setting when it comes to the prosecution  
13 of sexual assault cases, and additional  
14 considerations might exist for a sexual assault  
15 victim who is a member of the military that don't  
16 exist in the civilian setting.

17           However, I firmly believe that if we are  
18 doing our jobs correctly with the dedication,  
19 professionalism, and sensitivity that these types  
20 of cases demand, victim attorneys would really be a  
21 redundancy.

22           Thank you, and I'd be happy to answer any

1 questions you might have.

2 CHAIRWOMAN JONES: Thank you, Ms. Stamos.

3 Ms. Marjory Fisher is next. She's Chief  
4 of the Special Victims Bureau in Queens, New York,  
5 and Congresswoman Holtzman says hello. I think she  
6 said hello earlier as well.

7 MS. FISHER: Okay. Thank you.

8 Can you hear me?

9 CHAIRWOMAN JONES: I can.

10 MS. FISHER: Okay. Your Honor, Madam  
11 Chairperson and Panel members, thank you for having  
12 me.

13 CHAIRWOMAN JONES: Now I can't hear you.

14 MS. FISHER: Oh. You know what? I'll  
15 move.

16 CHAIRWOMAN JONES: No, I think that one  
17 works. It's just you need to be a little closer.  
18 Thank you.

19 MS. FISHER: Thank you for having me.

20 As a sex crimes prosecutor for over 30  
21 years and the bureau chief of a major metropolitan  
22 sex crimes bureau for over 23 years, I have thought

1 a great deal about what prosecutors can do best to  
2 serve victims of sexual assaults.

3           So you know where I came from and where I  
4 work, Queens has been the most ethnically diverse  
5 county in our nation, with 2.2 million residents  
6 speaking over 140 languages. We have many  
7 challenges, and I would like to share a few  
8 investigative tools that we've been using that have  
9 really allowed us to be very successful in this  
10 field.

11           I was asked to come and speak to you to  
12 answer the question, what works best to achieve  
13 justice and optimum victim satisfaction and  
14 victims' rights protection in the civilian world of  
15 sexual assault prosecution? Thank you for the  
16 opportunity to share my insights.

17           My experience is that what serves all of  
18 our victims most and ultimately protects their  
19 rights is an effective and successful prosecution  
20 by well-trained and experienced ADAs. My bureau  
21 has 14 ADAs. As I said, I have 30 years of  
22 experience, and I try cases pretty regularly.

1           My bureau consists of people with 15  
2 years, 18 years, 19 years of experience, and that  
3 is a critical contributor to a 95 percent  
4 conviction rate after pleas and trials. The  
5 components, I believe, of our program, along with  
6 extremely experienced and well-trained ADAs, are  
7 many. But if I could mention four of them that  
8 occur in the investigative stage, they would be our  
9 early case enhancement program, vertical  
10 prosecution, pre-arrest interviews of victims in  
11 difficult cases, and an effective team approach  
12 with our sexual assault forensic examiner program  
13 that is also linked to a 24-hour volunteer advocate  
14 program in our hospitals.

15           For each of these components, the  
16 critical word is "early." The primary determinant  
17 of the ultimate success of our prosecution is what  
18 happens before the handcuffs are placed on the  
19 wrists of the perpetrator. The determinations and  
20 the enhancements made to the case in the very, very  
21 first hours after the crime occurs or after the  
22 outcry is made account for our successes and

1 ultimately, I believe, for optimum victim  
2 satisfaction.

3           Let me first talk to you about our early  
4 case enhancement program. February 14, 1992,  
5 that's over 20 years ago, the Special Victims  
6 Bureau in Queens, under newly elected district  
7 attorney Richard Brown, instituted an early case  
8 enhancement program in special victims, known as  
9 the Riding Program. And this program was devised  
10 to address problems unique to the prosecution of  
11 sex crimes cases by having an assistant DA meet  
12 with the victim at the earliest stage of the case  
13 to make the victim feel involved in the  
14 investigation, to lessen his or her trauma, and to  
15 work together to figure out where the evidence is.

16           To staff this program, I have an ADA on  
17 call 24/7 every day of the year, and they work  
18 probably once every two weeks on call. And  
19 sometimes they get many calls, and sometimes for a  
20 month they get no call. But every time there's an  
21 arrest for a first-degree sex crime in Queens  
22 County, a sex crimes prosecutor goes to the

1 precinct or the hospital to enhance the case. Why  
2 do we do this?

3 We're seeking to establish a rapport with  
4 the victim, to explain to the victim what's going  
5 to happen next. And then, only after that, when  
6 she or he feels safe will the ADA proceed to  
7 interview the victim about what happened. And then  
8 they will supply immediate counseling referrals.

9 In most cases, we have vertical  
10 prosecution. What is this? The same ADA who meets  
11 the victim in the precinct, the hospital, the  
12 street will be responsible for handling that case  
13 through disposition if it's a negotiated plea or a  
14 trial. They work with the police to secure  
15 evidence, and one of their key goals is to take a  
16 videotaped statement from the defendant.

17 And we feel that by sending an  
18 experienced sex crimes prosecutor to the precinct  
19 immediately after the defendant's arrest, these  
20 goals can be achieved, and in doing so, we turn  
21 marginal cases into strong ones. I also feel,  
22 having gone out many nights myself, that there is a

1 real benefit when the ADA meets the victim, could  
2 be in the middle of the night, and he or she sees  
3 that this is the person who's going to handle the  
4 prosecution and they don't have to repeat the story  
5 over and over again to countless people over the  
6 course of months while the case gets transferred  
7 from one lawyer to another.

8           This is an ADA who is experienced in sex  
9 crimes prosecution and sensitivity to these  
10 victims. Over the past 20 years, we have ridden  
11 hundreds of cases at all hours of the day or night.  
12 In each of these cases, a special victims ADA will  
13 go out to the precinct. They'll interview the  
14 complainant, and they enhance the case with some  
15 combination of identifying additional witnesses,  
16 whether it be for the people or the defense, taking  
17 a statement, as I said, drafting a search warrant  
18 based upon what the complainant says, and going  
19 right to court and getting it signed, and providing  
20 counseling referrals.

21           And what I will tell you is that the  
22 victim comes away feeling like, "My case is being

1 handled by a professional, a legal mind at the  
2 scene who cares about my well-being and who will  
3 remain my primary point of contact as the case  
4 proceeds." And this has a tremendous effect of  
5 reducing anxiety.

6 In about 25 percent of the cases, the ADA  
7 who tries the case takes a videotaped statement  
8 from the defendant. And they range from denials to  
9 alibis to confessions.

10 I will tell you that this initial  
11 encounter really improves our chances of getting  
12 the victim to come forward at the grand jury and  
13 finally at trial. It helps eliminate the  
14 psychological limbo that may happen between the  
15 hospital and when they ultimately come to court.  
16 And I can't tell you how many times that our  
17 victims have said to their ADAs at trial a year or  
18 two later, "The only reason I'm here to testify is  
19 because you were there for me in the middle of the  
20 night during the worst hours of my life."

21 I will tell you that that bond builds  
22 trust, and it leads to greater openness on the part

1 of the victim in terms of her willingness to  
2 completely and accurately and truthfully relate all  
3 the information to the prosecutor without fear of  
4 judgment. And of course, this ends up certainly  
5 combining to achieve success at trial.

6           Also the fact that we have vertical  
7 prosecution and the person who was on the street or  
8 in the precinct who is going to try that case turns  
9 out to give tremendous incentive to enhance the  
10 case as well as you possibly can. And as I said,  
11 in approximately 95 percent of the cases that were  
12 enhanced at the beginning and indicted, convictions  
13 resulted. And in close to 25 cases, defendants  
14 made statements to the ADAs.

15           And just as important as to -- of those  
16 cases that added to the success in getting a  
17 conviction are those cases where the ADAs have  
18 released defendants where there was insufficient  
19 evidence to support an arrest. In approximately 10  
20 percent of the rides done over the last 20 years,  
21 our assistant DAs have exonerated suspects and  
22 released them or, at the very least, deferred the

1 prosecution until additional evidence could be  
2 obtained.

3           Another component of our successful  
4 prosecutions and ensuring victims are satisfied is  
5 that we have a great relationship with our SANE,  
6 SAFE, SART program in the hospitals. Now in Queens  
7 and across the City of New York, when a rape victim  
8 gets into an ambulance, the ambulance will ask them  
9 do you want to go to a center of excellence for  
10 sexual assault? They give them the option of going  
11 outside of the catchment area and going to these  
12 wonderful hospitals where they seen within one hour  
13 by a sexual assault examiner on call.

14           This examiner is a person who has been  
15 trained extensively not only by doctors, but also  
16 by prosecutors on what to expect in court when they  
17 come in and testify. And it's wonderful. They are  
18 also extremely successful and much more successful  
19 at finding DNA evidence than the non-SART programs,  
20 and we have evidence to prove that.

21           I will tell you, in our county they've  
22 done over 1,000 exams. We talked to -- we can

1 reach them in the middle of the night to get  
2 results of exams. We work with them constantly to  
3 work on systemic problems in the hospital.

4           And gone are the days when victims of  
5 sexual assault are examined by a radiology resident  
6 who has no idea what these exams entail, hasn't  
7 ever conducted such an exam, and who are  
8 uncomfortable performing a sex assault exam and who  
9 have no particular interest or concern for the  
10 patient. So that's a wonderful team effort that we  
11 have been involved in.

12           One other thing that I'd like to mention  
13 is that we have another team effort with our  
14 detectives. And in about 25 percent of our cases,  
15 our detectives call us and bring in victims in  
16 cases where there has been intoxication, where they  
17 know each other very well, where there is some kind  
18 of complicating issue. And these are many of our  
19 cases.

20           And this is our pre-arrest interview  
21 program. And what we do is before -- it could be  
22 weeks before an arrest is made, we will do that

1 interview with the detectives, and we'll determine  
2 whether there's any more evidence that can be  
3 gathered before an arrest is made or whether there  
4 should never be an arrest made. And that's a  
5 wonderful program.

6           The most frequent thing that we do with  
7 our victims in this program is that if the  
8 perpetrator is not aware of the allegation, the  
9 detective and the ADA will work together with the  
10 victim to do a phone call, which is being recorded.  
11 And the ADA is integral to the production of this  
12 because they know what will work at trial.

13           And it shifts -- if we do get a  
14 statement, which in an amazing number of those  
15 cases, we get a recorded phone call that works in  
16 court, it shifts the burden of proceeding from the  
17 victim to the victim and a confession on this phone  
18 call. And it empowers the victims, and it makes  
19 them feel more involved.

20           Finally, one of the most important  
21 ingredients for a successful investigation of these  
22 cases is that you have a victim who's strong enough

1 to go forward. And we have a volunteer effort with  
2 a major hospital in New York, Mount Sinai, where  
3 they have hundreds of volunteer advocates that are  
4 trained by prosecutors, police, and doctors about  
5 how to respond to a rape victim.

6           And they will come out. They're on call  
7 maybe once a month or so, and they'll come out and  
8 sit with the victim in the hospital overnight.  
9 They can even go to the precinct with them. And  
10 they will be there for them to help them and to  
11 bridge the gap between when they leave the hospital  
12 and when they go to the precinct, and it's a  
13 wonderful program.

14           In addition, I would tell you that the  
15 value of having a nonparty, nonlawyer advocate to  
16 offer a victim emotional support at that stage is  
17 enormous. The ER advocates are trained and  
18 wonderful, and they hand off the case to a  
19 specially trained social worker once they get to  
20 the DA's office. And that combination of help  
21 helps victims and guides them through what, as you  
22 can imagine, is a very confusing and intimidating

1 process.

2           At the same time, the prosecutor, with  
3 that backup, can focus on the legal aspects of the  
4 criminal case, knowing that the victim's emotional  
5 needs are being taken care of, and the prosecution  
6 is strengthened by having a single attorney build a  
7 relationship with the attorney -- with the victim.

8           The advantage of this approach is clear.  
9 When it comes time for the victim to provide  
10 testimony, she's received emotional and  
11 psychological support in the aftermath of her  
12 attack, and she has a solid connection to the DA  
13 who's been with her throughout the process.

14           In New York City, the instances of  
15 victims retaining counsel is rare. It happens  
16 maybe twice a year in a very busy county in which I  
17 work. My view and that of many of the ADAs that I  
18 work with is different from many who've spoken  
19 today who have served as victims' counsel -- excuse  
20 me -- or have seen them in their courtrooms.

21           Some of the things that they offer are  
22 amazing and wonderful and seem to really fill a

1 need. But my concern with retained or victims'  
2 counsel is that just because we represent the  
3 people or the government in our cases, it doesn't  
4 mean that our work somehow ignores or neglects the  
5 rights of the victim. She or he is our paramount  
6 concern from the pretrial rape shield motions to  
7 ensuring her right to speak at sentencing. Our  
8 victims know this.

9           And after 30 years, I believe that --  
10 that victims are comfortable with the combination  
11 of prosecutor and advocate that I have described.  
12 I worry that if the victim had their own lawyer in  
13 every single case, that the relationship that I  
14 think is sacrosanct in our office that exists  
15 between the victim and her counsel could circumvent  
16 or diminish the critical relationship that my ADAs  
17 have with their victim. And that is the one that  
18 fosters trust and full disclosure.

19           I'm also concerned that were the victim  
20 to have an attorney apart from the prosecutor, the  
21 victim could disclose facts to her counsel that  
22 were not disclosed to the ADA, and the counsel has

1 a complete privilege with the victim, and they  
2 might not be able to share those facts with the  
3 prosecutor due to the limitations of the attorney-  
4 client privilege.

5           What then happens if the victims' counsel  
6 receives such information that could be  
7 exculpatory. That is Brady material, which must be  
8 disclosed to the defense in a criminal prosecution  
9 by the DA. What happens if the victims' rights  
10 attorney takes a position contrary to the  
11 prosecutor?

12           These are my concerns, and I would  
13 recommend a commitment to specialized training for  
14 sex assault prosecutors in the military who stay  
15 with that job on how to build an open, candid, and  
16 supportive relationship with victims, rather than  
17 wholeheartedly supporting a system that introduces  
18 another attorney into a delicate, sensitive, and  
19 difficult case.

20           I would close by saying to you that  
21 although my responsibility as a DA is to seek  
22 justice and I represent the government, the

1 relationship that I and my DAs have with their  
2 victims is extraordinary. It is not unusual for  
3 our victims to come back year after year and see  
4 us, regardless of the result.

5           Recently, one of my ADA's victims named  
6 their baby after our ADA. They send holiday cards.  
7 They send wedding and birth announcements to their  
8 prosecutors. This bond that's created through the  
9 early case enhancement and prosecutor's dedication  
10 to the victim from the hospital to the precinct,  
11 through the trial to the sentence, is a worthy goal  
12 that leads to not only just outcome, but it also  
13 leads to victims end healing.

14           And I just want to finish by reading you  
15 a letter that one of my ADAs got from a sex abuse  
16 case that was tried two years ago. A woman who was  
17 -- a woman and her sisters who were all raped by  
18 their father over and over again.

19           She writes, "I plan on going on to  
20 establish a foundation to help others in situations  
21 like mine who are just in need. In a situation  
22 like this, the typical thing is to be battered,

1 sad, scared, and defined by my past. But that is  
2 not me. I am an overcomer who has been blessed to  
3 have God put such amazing people in our lives to  
4 support and defend us. You have done everything  
5 you could.

6 "I know without a doubt if we had to go  
7 to court six times, you would stand by us. You are  
8 an amazing person. I admire what you do. You know  
9 what? In this process, I have walked away knowing  
10 amazing people like yourself that I will always  
11 hold very close to my heart.

12 "Thank you for your help and support, and  
13 may God bless you and your family beyond measure.  
14 Remember, this is the beginning of a beautiful  
15 story."

16 My conclusion is the components of a  
17 successful sexual assault prosecution that I have  
18 outlined here have produced just results in the  
19 courtroom while at the same time making it a  
20 priority to minimize further trauma to the victim.  
21 I believe that some of these tools might be able to  
22 be used in the military sexual assault arena

1 without compromising in the slightest the  
2 traditional relationship between the prosecutor and  
3 the victim.

4 Thank you so much for allowing me to  
5 share these thoughts.

6 CHAIRWOMAN JONES: Thank you, Ms. Fisher.

7 We'll now hear from Ms. Keli Luther, who  
8 is the deputy county attorney, Maricopa County,  
9 Arizona. Ms. Luther?

10 MS. LUTHER: Thank you.

11 Your Honor, members of the committee, it  
12 is truly an honor to appear before you today and  
13 share with you my professional experience as a  
14 former victims' attorney, representing not only  
15 adult and child victims of sex crimes at the state  
16 and federal level, but also victims of homicide,  
17 aggravated assault, and even financial crimes, as  
18 well as currently a prosecutor in a jurisdiction  
19 that victims' rights have been embedded in our  
20 Constitution for over 20 years.

21 I'm currently a Maricopa County deputy  
22 attorney. I focus on victims' rights issues at

1 trial and appellate level for my office. The  
2 Maricopa County attorney's office serves  
3 metropolitan Phoenix and the surrounding areas.  
4 We're the fourth-largest county in the United  
5 States, with over 4 million residents. The  
6 Maricopa County attorney's office prosecuted over  
7 314 sexual assaults and sexual abuse cases in 2012,  
8 and thus far in 2013, we have 220 filings.

9           Back in early 2002, constitutional  
10 protections for crime victims had been on the books  
11 for over 10 years. These constitutional  
12 protections even included an expedited appellate  
13 remedy for violations. Still, far too often,  
14 victims' rights violations were far too frequent.

15           My mentor and former Arizona assistant  
16 attorney general Steve Twist, who is a career  
17 prosecutor, dared to wonder out loud if the rights  
18 of crime victims might be better protected through  
19 the retention of specially trained counsel to  
20 assert the rights of victims throughout the  
21 criminal justice process. Again, this is 2002.

22           What if a crime victim retained an

1 attorney for the sole purpose of effectuating her  
2 rights within the criminal justice process? Such  
3 representation would include educating the victim  
4 on the criminal justice process, meeting with a  
5 prosecutor, appearing on behalf of the victim in  
6 court, filing appropriate motions, and preparing  
7 the victim for trial and sentencing.

8           The grand constitutional experiment  
9 began. Most importantly, we posited the question  
10 as to whether it was truly possible to protect the  
11 constitutional rights of both the accused and the  
12 victim. Well, in Arizona, after representing crime  
13 victims in felony cases for over a decade, the  
14 resounding answer is yes.

15           This is not a zero sum game. The rights  
16 of the defendant are not diminished by enforcing  
17 the rights of crime victims, including their right  
18 to counsel. In fact, it's our belief that  
19 representation may indeed increase the odds that  
20 the rights of the accused are protected.

21           While I represented victims, the Victims'  
22 Legal Assistance Project, as well as the Crime

1 Victim Enforcement Project -- one was a federal  
2 project and one was a state-based project -- we  
3 represented over 5,000 victims in both federal and  
4 state courts since 2002. And attorneys at the  
5 project have logged in more than 5,000 court  
6 appearances, including pretrial hearings, trials,  
7 and sentencings.

8           Additionally, victims' attorneys have  
9 filed numerous appellate briefs litigating various  
10 victims' rights violations at the trial court level  
11 or supporting trial court rulings upholding  
12 victims' rights that are challenged by defendants  
13 at the appellate level.

14           Looking back over the last decade, the  
15 progress has not been without strife. Our courts  
16 are built upon the shoulders of tradition and are  
17 resistant to significant change. Understandably,  
18 not every judge was a fan. However, the rule of  
19 law indeed paves the way. The constitutional  
20 calculus guides the judiciary in balancing the  
21 rights of all.

22           Upon applying the U.S. Constitution when

1 the assertion of a crime victim's right infringes  
2 on the right of the accused, the accused right  
3 will, indeed, trump. However, after litigating  
4 hundreds of victims' rights issues, it's been my  
5 experience that it's far more often the case that  
6 courts are very apt at enforcing the most common  
7 rights of the victim, and the enforcements of the  
8 right of the victim does not violate the rights of  
9 the defendant.

10           Beyond the law, we can't disregard the  
11 important emotional support provided by victims'  
12 counsel. It should not surprise any lawyer in the  
13 room that attorneys are retained to provide  
14 guidance and support to their client. With the  
15 support and advice of a well-trained victims'  
16 rights lawyer, victims can find their voice.

17           I've been told by my clients, most who  
18 have never stepped foot in a courtroom, that  
19 becoming a victim, obviously, is incredibly  
20 traumatic. We all know that. But then within the  
21 fog of trauma, they're tossed into the criminal  
22 justice system.

1           It's been explained to me that the  
2 experience is akin to landing on the moon or being  
3 dropped into enemy territory completely unprepared.  
4 This is not Law & Order or CSI. It's a frightening  
5 world that victims are ill-equipped to navigate on  
6 their own. The language, culture, environment are  
7 often untenable. The assistance of a properly  
8 trained attorney to translate the culture and  
9 provide counsel makes a world of difference.

10           In my experience, I don't think it's  
11 realistic for crime victims to expect a great  
12 experience within the criminal justice system,  
13 whether within the military or in the civilian  
14 system, whether the victim has counsel or not. The  
15 most we can do as professionals is to enforce the  
16 law at the federal and state level, to try to meet  
17 crime victims where they are, attempt to  
18 accommodate the victims' needs, and not always  
19 expect the victim to conform to our system.

20           Not surprisingly, accommodations can  
21 indeed be made for all -- defendants, jurors, and  
22 victims -- that prove the truth-seeking process for

1 all. We can ensure that victims are treated with  
2 dignity, respect, as well as fairness, and to be  
3 free from intimidation and harassment.

4           An attorney who is well trained in  
5 victims' rights can successfully shepherd crime  
6 victims through the gauntlet of our criminal  
7 justice system. Additionally, it's important to  
8 note that at least in Arizona, after over 20 years,  
9 there are still far too few attorneys representing  
10 victims in criminal court. I applaud the  
11 innovative SVC programs and the efforts to provide  
12 appointed counsel to every victim that desires  
13 representation.

14           In Arizona, we're not there yet.  
15 Prosecutors recognize that 99 percent of our  
16 victims still will not have counsel, even after 20  
17 years of victims' rights being on the books and  
18 enforced. Our constitution guarantees each of  
19 these victims numerous rights. These rights must  
20 be protected and enforced.

21           As a prosecutor and a lawyer, it's my  
22 sworn duty to enforce the constitution and laws of

1 Arizona. The Maricopa County attorney's office  
2 mandates victims' rights training not only for  
3 prosecutors, but for every employee. New trial  
4 judges in Arizona receive victims' rights training  
5 as part of their new judge orientation.

6 Finally, in Arizona, prosecutors have  
7 standing to assert any right of the victim.  
8 However, prosecutors are not victims' counsel, and  
9 attorney-client privilege does not apply.  
10 Prosecutors represent the State of Arizona.  
11 Prosecutors are bound by the Brady line of cases,  
12 necessitating the disclosure of exculpatory  
13 information to the defendant.

14 It's essential in our office to ensure  
15 justice for all, the victim and the accused. While  
16 SVC programs are applauded and welcomed, the entire  
17 criminal justice system must make the cultural  
18 shift, recognizing that crime victims are not mere  
19 pieces of evidence and victims' rights are indeed  
20 civil rights.

21 Victims are participants within the  
22 system that have constitutional and statutory

1 rights that shall be enforced. It's a compliance  
2 issue in Arizona and at the federal level under the  
3 Crime Victims' Rights Act. SVC programs can drive  
4 that cultural change one court appearance at a  
5 time. However, again, in our experience, most  
6 victims will not be represented, at least in the  
7 civilian system.

8 Strong laws that prosecutors must enforce  
9 and the courts must recognize, I think, is at least  
10 part of the solution. I'm happy to answer any  
11 questions.

12 CHAIRWOMAN JONES: Thank you very much.

13 And now we'll hear from Mike Andrews,  
14 managing attorney, D.C. Crime Victims' Resource  
15 Center. Thanks.

16 MR. ANDREWS: Thank you, Madam Chairwoman  
17 and the committee, for this opportunity to come and  
18 speak with you all today.

19 I'm often reminded, having just heard  
20 from our distinguished panel, what my father used  
21 to say before giving a blessing before we sat down  
22 to eat, and his words were "make it brief." So,

1 with that, I understand that we probably want to  
2 get down to brass tacks, so to speak, and have a  
3 dialogue with Q&A, and I'll get to that.

4           But just let me briefly just say a couple  
5 things. First, again, I'm very appreciative for  
6 this opportunity to speak with you. The D.C. Crime  
7 Victims' Resource Center is unique because we're  
8 the only pro bono legal clinic in the D.C.  
9 metropolitan area that represents crime victims.  
10 Years ago, there was several clinics, including  
11 ones that Ms. Luther had run, and with funding  
12 restraints, those clinics had kind of went by the  
13 wayside.

14           I'm fortunate that D.C. has been able to  
15 maintain our financial stability, but for the most  
16 part, our template is with pro bono attorneys.  
17 Good, hard-working lawyers in the community that  
18 are willing to give their valuable time and effort  
19 to represent crime victims, and I'm very proud to  
20 be one of those individuals.

21           To recommend solutions, I have really one  
22 for you all, and that is to adopt the Crime

1 Victims' Rights Act, the CVRA. Real simple. It  
2 was passed by bipartisan support, both the House  
3 and the Senate. It's been tested. Many of the  
4 circuits have come down and on the enforceability.  
5 Interestingly enough, the head federal prosecutor  
6 in the United States, the Attorney General, he has  
7 set out guidance that has been straightforward.  
8 The CVRA must be applied to all their federal  
9 prosecutors.

10           There is no "shall." There is no wiggle  
11 room. His direction is to the U.S. attorneys this  
12 is the law of the land, and you must comport. And  
13 that, as a crime victims' rights attorney, really  
14 makes life a lot easier for me because at least  
15 from the prosecutor's perspective, the crime  
16 victims' attorney is nonthreatening. They know  
17 what the CVRA is.

18           I will tell you the majority of my time  
19 here in practicing law in D.C. is simply just  
20 educating the judiciary and, of course, the defense  
21 bar, and it wasn't always easy. I'll be honest  
22 with you. There was a lot of "Who are you? What

1 are you doing here?"

2           And I don't have one with me, but I'll  
3 tell you, I used to have these three-by-five cards  
4 of the CVRA, real simple, nonthreatening. How  
5 about the first right? The right to be treated  
6 with dignity and respect.

7           Really? We have to have a law that says  
8 we have to treat human beings with dignity and  
9 respect? And I usually used to tip off with that  
10 one, and then we'd go right down, down the list.

11           But with dialogue and with continuing  
12 education, I have to tell you, today I get  
13 representations from not only the government, but  
14 also from the defense bar. That didn't happen  
15 overnight, but it took a lot of work for that, as  
16 they see that it's a nonthreatening advocacy,  
17 especially on certain elements of the CVRA.

18           I will highlight a couple where I think  
19 are really relevant for the discussion that I  
20 anticipate we're going to have today. The right to  
21 be treated with fairness, with respect for the  
22 victim's dignity and privacy. This right is

1 essential in preventing unwanted incursions in the  
2 victim's background, such as unwarranted subpoenas  
3 for medical, educational, and unemployment records  
4 that are often sought out against the victim of  
5 sexual assault simply for fishing expeditions.

6           And I have litigated this issue on and on  
7 again, and I've been successful just for the fact  
8 that it's a thrown against the wall subpoena, and  
9 there's nothing behind it that would put forth why  
10 there is a need.

11           And I'm often concerned that if that's  
12 not litigated, then the right, the privacy right of  
13 a victim would then be -- would be pierced simply  
14 for the fact that they're a victim of a crime. Had  
15 they not been a victim of a crime, they would be --  
16 have the same protections as everybody else.

17           The second one that I'd like to talk to  
18 you about is the one that is also important, but  
19 it's the right to be reasonably protected from the  
20 accused. What do I mean by that? I have seen  
21 lately an uptick in increasing harassment through -  
22 - through the social media by posting graphic

1 pictures, statements, and other various electronic  
2 messaging against victims.

3 Well, the CVRA makes it clear that you  
4 cannot condone this behavior. As I indicated, my  
5 role is simple, I ensure that the victims are  
6 afforded the simple eight rights described in the  
7 CVRA.

8 One cannot simply look at a victim as a  
9 piecemeal approach. I understand that. But we  
10 must look at an entire body and that means that  
11 individual. I'm often reminded, and let me close  
12 by saying this, victims are not asked to be  
13 victims. But for one tragic event, they are at the  
14 mercy of others, and at the mercy for the passion  
15 and commitment of others to assist them.

16 And with that, I thank you, and I look  
17 forward to answering your questions.

18 CHAIRWOMAN JONES: Any questions? Okay.

19 VICE ADMIRAL (RET.) HOUCK: Oh, go ahead,  
20 please.

21 CHAIRWOMAN JONES: You know, the  
22 interesting thing here is that victims' rights are

1 a relatively new body both of law and certainly  
2 relatively new in the consciousness of everyone.  
3 And I think that one thing that is critical -- and  
4 I don't think I'm saying anything different from  
5 any of you, even though you take different  
6 positions on the counsel issue, victims' counsel  
7 issue -- is that the law exists and the -- it  
8 should be enforced by the court, number one.

9           And I think it is in the manual for Judge  
10 Advocates what the victims' rights, an essential  
11 outline of the Victims' Rights Act. And it should  
12 be enforced by the prosecutor because -- and not  
13 all of it perhaps, and that's where the dividing  
14 line comes in.

15           A prosecutor should understand that the  
16 victim has a right to be present at certain  
17 critical moments in the trial. Forget the trial.  
18 I mean at before and at a plea, for instance, with  
19 respect to bail issues, all of that sort of thing.

20           It seems to me that a well-trained,  
21 experienced prosecutor who also has a victims'  
22 advocate teamed up with them can be an extremely

1 perfect combination to provide all the support that  
2 victims need. And I understand, as an old  
3 prosecutor, both a former prosecutor and old, that  
4 -- that I had a very special relationship with all  
5 of my victim witnesses, and I never thought they  
6 needed anybody else.

7           So I considered them to be -- me to be  
8 their lawyer, as well as the state's lawyer. So I  
9 know where Ms. Stamos and Ms. Fisher are coming  
10 from.

11           I guess I wonder, though, whether there  
12 are -- and here's another problem. This notion of  
13 privacy rights. You -- and we've talked to a  
14 couple of people who have mentioned sheltering the  
15 victim from subpoenas, for instance. Well, the  
16 bottom line is some of that information may be  
17 relevant and exculpatory, and so that creates an  
18 issue in terms of the justice system.

19           You know, when a subpoena comes in, it's  
20 a case-by-case decision. Sometimes a judge will  
21 simply not grant it because it doesn't seem to have  
22 any basis at all by the defense. Other times, the

1 judge will look at it in camera before it's given  
2 over.

3           But it seems to me, I would prefer that  
4 system in terms of the defendant -- the accused  
5 rights to be the system rather than to have, at  
6 least in that one area, a victims' counsel who  
7 starts to get in the middle of a decision about  
8 what to turn over and what not to turn over in a  
9 criminal case. I think that ultimately has to be  
10 the decision of the prosecutor. This is just my  
11 own experience here.

12           So I do worry about a tension that gets  
13 created, but I think what I'm learning because, as  
14 I'll tell you, my knee-jerk reaction was you can't  
15 afford to have a civilian counsel in the civilian  
16 world. It's not happened. It's very difficult.  
17 There is no resources.

18           What I think I've seen in the military  
19 pilot project is that in that particular justice  
20 system for victims of sexual assault, this is an  
21 additional person who is a support to that person  
22 and empowers that person and is a sign that the

1 military considers this victim important and is  
2 going to be -- they're going to be taken care of.

3           Those are valuable things. I know you  
4 were all here before, and my only concern is can it  
5 be sustained? It's extremely resource intensive,  
6 to say expensive is the same thing. So I don't  
7 know. I just throw all of that out as my reactions  
8 to what I've heard.

9           And Admiral Houck, you want to save me?  
10 You had a question, which wasn't a question?

11           VICE ADMIRAL (RET.) HOUCK: Well, I mean,  
12 I think this is one of the great panels that we've  
13 had because it's really awesome to have your range  
14 of experience and expertise here and also terrific  
15 to see you taking different points of view, which  
16 is really helpful to us, I think.

17           The -- one of the things -- I guess to  
18 tack onto what Judge Jones said, one of the things  
19 that I wonder about is the role of if you have a  
20 classic prosecutor who works with the victim beyond  
21 the scope of the criminal case of the prosecution.  
22 Because I don't know if any of you were here this

1 morning, we talked about the array and the morass  
2 of other issues that are out there for survivors is  
3 extensive.

4           And I'd be -- one of the things that's  
5 attractive to me about the way that the military is  
6 going right now is the notion that this person is  
7 there for them during the criminal proceedings, but  
8 not necessarily exclusively for that. They can  
9 help the person navigate the rest of this process  
10 that's out there.

11           So, and I guess I would ask Ms. Fisher or  
12 Ms. Stamos, in a civilian system, what happens when  
13 the case is done? Do your prosecutors work with  
14 people throughout the whole range of other issues  
15 that are out there for victims? I would think not,  
16 but --

17           MS. FISHER: We have a justice center in  
18 our office that has a lot of volunteer lawyers and  
19 lawyers that work for different organizations  
20 around the city that has offices in this justice  
21 center that's attached to my office. So,  
22 oftentimes, I will send victims there to, you know,

1 get the divorce finalized, to, you know -- or to  
2 legal services to sue the landlord if they've been  
3 raped because the door was broken, and so on.

4           So we do try and help them with counsel  
5 for that kind of thing for sure, and you know, we  
6 do what we can. I just feel like having that  
7 person in there, in the middle of it, possessing  
8 information that I don't have that I could get  
9 surprised with at trial could be devastating. And  
10 maybe justice will be done in some of those cases,  
11 and maybe it won't, depending on what the privilege  
12 is. But we do try and assist them with those kinds  
13 of issues.

14           And just to respond to you, Judge, and  
15 your concerns, I will tell you that I recently  
16 tried a case where a young woman came from Mexico  
17 to live with her aunt and was raped by the uncle  
18 because they wanted her to have their baby. And  
19 there were -- she was in ICE custody for two  
20 months. So I had this many records from ICE  
21 custody. She had all kinds of problems when she  
22 came here in the education system, child welfare,

1 since the rape happened.

2 I mean, I had probably 1,000 pages of  
3 records, and I believed that a lot of them should  
4 be turned over, but I wasn't sure about some of  
5 them. So I took them and I gave them to the judge,  
6 and I said these are the ones I think should be  
7 turned over, and these are the ones that shouldn't.  
8 But I rely on you, Judge.

9 I didn't feel that we needed another  
10 attorney to make that argument. I could do that,  
11 and so could my -- my assistants. So I think there  
12 are a lot of ways to resolve the privacy issues  
13 despite that.

14 But getting back to you, we try whatever  
15 we can. And that's why we have these many years of  
16 relationships with our victims after the trial is  
17 over, you know, because we try and help them.

18 MS. STAMOS: I would just echo what  
19 Marjory is saying. I mean, in our office, our  
20 victim witness unit really does provide a lot of  
21 what Marjory's office will provide. I mean,  
22 certainly services, directions for counseling.

1           In Virginia, we have the crime --  
2 Criminal Injuries Compensation Fund. So, you know,  
3 they will help navigate a victim to get actually  
4 monetary compensation for injuries and other kinds  
5 of expenses.

6           I mean, does it go far enough?  
7 Absolutely not. Does that need more money? Sure,  
8 it does. But you know, there are all sorts of  
9 services in Arlington County that we can provide  
10 victims and direct them to legal services for the  
11 same kinds of things.

12           And again, you know, I just echo Marjory.  
13 It is a problem to have the notion that there would  
14 be in a prosecution -- and the judge has hit on  
15 this as well, you know, we are ministers of  
16 justice. We have to make sure that the right thing  
17 gets done.

18           And in this day and age, when prosecutors  
19 I think are being targeted left and right by good  
20 colleagues in the defense bar as far as, you know,  
21 failure to disclose exculpatory evidence and  
22 allegations, wanton allegations of prosecutorial

1 misconduct, we have to make sure when we're  
2 prosecuting someone for a sexual assault crime that  
3 we have the ability to get that exculpatory  
4 evidence that might be, you know, between a victim  
5 and her or his lawyer, and that lawyer does not  
6 have to turn that over to us.

7           And to be in a trial and to know that  
8 there might be important information, critical  
9 information -- you know, a recantation, an  
10 inconsistent statement, all the things that we have  
11 to worry about that are landmines for prosecutors -  
12 - to inject that person into the process troubles  
13 me greatly.

14           And again, I will say this. The victims'  
15 rights movement, in my view, grew because  
16 prosecutors didn't do their jobs. Because there  
17 were arrogant prosecutors who didn't consult with  
18 victims, who didn't get input from victims, and  
19 legislatures and general assemblies across the  
20 country had panels just like this in Springfield,  
21 Illinois; in Richmond, Virginia; hearing hellacious  
22 stories from victims who were just completely

1 disregarded.

2           The prosecutors in their case completely  
3 disregarded them and did not provide them with, as  
4 Mike says, you know, to be treated with dignity and  
5 respect. So we brought this on, but I also think  
6 that we are the answer for fixing it.

7           VICE ADMIRAL (RET.) HOUCK: If I could  
8 just ask one follow-up? With respect to the issues  
9 that you're raising in Arizona, how does this work?  
10 They posed the challenge. Have you had issues with  
11 Brady material and disclosure and those kind of  
12 things?

13           MS. LUTHER: Absolutely. I would say  
14 probably out of all the issues, victim issues that  
15 we face on a daily basis, I would say about 80  
16 percent, 75-80 percent deal with victim discovery  
17 issues. And in Arizona, crime victims have the  
18 right to refuse a defense discovery request. So  
19 the biggest issue for victims' counsel, as well as  
20 a prosecutor, is determining is it Brady material  
21 or not?

22           It's our position that if a victim has

1 their own -- obviously, they have their own private  
2 life. They had constitutional rights before they  
3 were victimized. They still have constitutional  
4 rights. And because you're victimized does not  
5 give anyone permission to go into your private life  
6 and open it up for anyone and everyone, especially  
7 the accused.

8           So the big question is, is it Brady or is  
9 it not? And so, we litigate those issues. Are  
10 these records in the control, custody and control  
11 of the state? If they're investigatory records,  
12 law enforcement records, that sort of thing, case  
13 law is very clear that that is Brady, and we would  
14 review those records and turn over any records that  
15 would be exculpatory.

16           However, if they are a victim's own  
17 counseling records outside, let's say we -- in our  
18 office, we encourage free counseling service for  
19 crime victims. So we're saying, you know, we want  
20 to get you help. Here is free counseling. You  
21 know, go get better. Take care of yourself.

22           And then two weeks later, we have a

1 subpoena from defense counsel saying I want those  
2 records? I want to pull up a seat next to you in  
3 your counseling session. That's different. And  
4 so, we litigate those issues.

5           The close calls? Absolutely right. We  
6 turn those over to our judges and ask for an in  
7 camera inspection if the accused has made the  
8 proper showing of the need, and there is that close  
9 call. I mean, there are some where it is close.  
10 The records that we have that could potentially be  
11 Brady, but there are many victim records that are  
12 not Brady. They are their own private records.

13           They are not parties. This is not a  
14 civil suit, and they should have some degree of  
15 protection, again where they're not -- a  
16 defendant's not pulling up a seat in their  
17 counseling session. So we do litigate those issues  
18 weekly, if not --

19           CHAIRWOMAN JONES: Do you do that, and is  
20 there any tension when you do that between yourself  
21 and the prosecutor?

22           MS. LUTHER: And I will tell you that a

1 lot of it is training, understanding the case law  
2 and that sort of thing. But there can be. And in  
3 fact, we have case law addressing that.

4           Say, in Arizona, even though the victim  
5 has a constitutional right to refuse a discovery  
6 request, if those records are in the hand of the  
7 prosecutor and they are exculpatory, those need to  
8 be turned over because, as we discussed earlier,  
9 the defendant's right would trump if it's Brady  
10 material.

11           So there can be tension. But victims  
12 have a voice in that, and it's about communication  
13 and understanding what the rights are and  
14 explaining when you have to turn over records why  
15 you're doing that. And why you may not want a  
16 situation where victims are turning over anything  
17 and everything to you, making sure they understand  
18 that they have privacy rights, and what our role is  
19 and what our role isn't.

20           Because in my experience, even when I was  
21 a victims' attorney, my client always thought the  
22 prosecutor was their attorney as well. And trying

1 to understand the different roles and what the  
2 different jobs. What I liked as being a victims'  
3 counsel is explaining the privacy rights to the  
4 victim and making sure they understood that. So it  
5 was their choice, you know, as what they wanted to  
6 turn over and what they didn't.

7           Also sometimes explain to them if you go  
8 to counseling, I mean, there's a good chance  
9 defense counsel is going to ask for those records.  
10 It seems unfair to the victim to have that  
11 conversation, to say, you know, it's just another  
12 example how a victim can be betrayed when we're  
13 trying to provide healing to them. But again, for  
14 the last 20 years, we've been litigating those  
15 issues regularly and on a case-by-case basis.

16           Sometimes courts order those records to  
17 be turned over. Sometimes they don't. And in our  
18 office, sometimes we appeal those rulings if we  
19 don't believe that it follows the law, and the  
20 appellate courts then address those issues.

21           So the victim has a right to take it up  
22 on appeal. We have a right to do that, and so we

1 kind of address on a case-by-case by enforcing the  
2 law.

3 COLONEL (RET.) COOK: Ma'am, if I may?

4 CHAIRWOMAN JONES: Sure.

5 COLONEL (RET.) COOK: Can I follow up  
6 with that? To make sure I understand it, the Crime  
7 Victim Legal Assistance Project that you are with,  
8 pro bono attorneys, but you weren't supported or  
9 staffed by the state in any way, were you?

10 MS. LUTHER: Yeah, and let me make it  
11 very clear. For 12 years, I worked for the Crime  
12 Victim Legal Assistance Project, which was a  
13 nongovernmental nonprofit. And now I'm actually a  
14 prosecutor, and I was actually brought over to make  
15 sure our office was complying with victims' rights  
16 and to actually have a more focused litigation  
17 strategy on victims' rights.

18 And so, if there's questions or  
19 litigation moments that need that specialty, I come  
20 in and do that.

21 COLONEL (RET.) COOK: Okay. And so,  
22 that's a system where Arizona has allowed that the

1 victims, to the extent that they choose to have a  
2 counsel there, they can come to an entity like you  
3 and get that counsel?

4 MS. LUTHER: That's right.

5 COLONEL (RET.) COOK: Now if you're  
6 looking at a military environment where what's  
7 being proposed is a government-appointed, funded  
8 attorney being provided to that victim, which means  
9 what happens -- you know, you talk about the  
10 exculpatory and the Brady, now is the evidence  
11 within the hands of the government? Because here's  
12 a legal assistance or another Judge Advocate or  
13 somebody who's been assigned to do that for the  
14 government, their rights in terms of the medical  
15 records, most military victims -- if it's a  
16 civilian victim, it may be a different issue.

17 But if you're within the military system,  
18 whether you're a dependent, family member, or the  
19 military person yourself, most of your records are  
20 within the government as well. You get your  
21 medical care through them. So the fight for those  
22 records isn't the same.issues. I guess what my

1 concern is if you know that that's an environment  
2 that we're proposing, does your strong belief in  
3 the system still apply?

4 I mean, it's one thing to say victims  
5 should have rights and maybe codifying them. Maybe  
6 they get the opportunity to have a victim counsel  
7 to represent their interests. Do they procure it  
8 if they want a civilian counsel the same way our  
9 Trial Defense Services do? Do they do it on their  
10 own, and we just make an allowance that lets them  
11 do that?

12 But to the extent the government provides  
13 them, the professional responsibility issues, the  
14 constitutional rights involved in all people -- I  
15 mean, right to privacy. In military service, you  
16 do waive some rights to privacy. And I'm not  
17 saying all should be. I'm just saying it's a  
18 reality.

19 So it's a question of how do you balance  
20 that in the military culture and the system, all  
21 provided by the government and then sustain it if  
22 we do incorporate it? Anyone -- if you want to

1 comment on that, Ms. Luther, because you've been  
2 experienced with it. But for the rest of you, any  
3 comments on that?

4 MS. LUTHER: Yeah, and I think that is  
5 definitely a challenge that we were discussing that  
6 issue, the Brady issue. My understanding was I was  
7 informed that upon the development of the program I  
8 think with the Air Force, that the government  
9 attorneys are considered just like a public  
10 defender would be. And I'm not sure within the  
11 charter, and again, excuse my ignorance on some of  
12 the issues, how this was all formed and that sort  
13 of thing.

14 And my understanding was that was  
15 addressed one of the first issues. If that's been  
16 taken care of, great. But obviously, if it's not,  
17 that's going to be an issue that I would think  
18 defense counsel will be coming forward with and  
19 saying, arguing Brady issues.

20 However, of course, we know that not  
21 every single record is Brady. And so, prosecutors,  
22 you know, deal with records every day and not every

1 single record is a Brady concern. So my guess is  
2 you'll -- it would end up working a lot like we do  
3 every day, going through those records, finding out  
4 what, indeed, is exculpatory, what is not, what is  
5 a fishing expedition.

6 But I think it's something that will  
7 obviously have to be addressed, maybe on a case-by-  
8 case basis. But attorney-client privilege may be  
9 different depending on that charter how that's  
10 established.

11 COLONEL (RET.) COOK: And if the  
12 attorneys involved can't agree between a special  
13 victims' counsel and a prosecutor, who makes the  
14 decision that the prosecutor may not get access to  
15 it because it's a confidential relationship? I'm  
16 just trying to understand the whole proposal  
17 better. I'm not trying to say one way or the  
18 other.

19 You know, in a gold standard, it sounds  
20 great, especially if it allows some of our victims  
21 to come forward and report. Reality for the  
22 military is 26,000 victims reported being victims.

1 How do we get after it? So --

2 MS. FISHER: I think, you know, the value  
3 of having them there to get people to report,  
4 knowing that they're going to have an advocate is  
5 terrific. I guess my concern is not so much the  
6 records. My concern is, you know, and I met with  
7 many members of -- reps from the military in my  
8 office in Queens a couple of months ago, and you  
9 know, a lot of the cases are just like mine.

10 Eighty percent of them -- the people know  
11 each other. There's alcohol involved. There's  
12 drugs involved. It's a huge problem. And so, my  
13 concern is if the -- not so much the records, but  
14 if the victim believes they have an attorney with  
15 100 percent attorney-client privilege, which was  
16 described earlier, it's not the records that I  
17 worry about so much. It's the victim telling them  
18 something and saying, "Do not tell the prosecutor,"  
19 you know?

20 And so, and the defense -- the defendant  
21 has an attorney, and they know each other. So the  
22 defense attorney is going to know whatever it is

1 that she's told her lawyer, and the only person  
2 that's left out in the cold at the trial might be  
3 the prosecutor, and that's a concern. Because the  
4 victims' advocate can't really share because they  
5 have a privilege and they have no obligations under  
6 Brady.

7           So I guess that when I was thinking about  
8 it, I see a huge amount of advantages. But this is  
9 one that really concerns me in terms of making sure  
10 that justice is done.

11           CHAIRWOMAN JONES: Well, you know, it's  
12 interesting, though, when you bring a witness in,  
13 as the lawyer bringing a witness in who's going to  
14 be prepared by a prosecutor and the prosecutor asks  
15 those questions that a prosecutor has to ask about  
16 what bad things have you done? Tell me every bad  
17 thing you've done in your life because I'm going to  
18 put you up there, and I want people to believe you,  
19 and I have to know all the facts about this case.

20           Frequently, the counsel for that witness  
21 is telling them whatever you do, don't lie and be  
22 completely truthful. So if everything's working

1 right --

2 MS. FISHER: Right.

3 CHAIRWOMAN JONES: -- it might work. Or  
4 it should work.

5 MS. FISHER: And we have those  
6 conversations. You know, we say, listen, he knows.  
7 He's telling his attorney. And we have been doing  
8 this, if it's me and another attorney, for a  
9 century.

10 So whatever you perceive the weaknesses  
11 in your case to be, if you were drinking, if you  
12 were doing drugs, if you had sex with him before,  
13 we can handle all of these things. We win a huge  
14 number of our cases. But you got to be honest.

15 So I feel that we can do this, and we  
16 don't need somebody intervening keeping that stuff  
17 a secret from us. That's what I worry about. And  
18 it should work if you handle it correctly.

19 CHAIRWOMAN JONES: Well, I was saying it  
20 could work or should work if victims' counsel  
21 understands how important it is that the witness,  
22 the victim witness tells the complete truth to the

1 prosecutor when asked the questions. That was the  
2 model I was thinking of.

3 COLONEL (RET.) COOK: Madam Chair, if I  
4 can ask another one? This is something completely  
5 different.

6 The Article 32 investigation that you had  
7 mentioned, which, for us, is a pretrial type of  
8 investigation, and right now, what it becomes  
9 sometimes is a mini trial because there are no  
10 limits on what's placed. If the military were to  
11 move to a process where we limited that more to the  
12 prima facie type case like the civilian community,  
13 can you each comment to me that for the defense in  
14 the military system now, the Article 32 for the  
15 prosecution is the ability to present enough of  
16 your case to say is there sufficient evidence to  
17 send the case to trial?

18 But for the defense, it's also the  
19 opportunity to see the evidence against their  
20 client and, in some cases, to put on as much or as  
21 little of a defense of that case to show that  
22 person who's making a decision, is there enough to

1 go to trial or that there isn't. So it's a  
2 discovery tool for them to see the evidence. It's  
3 a defense tool to see maybe they could influence  
4 what the next step would be.

5           If we take it away and we go limit it to  
6 the prima facie case, and it just becomes -- and we  
7 take away that discovery tool aspect, what  
8 alternative should we be considering, based on your  
9 experience? How else do you -- how does the  
10 defense get a lot of that evidence through your  
11 systems right now that the military may not have in  
12 place?

13           MS. STAMOS: Well, I'll just really  
14 quickly answer that and let Chris -- quite frankly,  
15 when Chris mentioned in his testimony about the  
16 Article 32, and I'm not steeped in the military  
17 justice system at all, but I do read the papers.  
18 And when the recent Article 32 hearing that we all  
19 in this area were aware of, which was the Navy, the  
20 Naval Academy Article 32 hearing, it was  
21 unimaginable to me that that young woman was on the  
22 stand for hour after hour. I think it was over the

1 course of several days perhaps.

2           So certainly, you know, a victims' rights  
3 issue is that, that someone can be cross-examined  
4 within an inch of her life before the trial even  
5 starts and have -- and use it as a discovery tool.  
6 That's where I think the military might want to  
7 focus its attention on changing those rules.

8           Because anyone who goes through that, I  
9 mean, you would have given -- and I'm not  
10 commenting on the merits of that case, but you  
11 know, what kind of person would go through that  
12 kind of crucible at a preliminary hearing and then  
13 be expected, you know, three months later or, you  
14 know, whatever to then stand trial and go through  
15 that again?

16           So that would be a place where I would  
17 want to look at, and then you would do your  
18 discovery rules. You know, open file discovery. I  
19 mean, Virginia is a very narrow discovery state.  
20 However, in my office, the tradition has been we do  
21 open file discovery. So you can come in. You can  
22 look at our police reports. We show you what we've

1 got.

2           And in most cases, obviously, the case is  
3 resolved by way of pleas because we do provide the  
4 discovery. Does the victim have to get on the  
5 stand in most preliminary hearings in sexual  
6 assault cases in my jurisdiction? Absolutely.

7           But it's very circumscribed. It's very  
8 narrow. You can't do any kind of rape shield stuff  
9 there. There has to be a rape shield hearing if  
10 you're going to go into all that stuff, which I'm  
11 assuming the military would also have. Although  
12 from the sound of that Article 32 hearing, that was  
13 a free-for-all.

14           CHAIRWOMAN JONES: You know, Mr. Mallios,  
15 I think you said it right at the beginning of your  
16 statement with respect to Article 32. A probable  
17 cause hearing, and I think in 23 years as a federal  
18 and state prosecutor -- well, let me say as a  
19 federal prosecutor, I saw two, I think.

20           Because you only had them if you weren't  
21 able to get a grand jury indictment. And no  
22 magistrate or judge allowed any length of cross-

1 examination of the victim witness because it was  
2 only to be a probable cause determination, not  
3 anything to do with the victim's credibility.

4           What I learned at a previous panel was  
5 that the military does not have a discovery system  
6 and that that's what the Article 32 does. And in  
7 the dialogue, you know, the notion that the  
8 military justice system might well go to a probable  
9 cause hearing and then establish discovery rules,  
10 you know, there's a Federal Rule of Criminal  
11 Procedure that lays out everything a defendant is  
12 entitled to in discovery.

13           And that might have to be the substitute.  
14 And I think I don't know where the military is at  
15 in working on that, but I know that it's a subject  
16 that they're looking into at this point. But I  
17 think that was your suggestion right at the  
18 beginning.

19           MR. MALLIOS: And I'm a little bit --

20           COLONEL (RET.) COOK: Before you answer,  
21 I just want to clarify one thing. The military  
22 does -- it's not that the military doesn't have a

1 discovery rule. I mean, Brady applies to the  
2 military, as it does any other court.

3 CHAIRWOMAN JONES: I'm sorry. I meant  
4 what you can request --

5 COLONEL (RET.) COOK: It would have to be  
6 beefed up in some areas probably. I just want to  
7 make sure that it's clarified that we do have some  
8 discovery.

9 CHAIRWOMAN JONES: Right. Right. I  
10 meant the specific requests, not Brady.

11 MR. MALLIOS: And I've heard before that  
12 sometimes the commander or the person making  
13 prosecution decisions about whether and how to go  
14 forward, that sometimes they also rely on the  
15 Article 32 hearing to assess their case. That  
16 concerns me.

17 I think the prosecution should have  
18 access to a full and thorough investigation. And  
19 if there are things that have not been  
20 investigated, then they should have additional  
21 investigation. And if there are facts that the  
22 defense attorney is aware of that the defense

1 attorney wants to bring to the prosecutor's  
2 attention, I think that they can do that without  
3 doing it by subjecting a victim to that type of  
4 cross-examination.

5 I had many attorneys contact me and say  
6 could you take another look at this case? Or let  
7 me give you some additional information. Or let me  
8 bring my client in to proffer him about -- so you  
9 can hear his version. Sometimes they talk to the  
10 investigators, sometimes they don't, and that  
11 happens later in the process.

12 That's all part of pursuing justice is  
13 getting that type of information. But doing that  
14 at the expense of subjecting a victim to that type  
15 of cross-examination I think -- I think is  
16 problematic in these cases and very, very different  
17 than anything that happens in civilian criminal  
18 justice systems.

19 CHAIRWOMAN JONES: Professor Hillman?

20 PROFESSOR HILLMAN: Thank you, Madam  
21 Chair.

22 Thank you for your perspectives. They're

1 very helpful to me.

2           I keep coming back to where Mr. Mallios  
3 started, which is the distinctions between military  
4 and civilian justice, state and federal. Military  
5 judges are not like federal judges. Military trial  
6 counsel are not like federal prosecutors. The  
7 preliminary hearing, the Article 32 is not like a  
8 preliminary hearing. The post trial review to  
9 which you referred under 66(c) of the UCMJ is not  
10 like the appellate review that happens in a  
11 civilian criminal conviction appeal.

12           Given all those distinctions, in  
13 addition, the JAG Corps is tasked with many  
14 responsibilities, military justice being a primary  
15 one, and we do have many experienced Judge  
16 Advocates, many of whom we've heard from, with  
17 tremendous experience. But they aren't like the  
18 prosecutors you describe with that career  
19 experience and extended experience.

20           And I wonder if given those differences,  
21 especially for those of you, for Ms. Stamos and Ms.  
22 Fisher, who really feel that this is a wedge, a

1 potential wedge that corrupts the capacity to  
2 prosecute effectively in these cases, did those  
3 differences temper your -- your sense that that  
4 really would be a wedge rather than a way to  
5 address some of those distinctions between civilian  
6 and military justice in sex crimes?

7 MS. STAMOS: Well, I mean, one of the --  
8 it's an interesting question, and it is so  
9 different. The systems are very different. But,  
10 and I guess from where I sit, the question is, is  
11 the notion of -- and I'm not sure, I guess all you  
12 folks will come up with recommendations to Congress  
13 about what to change or what not to change, what to  
14 add or what not to add.

15 And you know, it sounds to me like there  
16 might need to be some substantive changes in the  
17 way things are done in the military vis-à-vis  
18 criminal prosecutions. And certainly, sexual  
19 assault cases are sui generis. They are very  
20 different, and as we all know, most of our -- and  
21 same thing in my jurisdiction, you know, the bulk  
22 of our sexual assault cases, other than the child

1 sexual assault cases involving family members, is,  
2 you know, someone of an acquaintance type of  
3 situation. Alcohol or drugs are involved.  
4 Recollections are cloudy.

5           Prosecutions are difficult because the  
6 main reporter can't produce the evidence that we  
7 need to prosecute. And that's the problem in the  
8 military, too, I'm sure.

9           But I think, in addition, and Chris has  
10 made a couple of very good suggestions, just as a  
11 novice as I'm listening to him, the idea that, you  
12 know, if a young woman -- you know, there was like  
13 possession of cocaine. You know, when she goes to  
14 report, we find in her backpack or her handbag that  
15 she's got some cocaine in there when she's at the  
16 scene getting examined, well, we're not going to --  
17 we're not going to prosecute her for possession of  
18 cocaine.

19           Do we have to turn that over to the  
20 defense? Do we have to tell? Yes, she had cocaine  
21 in her bag, but we dropped the charges. You know,  
22 have that on a cross-examination if you think

1 that's going to move the ball.

2           But it seems to me that in the military  
3 if they have the discretion to say to a young woman  
4 who was drunk and, you know, perhaps conducting  
5 herself in a way that the military says you cannot  
6 do, that they have the discretion to say, well,  
7 we're not going to pursue that. I mean, that's not  
8 going to be an issue. There are not going to be  
9 these collateral misconduct issues, which would  
10 make it easier for that person to report, more, you  
11 know, willing to report, and not have the worry of  
12 having these collateral things happen down the road  
13 for whom I guess -- for which they need that  
14 attorney.

15           So it sounds like there are a lot of  
16 changes that need to be made, and I'm not so sure  
17 that lawyer is what really is going to get to the  
18 crux of the problem.

19           MS. FISHER: I really think, if it were  
20 up to me -- and certainly it isn't. But the  
21 greatest bang for the buck would be to set up a  
22 special victims prosecution unit where people stay

1 and they don't switch to being defense attorneys  
2 and victims' lawyers. They just become super  
3 effective and super well trained in doing this, and  
4 they make a commitment to it.

5           And to me, that would, you know, take the  
6 place of, you know, the two years that someone is  
7 going to be in the job of a special victims'  
8 counsel. Like I said before and I think you said,  
9 you know, I have assistants who love the work, and  
10 there are some people who hate it. But I have  
11 assistants who love the work who have been with me  
12 for 15, 18 years, and they can try anything.

13           And if the woman was drunk or if she was  
14 on drugs or if she has committed 12 crimes  
15 beforehand, you know, knock yourself out. Cross-  
16 examine her. But we have a woman who was strangled  
17 and who has some injury, and we're going to do just  
18 fine.

19           But that's because of their experience,  
20 and that's because of their ability to create this  
21 rapport with the victim where they're getting the  
22 full and true story. And so, if it were up to me,

1 I'd take the 25 million bucks, and I'd set up a  
2 unit that --

3 CHAIRWOMAN JONES: They wish they had 25  
4 million bucks.

5 (Laughter.)

6 MS. FISHER: I know that. And that's  
7 what I would do with it. It sounds like it's a  
8 reality, and I wish them the best of luck, and  
9 they're doing some wonderful things with it. But  
10 my idea of getting the best value would be to set  
11 up a consistent unit where people look like they're  
12 invested in it for a career.

13 CHAIRWOMAN JONES: I have to make an  
14 announcement now that there's going to be a fire  
15 drill at 3:00 p.m. today, and once it starts, if  
16 you were to leave the courtroom, you will be herded  
17 out and put on the street somewhere until they let  
18 you back in. And it's also going to be quite noisy  
19 from about 3:00 p.m. to 3:10 p.m. or 3:15 p.m.

20 So since you all have free will, you can  
21 make your own choices about what you want to do. I  
22 don't know if people want to -- may have to get out

1 of here beforehand or if everybody just wants to  
2 stay the course?

3 COLONEL HAM: So we are exempt from  
4 departing the courtroom.

5 CHAIRWOMAN JONES: We don't have to  
6 leave. Right.

7 MR. MALLIOS: Could I just -- I am going  
8 to leave, but I just wanted to respond to that  
9 issue. I have seen nonlawyer victim advocates who  
10 are well trained and well versed in the law do a  
11 phenomenal job protecting victim rights, working  
12 closely with prosecutors. Victim advocates,  
13 probably not government employees, but community-  
14 based advocates or civilian who -- with whom the  
15 victim does have confidentiality.

16 I think they could do a very good job of  
17 doing most of the things that the victim rights  
18 attorneys would do and in appropriate cases make  
19 referrals to attorneys who are available. I think  
20 that may be one way to fill that void, but also  
21 make referrals to attorneys when necessary. That's  
22 the system I worked under.

1           We had prosecution-based victim witness  
2 coordinators, and we had community-based victim  
3 advocates in our local rape crisis center and  
4 children's alliance. And they were just  
5 phenomenal, and they had pro bono attorneys on  
6 standby to make those types of referrals.

7           VICE ADMIRAL (RET.) HOUCK: I just had  
8 one observation I make, and this is the not the  
9 place, I think, to kind of litigate the issue. But  
10 a couple of comments have come up about the issue  
11 of collateral misconduct, and it's -- it's very  
12 difficult for us, and it's not to say that cocaine  
13 use, for example, is the equivalent of a sexual  
14 assault. I'm not saying that at all.

15           I think I'm just sort of putting down a  
16 placeholder that it's a different issue for us.  
17 It's relatively easy to say cocaine use, whatever,  
18 is different for us. And for reasons that --  
19 you're all smart. It's probably really obvious to  
20 you why it's different for us.

21           But I just wanted to make that  
22 observation. And we -- it's -- we have a lot of

1 work to do in sorting through it, and so that's not  
2 to say that I think that anybody on this panel is  
3 close-minded to thinking about it in a different  
4 way, but it's a harder issue than it might be for  
5 you.

6 COLONEL (RET.) COOK: One brief question.

7 CHAIRWOMAN JONES: Sure. Go ahead.

8 COLONEL (RET.) COOK: Can anybody just  
9 confirm for me, unless there's a victims' counsel,  
10 working with the prosecutors, working with your  
11 victim assistance programs, is there any place  
12 other than a counsel that the victim can come  
13 forward and make a statement confidentially in your  
14 civilian sectors? The counsel program, yes. Okay?

15 MS. LUTHER: Under Arizona law, our  
16 victim advocates in our office, and like you, we  
17 have victim advocates that are non-attorneys in our  
18 office. They do have victim-advocate privilege.  
19 But there is the Brady exception even for them.

20 So we do have that for our victim  
21 advocates within our office.

22 COLONEL (RET.) COOK: Anyone else?

1           MS. FISHER: We have a social worker-  
2 client privilege, and we have a rape crisis  
3 counselor-client privilege. I would tell you that  
4 if -- and we have two rape crisis counselors that  
5 work for a hospital that just sit in our bureau.  
6 So they are from an outside agency.

7           I will tell you that if a victim comes to  
8 them and says, "You know what, I lied to the DA. I  
9 don't want you to tell them." I think that person  
10 would probably work with the victim to get them to  
11 the point where they could disclose it.

12           But they do have, you know, people to  
13 talk to where they can have, you know, a cloak of  
14 confidentiality until it gets to the point where  
15 it's got to be turned over or someone's going to go  
16 to jail who shouldn't.

17           MR. ANDREWS: Clearly, I have the  
18 confidentiality, and it's one of the I think really  
19 no different than representing any other civil  
20 client I may have.

21           I do want to touch on a couple things, as  
22 I've been sitting here quietly. One, let's not --

1 and I know we haven't forgotten about this. But  
2 the government does not represent victims. I think  
3 that's pretty clear about that. Sometimes they  
4 believe they do, and as a prosecutor, you kind of  
5 take that role because but for them, you would not  
6 have a case.

7           But as I'm often reminded by the  
8 judiciary, the government doesn't represent the  
9 victim, and that's why attorneys or at least  
10 through the CVRA are carved out for that  
11 opportunity for that representation. I think  
12 that's very important.

13           The second is, of course, I fully support  
14 the way the Air Force has adopted their special  
15 victims unit of having legally trained attorneys.  
16 I can't emphasize the importance to have somebody  
17 legally versed especially in the mine field of  
18 crime victims' rights.

19           I mean, look at the discussion we've had  
20 today. I mean, it's been tantamount. It's been  
21 great. But can you imagine a layperson trying to  
22 explain this to a victim? I think it would be very

1 difficult. That's why I think somebody that's a  
2 trained lawyer would be happy to weave them through  
3 that.

4           And if I could address the gentleman, the  
5 vice admiral's comments about collateral charges.  
6 Interesting enough, sir, I'm going through this  
7 right now. I have my very first military client.  
8 She's an officer in the Air Force, and she has been  
9 brought up on an Article 15 charge collaterally.

10           She's a victim of a sexual assault in  
11 which it's being investigated by the federal  
12 government, and the charge is drinking alcohol.  
13 And there may be some consequences for her for  
14 having alcohol. But when we're talking about the  
15 greater good of having her career taken from her  
16 because she's violated that -- and I understand the  
17 command, the chain of command, and I understand the  
18 law and order. So, please, don't let me think I'm  
19 mitigating that.

20           But when you weigh that, as opposed to  
21 being brutally raped, I find that kind of  
22 disingenuous. But that's just my opinion, and

1 again, I mean, I mean absolutely no disrespect for  
2 men and women who serve in that law -- in that  
3 armed forces that go by those military  
4 requirements. But as a victims' rights attorney  
5 for a number of years and as we've heard in the  
6 civilian world, that drinking charge probably would  
7 not see the light of day.

8 CHAIRWOMAN JONES: I think Professor  
9 Hillman has one last question.

10 PROFESSOR HILLMAN: I just -- I would  
11 stay on this and just for a moment to respond to  
12 Admiral Houck raising this. This is a critical  
13 issue for us to increase reporting to decide what  
14 to do, as with Mr. Mallios pointed out is  
15 especially an issue on campuses, the collateral  
16 misconduct issue.

17 The campus is the environment that has  
18 the demographic closest to our most problematic  
19 demographic in the armed forces. What to do with  
20 collateral misconduct in an environment where  
21 conduct unbecoming an officer and a gentleman is a  
22 crime in the military, and there's the general

1 article that criminalizes a huge range of things  
2 not only cocaine, illegal drug use, but so many  
3 other things that, in fact, are not criminal in the  
4 civil system.

5           It's a huge problem for us in terms of  
6 encouraging reporting until we deal with that issue  
7 of collateral misconduct and the potential for  
8 amnesty to increase reporting.

9           CHAIRWOMAN JONES: Did you have another  
10 question?

11           PROFESSOR HILLMAN: No, ma'am. Sorry.

12           CHAIRWOMAN JONES: That's okay. All  
13 right then. I think we'll take our break now,  
14 unless there are any final comments from the Panel?

15           (No response.)

16           CHAIRWOMAN JONES: Okay. And you may  
17 escape before the fire drill if you really hurry.

18           (Whereupon, a recess was taken.)

19           CHAIRWOMAN JONES: For our last panel of  
20 the day, we have Perspectives of the Military  
21 Defense Bar, and I want to begin with Colonel  
22 Cullen, who's the Chief of the U.S. Army Trial

1 Defense Service. Colonel?

2 COLONEL CULLEN: Judge Jones, members of  
3 the Panel, I am Colonel Peter Cullen, Chief of the  
4 U.S. Army Trial Defense Service, and I have served  
5 in this position since August of 2012.

6 Thank you for extending an invitation to  
7 the leaders of the Military Defense Bar and our  
8 civilian colleagues to address you this afternoon.  
9 We each have an important perspective on the  
10 practice of military justice as it pertains to the  
11 investigation, prosecution, and adjudication of  
12 crimes involving adult sexual assault and related  
13 offenses.

14 The views I am expressing today are my  
15 own, and they do not reflect the positions of the  
16 Judge Advocate General or the Department of the  
17 Army. I've submitted the complete text of my  
18 statement for the record and would like to take  
19 just a few minutes to highlight some sections of my  
20 statement.

21 Let me begin by providing you some  
22 background information about defense practice in

1 the Army. Established in 1980, the mission of the  
2 U.S. Army Trial Defense Service is to provide  
3 independent, professional, and ethical defense  
4 services to soldiers. I have the great privilege  
5 of supervising approximately 150 talented and hard-  
6 working defense counsel who are serving on active  
7 duty in more than 50 offices worldwide.

8 I'm very proud of the tremendous work  
9 being done on a daily basis by Army defense counsel  
10 and the critical role they play in ensuring the  
11 integrity and constitutional sufficiency of our  
12 military justice system. The vast majority of  
13 these defense counsel are young, company-grade  
14 officers in their first or second tours as Judge  
15 Advocates.

16 When they start out as defense counsel,  
17 they frequently have limited military justice  
18 experience. They normally serve 18 to 24 months as  
19 defense counsel before moving on to another  
20 assignment. They compensate for their lack of  
21 experience with an impressive work ethic and a  
22 selfless dedication to ensuring each soldier client

1 receives the best possible representation.

2           In about 10 to 15 percent of cases, the  
3 Army trial defense counsel is joined on the case by  
4 a civilian defense counsel who has been retained by  
5 the soldier client at no expense to the government.  
6 In fiscal year 2013, the U.S. Army Trial Defense  
7 Service represented soldiers in approximately 910  
8 general and BCD special courts martial. This  
9 averages out to fewer than 10 courts martial per  
10 military defense counsel per year.

11           While the number of tried cases has  
12 leveled off in recent years, this should not mask  
13 the increasing complexity of our courts martial  
14 practice, especially the rising number of contested  
15 cases, over 40 percent of our general courts  
16 martial in FY '13, and a very robust motions  
17 practice.

18           I attribute these trends to the growing  
19 number of sexual assault cases that occupy more and  
20 more time on the court martial docket. Well over  
21 one-third of all courts martial in FY '13 involved  
22 charges of sexual misconduct.

1           In representing an accused service  
2 member, the defense counsel is confronted with the  
3 tremendous resources of the command, military law  
4 enforcement, and prosecutors. It can be a lonely  
5 and often uphill struggle for the defense to gain  
6 access to the witnesses, evidence, and resources  
7 needed to properly defend a soldier and ensure a  
8 fair trial.

9           Increasingly, defense counsel must also  
10 confront and overcome instances of unlawful command  
11 influence in sexual assault cases. There is  
12 tremendous pressure on senior leaders to articulate  
13 zero tolerance policies and pass judgment on those  
14 merely accused of sexual assault. Even if command  
15 actions do not rise to the level of unlawful  
16 command influence, it contributes to an environment  
17 that unfairly prejudices an accused's right to a  
18 fair trial.

19           I highlight these matters to ensure that  
20 there is some awareness of the institutional and  
21 systemic challenges already faced by defense  
22 counsel in sexual assault cases. As you evaluate

1 various legislative proposals, I ask that you be  
2 cognizant of the additional burdens these proposals  
3 will place on defense counsel in terms of their  
4 ability to ensure service members receive a fair  
5 trial.

6           Our military justice system is not  
7 perfect, and it can always be strengthened. We  
8 must be open to all informed ideas on how to  
9 improve the system and make it better for all  
10 concerned. I support a deliberate and thoughtful  
11 approach to reform of the military justice system.

12           The system that we operate in the  
13 military was developed after long and careful study  
14 and incorporates various checks and balances that  
15 reflect appropriate compromises between the  
16 command's unique need for good order and discipline  
17 and the service member's fundamental right to a  
18 fair process. The military justice system differs  
19 from its civilian counterparts in many significant  
20 ways. Some of these differences favor the defense,  
21 and some benefit the prosecution.

22           Proponents for change have claimed that

1 the military justice system is hostile to  
2 complaining witnesses and far too protective of the  
3 rights of accused service members. In so doing,  
4 they criticize procedures such as the Article 32  
5 investigation while failing to acknowledge that  
6 many of the procedural protections for defendants  
7 in civilian jurisdictions are not available to  
8 military accused. Here are just a few examples.

9           A service member does not enjoy the right  
10 to a jury of his or her peers. Instead, members of  
11 courts martial panels are hand-picked by the  
12 convening authority. A service member can be  
13 convicted of serious crimes by less than a  
14 unanimous verdict. Only two-thirds of the Panel  
15 members must agree before returning a guilty  
16 verdict.

17           A general court martial panel can be  
18 composed of as few as five members. This means a  
19 service member can be convicted of crimes carrying  
20 a maximum punishment of life imprisonment without  
21 eligibility for parole on a two-thirds vote of only  
22 four members. The requirements are even less for a

1 special court martial, which can be composed of as  
2 few as three members.

3           The defense does not enjoy the  
4 independent right to subpoena witnesses or  
5 documentary evidence. Instead, the defense must  
6 request witnesses or documents through the  
7 prosecutor, providing a justification, which the  
8 prosecutor can deny.

9           The defense counsel may take the issue up  
10 with the military judge, but not in an ex parte  
11 process. Instead, the prosecutor is present when  
12 the defense counsel explains to the military judge  
13 how the witness or evidence is relevant to the  
14 defense case. Of course, the prosecutor provides  
15 no such explanation to the defense before issuing a  
16 subpoena to secure witnesses helpful to the  
17 government.

18           Unfortunately, it appears that most of  
19 the changes to the military justice system that are  
20 under serious consideration are motivated in large  
21 part by a desire to make it easier for the  
22 government to convict service members accused of

1 sexual assault. As the Chief of the U.S. Army  
2 Trial Defense Service, I am understandably  
3 skeptical of such so-called reform. I'm deeply  
4 concerned that these proposals for change are being  
5 made without adequate regard for the rights of  
6 accused service members.

7           Viewed in isolation, many of the  
8 proposals have attracted broad support. If,  
9 however, they are considered in their entirety, I  
10 believe it becomes readily apparent that their  
11 cumulative impact will be to decisively tip the  
12 balance in favor of the prosecution and undermine  
13 the service member's right to a fair trial. In so  
14 doing, it fundamentally alters the character of the  
15 military justice system in a way that will risk  
16 depriving it of legitimacy.

17           As you continue your careful review of  
18 the response systems to adult sexual assaults and  
19 contemplate what recommendations to make to  
20 Congress, I would ask that you consider the  
21 following two matters. First, service members  
22 sacrifice a great deal when they enlist or are

1 commissioned in the military. They should know  
2 that when they volunteer in the service of the  
3 nation that they do not forfeit their right to a  
4 fair and impartial process if ever accused of a  
5 crime of sexual assault.

6           There should be no weakening of the  
7 important procedural protections embedded in our  
8 military justice system. These safeguards are  
9 absolutely essential to ensure just outcomes at  
10 courts martial.

11           And secondly, tremendous resources are  
12 arrayed against a service member accused of a crime  
13 of sexual assault. Service members deserve the  
14 best possible representation, and this means that  
15 we must continue to resource the defense function  
16 even in today's constrained budget environment.

17           Thank you for your attention, and I look  
18 forward to answering your questions.

19           CHAIRWOMAN JONES: Thank you very much,  
20 Colonel.

21           Next we'll hear from Colonel Joseph  
22 Perlak, who is the chief defense counsel of the

1 U.S. Marine Corps Defense Services Organization.

2 Colonel?

3 COLONEL PERLAK: Thank you, Judge Jones.

4 And I bid a good afternoon to this most  
5 distinguished Panel.

6 My name is Colonel Joe Perlak, and since  
7 31 July, it's been my singular privilege to serve  
8 as the chief defense counsel of the United States  
9 Marine Corps and as the officer in charge of the  
10 Marine Corps Defense Services Organization. These  
11 remarks are mine and mine alone.

12 For the past 100 days, I've been leading,  
13 training, and supervising an impressive, committed  
14 group of advocates as they brilliantly carry out  
15 duties guaranteed by the Sixth Amendment. Our  
16 nearly 100 members consist of one highly qualified  
17 expert, four regional leaders, senior defenders and  
18 new defenders, and enlisted support personnel, and  
19 a small, but distinguished Reserve bar. There are  
20 approximately 80 attorneys in the DSO, and I'm part  
21 of the overhead. I'm not doing cases. I'm  
22 leading.

1           DSO personnel perform their mission on  
2 behalf of, and with my apologies to my colleagues  
3 here at this table, the most extraordinary clients.  
4 They are United States Marines, amongst whom I  
5 jealously include those superb and motivated  
6 sailors who selflessly serve and choose to serve  
7 among, with, and as United States Marines.

8           The clients of the DSO are drawn from the  
9 very greatest this nation has to offer. They are,  
10 to a woman and to a man, someone we must never  
11 forget is a volunteer serving their nation in time  
12 of war.

13           If they're 18, as many of our clients  
14 are, they have known for their entire cognitive  
15 life a nation at war. If they're 28, they've known  
16 a nation at war since at least high school, and  
17 they have done what so very, very few in a country  
18 of 330 million persons do, and that is volunteered  
19 to serve. And they continue to serve.

20           And if they're 38, they've dedicated  
21 their lives to the defense of this nation in a 30-  
22 year continuum of conflict we only now begin to

1 appreciate began on October 23, 1983, at an airport  
2 in Lebanon.

3           Many, if not most, of our clients have  
4 been to war. They've been exposed to extremes of  
5 sound, smell, sight, sleep deprivation, fear, and  
6 overwhelming responsibility -- responsibility for  
7 themselves in an unforgiving environment,  
8 responsibility they've never had before in their  
9 lives, responsibility for the lives of others. And  
10 they've done so in an environment where alcohol and  
11 intoxicants and diversions from harsh reality are  
12 prohibited, and they are unavailable.

13           But then they return to find the other  
14 extreme, often the polar opposite of what I just  
15 described to you. A lack of stimuli, no externally  
16 compelled emotion, extremes of boredom, and often  
17 returning with mental and physical injuries for  
18 which they are medicated or for which they self-  
19 medicate in a land where those medications, be they  
20 illicit or distilled, are commonly available.

21           They are exposed to two extremes of human  
22 experience in an incredibly brief window during

1 which even the fully developed human mind cannot be  
2 expected to flip a switch from one to the next.  
3 Science has shown us that for the males especially,  
4 of which the Marine Corps is vastly male, the mind  
5 is not fully developed until the mid to the late  
6 20s. So when I talk to you about the DSO's  
7 clients, they are young men.

8           Still boys, but expected to act like men  
9 one day. Kill or be killed. And then to return to  
10 be asked to be a gentleman and to be gentle the  
11 very next day, which, to an extraordinary degree,  
12 the vast majority are able to do nearly all of the  
13 time.

14           Please don't mistake anything I just said  
15 as an excuse for criminal behavior, but it is  
16 extraordinarily important context to the  
17 environment and the persons that we're talking  
18 about and the decisions that they make that put  
19 them in the crosshairs of the UCMJ.

20           As persons dedicating ourselves to the  
21 military, to the law, for the betterment of  
22 military law, we must likewise never forget that

1 the Marines and sailors defended by the DSO are not  
2 attackers, victimizers, assailants, rapists, or any  
3 other pejorative brand they have been given, and  
4 I'm disturbed by the loose and repeated application  
5 of those brands particularly in advance of a  
6 finding of guilty.

7           The point for labels and the point for  
8 brands, if appropriate, doesn't even occur in our  
9 military courtrooms. In our process, it does not  
10 even occur when a service court of criminal appeals  
11 decides a case. If only it applies, it is upon  
12 completion of the procedural due process put in  
13 place that includes either a decision or denial at  
14 the Court of Appeals for the Armed Forces directly  
15 below the Supreme Court. That's when a conviction  
16 is finalized in our system. That's when those  
17 terms pertain to these Marines and sailors and the  
18 other service members represented by my colleagues.

19           And we introduce an obvious prejudice in  
20 using these terms and brands in advance of  
21 findings, and I find that to be a challenge to due  
22 process that has taken the UCMJ over six decades to

1 develop for them. The presumption of innocence and  
2 that application of due process of law demand much  
3 better of us.

4           We're talking about an all-volunteer  
5 force at continuous war who face prosecution in a  
6 still imperfect, hybridized system mixed with  
7 discipline and justice that has taken two  
8 generations to place in whatever balance we think  
9 it is in today. It seems a uniquely incongruous  
10 time to be discussing revolutionary change and any  
11 systematic curtailment of the rights of the accused  
12 in the court martial process.

13           The mission of my organization, the DSO,  
14 reads as follows. "The Marine Corps Defense  
15 Services Organization provides zealous, ethical,  
16 and effective defense counsel services to Marines  
17 and sailors who are facing administrative,  
18 nonjudicial, and judicial actions in order to  
19 protect and promote due process, statutory and  
20 constitutional rights, thereby ensuring the  
21 military justice system is both fair and just."

22           The challenge you face is to rise above

1 these anecdotes, emotions, and premature and  
2 prejudicial use of these brands to ensure that the  
3 words in our mission statement, hard earned  
4 incrementally over time, can continue to ring true.

5           And I thank you for your time and look  
6 forward to your questions.

7           CHAIRWOMAN JONES: Thank you, Colonel.

8           We'll now hear from Captain Charles  
9 Purnell, U.S. Navy Commanding Officer, Defense  
10 Service Office Southeast. Captain?

11           CAPTAIN PURNELL: Good afternoon, Judge  
12 Jones, members of the Panel. Thank you for having  
13 us.

14           As everyone else has said, the views  
15 expressed here are my own personal views. I'm the  
16 commanding officer of Defense Service Office  
17 Southeast. That's one of four Navy defense  
18 commands. We have 19 offices worldwide. Our  
19 mission is to defend service members, and that's  
20 our sole mission.

21           Since the October 12, 2012, establishment  
22 of the Defense Service Offices, we have reported to

1 an independent Chief of Staff for the Defense  
2 Service Offices and, ultimately, to Commander,  
3 Naval Legal Service Command.

4 Our defense counsel include about 74  
5 officers and 38 legalmen defending service members.  
6 Of that number of 74 officers, slightly more than  
7 half are what we refer to as "core defense  
8 counsel," and their primary role and they spend 75,  
9 80 percent of their time involved in courts martial  
10 litigation and in conducting supervisory counsel  
11 responsibilities.

12 The rest of our officers are accession  
13 officers who come to us for a six- to eight-month  
14 rotation during their first tour as Judge  
15 Advocates. Their responsibility is to defend  
16 service members at administrative boards and also  
17 to provide advice about other administrative  
18 matters and personnel law issues, such as  
19 nonjudicial punishment.

20 In addition to their supervisory counsel,  
21 our defense counsel have access to the Defense  
22 Counsel Assistance Program, which is staffed by two

1 officers and one highly qualified expert, who is a  
2 very senior civilian with 20, 30 years experience.

3 I don't recognize the picture of military  
4 justice that I see on the news. In my experience,  
5 commanders and commanding officers have been  
6 absolutely zealous in pursuing misconduct. I have  
7 never seen a commander or commanding officer not  
8 respond to an allegation of misconduct or to seek  
9 to hold a service member accountable. It's  
10 inconceivable to me that they would turn a blind  
11 eye or not to hold somebody accountable.

12 In my experience, the Navy strains toward  
13 accountability, and it produces in its military  
14 justice system I think results that some might  
15 perceive more harsh than merciful. So I never  
16 thought that I would come to a day where the  
17 conventional wisdom was that service members had  
18 too many rights under the Uniform Code. I don't  
19 think sailors share that view.

20 I think sailors don't understand their  
21 commands to be permissive. I think that they find  
22 it inconceivable that their commands would cover

1 for them or ignore an allegation of misconduct, and  
2 I'm stunned by that portrayal.

3 I think that, you know, I rather expected  
4 that we might see another Forrestal or Cox  
5 commission that would provide a bridge to gap the  
6 resources between the rights of the accused, and I  
7 didn't expect to see that we'd be making the system  
8 more harsh and provide fewer rights to service  
9 members.

10 I agree with Colonel Cullen in absolutely  
11 every respect in his submission, and so I took this  
12 opportunity to write more in depth about one  
13 particular point in which I agree with him, which  
14 is that the Article 32, as a thorough investigation  
15 with the right of discovery, should be maintained.  
16 I believe that a preliminary hearing under Rule 5.1  
17 of the Federal Rules of Criminal Procedure is an  
18 inadequate substitute. I think it's ill advised to  
19 pick and choose between the Federal Rules of  
20 Criminal Procedure, selecting only those rules that  
21 put the defense at a disadvantage and that  
22 advantage the government.

1           My fear is that in taking the worst of  
2 both systems, we're going to create a system that's  
3 very unbalanced and that's not just. And so, I  
4 appreciate the very considered and deliberate  
5 approach that you're taking in your review. I  
6 thank you for accepting this undertaking. I'll  
7 look forward to your questions.

8           CHAIRWOMAN JONES: Thank you very much.

9           Next is Colonel Dan Higgins, Chief of the  
10 Trial Defense Division, Air Force Legal Operations  
11 Agency. Colonel?

12           COLONEL HIGGINS: Judge Jones, members of  
13 the Panel, good afternoon.

14           Thank you for the opportunity to be here  
15 today. As just mentioned, I am Colonel Dan  
16 Higgins, Chief of the Air Force's Trial Defense  
17 Division. In that capacity, I am privileged to  
18 lead a team of 109 defense counsel and 78  
19 paralegals at 69 operating locations around the  
20 world.

21           Our charge is to further the Air Force's  
22 mission by providing America's airmen with

1 independent, world-class representation in a  
2 zealous, ethical, and professional manner. Like  
3 the others on this panel, the views today that I  
4 express are my own and not necessarily those of the  
5 Judge Advocate General.

6           Defense services within the Air Force are  
7 delivered by trained professionals at the base  
8 level. Most Air Force installations are serviced  
9 by a single captain, or O-3, area defense counsel  
10 and a single defense paralegal, typically an E-5.  
11 At larger installations, we may have two or even  
12 three defense counsel and multiple defense  
13 paralegals. But typically, it's one defense  
14 counsel and one paralegal per base.

15           These area defense counsel and defense  
16 paralegal teams are organized into 19 regions  
17 worldwide. Each of these regions is led by a more  
18 experienced O-4 senior defense counsel who is  
19 responsible for overseeing defense services at  
20 three to five installations within their region.  
21 Those 19 regions are again grouped into 3 global  
22 regions. These are led by a lieutenant colonel, or

1 O-5, chief senior defense counsel, and those three  
2 chief senior defense counsels report to me.

3           As a defense counsel, I am especially  
4 concerned about a potential rush to modify the  
5 Uniform Code of Military Justice, the manual for  
6 courts martial in our military justice system,  
7 especially when these changes are not part of a  
8 larger systematic review of the process as a whole.  
9 I am very much concerned that many of the changes  
10 being proposed now would serve to remove or erode  
11 the accused's constitutionally guaranteed due  
12 process protections and place a metaphorical thumb  
13 on the scales of justice, which tips the balance in  
14 favor of the government and ultimately increases  
15 the risk of convicting an innocent airman.

16           I want to be brief in my comments. So  
17 let me just say in closing that I am very grateful  
18 to be here today. I appreciate the opportunity to  
19 discuss the issue of sexual assault in our armed  
20 forces. As you go forward with your efforts, I  
21 would encourage you to consider that, first, our  
22 military members deserve the best possible

1 representation, starting as early in the process as  
2 possible when they are suspected or accused of  
3 criminal wrongdoing.

4           Second, a disciplined force is essential  
5 to commanders and to our nation as a whole.  
6 Furthermore, the military justice system ensures a  
7 disciplined force only so long as it zealously  
8 protects the rights of the accused and is  
9 consequently viewed by those it serves as having  
10 legitimacy.

11           Third, there should be no dilution of the  
12 due process protections currently afforded to  
13 service members by law and regulation. Changes to  
14 the military justice system made without the  
15 benefit of a systemic review of the entire military  
16 justice process run the very real risk of eroding  
17 the legitimacy of the system necessary to ensure a  
18 disciplined force.

19           I look forward to your questions. Thank  
20 you.

21           CHAIRWOMAN JONES: Thank you, Commander.  
22 Or Colonel, rather.

1           Next we'll hear from Commander Ted  
2 Fowles, U.S. Coast Guard. And you are Deputy,  
3 Office of Legal and Defense Services.

4           COMMANDER FOWLES: Yes, ma'am.

5           CHAIRWOMAN JONES: Thank you.

6           COMMANDER FOWLES: Good afternoon,  
7 Honorable Judge Jones and distinguished members of  
8 the Panel. I am Commander Ted Fowles, Deputy Chief  
9 of the Coast Guard's Office of Legal and Defense  
10 Services and senior military appellate defense  
11 counsel for the Coast Guard. I have served in  
12 these positions since July of 2012.

13           Thank you for providing me the  
14 opportunity to testify in front of this Panel, and  
15 I welcome any discussions on how we can protect the  
16 constitutional and legal rights of the accused  
17 while we work together to eliminate sexual assault  
18 from our service. I am also prepared to discuss  
19 the role of the commander in the military justice  
20 system.

21           Like my colleagues, in this regard, I am  
22 expressing my own views here today and not those of

1 the Judge Advocate General of the Coast Guard or  
2 the Department of Homeland Security.

3 I want to start by just describing  
4 briefly the Coast Guard's defense practice. As  
5 some of you may or may not know, trial defense  
6 services for Coast Guard members accused of  
7 violating the Uniform Code of Military Justice are  
8 actually provided by the Navy, pursuant to the  
9 terms of a Memorandum of Agreement.

10 Under this agreement, we have four Coast  
11 Guard lawyers that are stationed at each of the  
12 DSOs around the country. They work for the Navy.  
13 I do not have any direct supervisory role with  
14 respect to their positions. My office does provide  
15 the detailing function, and we also provide  
16 additional support when necessary.

17 I think it's also important to highlight  
18 that we don't have a separate training program for  
19 Coast Guard individuals that are performing a  
20 defense role. We do have a program where the Judge  
21 Advocate General of the Coast Guard encourages  
22 junior Judge Advocates to volunteer for

1 opportunities to represent individual clients. But  
2 that's on a volunteer basis.

3           Another important distinction in the  
4 Coast Guard is that each trial counsel is stationed  
5 in the Staff Judge Advocate office, and they  
6 control their own training budget. And they can  
7 travel as approved by their Staff Judge Advocate.  
8 Contrast that to defense counsel in -- that are in  
9 the Coast Guard serving for the Navy have to rely  
10 on asking the government for funds to attend  
11 training or to travel in any manner to represent  
12 their clients.

13           With this quick overview of the status of  
14 defense service in the Coast Guard, let me move on  
15 to discuss the issues that brought us here today.  
16 There can be no doubt that every sexual assault  
17 case that occurs in the Coast Guard poses a grave  
18 threat to the good order and discipline and  
19 undermines the great work that we do.

20           Around the globe, the work -- the Coast  
21 Guard works tirelessly to protect our borders,  
22 protect our natural marine resources, and save

1 those who are in distress at sea. One conviction  
2 for sexual assault certainly tarnishes all the hard  
3 work that goes into keeping our great reputation.

4           As such, I'm here to work together with  
5 you to find a balanced solution that accomplishes  
6 the goal of eradicating sexual assault. However,  
7 we must charter a well-reasoned, rational, and  
8 cautious course towards accomplishing this goal to  
9 ensure that we do not diminish the value of the  
10 very freedoms that the armed services work so  
11 tirelessly to protect.

12           In short, I humbly submit to this Panel  
13 that as part of your duties, you must also work  
14 tirelessly to protect the rights of the accused.  
15 An unjust system of good order and discipline is  
16 just as detrimental to our services.

17           With respect to changes to the  
18 administrative military justice, I concur with my  
19 colleagues that a piecemeal approach will only --  
20 will create imbalances. The history of the Uniform  
21 Code of Military Justice demonstrates that it's a  
22 constantly evolving process, and it's one of checks

1 and balances.

2 I also concur with my colleagues on the  
3 role of the commander in the military setting.  
4 Simply put, it seems odd that we would entrust  
5 commanders with the lives of -- literally the lives  
6 of their subordinates as well as millions of  
7 dollars of property, but to think that we can't  
8 trust them to make decisions regarding the role of  
9 military justice in their command.

10 Checks and balances are already in place  
11 in the Coast Guard with respect to the authority of  
12 commanders. In 2012, the Commandant of the Coast  
13 Guard issued a service-wide order limiting the  
14 disposition authority involving cases of sexual  
15 crimes to those officers in the pay grade of O-6 or  
16 above that have a dedicated Staff Judge Advocate  
17 assigned and are at least a special court martial  
18 convening authority.

19 The determination to limit the decision  
20 authority on cases involving sexual crime to not  
21 only the most senior officers makes sense.  
22 However, rather than curtail the commander's role

1 any further, we need to shift the focus to holding  
2 commanders responsible for fostering a command  
3 climate that embraces the dignity and respect of  
4 all individuals. I submit that this will make the  
5 biggest impact on the military of the future.

6 In conclusion, and to keep my remarks  
7 short, I recognize that we can always find a case,  
8 an investigation, or facts that we should have  
9 handled better. The Coast Guard is built upon  
10 learning from history and improving in the future.  
11 As such, I am convinced that reasoned, rational  
12 changes to the UCMJ will accomplish this.

13 As we do so, however, I ask that we  
14 cautiously and carefully consider the impacts on  
15 the rights of the accused. Thank you for your time  
16 and consideration, and I look forward to answering  
17 any of your questions.

18 CHAIRWOMAN JONES: Thank you, Commander.

19 Next we have Mr. David Court, of Court &  
20 Carpenter from Stuttgart, Germany. And I know  
21 you've been here all day, Mr. Court, because we  
22 came into the courthouse at the same time. So

1 thank you for your patience, and we'd be pleased to  
2 hear from you.

3 MR. COURT: Thank you, Your Honor. Thank  
4 you for letting me be here.

5 Okay. Almost never have I been told I'm  
6 too quiet in the courtroom.

7 Thank you, Your Honor. Thank you,  
8 members of the Panel, for allowing me to be here.

9 Stuttgart is where my combined firm  
10 currently has its headquarters, but I've been in  
11 Frankfurt for 30-odd years. I started in military  
12 justice in 1977, and that's all I've ever done.  
13 I've defended thousands of service members,  
14 hundreds of courts martial. You can tell because  
15 of my gray hair.

16 I have been here for a couple of days.  
17 So I will apologize in advance if I yawn. It's the  
18 hours, not the company.

19 By being here, I've had an opportunity  
20 not only to sit in here, but on Wednesday to wander  
21 around. And I happened to come across a building,  
22 two, three blocks from here -- the Keck Institute

1 for the National Academies. And chiseled on the  
2 front of that building -- I say chiseled, it's  
3 probably lasered. On the front of that building is  
4 a quote, which struck me as being appropriate not  
5 only for science, but for the judicial process.

6 "The right to search for truth also  
7 implies a duty. One must not conceal any part of  
8 what one has recognized to be true." That was  
9 Albert Einstein.

10 The connection I drew is that just as I  
11 know without a doubt in my mind that there are  
12 criminal sexual assaults occurring in the military,  
13 I also know without a shadow of a doubt that there  
14 are false reports of sexual assaults in the  
15 military. And one cannot forget that at any stage  
16 of the process.

17 I've prepared some remarks, which I'm not  
18 going to read to you. It's the hours and all of  
19 that. You can read them yourself. But I would  
20 like to address a couple of points in that regard.

21 Sitting here for the past two days, I  
22 didn't keep track, but I'd be willing to bet that

1 if you checked the record, the word "victim" was  
2 said probably 2,000 times. Maybe only 1,500. I  
3 don't recall more than half a dozen times that I  
4 heard the words "alleged victim." That, to me, is  
5 a problem.

6           What we're doing and what is being  
7 proposed is that as soon as a report is made, that  
8 person who makes the report -- male, female,  
9 doesn't matter -- is being immediately granted the  
10 crown of truth. That person is a victim. We say  
11 that word. We have a special victim counsel. We  
12 have special victim investigators. We have special  
13 victim prosecutors.

14           Can't we just have special prosecutors?  
15 Why must it be that we immediately identify the  
16 person to be a victim? I've been in numerous  
17 courts martial where the prosecutor has used that  
18 word in opening statement and been stopped by the  
19 judge, saying, "Counsel, that's not been  
20 established yet. Please say alleged," because the  
21 panel otherwise will get the wrong conclusion.  
22 Words are important, extremely important.

1           False reporting. I'm not going to sit  
2 here and go through a litany of all the cases I've  
3 been involved in. Why would people false report?  
4 That's the immediate question. Someone says why  
5 would a woman or a man say that this most intimate  
6 violation has occurred when it didn't?

7           Now it may be different in the civilian  
8 world, and we heard just recently from prosecutors  
9 and counsel who are in Queens, in Arlington, here  
10 in the area, they probably don't get the same  
11 reasons why there could be false reporting in the  
12 military.

13           What are some of the reasons? The  
14 classic remorse. Okay, the idea of in the military  
15 more it's important, revenge. Revenge against a  
16 superior. Revenge against the accused who cheated  
17 on me with someone else. These we're dealing with  
18 as issues. I've got all kinds of cases to support  
19 that -- anecdotal, mine.

20           Self-protection. Don't want the people  
21 in the unit to think I'm that kind of person that I  
22 would just do that on a second date.

1           Deflection from your own problems. I'm  
2 being called up in front of the commander because I  
3 was disrespectful to my NCO. And oh, by the way, I  
4 was disrespectful because he raped me two years  
5 ago.

6           I have a case right now that was alleged.  
7 Fortunately, after the Article 32 hearing, it was  
8 clear to all the attorneys that that was not a  
9 credible claim. There were other issues, and so  
10 there will, nonetheless, be a conviction, but not  
11 for rape.

12           What can you do about false reporting?  
13 Investigate impartially. Impartially. The  
14 investigators who I have dealt with in many cases  
15 start out believing it's the victim.

16           We heard the other day from someone in  
17 this very room talking about how it was  
18 inappropriate for the investigator to challenge the  
19 reporting witness because that makes them feel bad.  
20 Well, that also makes it seem like the investigator  
21 doesn't do his or her job. He's not looking into  
22 the issue.

1           We talk about investigations. Many of my  
2 co-panelists have talked about the Article 32  
3 investigation. I, too, believe an Article 32  
4 should not be changed into a preliminary hearing.

5           Listening to Mr. Mallios talking about  
6 making it just a preliminary hearing so that we  
7 don't have to worry about the credibility of the  
8 complainant. Why not? Why should she be presumed  
9 to be telling the truth any more than anyone else  
10 is? She's a witness.

11           We talk about the special victim counsel  
12 and the issues about Brady. I understood and was  
13 listening as Professor Hillman, who, unfortunately,  
14 is not here, was talking about continuity and  
15 turning the special victim counsel into or using  
16 the civilian component of the legal assistance  
17 function in the various services because they tend  
18 to be more stable. Not necessarily in Europe.  
19 They have a five-year rule and rotation. But  
20 nonetheless, they are more stable.

21           The idea that a special victim counsel  
22 who has six more months on his or her tour is going

1 to see a case through to completion is not  
2 realistic in the current military environment. The  
3 conversation has also talked about the rights of  
4 victims, CVRA. They are, if granted, as Ms. Luther  
5 talked about, not going to trump the constitutional  
6 rights of the accused.

7           The one that concerns me most are the  
8 rights of victims because most of them are common  
9 sense, okay? You're going to talk to the victim.  
10 You're going to tell her -- excuse me. I'm doing  
11 it myself. You're going to talk to the alleged  
12 victim and let her know what the process is.  
13 You're going to talk to the alleged victim and let  
14 him know when the next hearing is.

15           But the right to be in and sit in as an  
16 observer in the courtroom I find to be troubling in  
17 the military environment. The only provision in  
18 the current law that deals with presence of a  
19 witness, crime victim, is the right not to be  
20 excluded from any public court proceeding unless  
21 the court, after receiving clear and convincing  
22 evidence -- pretty high standard. Clear and

1 convincing evidence determines the testimony by the  
2 victim would be materially affected.

3           That's a good standard, a good test. But  
4 I would, if you're going to do this, incorporate  
5 something that makes it more uniquely military and  
6 add words to the effect "or would affect the  
7 testimony of other witnesses by the alleged  
8 victim's presence during that other testimony."  
9 Because in a military environment, that can happen.  
10 It is a smaller environment. It is a smaller unit.

11           If the alleged victim's friend is going  
12 to come in and say he or she observed actions by  
13 her, by the alleged victim, which are inconsistent  
14 with the claim and has said that in interview, that  
15 person might not be wanting to do that if he has to  
16 look her in the eye. Does that mean it's true or  
17 not true? Don't know. But it affects the person's  
18 testimony. It affects the person's testimony. And  
19 I think that's a problem with allowing any witness  
20 to sit in on the testimony of any other witness,  
21 with the exception of experts.

22           Finally, the system of military justice

1 that has been established over time, and when I  
2 began doing this, we didn't even have Trial Defense  
3 Service in the Army. It's been a while. We didn't  
4 have a rape shield law when I started. We've seen  
5 a lot of change and a lot of development to make  
6 the system fairer, to make it more appropriate.

7           The rape shield law is correct. The  
8 protection of medical records except with an in  
9 camera review is correct because it allows both  
10 sides a fair shot. But the changes that are being  
11 suggested that I've been hearing about -- some  
12 rational, some not -- the past couple of days has  
13 made me realize that not only must the alleged  
14 victim have confidence in the system, but so must  
15 the accused, so must the sailor, soldier, the  
16 airman, the Marine, the Coasty.

17           They have to be confident that the system  
18 of justice that they have is going to be fair to  
19 them. And right now, we're in a -- I call it "Izzy  
20 Inbit" world. Too many people look at it and say  
21 if she says it, it must be true. We can't do that.  
22 We need to have confidence. We need to know that

1 both sides will be heard and heard fairly. That  
2 neither side will be granted any extra privileges.

3           Colonel Cullen talked about all the  
4 military limitations that an accused does not have,  
5 sort of in exchange for the Article 32 hearing --  
6 trial by peers, limited number of votes, not a  
7 trial of 12 panel members. I would think, and I  
8 don't know if my fellow panel members would agree,  
9 but if someone were to say to me, Dave, we're going  
10 to take away your Article 32 hearing. We're going  
11 to give you a probable cause hearing. We'll give  
12 you some discovery down the road, assuming the  
13 prosecutor understands that. Frequently, the young  
14 ones don't. But that's another issue.

15           In exchange for which you get a jury of  
16 12 people who have to vote unanimously, I'd take it  
17 in a heartbeat. We're not going to get that. So  
18 please don't take away our Article 32 hearing.

19           Thank you, and I look forward to your  
20 questions.

21           CHAIRWOMAN JONES: Thank you, Mr. Court.

22           We now have Mr. Jack Zimmermann, of

1 Zimmermann, Lavine, Zimmermann, and Sampson. And  
2 you're here from Houston, Texas.

3 MR. ZIMMERMANN: I am, Judge. Thank you  
4 very much, and members of the Panel.

5 CHAIRWOMAN JONES: I think we need you to  
6 --

7 MR. ZIMMERMANN: Okay. How about that?  
8 Is that better?

9 CHAIRWOMAN JONES: That is -- closer, I  
10 think, is the answer.

11 MR. ZIMMERMANN: Okay. How about that?

12 CHAIRWOMAN JONES: Perfect.

13 MR. ZIMMERMANN: Ever since I was  
14 contacted and asked to review some proposed  
15 legislation to modify the Uniform Code of Military  
16 Justice and come talk to a distinguished Panel of  
17 experts and give you my opinion on those, I have  
18 looked forward to today.

19 I will tell you, though, that when I turn  
20 on the television and I see some commentator or  
21 some guest expert rendering an opinion, I want to  
22 know what that person's background is so I know how

1 much credibility to give to that talking head. So  
2 I thought I would just take maybe 15 or 20 seconds  
3 and tell you that I have served as a practitioner  
4 in the military justice system since 1975, for 38  
5 years.

6 I have been a chief defense counsel,  
7 chief trial counsel, military trial judge, Staff  
8 Judge Advocate, and I am also able to give you the  
9 view of the commander. I've been an artillery  
10 battery commander in combat for two batteries, and  
11 I've served as an infantry battalion commander in  
12 the Reserve. So I feel like I have the handle on  
13 what lawyers and judges in the military think and  
14 at least formed my perspective as well as the  
15 commander.

16 I've been the chairman or the co-chairman  
17 of the Military Law Section for the National  
18 Association of Criminal Defense Lawyers since 1996.  
19 So it is with that background that I want to talk  
20 to you very briefly about some of the things that I  
21 think are good improvements to the Uniform Code of  
22 Military Justice and then take the rest of the

1 time, if it's all right with you, to talk to you  
2 about some things that bother me and make me worry  
3 about us diminishing the effectiveness of the  
4 Uniform Code of Military Justice.

5           Let's talk quickly about those things  
6 that I think are proposed that are good changes.  
7 Many of the statutes that I saw, proposed statutes  
8 talk about keeping better records. I think we  
9 should keep better records. I think we should  
10 prohibit the accession of candidates for enlistment  
11 or commissioning who have sexual offense or any  
12 felony conviction on their records, frankly.

13           I believe in strengthening whistleblower  
14 protection, which is in that proposal. I think we  
15 all agree with removing consensual sodomy as an  
16 offense under the code, since the Supreme Court a  
17 long time ago said that was not a crime.

18           I agree with the elimination of the  
19 requirement that the defense seek the production of  
20 witnesses through the trial counsel, and I agree  
21 with changing the rules so that an appellant in the  
22 military system can petition the Supreme Court for

1 review when the Court of Appeals for the Armed  
2 Forces has denied review. We don't have that right  
3 right now.

4           But I think this. Those who write the  
5 law and write the changes to the law where the  
6 rights of the alleged victim seem to preponderate  
7 against the rights of the accused seem to me is  
8 where we are with almost all of these proposals  
9 that I've seen that were sent to me by your staff.  
10 To me, we're almost writing out the presumption of  
11 innocence and the burden of proof being on the  
12 government.

13           And let me be specific. This idea of  
14 creating two separate justice systems within the  
15 military, one that deals with sexual assault cases  
16 and one that doesn't, seems preposterous to me. It  
17 has to have been proposed by someone who never put  
18 on a uniform. You can't have two separate systems.  
19 You get accused of homicide, you go to one chain of  
20 courts or procedures, and if you get charged with  
21 sexual assault, you go to a completely different  
22 one. That makes no sense to me.

1           I think some of these proposals create  
2 unworkable processes in the courtroom, and I  
3 specifically refer to this what Mr. Court has  
4 already attacked. I agree with him. Victim,  
5 special victims' counsel that we just spent the two  
6 hours before this panel started. I'm going to come  
7 back to that in a few minutes.

8           I think that by stripping commanders of  
9 the authority they need to maintain discipline in a  
10 fair way is a mistake. I think that importing  
11 minimum mandatory sentencing provisions into the  
12 military justice system is a horrible mistake.

13           The civilians that have dealt with  
14 mandatory minimums have almost universally not  
15 liked that. It has not worked out to be good.  
16 It's not a good thing.

17           We have our system now where members or  
18 military jurors have a range within the Manual for  
19 Courts Martial maximum punishment range to assess a  
20 sentence that they think is appropriate under the  
21 circumstances, taking in the severity of the  
22 offense, what the person's been convicted of, and

1 the background and character of the defendant. And  
2 I think that system needs to stay.

3           This effort to stop sexual assault is  
4 something, as Mr. Court said and all of the  
5 uniformed defense counsel, chief defense counsel of  
6 their respective services, all of us agree that we  
7 need to stamp out sexual assault. I'm not here to  
8 tell you that that's a good thing. It's not a good  
9 thing.

10           I have a daughter in the military who's a  
11 young colonel. I know that the words "young" and  
12 "colonel" in the same sentence don't seem to jive,  
13 but I'm an old colonel.

14           CHAIRWOMAN JONES: A lot of young  
15 colonels here.

16           MR. ZIMMERMANN: Yeah, we got somebody on  
17 the -- we got some young-looking colonels and even  
18 young-looking brigadier generals on your Panel.  
19 But I'm talking about we all want to stamp that  
20 out.

21           And so, this SAPR training that's going  
22 on everywhere, I'm going to tell, I spent yesterday

1 from 9:00 in the morning until about 3:30 in the  
2 afternoon litigating an unlawful command influence  
3 motion to dismiss a sexual assault case because of  
4 in part the SAPR training that's going on.

5           The SAPR training is creating unlawful  
6 command influence. Let me give you some feedback  
7 of what potential members in courts martial are  
8 being told.

9           They're being told that one drink of  
10 alcohol negates consent. One drink of alcohol will  
11 negate consent. They're being told in a laughing  
12 way, I think, but to try to keep attention that you  
13 ought to videotape or audiotape someone giving  
14 consent so in case it's questioned later.

15           They're told that everyone who gets  
16 convicted, I saw a slide that I introduced into  
17 evidence yesterday from a SAPR training session  
18 that said 100 percent and then semi-colon maximum  
19 punishment. Hundred percent of claims will be  
20 prosecuted, and you should give them the maximum  
21 punishment.

22           So this effort has gone overboard. Let

1 me say this. I'm going to tell you what I think.  
2 I'm unrestrained by having the uniform anymore on,  
3 and I'm going to tell you what my experience  
4 requires me to tell you, and I'm not trying to  
5 insult anybody or make fun of anybody. But when I  
6 think something's ridiculous, I'm going to tell you  
7 that it's ridiculous and I think something's good.

8 I think that the members being told by  
9 the senior officer in one of our services that 80  
10 percent of sexual assault claims are legitimate is  
11 ridiculous. But attached to my motion yesterday  
12 was a transcript of a voir dire from an actual case  
13 where two potential members said, well, if the  
14 Commandant says it's 80 percent, I agree with him.

15 And then the other one says, as was  
16 emphasized in that brief presentation we got, I  
17 believe that 80 percent of these claims are  
18 legitimate. Now what does that do to the  
19 presumption of innocence when we've got senior  
20 military officers trying to stamp out something we  
21 all agree should be stamped out, but trespassing on  
22 the criminal justice system that we have in the

1 military.

2           I have a major problem with this special  
3 counsel issue, and I was heartened to see that two  
4 civilian career prosecutors with 25 and 30 years  
5 experience are opposed to it as well. But I have a  
6 problem with it starting with the title, as Mr.  
7 Court said. I have objected every time I've ever  
8 heard this term "victim" used in voir dire or  
9 opening statement. In every case, it's been  
10 sustained.

11           In my view, nobody is a victim in a  
12 courtroom until a judge or a jury says that they  
13 are the victim. So that we should be using other  
14 terms if we're going to have this. But here's what  
15 bothers me about this concept. What role does this  
16 lawyer play in the courtroom? What ethical duty  
17 does this counsel have?

18           What if this counsel finds out that the  
19 alleged victim is lying, in the opinion of that  
20 lawyer? What's the ethical duty of what I'm going  
21 to call special counsel? What is his or her duty  
22 when this person who's now his or her client is

1 being untruthful, and the lawyer believes them to  
2 be untruthful?

3           Is he supposed to -- is the special  
4 counsel supposed to move to withdraw? Is he  
5 supposed to turn in the alleged victim? What's he  
6 supposed to do? Or what if he discovers during  
7 that that we have some of these collateral  
8 consequences we've talked about? What if he finds  
9 out she's been using illegal drugs?

10           What is his or her ethical duty at that  
11 point? It's completely undefined. And what about  
12 this attorney-client relationship? You heard the  
13 lady from New York saying she was worried that  
14 there might be something that the alleged victim  
15 tells special counsel that ought to go to the  
16 defense, but the special counsel interprets his or  
17 her responsibility to the client as that being  
18 privileged under the attorney-client privilege, and  
19 it's not talking about some future crime. So it's  
20 privileged. It's past conduct.

21           And so, special counsel does not tell the  
22 prosecutor. And she went into that how that can

1 cause problems. But she went into it from the idea  
2 of making it hard to prosecute. What I'm concerned  
3 about is what about that word not coming back to  
4 the defense lawyer? Because, as Mr. Court said, we  
5 know that there are false claims, even if you  
6 believe that there are 80 percent of the claims are  
7 true. That means 20 percent of them aren't.

8           And let me tell you, if you're the  
9 accused and you're one of those 20 percent,  
10 according to him, you'd want all the protections  
11 you could have and which you're entitled to by our  
12 Constitution.

13           Somebody has already talked about  
14 importing civilian practices, such as the grand  
15 jury system, into our military justice system.  
16 Well, if we're going to do it, let's do it, as some  
17 others have suggested. Let's do it all the way.  
18 Let's have a 12 jury -- 12-member jury on all  
19 general courts martial because that's a felony  
20 level. I think all but one state in our union  
21 requires 12 jurors for felonies. And let's require  
22 unanimous verdict.

1           We've talked about the Article 32 should  
2 go away because it's unfair. Let me tell you, in  
3 conversation with a congressman who I help select  
4 candidates for his appointments to the service  
5 academies about all this flair-up, his comment was,  
6 you know, we have one event that occurs, and it  
7 causes a reaction in Congress because they all want  
8 to have something so they can tell their voters,  
9 their constituents that they're doing something  
10 about it.

11           And I think that the furor over the 32  
12 has been exacerbated by this Naval Academy Article  
13 32, where three football players were the accused.  
14 I don't know if there being three different sets of  
15 defense lawyers had something to do with the length  
16 of time that the alleged victim spent on the stand  
17 or what. I don't know the facts of that case. But  
18 I believe that's what's fueling a lot of this  
19 current effort to revise the 32.

20           But I can assure you this. I've been an  
21 Article 32 officer myself, and I've participated as  
22 defense counsel and prosecutor in many, many 32s.

1 That is a rarity. It is a rarity for anybody in a  
2 32 to be on the stand for allegedly 20 hours or 30  
3 hours. That does not happen in the normal 32.

4 I also think that if we're going to start  
5 changing the 32, it can be improved, and it ought  
6 to be this way. Every investigating officer ought  
7 to be a trained Judge Advocate.

8 I'll never forget representing a major  
9 who should never have gone to a general court  
10 martial for what was basically fraternization, but  
11 it was alleged as rape. I mean, it was not  
12 fraternization. It was adultery, but it was  
13 alleged as rape because we still have -- we had  
14 adultery at the time on the books.

15 And a helicopter pilot was the IO, the  
16 investigating officer. He knew nothing about the  
17 law, and I actually went and told the Staff Judge  
18 Advocate. I said we can go to all this trouble,  
19 but you're going to ruin this major's career  
20 because he's going to get acquitted of the rape,  
21 but he's going to -- by testifying, he's going to  
22 admit to adultery, which we don't really prosecute

1 anymore.

2           And it went to general court martial. He  
3 got acquitted of the rape, and you know, so I think  
4 we need to have trained investigating officers,  
5 trained lawyers as investigating officers. You  
6 want to import the civilian grand jury practice to  
7 that, like some people have suggested today? Well,  
8 import the decision when no probable cause is found  
9 by a grand jury, they return a no bill of  
10 indictment, and that's the end of the case.

11           So if the investigating officer finds no  
12 probable cause, that ought to be the end of it. I  
13 think that should be in there now. I think that  
14 should be in there now. I don't think that's a  
15 tradeoff. I think you should have trained  
16 investigating officer, and if that investigating  
17 officer says there's no probable cause, that's the  
18 end of the case. It's the equivalent of a no bill.  
19 If you all want to rewrite 32, let's do it that  
20 way.

21           And as far as the usefulness of the 32,  
22 as a prosecutor, you're only required to put on

1 some evidence on every element, all right? You're  
2 not supposed to prove your case beyond a reasonable  
3 doubt. I don't know who -- where do these people  
4 get this from?

5 I suspect sometimes that some of these  
6 changes -- the proposals to the UCMJ are being made  
7 by people who never served in the military, doesn't  
8 even have a relative that served in the military.  
9 That's how unfamiliar they seem to me to be with  
10 the military justice system.

11 However, prosecutors are helped by the  
12 32, and defense lawyers are helped by the 32. And  
13 you know what happens in almost every case, the  
14 lawyers evaluate their case. The strong cases  
15 result in pleas. The weak cases get dismissed.

16 So they serve a purpose other than just  
17 investigating the case, in my opinion, based on my  
18 experience. The close cases are the only cases  
19 that go to trial after a properly done Article 32.

20 And with regard to the separate non-  
21 commanding officer convening authority, I don't  
22 think that's workable. In reality, you know, the

1 proposal is that you have a special senior  
2 prosecutor lawyer make these decisions. That's  
3 what I'm talking about, that proposal.

4           In reality, here's what really works, as  
5 it works. I'm telling as a former SJA as well.  
6 The SJA formally has to make a recommendation to  
7 the commanding general or whoever the convening  
8 authority is. But in reality, they talk about it  
9 ahead of time. And you know what? The convening  
10 authority almost always follows the SJA's  
11 recommendation. That's reality anyway.

12           He doesn't have to or she doesn't have  
13 to, but ordinarily, that's what happens. So, in  
14 effect, we have right now, a senior prosecutor --  
15 because I never thought the SJAs when I was a  
16 defense counsel, I never thought they were neutral  
17 and impartial, I thought they were just super  
18 prosecutors. And I think that's the way it is in  
19 the real world. But they do have an impact on  
20 whether a case is referred to trial or not.

21           Now there was a suggestion that you have  
22 lawyers that do nothing but prosecute sexual

1 offense charges, and that's what they stay in. If  
2 you did that, you would stymie that lawyer's  
3 opportunity for promotion because you have to have  
4 a varied career to get promoted. You can't just be  
5 put in one niche and stay there forever.

6           Now some final thoughts. Again, let me  
7 emphasize how horrible sexual assault or any sexual  
8 offenses are in the civilian world or the military.  
9 But to me, a fair trial and a successful  
10 prosecution is not whether there was a conviction  
11 or not, like we heard today and we see in a lot of  
12 the proposals. To me, a fair trial and a  
13 successful prosecution is when the truth is found  
14 out.

15           But I think from some of these proposals,  
16 you'll see that people that sponsor them equate a  
17 successful prosecution with a conviction. And with  
18 regard to why we should -- and it's been brought up  
19 by one of my colleagues already, go back to the  
20 history of the Uniform Code of Military Justice  
21 when the World War II vets came back, and many of  
22 them got elected to Congress, and they were saying

1 how bad and how unfair the military justice system  
2 was that they experienced in World War II and then  
3 in Korea, that's why the Uniform Code of Military  
4 Justice got formed in 1951.

5           And that's why it was intentionally done  
6 and written so it protects the rights of the  
7 accused service member to protect against unlawful  
8 command influence. And think of the things that  
9 are written into it. I think 13 years before  
10 Miranda, military personnel were entitle to be  
11 warned of their rights under Article 31(b) before  
12 the Supreme Court said civilians had that right.

13           They put the 32 in there for a reason, to  
14 protect the rights of the accused. The right to  
15 qualified counsel in every case was in there long  
16 before civilians had that right, and the right to  
17 appeal automatic above a certain sentence was put  
18 in there to protect the rights.

19           Now none of these changes, in my opinion  
20 -- this is me speaking. None of these changes  
21 should be made until there are comprehensive public  
22 hearings by Congress and not just rushed through

1 without people thinking about what that's going to  
2 do to the whole thing.

3           And I leave you with this thought. I  
4 understand that some people have said -- some  
5 prominent people in this country have said, you  
6 know, "If I had a daughter, I wouldn't want her to  
7 enlist in the armed forces today because I don't  
8 think it's safe." Well, let me tell you what.

9           I think parents of a son have a greater  
10 concern. I think that parents of a son might  
11 recommend that that son not enlist in the armed  
12 forces today because, God forbid, he should get  
13 falsely accused with a sexual assault case. The  
14 way the deck is being stacked against the accused  
15 here, he's liable to end up in jail for 20 or 30  
16 years for something he didn't do if we allow these  
17 changes to be made.

18           I'm asking you as a longtime practitioner  
19 let's do the right thing. Let's protect the  
20 constitutional rights of the accused, and let's  
21 don't recommend the adoption of the proposals that  
22 I have just mentioned in the last few minutes.

1 Thank you very much.

2 CHAIRWOMAN JONES: Thank you, Mr.  
3 Zimmermann.

4 Lastly, you've been very patient, Ms.  
5 Wilson. We have Bridgette Wilson, who's here from  
6 San Diego. Go ahead.

7 MS. WILSON: Good afternoon. I have the  
8 dubious distinction of being the last person  
9 testifying between you and a three-day weekend.  
10 And I appreciate your attention.

11 You know, Mr. Zimmermann said to me  
12 before this started, "So by the time they get to  
13 us, will there be anything left to say?" And so, I  
14 will try not to rumble through.

15 I think we're all horrified by the idea  
16 that there is serious talk about impairing access  
17 to Article 32 proceedings based on the perceived  
18 abuse in this matter at the Naval Academy. I don't  
19 know what happened in that hearing.

20 My recent experience has been, by the  
21 way, that in almost all the cases that I've dealt  
22 with for several years that the IOs are JAGs. I

1 very rarely -- it still happens, but most cases I'm  
2 still running into Judge Advocates doing 32s.

3           Now it may be because civilian counsel is  
4 onboard. Sometimes I think they up the ante on  
5 doing things. But I do see that. And I think it's  
6 a falsehood -- to say that 412, for example, 412  
7 and 513 privilege is enforced at Article 32  
8 hearings. The idea that it's not is simply false.

9           So I think that what we have is  
10 discussions being based on misconceptions of  
11 military justice that are being, you know, streamed  
12 out through the media day after day. And in the  
13 last two years, I've probably had more discussions  
14 with civilian -- and I say "civilian." I am prior  
15 service. I am now a civilian. But I say civilian  
16 mostly because of the world I practice in.

17           The -- that about military justice than I  
18 can remember having in years, probably since the  
19 Vietnam War, and I think Mr. Court and I are both  
20 old enough for that. That who all think that PFC  
21 Manning was subjected to a kangaroo court, but  
22 those accused of sexual assault are somehow getting

1 off scot free.

2           Can I say I disagree with both of those  
3 conclusions? And I think that it's a broad  
4 misconception of what this system of justice is.

5           Indeed, one of the things that all of  
6 you, I would bet, know is that military justice,  
7 the courts that we have serve a dual purpose:  
8 justice and discipline. And probably since  
9 Professor Winthrop, we've had arguments about the  
10 weight that discipline may take, whether it's equal  
11 to the justice concern, whether the rights of  
12 service members are greater to that balance, and  
13 the scale, I think, has rightly, since 1950,  
14 weighed more in the direction of justice for our  
15 service members.

16           And we do like to believe that our  
17 service members do not abandon their constitutional  
18 rights simply because they put on the uniform. So  
19 I do think that a lot of this is based on a  
20 misunderstanding.

21           One of the things that all of us have  
22 seen as defense counsel is cases being referred

1 that might otherwise have been set aside, and I  
2 will tell you that I have a case right now that  
3 went through an IO who recommended against  
4 prosecution, was reviewed by region, also  
5 recommended to decline prosecution, that was then  
6 referred.

7           Now I'm not saying that this particular  
8 admiral referred this case out of that sense of  
9 politics, but I don't know that these days. And  
10 here's what I know about those senior commanders.  
11 They're looking at a Congress in which people's  
12 advancements and appointments are being held up  
13 because they did their jobs under the code.

14           They're concerned that if they don't  
15 refer a sexual assault charge that it's going to  
16 come back and bite them, and that if they do refer  
17 it over, well, let the court sort it out. Not my  
18 problem.

19           After some of the discussions that have  
20 been going on publicly about Article 60 relief, can  
21 you even imagine a commanding officer who isn't --  
22 a convening authority who isn't going to think

1 twice or three times or not at all about setting  
2 aside a court martial conviction or even charges.  
3 The kind of relief that we all depend upon because  
4 we do have a unique and special and very odd little  
5 system that is heavily weighed in favor of the  
6 government, whether the government believes that or  
7 not.

8 I don't care if you're talking about the  
9 mutiny on the Somers or the sexual assault cases of  
10 today. The confidence the service members have in  
11 these courts martial, both as the alleged victims  
12 of crimes and the accused, the alleged accused in  
13 crimes, they must have confidence that that system  
14 works. It is -- it remains a tool of command, and  
15 I'm often frustrated by some of the things I have  
16 not seen.

17 For example, it is possible to pull these  
18 charges out of the standard court of command.  
19 Those of you who have been around long enough to  
20 remember Tailhook, scandal that occurred during  
21 Tailhook, and I bet Admiral Houck, Vice Admiral  
22 Houck remembers this. They pulled that entire

1 prosecution out of the hands of local commands and  
2 moved it up to departmental level.

3           It's a doable thing. So there are things  
4 that can be done to take a look at a specific  
5 situation. But indeed, I'm hearing the same things  
6 that these other defense counsel are. People being  
7 trained and being told that if a woman has a single  
8 drink, she can't consent to sex. That's absolutely  
9 craziness inducing.

10           And the voir dire that I'm doing in  
11 trials -- by the way, I just defended an adultery  
12 case. So they are still prosecuting it. At least  
13 the Marine Corps is still prosecuting it.

14           And what I have found on the ground is  
15 that there is such a distrust of these prosecutions  
16 that it discredits the entire process of vigorously  
17 pursuing sexual assault cases. That there is a  
18 widespread belief -- now that's anecdotal. That's  
19 my ear to the ground. That's my talking to sailors  
20 and soldiers and Marines that I know and many of  
21 whom I represent. But there is a very strong  
22 concern that I have that the belief in the fairness

1 of these processes has been tremendously impaired  
2 by the politics that seem to be pushing this  
3 forward.

4 I can't make being the victim of a rape  
5 not be a horrible experience. Probably more than  
6 anyone else sitting in this panel who has not been  
7 some sort of victim advocate, I have probably  
8 spoken with more victims of sexual assault over the  
9 years who felt that they were not being heard, who  
10 were railroaded, who were put in psych hospitals,  
11 who were demoted, who were prosecuted, all kinds of  
12 things that happened to them. The sobbing father  
13 whose daughter was raped in Iraq some years ago,  
14 who was shanghaied off and sent back and pushed out  
15 with a personality disorder, those things do  
16 happen.

17 And I am female. Yours truly is the  
18 female on the panel, and here's what I know. Is  
19 the military a safe place for a woman? Society is  
20 not a safe place for a woman. How often do you  
21 park far away from your car in the dark?

22 What happens with most of these cases is

1 no different than what happens on any college  
2 campus in America. A unique military problem we  
3 have is how that gets handled by commands. The  
4 abuse of power syndrome where senior -- senior  
5 NCOs, commanders have used that authority to abuse  
6 and coerce physically or otherwise subordinates  
7 that are a hard thing to answer.

8           And it doesn't all happen in a courtroom,  
9 and it's not just enough to give the mantra of  
10 "believe the victim." We have to take a look at  
11 how we -- for example, how we perceive women in the  
12 armed forces.

13           The other reality is this. The vast  
14 numerical majority of sexual assault victims in the  
15 military are not women. They are men, just based  
16 on the fact that 85 percent plus of our armed  
17 forces is male. I spent years fighting "don't ask,  
18 don't tell" and the provisions that preceded it and  
19 dealt with numerous male victims of sexual assault  
20 who were facing discharge when they reported that  
21 assault on the grounds that it was homosexual  
22 activity.

1           So don't tell me. I get the collateral  
2 misconduct problem, but I figure that not  
3 prosecuting that collateral misconduct is the best  
4 gift any prosecutor or convening authority could  
5 ever give me as defense counsel because I get to  
6 walk into that courtroom and point out to that  
7 panel that this alleged victim has been drinking  
8 underage, fraternizing or engaging in inappropriate  
9 superior-subordinate relationship, and that nothing  
10 has happened to that individual.

11           And who's in the courtroom to be  
12 punished? My client. This person walks scot free.  
13 The Perry Mason moment I had in my last court at  
14 Camp Pendleton was the ability to look at this  
15 female, and this was an adultery trial. How much  
16 has the sexual assault stain leached over into  
17 other prosecutions?

18           I got to walk in. My guy is on trial.  
19 And I looked at her and said, "Hmm, is that a good  
20 conduct ribbon you're wearing?" And the eyes of  
21 that panel switched rapidly.

22           So if you keep building in incentives for

1 people to fabricate and if you don't believe it  
2 happens in a military environment, what would you  
3 do to get out of a war zone? What would you do to  
4 get off a ship? And if you don't think it happens,  
5 then we're all being naïve.

6           But I do think sexual assault is a  
7 problem. It's a problem society wide, and it has  
8 its specific tone and its specific issues in our  
9 armed forces. The reality is that in a combat zone  
10 in Iraq or now in Afghanistan more often, female  
11 soldiers carry their weapons to the latrine and to  
12 the showers. Not to protect themselves against the  
13 enemy.

14           When I was young and training up with the  
15 Army Reserve, we used to post our own security at  
16 night because we didn't necessarily trust the males  
17 who were on guard duty for the night to keep an eye  
18 on all of us. That's not that uncommon.

19           You know, if you're talking to women in  
20 the enlisted ranks, they have a significantly  
21 different experience than men. But we cannot  
22 abandon the concept that these accused are innocent

1 until proven guilty, and right now in our armed  
2 forces, Marines, soldiers, sailors, airmen, Coast  
3 Guard, very, very many of them believe that you  
4 cannot get a fair trial in a court martial.

5           Now that's a time-honored tradition in  
6 our armed forces. None of us would have any  
7 business if that wasn't the case. Literally every  
8 person who calls me, calls me saying "I don't trust  
9 that JAG," and I disabuse them of that rapidly  
10 because I can't work without that JAG.

11           And some of that's a hangover from the  
12 days that Mr. Court and Mr. Zimmermann and I  
13 remember, where there was no separate Trial Defense  
14 Service were people served in the same unit and the  
15 head of the prosecution was rating the junior  
16 officers who were in the defense deck. And if they  
17 did too good a job, they might not get a very good  
18 OAR.

19           So, you know, those things are hangover,  
20 but the reality is that the confidence in the ranks  
21 about the fairness of these prosecutions has been  
22 seriously damaged by decisions that appear to be

1 being made not on reality, not on what we need to  
2 do as a force, and not what we need to do to  
3 protect the rights of the accused, as well as to  
4 protect the alleged victims of crime. They're  
5 being made on largely political considerations.

6 I'm pleased to hear all of these panel  
7 members here with so much knowledge of this system,  
8 and you know, if we're going to review this, I hope  
9 we don't deal with these things on a piecemeal  
10 basis and start hacking this out bit by bit only to  
11 the detriment of the accused. If we want to have a  
12 longer discussion about UCMJ reform, let's have it.  
13 But let's not do this one piece at a time.

14 So I hope I haven't repeated too much  
15 what has already been said here today, and I thank  
16 you very much for inviting me to speak to you.

17 CHAIRWOMAN JONES: Thank you very much,  
18 Ms. Wilson.

19 I want to thank each and every one of  
20 you. And are there any questions or comments? I  
21 have one, but why don't you go first?

22 COLONEL (RET.) COOK: Okay. Again, thank

1 you all for being here because that perspective, as  
2 Mr. Court had said, you don't hear a lot of the  
3 perspective of all sides in this. And it is a  
4 justice system where you're balancing all the  
5 interests -- the command, the accused, and the  
6 victims, the alleged victims -- in these cases.

7 But the one thing, the emphasis on sexual  
8 assaults and sexual harassment has been there and  
9 some of the unlawful command influence issues that  
10 are coming up in court probably not quite as new.  
11 I guess my question was to go to what is very new  
12 is this concept of a special victim counsel.

13 And Colonel Higgins, since you are with  
14 the Air Force and they've had that program now for  
15 the last 10 months. You've been in your position  
16 since, only since about July, if I read your bio  
17 correctly, can you tell me about what your  
18 experience is?

19 And if I look at Colonel Cullen, we heard  
20 from Colonel McKee this morning, and he said that  
21 at least in the Army, there was a case yesterday --  
22 a case recently where there was a special victim

1 counsel that appeared. They got to argue on part  
2 of a motion during the court at the request of the  
3 judge. Are you hearing any feedback about that?

4           And Colonel McKee also said, my question  
5 was, look, you got special victim counsel, and then  
6 you're going to turn it over to a TDS attorney for  
7 the collateral matter if there is any at the  
8 appropriate time. Well, when I asked him about,  
9 well, when does that happen and how do you -- you  
10 know, does the special victim counsel tell the  
11 victim -- excuse me -- when to remain silent if  
12 there's something that can come out against her?  
13 Do they call TDS?

14           Who trumps, and how is that handoff going  
15 to work in the Army? And the response was you're  
16 still working all that out. Are you part of that  
17 discussion?

18           But I'd like to start with Colonel  
19 Higgins on that.

20           COLONEL HIGGINS: Thank you, ma'am.

21           In large respects, it is still unsettled.  
22 I mean, the decision that the appellate courts have

1 reached just a few months ago in giving the special  
2 victims' counsel the right to be heard at -- at  
3 these trials is still, I think, being felt in the  
4 field. What does it really mean? What is going to  
5 be the practical impact of that decision in  
6 practice?

7 I think our fear, as the Air Force  
8 defense community, is that we are going to take  
9 what has been a traditional one v. one system and  
10 we are going to put a special victims' counsel in  
11 the courtroom, partnering with the prosecution.  
12 And in a lot of the cases that we're seeing, we are  
13 seeing anecdotally the special victims' counsel  
14 sitting down with the prosecution and talking  
15 through case strategies and things like that. And  
16 so, that the prosecution now is basically in a  
17 partnership in some cases with the special victims'  
18 counsel.

19 And that concerns us a great deal because  
20 that special victims' counsel is not a government  
21 counsel in the sense of someone who is, as you've  
22 heard earlier today, constrained by Brady with the

1 obligation to provide discovery to the defense.  
2 And so, what that role of that special victims'  
3 counsel is going to be is something that I think is  
4 unsettled, and it is something that concerns us  
5 greatly, just on the anecdotal stuff we're seeing  
6 thus far.

7 COLONEL CULLEN: As you know, the Army's  
8 Special Victim Counsel Program was recently  
9 established. I think the initial operating  
10 capability was 1 November, with a full -- fully  
11 operational capability as of 1 January, I believe.

12 So we're still early in the process. I  
13 have identified, along with Colonel McKee, that  
14 there is the potential there for a friction point  
15 in the case of collateral misconduct, where the  
16 alleged victim has already formed an attorney-  
17 client relationship with the special victim  
18 counsel. But that special victim counsel is not  
19 authorized to represent that client in any  
20 disciplinary proceedings. That matter has to be  
21 turned over to the trial defense counsel.

22 So you will have an alleged victim with

1 two lawyers representing them. My position would  
2 be that the trial defense counsel takes priority in  
3 making any tactical decisions that could  
4 potentially have implications for the culpability  
5 of the alleged victim.

6 But it's a matter that we're going to  
7 have to work with our Professional Responsibility  
8 Branch. We adhere to very strict professional  
9 responsibility rules that outline the roles and  
10 responsibilities of counsel, and my commitment to  
11 Colonel McKee is that we will do this right. We  
12 will do it in accordance with our rules of  
13 professional responsibility.

14 And when it comes to any client, the  
15 trial defense counsel is committed to independent,  
16 ethical, and professional representation.

17 CHAIRWOMAN JONES: You know, this is the  
18 second time that we have come up to or come to a  
19 discussion about Article 32, which almost every one  
20 of you mentioned. And it's the end of the day, and  
21 we haven't heard exactly what function in detail it  
22 does serve.

1           Someone who comes from the federal system  
2 and even the state civil prosecution system is used  
3 to a probable cause finding by a grand jury and  
4 then rules of discovery. It was a surprise to me  
5 when I found out that the Article 32 was a  
6 discovery mechanism, and I know I think it's  
7 Captain Purnell, in your written statement, you've  
8 gone into a description of what Article 32 actually  
9 does and what its purpose is and why it's a good  
10 thing.

11           And I would like to hear that, with  
12 apologies to those of you on the Panel who already  
13 know the answers. But I think it would be good for  
14 the rest of us, and those who aren't here can read  
15 it.

16           CAPTAIN PURNELL: Okay. Well, in the  
17 investigation -- was that a question, ma'am?

18           CHAIRWOMAN JONES: Pardon me?

19           CAPTAIN PURNELL: Was that a question?

20           CHAIRWOMAN JONES: That was a question.

21 I have a problem that way, but yes, that was a  
22 question.

1           CAPTAIN PURNELL: Okay. From the  
2 investigation perspective, it's to make sure there  
3 has been an adequate investigation. And I think  
4 what the defense counsel brings to that process is  
5 that's often the first person in the process who  
6 has looked skeptically at the charges.

7           And so, it brings some sunshine. It  
8 serves as a check and balance. But in terms of the  
9 investigative function, it can allow -- you know,  
10 oftentimes we think about cases having been  
11 investigated solely by NCIS. But some military  
12 offenses are convened by command investigations  
13 that aren't always very, um, very strong.

14           Or there can be a need for a command  
15 investigation to build confidence in the results  
16 that the report releases. So you sometimes might  
17 see in a deployed environment or in a -- like a  
18 friendly fire or something, there might be benefits  
19 from the transparency that an Article 32  
20 investigation brings. But the one purpose is  
21 investigative, to see if there is some evidence  
22 that the offense was committed, and then the other

1 process is for discovery.

2           And the Article 32 is what makes our  
3 discovery process work because we have constrained  
4 rules of discovery. We don't have the right to  
5 subpoena witnesses. We don't have the right to  
6 subpoena evidence. We have to go to the government  
7 and ask "Mother, may I?" every time we want to do  
8 something.

9           We don't have travel funding. We don't  
10 have investigative assistance from trained defense  
11 investigators. And the Article 32 is our way to  
12 compel production of witnesses and have an  
13 opportunity to interview them.

14           So those primarily are the two functions.  
15 I mean, I think the Supreme Court said that the  
16 purpose was to ensure adequate preparation to avoid  
17 hasty or ill-considered charges, to save the  
18 accused from wrongful stigmatization, and to avoid  
19 trivial cases going forward. And I think those  
20 things happen today still.

21           CHAIRWOMAN JONES: So the mechanics are  
22 that, I guess, if I can call it this, the direct

1 case would be the prosecutors calling the witnesses  
2 they believe they need to establish the crime. And  
3 then what -- what power does the defense have? You  
4 can compel your witnesses during this proceeding?

5           CAPTAIN PURNELL: We can compel military  
6 witnesses that are reasonably available.  
7 Reasonably available means within 100 miles of the  
8 site of the investigation. They can be excused  
9 from attendance for good cause. So if they were  
10 involved in a military mission or some other  
11 reason, but we might very well have a right later  
12 then to depose or reopen the Article 32  
13 investigation for the absence of essential military  
14 witnesses.

15           We have the right to request the  
16 attendance of civilian witnesses, but they cannot  
17 be compelled to attend the Article 32  
18 investigation. And so, what often happens is the  
19 government may bring a paper case, may just call  
20 the NCIS agent and put in the NCIS investigation.  
21 But then we have the opportunity to call witnesses  
22 that we think should be explored and to ask them

1 questions.

2           And what it does is to jump-start our  
3 entire discovery process. It gets us going. It's  
4 very effective, I think, in the military  
5 environment where there's a more rapid pace. I  
6 mean, I know that one of the criticisms from our  
7 commanders is that our system is ponderously slow.

8           But in comparison to some civilian  
9 systems, I think it moves much more rapidly. And  
10 to have that sort of clarifying deadline, you know,  
11 to get this thing going and it's very helpful to  
12 get it jump-started.

13           And that's who we have the right to call  
14 in an Article 32 and what we ask them about.

15           COLONEL (RET.) COOK: Before you move on,  
16 let me just clarify two points that you made  
17 because what happens in the Navy may not be the  
18 same for some of the other services. The one point  
19 that you made about the Article 32 being used  
20 because -- as a discovery tool because sometimes  
21 there was a command investigation as opposed to a  
22 criminal investigation, and the evidence is not as

1 well developed or done as appropriately.

2 I think that now has changed that at  
3 least in sexual assault cases, it has to -- if it's  
4 a sexual assault allegation, it must be turned over  
5 to one of the criminal investigative services, and  
6 they do it. So, in the sexual assault arena, that  
7 concern valid across the board maybe, but maybe not  
8 as much in sexual assault?

9 CAPTAIN PURNELL: Absolutely not in  
10 sexual assault.

11 COLONEL (RET.) COOK: Okay. And the  
12 other point, just to clarify, is in terms of  
13 witnesses who are reasonably available that can be  
14 compelled to appear at an Article 32, 100-mile  
15 radius may be a policy determination made within  
16 the Navy. But that may not be the same standard  
17 that's applicable in the other services.

18 If somebody happens to be in an area or  
19 somebody is considered important enough, that  
20 person may be ordered to be presented as well.

21 CHAIRWOMAN JONES: Yes, Mr. Court?

22 MR. COURT: With regard to the 100-mile

1 matter, that's in the discussion of the reasonable  
2 availability portion of Rule 405, Rules for Court  
3 Martial. It's not part of the actual rule, but  
4 it's the discussion to the rule saying reasonable  
5 availability could be, for example, 100 miles.

6           One slight point. I have the potentially  
7 unique position of understanding that we're dealing  
8 with service members who are not necessarily in the  
9 United States. In Germany, there is a Status of  
10 Forces Agreement between the German government and  
11 the American government, which, among other things,  
12 relates to judicial process. And that provision, I  
13 believe it's Article 37 of the Status of Forces  
14 Agreement, permits -- actually requires the host  
15 nation, in that case Germany, to assist the sending  
16 state, U.S., in quasi-judicial -- and that's  
17 exactly what the Article 32 is -- quasi-judicial  
18 matters by subpoenaing witnesses.

19           I find across the board the government  
20 counsel do not understand that. They don't know  
21 that. They just say because they're used to what's  
22 going on in the States, we can't subpoena. We

1 don't have the authority. We can't make it happen.

2 And they can.

3 Now that doesn't mean it will happen.

4 There are times when a German prosecutor will  
5 decline to subpoena. For example, a child in a  
6 molestation case where the government doesn't want  
7 to bring the child to the 32, the Germans aren't  
8 going to make that happen.

9 But that's part of the reasonable,  
10 reasonably available issue at a 32. Ma'am, as a  
11 mechanism, how that occurs, the right to request  
12 witnesses is to request from the investigating  
13 officer that he direct the witnesses be there.  
14 Then he makes the determination if he will or will  
15 not.

16 Also one other thing about 32s, which I  
17 think has been sort of either not discussed at all  
18 or lost. The Army does not have a requirement for  
19 a legally trained person to be the Article 32  
20 officer. The Air Force, the Navy, and I suspect  
21 the other services do use JAG officers as 32  
22 officers. For whatever benefit or not that is, but

1 that person has a much greater understanding of  
2 whether a witness will or will not be relevant, how  
3 it might fit. But you can request that.

4           As a tactic, I have frequently invoked  
5 one of the phrases that the Article 32 officer  
6 states at the beginning of the proceeding. That  
7 is, "If you're aware of any military records that  
8 you have been unable to obtain, let me know, and I  
9 will get them for you." Well, that's a pretty  
10 broad statement.

11           Now I frequently don't need his  
12 assistance in that regard, but I can get it and  
13 have him try to obtain records which, for some  
14 reason, I don't yet have. The Article 32 purpose,  
15 ma'am, there are fundamentally two that I see as a  
16 practitioner.

17           One is to either poke holes in the  
18 government's case to the extent that I cross-  
19 examine witnesses and then at trial can drive  
20 through those holes because I've already  
21 investigated the case before the 32. I have a  
22 right, and I almost universally will get the

1 investigative report before a 32 is conducted so  
2 that I can then interview people, talk to witnesses  
3 and decide who I want to call as witnesses.

4           The other reason is if we have a reason  
5 to believe that the government thinks this case, or  
6 at least some charges on the charge sheet, would  
7 die at the 32, then it may be tactically smart to  
8 show enough of your defense hand to present that at  
9 the 32 to get that piece dropped out. But that's  
10 the way I approach a 32, one or the other, and I  
11 discuss it, of course, with my client and we go  
12 through all of that ahead of time.

13           CHAIRWOMAN JONES: So presumably -- I  
14 think you said you usually have all the  
15 investigative reports. In the -- look, in a  
16 federal context, you would have the right to all  
17 the statements made by any of the government  
18 witnesses that were going to be getting on the  
19 stand. Maybe not too much before the trial, but  
20 you'd get them.

21           You'd have a right to any tangible  
22 evidence that they were going to present. You'd

1 have a right to a preview of expert testimony.  
2 Those sorts of things. You'd be -- you have right  
3 to notice of an alibi. Where do those things fit  
4 in in this system?

5 MR. COURT: Ma'am, the preview of expert  
6 testimony doesn't fit in at all. We have no right.

7 CHAIRWOMAN JONES: You have what? No  
8 right?

9 MR. COURT: No right to know what the  
10 expert is going to say. I have attempted on  
11 occasion to include in my discovery request a  
12 synopsis under one of the federal rules, I believe  
13 it's 16(b), that requires that.

14 CHAIRWOMAN JONES: Mm-hmm.

15 MR. COURT: I've never had it enforced in  
16 the military. I have to figure out what the expert  
17 is going to say, and this causes delay because  
18 until I can find out and interview the expert, then  
19 I don't know if I need an expert to explain what  
20 that expert is telling me or not.

21 So then, once I've done that, I then  
22 petition the convening authority and say I need an

1 expert in this field because the government has an  
2 expert in that field, and that causes further delay  
3 in the process. The other matters you're talking  
4 about --

5 CHAIRWOMAN JONES: But is this all going  
6 on during the Article 32?

7 MR. COURT: No, ma'am. No. Very, very  
8 seldom is an expert called at an Article 32  
9 hearing. The government doesn't want to spend the  
10 resources, spend the money, whatever reason. They  
11 almost never call an expert at an Article 32  
12 hearing in my 30-odd years of experience.

13 The other matters of discovery, I can  
14 usually obtain access to the law enforcement  
15 records. You asked if I get all the files. I get  
16 what they give me. Whether that's all of it or  
17 not, I don't know until I've gone and looked at the  
18 source.

19 And I frequently find where there are  
20 young trial counsel who may not have been very  
21 experienced that they just accept what the law  
22 enforcement people give them as "the file." I then

1 go down and look at the real file, the one that's  
2 maintained, and there have been many times when I  
3 found statements of witnesses that law enforcement  
4 didn't think was important enough to give out to  
5 the government, and the government didn't go down  
6 and look. And that has led me -- anyway, war  
7 stories, I could go on for days.

8           But the physical evidence, if it's  
9 available, if it's not at the lab, which it could  
10 be because they don't have to wait for it. They  
11 can just say it's at the lab, and we don't need  
12 that for preliminary Article 32 hearing. I'm  
13 rambling. I'm sorry.

14           CHAIRWOMAN JONES: I'm just trying to get  
15 a feel for how this whole process works. It's not  
16 easy for me. It's not used to the system I come  
17 from. The Article 32 sounds like a mini trial.

18           MR. COURT: Yes and no, ma'am. It can be  
19 turned into that if you wish. But again, from a  
20 tactical point of view, since probably 70 to 80  
21 percent of all cases that go to an Article 32 go  
22 forward to trial in some form or other --

1 CHAIRWOMAN JONES: Mm-hmm.

2 MR. COURT: -- it may not be tactically  
3 smart for a defense counsel to show too much at the  
4 Article 32 hearing.

5 CHAIRWOMAN JONES: Right.

6 MR. COURT: So it's not in that sense a  
7 mini trial. But it is a mini trial if you can  
8 cross-examine the witnesses sufficiently to prepare  
9 your cross-examination at trial. And you can, with  
10 luck, get the charges dropped at an Article 32  
11 hearing, if you know what you're doing and if you  
12 have the case for that.

13 CHAIRWOMAN JONES: Okay. Mr. Zimmermann?

14 MR. ZIMMERMANN: I'm going to add  
15 quickly. Our attitude -- our attitude toward the  
16 Article 32, as far as what the defense objective  
17 is, there's two possibilities. It depends on the  
18 strength of the case that we learn from the  
19 pretrial discovery.

20 If we know it's going to go to trial no  
21 matter what we do, we cross-examine their witnesses  
22 the best we can, and we don't put anything on.

1           CHAIRWOMAN JONES: Right.

2           MR. ZIMMERMANN: If we think we can "win  
3 it," defined as knock it out at the 32 by  
4 convincing the investigating officer to recommend  
5 dismissal because there's no probable cause, then  
6 we will put on a defense many times and with the  
7 idea that we're going to show this investigating  
8 officer who in the Marine Corps is always a Judge  
9 Advocate, often special court martial judge. And  
10 therefore, why I think that my experience has been  
11 the dismissal recommendations have been followed in  
12 all but one Marine Corps case that we've had, and  
13 that would be to win it by getting a recommendation  
14 for dismissal.

15           CHAIRWOMAN JONES: Ms. Wilson?

16           MS. WILSON: I think there's also another  
17 alternative, which is that after the Article 32 --  
18 yes, your great goal in life, if you're a defense  
19 counsel, is to make the case go away. But often,  
20 some of the charges may drop off because, you know,  
21 the prosecution tends to kitchen sink plead.

22           But also it may be that the strength of

1 the case, you may end up with the willingness to  
2 have the client plead to a lesser included offense.  
3 You know, one of the charges, if you'll drop all of  
4 these, you get plea bargains out of it.

5           With some frequency, matters are deferred  
6 to administrative processing versus, you know,  
7 continuing to court martial. So it's not all black  
8 and white, and it's a good place -- at the end of a  
9 32 hearing is a good place to do whatever  
10 negotiation you may have to do on the case to go  
11 back to that convening authority and sit down and  
12 say, well, let's talk about this.

13           So it is not a useless institution.

14           CHAIRWOMAN JONES: Oh, I don't -- I don't  
15 find it useless at all. It seems very useful.  
16 It's just different.

17           MS. WILSON: Yes, ma'am.

18           COMMANDER FOWLES: Ma'am, just because  
19 you asked, process wise, I think it's important to  
20 keep in mind that the Article 32 officer's report  
21 is just a recommendation. The convening authority  
22 is not bound by that. So no matter what the report

1 says, the convening authority can go forward either  
2 way. So --

3 CHAIRWOMAN JONES: And I guess the  
4 Article 32 is the only way that the convening  
5 authority is presented with the facts or a version  
6 of the facts from the investigating officer to make  
7 their decisions?

8 MR. COURT: Yes, ma'am. Anything beyond  
9 what the investigative group -- anything beyond  
10 what the investigative agency has developed. I  
11 mean, the convening authority could always read  
12 that. But the purpose of a 32 is to develop and  
13 flesh it out and give in some cases the convening  
14 authority a reason to decide that this is not a  
15 case that should go forward or not this charge.

16 And one other reason, which I'm sure  
17 we've all had for an Article 32, is client control.  
18 To let your client understand the nature of what  
19 he's up against so then we can do some sensible  
20 negotiating.

21 CHAIRWOMAN JONES: So he or she can see  
22 what the proof is.

1           MR. ZIMMERMANN: And not just hearing it  
2 from the defense lawyer.

3           CHAIRWOMAN JONES: Right.

4           COLONEL HAM: Ma'am, may I ask a  
5 question, please? We heard yesterday of abusive  
6 interviews by defense counsel, and I'd like to hear  
7 whether or not any witness can be forced to be  
8 interviewed by defense counsel. I'd like to hear  
9 your views on that, please.

10          CAPTAIN PURNELL: Well, Professor Fidell  
11 seems to think that that's -- we have plenty of  
12 discovery because we'll always be able to interview  
13 witnesses or we'll always be able to compel a  
14 deposition. But I don't see what right there would  
15 be to compel a witness to talk with you, and I  
16 don't know of any precedent.

17          A judge might use their good offices to  
18 encourage the trial counsel or the witness to speak  
19 with the defense counsel, will remind the trial  
20 counsel and the witness that both sides are  
21 supposed to, under Article 46, have equal access to  
22 witnesses and to evidence. But short of using a

1 judge's good offices, I know of no precedent which  
2 would allow a witness, require or compel, you know,  
3 a witness to be interviewed.

4 COLONEL HAM: Those of you who have been  
5 trial counsel, do you make that part of your  
6 initial discussion with the witness? Is that a  
7 common question, "Do I have to talk to the defense  
8 counsel?" And how would you answer that question?

9 MR. ZIMMERMANN: I think it depends on  
10 the status of the witness. I think a civilian has  
11 absolute right to talk or not talk pretrial, to be  
12 interviewed. I think a military witness can be  
13 told to talk to defense counsel.

14 I've never run into a situation where we  
15 were unable to interview a military witness.  
16 Maybe, maybe there's something different now, but -  
17 -

18 COMMANDER FOWLES: Colonel Ham, in the  
19 Coast Guard context, I've been trial counsel for  
20 eight years, and I've never told them they have to  
21 talk to defense counsel, but I've always encouraged  
22 that it's an open discovery system. And I think

1 cooperation makes the process easier on the victim.

2 MR. COURT: If I can, ma'am?

3 COLONEL HAM: Mr. Court, yes?

4 MR. COURT: Moving this into the purpose  
5 of this panel, let's talk about talking to an  
6 alleged victim because I think that's what we're  
7 really here talking about. There is no requirement  
8 of which I am aware that says any uniformed service  
9 member must submit to a defense interview.

10 Now in the practice, they do. Why? In  
11 large part because they're used to following  
12 orders. Their first sergeant tells them to go down  
13 there and see the defense counsel because we've  
14 asked the first sergeant to send the guy down or  
15 the whatever.

16 We're talking about an alleged victim.  
17 It's obviously different. Whether there is a  
18 special victim counsel or not, almost invariably  
19 there is at least one **baffle** or two baffles that  
20 must be gone through by the defense to be able to  
21 speak to the alleged victim.

22 Whether it's a protective trial counsel,

**Comment [E3]:** Should this be  
"battle"?

1 whether it's a victims' advocate, whether it's a  
2 witness/victim liaison, someone is going to be  
3 there. And parts of what I'm hearing about abusive  
4 interviews, I had never, ever had a problem with  
5 allowing an alleged victim to have a helper, social  
6 worker, victims' liaison, be present in the  
7 interview to make sure I'm not going to beat the  
8 person up.

9           As a practical matter, I find that to be  
10 totally ineffective in an interview session anyway.  
11 It makes no sense. You can get a lot more --  
12 anyway. I'm not going to go too far down that one.

13           But the requirement that I've heard  
14 bandied about that the trial counsel be present on  
15 the interview, absolutely not. That's absolutely  
16 inappropriate unless, of course, I get to be  
17 present for all of his interviews with the alleged  
18 victim. What's sauce for the goose is sauce for  
19 the gander.

20           But, no, ma'am. There is no requirement  
21 I am aware of to require a witness to testify.  
22 I've only had one case in 30-odd years where I

1 recall an alleged victim refused to grant me an  
2 interview. The judge tried, wouldn't do it.

3           So I get into the courtroom, and that's  
4 my first question. And the cross-examination for  
5 her went downhill from there because the panel does  
6 not understand why not? Why won't you grant an  
7 interview?

8           CHAIRWOMAN JONES: Well, I would assume  
9 with a sexual assault case, the prosecutor would  
10 have to, almost in every case, put the sexual  
11 assault victim on at an Article 32. Is that not  
12 the case?

13           Or is it hearsay? It doesn't have to be  
14 direct evidence? Colonel Higgins?

15           COLONEL HIGGINS: I think as a practice,  
16 the prosecutor is generally going to put their  
17 victim on. If they're a civilian, they cannot be  
18 compelled to attend the hearing, and you will find  
19 civilian victims that refuse to attend the hearing,  
20 in which case --

21           CHAIRWOMAN JONES: Right. In a military  
22 --

1 COLONEL HIGGINS: In which case a written  
2 statement is often offered in its place. But  
3 you're going to have some statement from the victim  
4 in almost every sexual assault case.

5 CHAIRWOMAN JONES: So you can actually  
6 use hearsay? You can use a written statement from  
7 the assault victim?

8 MR. COURT: Under certain circumstances.

9 COLONEL HIGGINS: Yes, under certain  
10 circumstances. You can put in a prior statement of  
11 a witness.

12 MR. COURT: The issue of rules of  
13 evidence at an Article 32 hearing, ma'am. The  
14 rules of evidence do not apply, except for  
15 privileges and 412 and relevance. Those are the  
16 only ones that matter that can keep evidence away  
17 from an Article 32 hearing so that hearsay or out  
18 of court statements, in some circumstances, are  
19 admissible and frequently are used, particularly if  
20 the witness is not reasonably available, for  
21 whatever reason.

22 Although on that point, at Article 32s,

1 we routinely of late, as the technology has gotten  
2 better, use VTCs or telephonic testimony to capture  
3 it for the investigating officer.

4 CHAIRWOMAN JONES: Thank you. That's all  
5 very helpful to me.

6 Colonel?

7 COLONEL (RET.) COOK: Okay. Another  
8 question. We've heard a lot in the last two days  
9 about the special prosecutors, the special  
10 investigators, the special victim counsel. What  
11 kind of assets, if any, have been put to each of  
12 the services on the defense side, the specialness  
13 of this whole process?

14 Okay. Mr. Court's hands say zero. Are  
15 there any special defense counsel or special  
16 training that's been allocated to the defense  
17 community, again thinking it's a justice system and  
18 trying to keep everything balanced.

19 CAPTAIN PURNELL: Well, I think that -- I  
20 mean, the Defense Counsel Assistance Program was  
21 stood up to make sure that counsel were having the  
22 training and resources they wanted. We did add a

1 defending sexual assault course and a defense  
2 counsel orientation course that we had not had in  
3 prior years.

4           So I think, you know, I think Judge  
5 Advocate -- the Judge Advocate General that's  
6 present here on your panel today was instrumental  
7 in making sure that there was balance to both sides  
8 and did a nice job of that. So we did see some  
9 resources.

10           I don't think they compensate for now  
11 giving with the special victims' counsel what we  
12 view as an additional attorney to the trial team,  
13 but we have seen some increase in resources.

14           COLONEL (RET.) COOK: For the other  
15 services?

16           COLONEL CULLEN: In the case of the Army,  
17 we are very proud of the Defense Counsel Assistance  
18 Program, which was stood up in 2007. We have two  
19 highly qualified experts, both former military  
20 judges with a career of experience in the military  
21 justice system that provide tremendous assistance  
22 to our counsel in the field.

1           They are also utilized as instructors,  
2 and we operate training program, an extensive  
3 training program for our counsel. And I believe  
4 you will hear about that at your session in Austin,  
5 Texas, next month.

6           But the biggest frustration I have as the  
7 Chief of the Army Trial Defense Service is the  
8 relative lack of experience of new trial defense  
9 counsel. They bring a great work ethic and a sense  
10 of selfless service, and towards the end of their  
11 tour, they can become highly skilled courtroom  
12 advocates. But there is certainly a train-up  
13 period there where they are having to represent  
14 clients. We will normally assign more experienced  
15 counsel with them to assist them, but there has  
16 been a great diversion of talent into the  
17 prosecution side.

18           In the Army, we have 23 special victim  
19 prosecutors who are mostly field grade officers  
20 that in past years might have been candidates to be  
21 senior defense counsel. They have now been  
22 diverted into the prosecution side, which has

1 limited then the talent pool that's available to  
2 serve as senior defense counsel.

3           So that's a challenge that we face, but  
4 we work very hard through our training program to  
5 compensate for that and to ensure that every one of  
6 our clients between the counsel and the supervisory  
7 support that they receive can always deliver  
8 competent representation at every courts martial.

9           BRIGADIER GENERAL (RET.) MCGUIRE: Just a  
10 quick question. Thank you, ma'am.

11           CHAIRWOMAN JONES: General?

12           BRIGADIER GENERAL (RET.) MCGUIRE: Is  
13 I've failed to ask this question prior to those who  
14 prosecute, but in the case of defense, do you have  
15 any opinion or comments of the efficacy or quality  
16 of the investigations that you receive?

17           MR. COURT: Ma'am, when you say "the  
18 investigation" --

19           BRIGADIER GENERAL (RET.) MCGUIRE:  
20 Criminal investigations.

21           MR. COURT: You're talking about the  
22 initial --

1           BRIGADIER GENERAL (RET.) MCGUIRE: From  
2 NCIS, OSI, CID?

3           MR. COURT: Going back to what some of my  
4 opening remarks were, I find that many criminal  
5 investigators begin with the attitude of they have  
6 a crime here that they must resolve. They're not  
7 going into it openly and thinking did it happen or  
8 did it not?

9           That said, there have been cases where,  
10 for whatever reason, the particular investigator  
11 didn't seem to be accepting the version he was  
12 being given and went the extra mile to find  
13 defense-friendly evidence. In my comments, I  
14 pointed out that invariably in the report there is  
15 a background check on the accused. There is never  
16 one on the alleged victim.

17           Now I understand privacy, and I  
18 understand fishing expeditions, and I understand  
19 what was talked about. And I'm not talking about  
20 seeking that routinely. But if there were to be a  
21 background check on an alleged victim and it were  
22 to be positive for something, I don't care what,

1 all the report should say is positive. Then the  
2 defense could seek, for example, a ruling from a  
3 military judge akin to 513 for medical records and  
4 mental health records, asking for an in camera  
5 review.

6           Because we know there is something, and  
7 it could well be, has happened to me in a case  
8 within the past two years, that it wasn't a  
9 background check. It was an Article 15 that should  
10 not have still been in the records, but it was.  
11 And what was it for? Lying to your superior.

12           Now that's something that you want to  
13 know about in a court martial and question the  
14 witness so that if all the CID report in that case  
15 had done was run a background check and popped up  
16 Article 15, we wouldn't have had to have a three-  
17 week delay when it developed in last-minute  
18 discussion with the victim that she had had an  
19 Article 15 years ago. Not the victim, or maybe. I  
20 don't recall anymore. My facts are --

21           But the point is, that is an example of  
22 something that we don't get that I think would help

1 balance the system. Those are the kinds of things  
2 that are not ever in the law enforcement report.  
3 Ever -- okay, seldom in the law enforcement report  
4 that the defense then has to go look for.

5           And that's another reason to have the  
6 alleged victim at the 32 because there you can ask  
7 questions like have you ever been in trouble? So  
8 that you have a basis to seek a subpoena.  
9 Otherwise, you'll never know. You can ask a  
10 question like have you sought mental health  
11 counseling? So that you know you can request  
12 records under 513.

13           Because you frequently, if ever, will get  
14 that in the initial report. She may tell you in an  
15 interview, but you may not want to do that in an  
16 interview. You'd rather wait until it's under oath  
17 at the 32, where you can rely on the  
18 representation.

19           But I do find on balance that the  
20 investigations are not as even-handed as one would  
21 wish.

22           CHAIRWOMAN JONES: Anything else?

1 (No response.)

2 CHAIRWOMAN JONES: Well, thank you very  
3 much. It was very important for us to hear from  
4 each of you and receive your perspectives on this.

5 I'm going to adjourn now. Some of us  
6 have to catch trains, like me, and we've lost a few  
7 Panel members already. But just because you were  
8 the last panel, I don't want you think that you  
9 haven't been heard, and we very much appreciate  
10 your coming.

11 Thanks.

12 MS. FRIED: This meeting is closed.

13 (Whereupon, at 5:10 p.m., the public  
14 hearing was concluded.)

15

16

17

18

19

20

21

22