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
PANEL MEMBERS PRESENT:

THE HONORABLE BARBARA JONES, Chair

COLONEL HOLLY COOK (RET.), USA

MS. MAI FERNANDEZ

PROFESSOR ELIZABETH HILLMAN

THE HONORABLE ELIZABETH HOLTZMAN

VICE ADMIRAL JAMES HOUCK (RET.), USN

BRIGADIER GENERAL COLLEEN MCGUIRE (RET.), USA

OTHERS PRESENT:

COLONEL PATRICIA HAM, USA, Staff Director

MARIA FRIED, Designated Federal Official
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   Mr. Brian Lewis  
   Ms. BriGette McCoy  
   Ms. Ayana Harrell  
   Ms. Sarah Plummer  
   Ms. Marti Ribeiro

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   Colonel James McKee, U.S. Army, Special Victims' Advocate Program  
   Colonel Carol Joyce, U.S. Marine Corps, Officer in Charge, Victims' Legal Counsel Organization  
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CHAIRWOMAN JONES: Good morning, everyone. We're now going to begin the second day of our two-day public hearings. And we have our first panel who are all sexual assault survivors, and they're here to give us their perspectives. And in advance, I just want to thank each and every one of you for coming in to offer us information that we very much need. So we all appreciate it.

If we could begin with -- I'm very bad about ranks. Yesterday, I called a master sergeant a general.

(Laughter.)

MALE SPEAKER: Yes, she did.

CHAIRWOMAN JONES: Command Sergeant Major Julie Guerra.

SERGEANT MAJOR GUERRA: Yes, ma'am. Good morning.

Judge Jones and members of the Panel, thank you for the opportunity to speak here this
CHAIRWOMAN JONES: I'm sorry to stop you.

SERGEANT MAJOR GUERRA: Yes, ma'am.

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

SERGEANT MAJOR GUERRA: Yes, ma'am.

CHAIRWOMAN JONES: Okay.

SERGEANT MAJOR GUERRA: Is that better?

CHAIRWOMAN JONES: Yes, much better.

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

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

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

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

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

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

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

But the most important thing my command gave me was mentorship. My supervisors and the people directly around me still treated me like I
was a valued member of the team. I was given duties and responsibilities, just like every other soldier in my unit.

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

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

The advice I give to victims is report it and then trust the process, and I believe in that. I tell victims you're going to have to tell your
story over and over again. It will be grueling. It will be ugly, and it will not be comfortable. But it's part of the process.

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

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

I think that it's not -- I'm sorry. I think that it is important not just to get the victim the services they need, but to allow them to
continue their service if that is what they so
desire. As much as you possibly can, you should
not change their daily battle rhythm because it
provides a sense of normalcy and reminds them that
they are still contributing to the force as a
whole.

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

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

Had my leaders not taken care of me 18
years ago, I would be another statistic that left
the force with yet another ugly story to tell.
Because I had caring, compassionate leaders, I am who I am in the United States Army today. Over my career, I have watched the Army transform the services that are available to sexual assault victims. My sexual assault occurred in a culture where we didn't talk about the assaults. Now we educate, inform, have the tools necessary to support victims, and different avenues of reporting.

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

I see the resources that the Army has
poured into the fight against sexual assault. I have seen the change in the way we educate soldiers about this crime and about the Army values. I have also seen the emphasis our leaders put into training and accountability.

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

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

At that time, I thought I'd have to put up with a lot of crude and vulgar language and behavior because I wanted to be part of that team. I don't put up with that now, and I tell every junior soldier I meet, male or female, that they...
can't either. You will be part of the team on your own merit by being physically fit, knowing your job, and being where you are supposed to be.

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

I shared my story today because somebody needs to talk about what the Army has done in a positive manner, and from my perspective and my experience was completely different than what you hear in the media, what you see on movies and TV.

I emailed the Sergeant Major of the Army, who was formerly the Commandant of the United States Army Sergeant Majors Academy when I was a student there, and I told him that I had a different story to tell, one of mentorship.

I knew that the Army took care of me, and my chain of command took care of me. And I think that while this was a very horrible, tragic thing that happened, look where I am today. I am a
senior leader, a battalion command sergeant major that 19 years ago I trained in to be a counterintelligence agent.

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

Thank you.

CHAIRWOMAN JONES: Thank you very much.

Mr. Lewis?

MR. LEWIS: Good morning, Your Honor.

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

It's very important for male survivors to be included in this discussion. In the 2012 survey that was recently conducted, 53 percent or
approximately 14,000 out of the 26,000 estimated sexual assault cases involved male victims.

One of the biggest hurdles today for male survivors in the military to face is the lack of recognition of their status as survivors. One of the most offensive awareness campaigns a few years ago was the "Ask Her When She's Sober" campaign. This poster campaign truly marginalized the experiences of male survivors, and even today, the posters for sexual assault awareness mostly feature women and do not feature male survivors at all. This devalues the experience of male survivors.

More recently, the Marine Corps training film "Lost Honor" has interviews with three convicted perpetrators of sexual assault, all male. This ignores the reality of female perpetrators. The Department of Defense can do better. They need to include men in their marketing as survivors and include women as perpetrators to drive home the message that sexual misconduct is a crime, and either gender can be a victim or can be a
perpetrator. Another and possibly the biggest hurdle facing survivors of military sexual trauma is the continued involvement of the chain of command in prosecuting these crimes. Commanding officers have many tools at their disposal to ensure that formal written complaints or formal allegations are never made. These include, but are not limited to, alleged orders to maintain silence in regards to the attack, downgrading evaluation reports of survivors who report incidents, and failure to maintain the confidentiality of the complainant. Currently, the Department of Defense has an initial disposition of authority policy in place that limits the authority of commanders below the level of O-6 to decide the appropriate action on these cases. This supposed reform is really a distinction without a difference.

In my case, I was attacked on a command that was headed by an O-6. Had this reform been in place when I was a survivor, the issue still would not have left my chain of command. I'm sure the
same is true for many survivors in all branches of the service, and like me, they will not receive the alleged benefit of the impartial review that was the intent of this policy.

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

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

As I alluded to earlier, the commanding officer has these tools to prevent survivors from reporting. And while Congress and the public have been focused on what happens in the adjudication
process, we really need to look at why over 90 percent of victims apparently choose not to report this crime at all.

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

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

As was alluded to yesterday, another huge battle and another barrier facing all survivors is the use of unfounded and stigmatizing mental health diagnosis by military mental health professionals. I was discharged in 2001 with a personality
disorder after being diagnosed with post traumatic stress disorder resulting from my rape.

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

Unfortunately, the use of these disorders has only continued in recent years, despite current policies to not -- excuse me, to not assign these diagnoses. That policy only applies to combat veterans. To address this problem, Congressman Tim Walz introduced the Service Member Mental Health Review Act. This legislation requires the
Department of Defense to identify former service members who were victims of these scandals and give these survivors an independent look at their discharge by the Physical Disability Board of Review.

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

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

Survivors see what's happened to prior people who have reported, and they read our
accounts on social media and in the news. Survivors know if they are unsuccessful at stopping the retaliatory discharges before they occur, they will carry that stigma through the rest of their lives. The easiest way to stop that retaliation is not to report.

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

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

Even though the Department of Defense says that if we believe an error occurred during
the discharge we are free to pursue a remedy through the Boards for Correction of Military Records, in practice this solution does not work. The boards take favorable action on less than 10 percent of petitions submitted for their consideration. The Department of Defense needs to show and needs to publicly show that it is committed to acknowledging its past erroneous discharges and providing an effective remedy if it is to begin building a trust with current troops, as several panels stated yesterday morning. To give the committee some brief background on myself, even though it should not be necessary, I was assaulted while serving aboard a ship in the United States Navy. My command ordered me not to report the crime any further. I was taken off the ship. I was sent to the naval hospital in San Diego. I was misdiagnosed with that personality disorder, and I was discharged. I have turned my life around, and it is in no small part due to my partner and the veterans
who surround me. I currently hold an Associate of Applied Science from Anne Arundel Community College in paralegal studies. I hold a Bachelor of Science degree from Stevenson University in paralegal studies, which is an ABA-accredited institution. And I hold -- I will obtain my Master of Science in forensic studies in the coming weeks. While there, I wrote my long paper on military sexual trauma, which was nominated for consideration to be published in the Stevenson University forensics journal. I know military sexual trauma. I also know that the Department of Defense needs to do a lot better job providing services for male survivors. Currently, male survivors have access to very few groups where we can process our emotions. We have access to only one residential treatment facility run by the Department of Veterans Affairs where we can seek intensive treatment, and that is in a coed basis. Just as the women surrounding me deserve their privacy and
their place to tell their stories in a single-gender setting, males deserve that same setting, too.

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

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

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

Ms. McCoy?

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

For those of you who do not know me, my name is BriGette McCoy, and I'm a nationally invited public speaker. I am also a conference
facilitator and a veteran community leader. My experience has been requested on multiple networks, and I've spoken and been interviewed in a documentary, which is called "Servicewomen Come Marching Home" that chronicles the lives of women veterans after they return from the military and how they transition.

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

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

I -- I volunteer extensively. I collaborate with multiple organizations, trying to make sure that we get the word out and get help to
those who are not in the forefront, people who
don't have the ability to speak for themselves.

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

When I testified before the Senate
previously, I explained how my command handled my
written report. I did write a written report about
sexual harassment from a senior enlisted soldier in
my unit. That information was taken to my command.
They came and questioned me and, at the end of it,
sent me to my first sergeant, and my first sergeant
wanted to know what I wanted out of this situation.
I had no, you know, premise. I didn't
want anything but to get out of that situation with
that particular service member and not be harassed
anymore. From that point forward, I was expedited
out of the military. So within a very short amount
of time, I lost my career because I reported sexual
harassment.

Now, mind you, if you don't know my
story, not only was I sexually harassed, but I had
been raped twice before, and I never reported that.
So my experience is very different. I didn't have
a system of support. I did not have anyone that
came alongside me, and I was ostracized.
The people who were in my unit that were
-- reported to me no longer were reporting to me,
and I was set aside from my specific job duties. I
was given the opportunity, and I'm using air quotes
here, to leave the military with an honorable
discharge if I chose to leave the military without
pressing any charges or moving forward.

Because I've been very vocal about my
personal experience, people in the community come
to me. They send me emails. They send me letters.
They send people to me to find out what type of services are available, how they can get mental health treatment, and how we can help them transition in some cases within the military because there are still cases going on right now where women are being abused sexually in the military, and there is no remedy.

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

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

And let me point to you, I keep saying all of those terms. I spread them out because when...
we use MST, it, for some reason, has given people this idea that it is some, you know, nebulous idea. We don't have to deal with it. The military is going to handle it.

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

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

In one case -- excuse me. In this particular case, a young woman decided to stay in the military. She was sexually assaulted, and they put her on the psychiatric ward because she
reported that she had been assaulted. They took her personal belongings and hid them from her when she was discharged from the ward. So she had no way of being able to contact her family or her friends. She had no record of her medical documentation.

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

It's troubling to me that parents of service members have to seek support and leave their jobs to support their sons and daughters who have been raped or harmed in the military because the remedies that are available are not sufficient to protect them while they're serving. Attacking the root cause to these issues should be paramount. We would not have rape or sexual assault if there were no one perpetrating these crimes.
Utilizing the UCMJ, changing Article 32 so that we're taking this out of the chain of command should be paramount. There shouldn't even be a discussion. The levels of retaliation that people receive when they report a crime that happens to them is -- has been a tremendous challenge. It causes people who see the crimes to not come forward, and this is another issue.

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

We've got to change how we connect all of the pieces to support the veterans and the military. We have the infrastructures. We just
need to bring them all together and make this a better situation for everyone.

Thank you for your time.

CHAIRWOMAN JONES: Thank you, Ms. McCoy.

Ms. Harrell?

MS. HARRELL: Good morning, Your Honor --

CHAIRWOMAN JONES: Good morning.

MS. HARRELL: -- and other Panel members.

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

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

When I first found out last February that I was going to be paired with a service dog to
mitigate my disabilities, that prompted me to find out more, and I wanted to learn -- I wanted to learn more about service dogs and PTSD and just everything that it would help me with, with mitigating my disabilities. And I learned that there was nothing in my community to teach me about service dogs or that even teaches or supports veterans with service dogs.

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

I'm nervous.

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

Both my parents are retired Army of the OIF and OEF wars. I am a military brat. My love for the military started when I was a military brat growing up in Europe. I always knew that this was what I was going to do. Throughout high school and
junior high, I participated in Air Force and Army JROTC.

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

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

And two, because my mom wasn't my mom that day. She made me do push-ups, told me to recover, and she was the very first military person that handed me my first military coin. AIT was a
different culture with more freedoms. Within my first three weeks, I was pushed to a mental break from my peers.

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

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

My bed was moved out of my room into the barracks common area, and the same people who were bullying me was placed on buddy watch. I was shown from the very beginning of my training that it was not okay to speak out. And in December, they decided to let me go home. So I went home for
Christmas. They decided to let me go home and get
my mind right and return in January to train, which
is called recycle.

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

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

I had to be back on Sunday for CQ duty.

So we left. Immediately arriving, the girls said
one by one that they were going off to hook up with
other guys in other rooms. There was a main room
where I was, but they wanted to go spend time
before being shipped off to their first duty
stations.

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

I got some fruit punch, and I sat down
while watching TV and listening to the guys in the
back bathroom doing keg stands. They all came to
the front. So I got up to go to the bathroom, and
when I returned, I was a little drowsy. So I told
one of the guys I was going to go lay my head down,
and he said, "Sure, go ahead," and he even told
some of the rest of the guys to come back and to
shut the door.
At some point, I remember going in and out of being awake, and a guy who had a huge crush on me from the Marines -- because at Redstone arsenal, we have a few different branches training for ammunition. I was an ammunition specialist. He wanted me to leave with him, but I told him no because I thought that he was trying to get me to go off and, you know, lay in the hay. I do not know if that is real, but I dream of that very often.

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

So I looked around for the room phone and the cord, and it led out of the room, and I walked out of the room filled with men. And I stepped over them, saw the phone under the couch, and I reached down to pick it up. I grabbed my shoes off
the floor, my purse -- and I'm skipping a few parts here because I don't want my testimony to be too long. I'm sorry.

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

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

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

You now have a military with women in positions of great importance, and we are serving
with distinction and courage through performance.

So women have our place. MST isn't happening because women are in the ranks. Sexual assault is occurring at an alarming rate to men and women of our military. Let me make that clear.

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

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

I found Service Women's Action Network,
or SWAN, whom has helped me find my voice. I found K9s for Warriors, which is helping me to regain my independence and my place back into society. These two organizations together have helped me to decide to share my story with other veterans who may be going through what I am going through, which is another reason that I decided to start and create Paws on Duty.

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

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

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

Thank you for listening.

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

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

Ms. Plummer?

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

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

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able to advocate for ourselves and for others. So I hope that sharing a small piece of my story, as well as some suggestions for all of you, I have the hope that they'll improve the DoD's handling of these types of cases and help other veterans coping with similar challenges in the future.

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

So I'm a University of Virginia graduate, a former Marine Corps intelligence officer, and five-time military Olympic athlete. I'm a registered yoga instructor, a certified integrative nutrition counselor, published author, and small business owner who continues to serve my fellow veterans in a variety of ways. I mention these
things because -- precisely because what happened to me in the military is what's driven me to do what I do now professionally.

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

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

And that being said, I'd like to address the first point, the inadequacy of the military system to support victims throughout all phases of
the reporting process. So I have many examples of lack of coherent, consistent, and intelligent support provided to me as a victim. I'll pick one. The most tangible example from my personal history is that I was not allowed to complete flight school because of my having sought counseling after being raped. So while undergoing the initial legal proceedings of my case, the JAG in charge was rude, flippant, failed to keep me well informed about my case. And I'm sorry, I'm forgetting your name, and I can't read it from here. But the first woman who shared, you know, how well informed she was throughout the process, I had the exact opposite experience, where I felt very confused because I just wasn't provided information throughout the process, which it's, you know, can be a complicated process to begin with. So I was effectively left to the wolves to kind of handle the after-effects of grueling questioning sessions behind closed doors, then sent back out into my training environment with no
mention of what the next steps would be legally or what resources of support I had available.

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

I think he was acting with good intent to tell me that, you know, it was a modern Marine Corps and I could go ahead and utilize these resources, which I did, and then I was subsequently punished for. Although I graduated at the top of my class at the basic school, the six months of kind of infantry, you know, style training that all Marine Corps officers must complete, when I reported to Pensacola, Florida, afterwards in order to pursue my next stage of military training to complete flight school, even after having already acquired the equivalent of my private pilot's
license, I was informed I was medically
disqualified from moving forward in the flight
pipeline simply because I had been to counseling
for having been raped.

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

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

I wasn't in denial, and I proactively
sought guidance to healthfully navigate rough
waters. Yet I was told then, at that point in my
career, it would be impossible to become a Marine Corps aviator.

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

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

So my desired career path was cut short from the outset. I see this as a lack of support in all ways because I used the victim services and then was subsequently effectively punished for having done so, both directly by a disrupted career
path and then moving forward because I was labeled with the "rape victim" moniker at every command I went to afterwards.

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

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

Therefore, I disagree with the claim that many top military leaders have argued before Congress that removing a commander's authority over criminal cases, including those involving sexual assault, would disrupt discipline and undermine their authority. In fact, I believe it would improve good order and discipline because it would remove undue pressure from commanders to get
involved in heated legal battles and bogged down by intricacies that pull them away from the main effort of their command duties.

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

Senators in both parties appear extremely reluctant to take a position on what is constantly referred to as such an emotionally charged and complex legal issue, and military leaders often erroneously refer to the cases in a similar tone.

And yes, these are complex issues, but more than that, they're violent crimes. And clearly, people, both civilian and military alike, have a hard time addressing them as such, let alone impartially deciding a case, which I don't think a commander can do.

In civilian courts, judges must recuse themselves if they so much as make comments of a biased nature within years of a thematically...
similar particular case. Yet we allow military commanders with vested interest in individuals, who know them personally and intimately, to be the final say so of complex legal proceedings? That doesn't make sense to me or sound like good order and discipline to me.

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

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

My experience was one in which my rape, I mentioned earlier, effectively followed me
throughout my seven-year career. I'm going to try
to paraphrase a small example of that.

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

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

But it then was drawn out of my file,
shared inappropriately, unprofessionally violating
my confidentiality to just say, oh, yeah, let's
discredit her. So, again, I'm taking a large story
and trying to boil it down. But one example of how
the history of my rape was taken out of context.

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

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

I saw over a dozen different counselors
from the first time I sought care to the time I
left the Marines. When I did finally find a doctor
with whom I meshed, a couple months later, I
received orders to move to a new base, where I subsequently started the process all over again. And often, too, the providers themselves were frequently moved or burned out, disabling them from providing quality care to those in need.

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

You go to the hospital, explain to them why you need counseling, wait weeks or months to see a counselor, and then tell your life story and vivid account of the rape all over again, and hope that the standard of care is one of which you approve, which it often wasn't. Psychological counseling was the only option I was ever given.
Well, that and medication. And although I never took medication, I was constantly offered narcotics for things as minor, comparatively speaking, as TMJ and told to take three valium a day for TMJ. Yeah, I wouldn't have TMJ because I'd be drooling on myself if I was taking three valium a day.

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

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

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

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

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

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

And the researchers are studying yogic interventions also at the War-Related Illness and Injury Study Center, where they're analyzing the treatment of chronic pain in veterans with traumatic brain injury and PTSD. And the studies are already showing that meditation alone can
reduce physical symptom complaints and improve
equotional functioning in patients suffering from
chronic pain and PTSD.

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

So, you know, when we're talking about
alternative care, I think of the example -- and
I've had this happen both with the work that I've
done and then peers who are doing similar work --
Marines in particular, Marines coming to them and
saying, you know, "I'm really excited. I thought
this yoga stuff" -- again, just as an example. It
doesn't have to be yoga. "But this yoga stuff was
going to be weird, but it's cool. I've been doing
the class, and now I'm not taking, you know, 14
different narcotics. Now I find that I can manage
my pain with yoga and meditation."
And I hear that more often than I hear,"Wow, I had a really great therapy session with my
counselor yesterday and took three valium to go to
sleep." I mean, you're not proud to say like I
have to take medication to try to function and then
have all these crazy side effects that then
actually end up hurting you.
I just think that the availability of
alternative therapies is something that needs to
continue to grow. It's something I've had personal
success with and have seen through others and well
beyond that. Again, the evidence is there now in
modern longitudinal studies that are showing its
positive effects.
So, in general, I would say that I'm
grateful for my experience. In some ways, it did
get better later in my career. My final command
did know because, again, the news of my rape and
having sought counseling got passed from command to
command.
The last command, I had wonderful
leadership. It sounded a little bit more like the
first story where they were very supportive and
said, you know, when you need to go to counseling,
go. I was still -- I was in a leadership position
that I was never taken from, and that was very
helpful to remain within the system and continue to
fulfill your duties and your responsibilities.
So, in summary, though, I believe that
the military needs to address the challenge of
adequately addressing violent crimes like sexual
assault and rape as a cultural one that although
large scale and seemingly impossible to fix is one
that absolutely must be undertaken. The DoD must
be more consistent in actually supporting victims
who report through administrative and legal
matters, as well as in healthcare.

Sexual assault and rape cases should not
remain within the chain of command where impartial commanders are forced to sacrifice good order and discipline in order to fulfill roles for which they are not equipped. And beginning now, more alternative therapies need to be available to active duty and veteran service members for victim services, both in partnership with government organizations, nonprofits, and regular service providers, but especially, too, with peer-led models.

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

I feel like I saw a gap. I've tried to address it, and I'm just one person. And I think well beyond my personal effort, just being able to better support those type of businesses and organizations that are peer-led models would be
very, very helpful. So I think the livelihood of our country literally depends on adequate legal and healthcare for our military members. Because although our veterans are a microcosm of our nation, they lead the way and can pave the path for the whole country to be better served.

CHAIRWOMAN JONES: Thank you, Ms. Plummer.

MS. PLUMMER: Thank you.

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

MS. RIBEIRO: Yes. Can you hear me?

CHAIRWOMAN JONES: Yes.

MS. RIBEIRO: Good morning.

CHAIRWOMAN JONES: Good morning.

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

I want to tell my story by breaking down
the myths that are associated with MST and offer a few recommendations on how I personally think we could improve the system.

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

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

I earned countless awards for my journalism and public relations work, even earning the Air Force Association Airman of the Year. I so loved the Air Force that I hoped my professional accomplishments, coupled with the completion of my bachelor's degree, would lead me to becoming an
officer some day. I'm actually third generation Air Force. My grandfather originally joined the Army Air Corps during World War II, reentering the Air Force at the start of the Korean War, later retiring with 32 years of service. My father spent 28 years in the Air Force as an active duty officer. You could say that the Air Force is my family business.

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

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

In 2006, I filled a joint billet at
Bagram Airfield Afghanistan, being assigned to the Army 10th Mountain Division. A few months into my deployment, I was directed to pull night guard duty. All of the junior NCOs took turns pulling guard duty for the Joint Operations Center, which is a small compound within the perimeter of Bagram. I had pulled guard duty before. So it wasn't new. But what happened that night was new.

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

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

He pinned me with his hand and eventually
his forearm. I fought as hard as I could, but it
was not enough. I was raped.

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

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

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

She then told me that if I proceeded to
file a report that I needed to understand that I
would be charged with dereliction of duty for
leaving my weapon in a combat zone. I screwed up. I made a mistake. But it didn't warrant me being raped.

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

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

I didn't tell anyone for six months. I struggled through life, trying to forget it ever happened. There was a lot of shame and a lot of how could I have let this happen to me? I quietly separated from the military at the end of my enlistment and never applied for officer training.
The third myth is that military leaders want to believe that this is not happening in their units, but it is. Through the years, I've gone back and forth on telling my story publicly. I've watched DoD have knee-jerk reactions to repairing the problem with MST. They've thrown a million initiatives at the issue, to include training, victim advocates, special victim agents, PR campaigns with posters telling bystanders to intervene, new SARC's. But yet sexual assaults continue. How can we change this?

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

The response after telling my story was overwhelming as far as support. But the scary
thing is that in the following weeks, as word got
out about what had happened to me, I had three
females approach me, telling me the same thing had
happened to them. Different circumstances, but it
had happened, and none of them had reported it.

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

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

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

I have an absolutely wonderful 12-year-
old daughter. She is a straight A student and an amazing athlete. Remaining on this trajectory would make her an ideal candidate for military service, continuing the family business. But at this point, I could not recommend she join the armed forces.

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

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

Second, while I never submitted evidence, the armed forces need to ensure that rape kits are stocked in deployed locations and that medical
personnel know how to collect evidence that can hold up in court. I've heard countless stories of how evidence was compromised or lost in the shuffle.

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

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

We're grooming a generation of women who have served honorably, fought bravely. But in return, we've torn away their self-esteem and
dignity. And at this point in my life, I don't know if we ever get it back.

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

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

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

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

CHAIRWOMAN JONES: Mm-hmm.

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

And then that's all I had right now.

Thank you, ma'am.

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

CONGRESSWOMAN HOLTZMAN: Of course, your
testimony raises so many issues, and I want to
thank you for the -- for coming here and going
through the personal and psychological stress of
sharing the story with us. But I hope that we'll be able in some way to make some changes that will prevent a recurrence of what you have gone through. I'd like to ask a little bit about the -- the help or services available to you after you are leaving the military and the quality of those services. I gather, first, that for those of you who did have services during the time that you were in the military, there was no continuity after you left and sought those services. Is that correct? Is that -- that's correct. Okay. Anybody disagree with that? Okay. Secondly, what is the quality of the service that you're getting when you've left the military and you haven't reported? I mean, for example, the last witness talked about attacks on how self-esteem has been taken. And of course, that's one of the consequences. MS. RIBEIRO: Right. CONGRESSWOMAN HOLTZMAN: But is there an available resource for you to address this, and have you availed yourself of this?
MS. RIBEIRO: I've fought through the VA. The VA system is severely broken. We have to fight tooth and nail to get any benefits that are technically owed to us.

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

But the VA also does the "cure in a box."

You know, they give you an antidepressant and sleeping meds, and it's not tailored to you. So you fight an addiction to a medication. There's no consistency in the counseling. The counseling is not available when it would work for you.

Or, you know, like for me, I'm a single mom. It'd be really nice to, you know, have resources available to help me to get to counseling or to have child care during counseling, that kind of stuff. But in a word, it sucks really bad, the continuation. There is no continuation of care whatsoever.
CONGRESSWOMAN HOLTZMAN: And you're saying also that the quality of care is insufficient at the VA?

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

CONGRESSWOMAN HOLTZMAN: Anybody else want to comment on that?

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

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

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

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

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

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

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

MR. LEWIS: Yes, I did. I filed a
complaint with the patient care reps. I filed an Article 138. I did everything I could, and there was no professional discipline that was ever taken on this provider.

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

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

There are certain physical aspects, certain mental aspects that even though I know several of the panelists here very well, I would not share with them that aspect of my trauma.
because I just feel it's too much information, as much as I care for the women. And VA has not taken the appropriate steps to address single-gender care for both men and women.

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

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

CONGRESSWOMAN HOLTZMAN: Thank you, Mr. Lewis.

Any other -- Ms. McCoy?

MS. MCCOY: So I used -- utilized the VA
system for a number of years for -- and I still utilize the VA system. I'm continuously there hoping that through going there, asking questions, trying to get -- you know, let the people know that there are some issues with the way that they're treating us, that something will change. I have seen some things change, and those things are good. But when a system is so deficient and they improve a slight amount, I don't know that you can necessarily call it an improvement. So I'll start there.

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

When you go to the women's clinic, if you have 12 issues, they want to talk to you about one
issue that day, and they give you an appointment for 4 or 5 months down the road to talk about the other issue. So if you have these cascading issues that are on top of each other, and in my case, I did. I had -- you know, I had fibromyalgia and arthritis and all of these other things. You can never get any real remedy.

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

I don't necessarily utilize all of the services from VA anymore. I, much like the panelists, utilize a holistic, you know, therapeutic arts, you know, all kinds of modalities for healing. I personally perceive them to work better for me.
I do continue to utilize mental health, but only on a check-in basis. I'm also part of the vet center. I love the vet center. They are grossly understaffed.

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

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

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

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

CONGRESSWOMAN HOLTZMAN: Okay. Paid for by the government.

MS. MCCOY: I don't pay for anything. And so, they offer services for my family. So my daughters can go in and get counseling as well, and it's a much less stressful situation going into the
They have community programs. They do things, you know, more outreach, and then we have group. So I -- you know, I suggest that anyone who has had, you know, military sexual trauma as part of their history that they seek mental health services, absolutely. And you need to be in a couple times a week if you're really reactive.

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

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

CONGRESSWOMAN HOLTZMAN: Thank you.

I'm sorry. Ms. Harrell?

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

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

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

But I'm on 10 pills right now that are -- two are twice a day, and then the other ones are -- the other, I've got to take those, too. I'm not high now, though.
CONGRESSWOMAN HOLTZMAN: Ms. Plummer, did you want to add something or --

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

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

One of the hoops they made me jump through, they said, okay, well, we need to -- even though all of the counseling that I had received the previous months all effectively checked out, like I said, you know, had a normal response, anxiety and some stuff like that, but was healthfully resolved, functioning well, yada, yada, yada. At Pensacola was told, well, we need you to go back to counseling, just do it. Once you do a
couple months of that, then we'll let you start was what I was told.

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

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

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

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

I know the military is a system by which...
you have ratings, academically, physically, leadership. I was at the top. I mean, giving those examples of like it's not the dirtbag. I wasn't trying to get out of anything. I wanted to start my career.

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

So, anyway, that was for me the medical treatment at the time, yeah, it just didn't make any sense. Since I've been out, I would say I'm probably a positive example of not having had trouble getting -- filing my claim with the VA and getting a disability rating that I felt like was fair and made sense. So I would say that I personally have had a positive experience where my
disability payments have been very helpful during my transition time after leaving the military. 

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

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

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

CONGRESSWOMAN HOLTZMAN: Thank you.

CHAIRWOMAN JONES: Ms. Harrell, go ahead.

MS. HARRELL: Just to add what I was
trying to say, and I completely forgot to say it, I'm on all the pills that I'm on now. But with the program that I'm on with the K9s for Warriors, in the time that I've been with them, for the two weeks that I've been training, I've actually come off of two of the pills that I've been on. I'm not having to take the sleeping pills because I'm having to get up and walk the dog. You know, I'm not suffering through the insomnia. There is a purpose for me to get out of the house. I'm not zoning, you know? On some of the pills, they make you get into a place where you are zoning as a veteran.

So, you know, we all have tried different approaches -- holistic, exercise, yoga, all these other different things -- and I think the VA has said it for -- they've been saying this for a couple of years now about considering service dogs for PTSD, and it keeps getting shut down. It's a wonderful resource, you know? You can kill 10, 15, 20 pills off of a service dog. It gives you confidence when you are
going out in public that you have -- just having
that confidence of, you know, not having that
anxiety, you know, and not having to take or pop
that Clonazepam or, you know, or whatever.

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

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

What these boards usually do is ask, in
the Navy's case, the Bureau of Medicine for an
advisory opinion. And my mental health record from
the military was sent to a doctor that I had never,
ever heard of before, at the Naval Medical Center
in Portsmouth. And without interviewing me,
without laying eyes on me, he was able to in the
space of how -- maybe a few days or whatever, scan
my records and say, oh, yes, we approve of the
Navy's decision.

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

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

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

For instance, when you go back to the VA
and they get your records, when it comes time to
reevaluate your rating disability, they can say,
oh, well, the Board for Correction said that you
have a personality disorder vice of PTSD. We're
going to cut your -- we're going to cut your
disability. And that's healthcare mismanagement
also.

Thank you.

MS. FERNANDEZ: Madam Chair?

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

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

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

Probably around 2006 or '07 was the first
time I actually heard the term MST, and I heard it
from a veteran advocate, Susan Avila-Smith, who was -- again, because I do a lot of things on the
Internet and on social media and things like that. And she was -- you know, had a page, and basically,
it was a social network of women and men who had been, you know, traumatized in the military. And
she was the first person to ever explain it to me.

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

And so, I had information in my medical records and in my military records that were considered a marker. And because I had those markers in my military record, I went from doing very, very well to being, you know, a problem child in the military with different issues, those markers, and I also had an abortion in the very
A short amount of time that I was stationed at my duty station.

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

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

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

I can go to rainn.org and look at their...
description of what sexual assault is, and it's clear. So it's -- so the messaging is problematic because they're asking you questions in a little room and saying, you know, "Did someone harm you? Did you feel safe?" or whatever. But nobody tells you on the backend what they're even asking that for.

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

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

So now because a crime has been perpetuated against me, now I have to carry a mental health diagnosis? Are you serious? So there are some problems with that, but that's part of that process, like the panelist was saying, you
know, the services are available, but you have to kind of bow down to whatever the DSM says to even get your benefits. And in that process, you're retraumatized.

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

SEARGEANT MAJOR GUERRA: If I may? I have one point on that. As a member currently serving in the active component, I will say that it is not wildly known that this is something that's out there for victims. But recently, at senior leader training from the brigade SHARP rep, she has started to educate the company-level leadership and higher on what is available as far as VA payments and services for when service members exit the military, which up until six months ago was not something that was really being discussed.
So from my perspective as somebody who's still on active duty, this is -- this is something that I believe that the SHARP program is trying to get in front of in the education process for the senior leaders. That way, for the soldiers that are exiting the force, that they know what is available to them once they are complete.

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

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

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

And then, when I got my -- the whole packet of info back was honestly kind of surprised.
Knowing what I know now, even within the last few years, I'm like, wow, I'm really lucky that I was covered. Yet it is kind of a double-edged sword because then you also have to get stamped with having PTSD to get that. But, yeah, so it's been interesting to see that.

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

There are -- there is a disability retirement under Title 10 if you have an injury or an assault that occurs that can -- that renders you incapable of performing your duties through PTSD, and there are disability benefits under Title 38, which apply to the Department of Veterans Affairs. The process is now under the integrated disability evaluation system. So soldiers getting out now may potentially have that, although it's not clear -- it would not apply in the case where a
A soldier is being discharged for misconduct or other physical, mental conditions not constituting a disability. They would simply be limited to Title 38 benefits.

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

And that's a problem because they're both using -- they're supposed to be using the same disability evaluation system. And that's also a point for survivors who have gone down that route is that they don't understand how they're eligible for benefits and payments under Title 38, but yet the military under Title 10 can say, whoops, that's never happened, and we're not responsible for it.
And that avenue, the Title 10 disability benefits, is somewhat known. However, as I stated, the process for getting it is long and involved. The military claims it's not adversarial, but in reality, it's very adversarial and it's very rigged against the participant. So wider knowledge of both of those and how they interact with each other is definitely required.

Thank you.

PROFESSOR HILLMAN: Madam Chair?
CHAIRWOMAN JONES: Yes, Professor?
PROFESSOR HILLMAN: I just wanted to thank each of you for coming forward and for standing for so many people behind you with as disparate as your experiences have been during and then for some of you after, still in the service. And I want to thank you -- Monday is Veterans Day, and I'm grateful for your service.
CHAIRWOMAN JONES: We didn't leave enough time to speak with all of you, but we do have to recess now. And you mentioned some studies, and you also mentioned a couple of documentaries other
than "The Invisible War." We may have them. I'm not completely caught up on all of my reading, but I would be pleased to receive those if you could send them along.

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

Thank you very much.

(Whereupon, a recess was taken.)

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

COLONEL MCKEE: Yes, ma'am.

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

Your Honor, distinguished Panel members, I would like to thank the Panel for inviting me to speak about the Army's Special Victims' Counsel
Program. As the program manager of the Victims'
Counsel Program, I am excited to implement this
program across the Army, thereby ensuring that the
victims of sexual assaults will have a voice in our
military judicial and administrative systems.

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

I would like to inform the distinguished
Panel about my background. I enlisted in the Army
in 1989 and earned both my Bachelor and Juris
Doctorate from Syracuse University, after which I
transferred from the enlisted ranks to the Judge
Advocate General Corps in 1994. I have served as
both a trial defense attorney and a trial counsel,
and I have an Army skill identifier as a military
justice expert.
I have served at all levels in the Army from the squad level to the Army staff. I am truly honored to be the first program manager of the SVC program. In this role, I am responsible for the strategic operations and policy updates for the Army Special Victims' Counsel Program. I work directly for the Assistant Judge Advocate General for Military, Legal, and Operations, Office of the Judge Advocate General. I coordinate all aspects of the Special Victim Counsel Program with OTJAG Legal Assistance Policy Division, OTJAG Criminal Law Division, OTJAG Personnel, Plans, and Training Office, and the Judge Advocate General's Legal Center and School. Finally, as the program manager, I coordinate with the Headquarters Department of the Army G-1 on the development and delivery of legal services for victims in conjunction with the Sexual Harassment/Assault Response Program and provide reports on the progress of the Special Victims' Counsel Program as mandated by Congress. I am responsible for ensuring that each
A victim of a sexual assault is provided with a special victim counsel if requested. I will ensure that we establish and deliver the finest legal representation for special victims.

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

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

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

First, the Army already has a very robust
legal assistance program. In a 2011 survey of the Army legal assistance offices, many responded that they were providing services to eligible clients who were victims of crime.

Second, the Army legal assistance attorneys routinely see clients whose interests are adverse to the local command. This includes clients with adverse duty evaluations, facing a determination of the financial liability due to equipment loss, and facing a filing determination concerning adverse information. This is unique, as other services provided such representation through the trial counsel office. Our legal assistance attorneys are used to representing clients with interests adverse to the command, and our SJAs respect their professionalism in providing quality legal representation in such cases. It was determined that it was unnecessary to create a separate legal structure for SVCs, as the legal system's model was already working efficiently.

SVCs are selected by the Staff Judge.
Advocate based on their military justice experience, sound judgment, and their maturity. They will work under the direct supervision of their chief of legal assistance.

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

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

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

The SVC also helps build and sustain victim resiliency. SVCs will provide the following services to their clients: accompany and advise the victim during interviews, examinations, hearings, and court martials; represent the victim in court martial proceedings, as permitted by law; refer the victim to Trial Defense Service if there are allegations of collateral misconduct; advocate the victim's interest with government counsel and/or commanders on the disposition options; assist the victim with post trial submissions to include victim impact statements; advise the victim
on collateral civil issues arising from the crime; 
provide the victim with legal assistance services 
as needed; and answer any questions that the victim 
may have about the court martial process. 
The SVC will also coordinate with the 
victim/witness liaison and the victim advocates to 
ensure that the victim is informed of their 
reporting options, on their rights as a victim, on 
their eligibility for military and VA benefits, on 
their right to request an expedient transfer, their 
ability to obtain a military protective order 
and/or a civilian protective order, and the nature 
of the military justice system and victims' rights 
and duties. 
While the defense bar has raised some 
concerns that the SVC will become a second 
prosecutor in trials, this is clearly not the case. 
The SVC is representing the victim's interests. In 
many cases, those interests will coincide with the 
successful prosecution of the case. However, in 
others, the interests will not align, and the SVC 
will advocate for the victim's interests.
The Army SVC program achieved initial operating capability on 1 November, and we will be at full operating capability by 1 January 2014. The Army News Service ran an article on 1 November 2013 publicizing the Army's SVC program and the services that SVCs will provide to victims of sexual assault. There will also be a story in the Stars and Stripes this week, and there will also be an article in the Army Times next week highlighting this program.

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

In fact, our first attorney to make a court appearance on behalf of a victim occurred the day prior to 1 November. At Fort Bragg, a victim requested services from an attorney. The counsel notified the judge, the trial counsel, and the
defense counsel. The SVC obtained copies of the client's statement to CID, the charge sheet, the CID investigation, and the pending MRE 412 motion and response.

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

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

This example demonstrates our program is already working and that our independent trial judiciary has adopted the SVC into our system.
As we move towards IOC by 1 January 2014, we are planning both additional online training for our already-trained attorneys and an annual course for those who will assume their duties in the future as special victims' counsel. In addition to the face-to-face training and online training, we have established a JAG university presence, a legal assistance military suite Web site for collaboration, and a document library where our attorneys can share forms, briefs, and other documents to provide the best legal services to our clients.

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

The Special Victims' Counsel Program is only part of one aspect of the Army's comprehensive program to combat sexual assault, but I believe it
will become a cornerstone program for victims of sexual assault because it will provide them with a voice in the process. With this simple action of empowerment, regardless of the outcome in a judicial or administrative process, victims will know that our military justice system supported them and gave them the best opportunity to be heard and the best chance at justice.

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

CHAIRWOMAN JONES: Thank you, Colonel.

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

COLONEL JOYCE: Thank you, Your Honor.

Your Honor and distinguished Panel members, as stated, I am Colonel Carol Joyce, and I am the officer in charge of the Marine Corps Victims' Legal Counsel Organization. I thank you for this opportunity to appear before you today.
I would like to just first share with you a little bit about my background as well before I explain to you the Marine Corps program. First of all, I've been serving continuously on active duty with the Marine Corps for over 32 years now. I started out as a supply officer, and I was then later accepted into the Marine Corps law program in 1986. So I've been serving as a Judge Advocate since I graduated from Suffolk University Law School in Boston in 1989.

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

I was later selected to be the Deputy Chief Prosecutor for Military Commissions in
dealing with the detainees down at Guantanamo Bay. Recently, I was also an appellate court judge for the Navy/Marine Corps Court of Criminal Appeals.

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

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

And lastly, I had the distinct privilege of also being a commanding officer. As some may
know, in the Marine Corps, we get the opportunity
to have line officer billets, and I commanded a
Marine wing headquarters squadron for two years in
Okinawa, Japan.

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

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

As the officer in charge, I'm located
here at Headquarters Marine Corps, and I am
responsible for the supervision of all the Marine
Corps victims' legal counsel, as well as to ensure
the delivery of the victims' legal counsel services
throughout the Marine Corps. I work directly for the Staff Judge Advocate to the Commandant of the Marine Corps, Major General Ary.

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

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

I'd like to explain to you how it was for the Marine Corps. The legal assistance attorneys were the ones that were advising or providing counseling to victims of crimes. The problem was
Corps, the mindset always is, is that they deal

with powers of attorneys, wills, estate planning,

family matters.

So what was really happening here is that

victims of crime were not really going to the legal

assistance officers in the Marine Corps. And they
did not have the authority or the ability to
actually represent these victims beyond the mere
advice and counseling.

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

In our Marine Corps, we have four major
regions. We have east coast at Camp LeJeune, west
coast at Camp Pendleton, and overseas Okinawa,
Japan, as well as representatives at Quantico, a legal service support section at Quantico with the National Capital Region.

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

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

I think this allows the victim -- as yesterday there was a comment about victims' rights in the Manual for Courts Martial, and victims have the right to be heard. They have the right to be present during hearings, and they also have the
right to know about pretrial negotiations. But I really think that this program is going to give them the voice that they always needed because while those rules were in the manual, they did not really surface enough for them to be acknowledged and recognized.

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

Also we are looking at the eligibility of victims based on what's already in the statute that has given us the authority with regards to legal assistance eligibility to all of those same individuals identified in 10 U.S. Code 1044, then emphasized in 10 U.S. Code 1565(b). And that is, is that we will also include dependents.
And the Marine Corps has decided not to distinguish its eligibility based on the age of these dependents. So the Marine Corps will look at victims not only of sexual assault, but all crimes, other crimes, as well as all individuals that are eligible within the statutory authority.

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

So I won't list all of those same things that Colonel McKee listed, but when these individuals are detailed, they will then represent them in the military justice proceeding in accordance with the statutes, regulations, and again, case law.
If a victim has been involved in collateral misconduct, it's really imperative that we start with the victim legal counsel again. Let me explain one thing is that we really felt that there was some confusion with regards to this collateral misconduct, that as soon as a victim identified some involvement with collateral misconduct, the mindset was to send them to the Defense Services Organization.

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

We also emphasize the importance that's
already drawn out in the statute -- that, again, being 10 U.S. Code 1565(b), allowing legal assistance to sexual assaults -- to emphasize the importance of the SARC\textemdash the victim advocates, victim/witness liaison representatives, military criminal investigators, and trial counsels, that they must inform this victim that there is a legal counsel available and that they should allow this victim to consult with an attorney should they want to.

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

For honest representation, duration of representation will be involved. The -- excuse me. The duration of representation is considered basically complete when the convening authority takes action. That is that phase when the commanding officer has made his final decision with regards to the disposition of the case, and unless
it's resolved sooner. But also that there may be exceptions, and those exceptions would have to be addressed by me or my boss, the Staff Judge Advocate to the Commandant of the Marine Corps.

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

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

So, again, I thank my counterparts for
that and ensuring that we were ready by 1 November not only to have the individuals, but to have them specially trained in this case.

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

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

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

CHAIRWOMAN JONES:  Thank you, Colonel.

We're now going to hear from Captain
Fischer-Anderson, who is Chief of Staff for the Victims' Legal Counsel Program in the Navy.

Captain?

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

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

CAPTAIN FISCHER-ANDERSON: How's that?

Better?

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

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

In my role as Chief of Staff, I'm
responsible for leading, mentoring, training, and equipping 29 specially trained, independent Judge Advocates and 10 administrative support personnel. I report directly to Admiral James Crawford in his role as Commander, Naval Legal Service Command.

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

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

And when I first joined the JAG Corps, both trial and defense counsel were assigned to the same command. So, as a result, I had the
opportunity to prosecute sailors charged with sexual assault. As I became more senior, I was assigned as a Staff Judge Advocate and as a Force Judge Advocate to two- and three-star line commanders.

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

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

Our goal was to choose third tour and
junior fourth tour Judge Advocates with both trial and defense counsel experience. Twenty out of 29 of our counsel met as a group for the first time during the week of 14 October in Montgomery, Alabama, where the Air Force provided some terrific training.

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

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

On November 1st, consistent with Secretary of Defense's direction, the Navy met
initial operating capability. Twenty-one of 29 victims' legal counsel have been trained and certified, and 9 of our counsel are in place delivering legal services. Locations where victims' legal counsel are currently assigned include the Naval Academy, Oceana, Mayport, Great Lakes, Coronado, San Diego, Bremerton, Pearl Harbor, and Guam.

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

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

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

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

CHAIRWOMAN JONES: Thank you, Captain.

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

Thank you.

CAPTAIN TYLER: Can you hear me?

Good morning, Madam Chairperson and members of the distinguished Panel. I have a short
prepared statement, and I'll answer questions afterwards.

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

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

Today, I'll present the Special Victims' Counsel Program currently implemented by the Coast Guard. The Special Victims' Counsel Program is a new program that was initiated in the summer of
2013 as part of the Commandant's strategic plan to address sexual assault prevention and response in the Coast Guard.

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

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

Initially, we trained and employed a volunteer legal force. We are in the process of validating the initial operating procedures and
finalizing the aspects of the program. Several new military and civilian positions have been authorized. The positions will include administrative support, junior and senior legal staff, and management staff positions.

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

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

Special victim counsel are military attorneys who receive specialized training to provide support to sexual assault victims. Special victims' counsel assist the member in negotiating the legal process, thereby reducing the anxiety associated with being a witness in the military justice system. We provide an additional resource to ensure the victim understands their rights and feels respected and included in the process.
The assistance provided varies based on the needs of the member. In the initial phase, special victims' counsel are a source of information about the military justice process and facilitate victims' interactions with other professionals who are involved in the investigation, treatment, and prosecution.

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

The special victims' counsel role may morph as our program matures. Currently, in appropriate circumstances, counsel may establish attorney-client relationships with sexual assault
victims. Counsel may travel to the member's location when appropriate and be present with a member during military justice proceedings, interviews, and investigations or other events, to provide insight into the legal process and answer questions on the aspects of the military criminal justice system. Counsel may be authorized to represent victims in military justice proceedings.

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

At that point in time, the sexual assault victim may notify the SARC that they would like counsel, and at that -- all notification will go through the SARC to counsel. Counsel's contact
information will go back to the SARC, which will then be provided to the victim so that the victim may initiate the contact with their counsel.

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

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

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

And that's all I have. Thank you.

CHAIRWOMAN JONES: Thank you very much,
Captain.

Colonel Hankins, we'll hear from you.

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

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

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

Our mission is to provide victims of
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sexual assault with world-class representation.

That's attorney-client privileged legal representation throughout the investigation and prosecution processes. And I have had the privilege of running this program from its inception in January of this year.

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

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

To give you guys just a little bit of
background as to why the Air Force decided to establish an SVC program on our own, in mid 2012 of last year, the Chairman of the Joint Chiefs of Staff issued a strategic direction to the force that basically indicated, you know, dissatisfaction with the progress that the services were making with regard to reducing sexual assault and that gaps basically continued to remain in the full implementation of the SAPR program at all levels of command from the highest level all the way down to the lowest.

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

The Judge Advocate General of the Air

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

And initially, it was a pilot program for
the Department of Defense. And of course, as you
know, this type of program providing legal
representation to victims of sexual assault has
been directed by the Secretary of Defense for all
the services on the 14th of August of this year.
Initially, we fielded our program with
part-time special victims' counsel. We had 60
Judge Advocates serving part time while still
performing their other legal duties. One of the
reasons we did it that way is because we wanted to
immediately field the capability. And so, in order
to do that, we had to use folks that, you know,
especially still had other jobs to do.
In June of this year, we stood up a new division within our Air Force Legal Operations Agency that does provide an independent chain of command for the 24 special victims' counsel and paralegals that are assigned to my division. So I now lead that division.

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

Our special victims' counsel teams are JAG paralegal teams. They're organized basically into 10 regions worldwide, with each region covering about 4 to 12 different installations. We simply don't have enough Judge Advocates to assign an SVC to every installation that the Air Force has
because we have over 100 worldwide.

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

SVCs have participated in over 700 interviews with investigators, defense counsel, and trial counsel. SVCs have spent over 18,000 hours asserting victims' privacy rights in various portions of the process ranging from protection of their mental health records from disclosure and admissibility of their prior sexual history at trial to something seemingly minor, yet so important to victims with regard to limiting seizures of their cell phones, personal journals, and diaries.
SVCs are empowering victims by providing a voice in the justice process, helping them to submit victim impact statements during the post trial phase. We actually have a regulation in the Air Force that gives them the right to submit a post trial statement during the clemency process. Enforcing their rights as a crime victim, whether it's the right to be present, the right to be consulted, the right to be notified, and various things of that nature.

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

They've been helping them with collateral misconduct, and I think about the survivor that testified earlier today and the conversation that she had with the SARC. And I think to myself, boy,
I really wish she had had an SVC because that legal counsel really could have helped her with that situation.

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

Not surprisingly then, the client concerns are similar to victims in the civilian sector. Protection of their privacy being probably -- it's the number-one thing. I think 82 percent of our clients have requested SVC support to protect privacy in some way. Respectful treatment, feeling alone and afraid like they're the only ones out there and that there's no one there to support them.
And really, other civil legal matters that they might have, like, for instance, if the sexual assault took place where they live, they have an apartment, and they want to be able to break their lease because they don't want to live in that situation anymore. So our SVCs are helping our clients with those things as well, which are very similar to concerns of civilian victims.

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

The integration of their private life with their work life and how a sexual assault can unravel essentially all aspects of your life. I think that really is a difference between, in some ways, the military life and the civilian life because you live and you work with the exact same people. It's all one community.
Unit impact is also a huge thing, and the loss of control that our victims have that can really be compounded by military life and the fact that they're subjected to military orders. The other example given by the survivor was, you know, "I had to be at work at a certain time, and if I wasn't, then essentially I'm AWOL." So I think a lot of those things are very unique to our military victims, and those are the things that our SVCs are able to help our clients with.

We knew we would be asked: is this program value added or just more resources being thrown at yet another program with regard to the SAPR program? But yet there's no measurable results to be able to show for it? To answer those questions, we fielded a victim impact survey at the very beginning of our program, which we provide to our clients at the close of our representation. So we have 555 clients now. About 124 or so we've actually terminated -- "terminated" sounds like such a bad word when you're talking military speak. Where we've ended the attorney-client
relationship, and that's at the point in time that we give them the survey. Some of the questions are objective in nature, and then some are very subjective. How did you feel about various parts of the process?

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

And then we also ask about their satisfaction with the services of their SVC, which I do think is very important to find out. You know, you can have a service, but how do you know if the service is any good or not?
The feedback has -- in my opinion, has been overwhelmingly positive that we've received. Ninety-two percent indicate that they were extremely satisfied with the advice and support of their SVC provided during the Article 32 and court martial.

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

The SVC requested that the case get delayed, and ultimately, that request was not honored. And the end result was, you know, a victim who was not satisfied that she got the representation that she had wanted during that process.
Ninety-eight percent would recommend that other victims of sexual assault get an SVC. Ninety-three percent have indicated that their SVC advocated effectively on their behalf, and 96 percent indicated their SVC helped them understand the investigation and court martial process, which is essentially one of the goals that we have of our program.

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

But to me, even more importantly is the anecdotal feedback that they've provided to us. I'm constantly amazed that people even complete a survey. I, for one, don't like them, and I have to be forced to fill them out. But I'm the one who
clicks the button to get through to the end, and I'm amazed that our clients not only click the buttons and fill out all this data, but then they also take the time to explain their answers and provide us with anecdotal feedback on how they feel about the process and how they feel about their SVC.

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

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

"Not everyone fully understands the legal
process --" and in fact, I'm sure if you asked some
civilian attorneys where we try to explain the
military justice process, they go "huh?" So I can
only imagine what our young airmen who are 18 years
old to 20 years old understand about the criminal
justice system.

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

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

So we had some folks who got an SVC at
the very beginning, you know, when they first
reported, and then we had other folks that had gone
through the interview, the investigation, an
Article 32, and now are at trial, and those folks received an SVC. And one of the comments from one of these clients was, "After testifying at two other Article 32 hearings and one other court martial, I can say wholeheartedly that my SVC made the utmost difference in making my final testimony an experience I could walk away from without feeling revictimized again."

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

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

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So of those 59 clients, almost 50 percent have converted from restricted to unrestricted after consulting with an SVC. And I think the reason for that is a lot of them were interested already in the idea of conversion, but they just didn't know and they really wanted to talk to an attorney in a confidential setting where their name would still be anonymous, where they could really find out, no kidding, what am I going to get myself into if I decide to go unrestricted? And to me, I think this is a huge benefit of the program is being able to reach out to those folks who really have a lot of questions and that they can talk to an attorney who can explain to them exactly what an investigation is going to look like and exactly what a prosecution process is going to look like.

Now we do have some of our restricted clients -- you know, it's only a 50 percent conversion rate. So we do have some of our clients who have elected to remain restricted. They don't
-- they don't want to convert. They don't want to file an unrestricted report, and I know this was a question that was being asked yesterday.

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

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

They don't want to be treated differently once they come forward and report. So it's that social stigma that comes from being the victim, a
rape victim or a victim of sexual assault. For some, they don't want to report because they just don't want to be a burden onto others for various reasons.

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

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

So those are the reason that I can tell you about our clients who have decided not to
convert to an unrestricted report.

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

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

I think also important to our success has been this continuing outreach that we've done with other outside organizations to include NCVLI that I mentioned before, who's been extremely helpful to us, the Victims' Rights Law Center, and the Office of Victims of Crime through the Department of
Justice. We've really teamed with all of them. And I think that robust partnership and extensive policy development at -- and commitment really at the Headquarters level. We've had 110 percent commitment not only from the leaders within the JAG Corps, but also our commanding -- our commanders within the Air Force.

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

CHAIRWOMAN JONES: Thank you, Colonel Hankins.

Admiral Houck?

VICE ADMIRAL (RET.) HOUCK: Good morning. So, resources. There was testimony yesterday from one of the witnesses, Admiral Buck from the Navy, who spoke with some striking candor about the fact that resources have been moved quickly to this project in the Navy and that there are now things that aren't being done in the Navy because of this. And what I'm interested in is from each of you, your sense of the permanency of the
program. And I realize to some extent, these
questions may be considered above your pay grade,
but you're here. So what I want to know is your
sense of the commitment of the services to this,
number one.

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

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

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

With regard to resources, first of all,
when the Marine Corps decided to set up the
Victims' Legal Counsel Organization, we decided
that we wanted to start out by going into the
active duty side. It was really important to force
the structure into the Judge Advocate community
structure and not start with the Reserve side of
the house because we needed to also force the request for additional Judge Advocates from our higher Headquarters.

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

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

VICE ADMIRAL (RET.) HOUCK: If I could interrupt, because I think that's really what I was getting at. Do the rest of you have specific insight as to if there's going to be additional
resources to cover this important mission and the
backfilling that's required behind it?

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

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

We don't even have a year's worth of data
yet to know are we going to have a 600, you know,
person caseload every year and is it sustainable or
not. And so, I think that there's a willingness,
at least within the Air Force, to be able to
continuously look at this and be able to go back to our Air Force corporate structure to ask for additional resources.

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

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

VICE ADMIRAL (RET.) HOUCK: That sounds
pretty temporary.

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

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

Thank you, sir.

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

VICE ADMIRAL (RET.) HOUCK: I want to allow them to -- yeah.
CAPTAIN FISCHER-ANDERSON: Sir, from my perspective, and I'll be happy to take this back for the record, I'm unaware of any legal missions not currently being met. Attorneys are doing more with less. I will say that. Their portfolios may be a little more varied than it used to be.

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

Initially, though, because we had to meet an aggressive implementation guideline for the program, we reached back to our Reserve force. And as I said during my opening remarks, 18 of our 30 or 29 VLC -- I count one of them as the Chief of Staff, the 29 -- 11 of them are Reservists who have come onboard and will remain with us, some for only a year, and then we had recently a recall board
where we could have up to 3 of those Reservists remain with us for 3 years.

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

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

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

THE WITNESSES: Yes, sir.

VICE ADMIRAL (RET.) HOUCK: Thanks.

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

The question I have and is to either or any of you is who, on behalf of the victim, helps them navigate through all of the legal process
piece, but then there's also the counseling
services piece. You've got the personal and
professional guidance piece.

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

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

    But I think in our experience what we've
found is, for the most part, it's been the SVC. So
they've come to the SVC, and the SVC is sort of
that central person that they use to be able to
access all of these other services.
And so, I think it's one of these things that we have to bear in mind that this is a team approach to providing services, and that really we see the role of our SVC to be in there to kind of -- you know, you have all these services available, and it's the SVC that's filling the gap amongst all those services and making sure that they are getting all the services that they want and need, whether it's medical care or mental health services, issues with education, training problems, et cetera.

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

CAPTAIN TYLER: I'll say the Coast Guard has been doing this for four months. So we don't
have a long time. But we view this as a
collaborative effort. Really, it does depend on
what the victim/survivor member desires.

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

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

PROFESSOR HILLMAN: Madam Chair?
CHAIRWOMAN JONES: Professor?

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

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

And in part, this is inspired by the victims' testimony earlier today about the difficulty of continuity with respect to services provided through a transition out of the military, if that's, in fact, what happens after an incident like this. And the SecDef's directive said it needs to be legal assistance throughout the justice process.
And Colonel Joyce, I think you said that it terminates at the convening authority's action. Colonel Hankins, I'm not sure when it terminates in the Air Force, which has the greatest experience with this. So you could share that, too.

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

And then my second question is about the military or civilian piece in terms of who this person ought to be who provides legal assistance because the Title 10 specifies military or civilian legal assistance, and to what extent, I wonder, as you were standing up these programs -- you've articulated the reasons for having military counsel here. But given the resource considerations that Admiral Houck pointed to, and you all are working hard, I'm sure, to make sure you're staffed
appropriately, I wonder how much you considered the
use of civilian advocates in this process?

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

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

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

So we actually have them terminate,
officially terminate the relationship by signing a document. You know, just like any other representation that you have with a lawyer, once your legal services are done, then your representation is complete.

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

But I think it's definitely a discussion that is had with the client on what needs do you have? Are there things that I can still help you with? What are your concerns? And generally, we find that our representation actually terminates, you know, months after the final disposition is over, that it is a discussion, an ongoing discussion that is had over several weeks just to make sure that that client is okay and is in a good place.
And at that point in time, I think really where we decide, okay, we don't -- I'm not going to continue to have a legal obligation, an ethical obligation to you, to ensure that they still have the services of their victim advocate or whoever it was that they chose to utilize. Some may not have a victim advocate by their choice, or maybe they were really comfortable with the SARC. Then we just make sure that there's someone still there to be able to take care of their needs.

And the last thing that we tell them is, hey, if you ever have another problem or another need or another concern, just because I'm no longer your lawyer right now doesn't mean that you can't come back in and you can come in and see me. So just because the official representation is over for that particular incident, if something else happens or they have some other legal concern, then they can come back in, just like they could today, and go in and see a legal assistance attorney to address their needs. So that's -- that's how we've dealt with that.
VICE ADMIRAL (RET.) HOUCK: Over the short run, that seems reassuring, but over the medium and long run, it's less reassuring to me in that -- I mean, I think an analogy to think about here are wounded warriors and the progress that the services have made in understanding and realizing that the complexity of these issues last a long time. And you do. You clearly understand that.

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

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

COLONEL HANKINS: Well, sir, I just have to also point out, you know, our attorneys will go on to do other jobs in the Air Force. They will not be victims' counsel forever. And so, they do
have to be able to have the freedom to be able to
go and deploy, deploy for a year, if that's what
the Air Force needs for them to do.

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

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

COLONEL MCKEE: Just to add on the Air
Force's testimony in terms of we -- at our course,
we told our special victims' counsel how to
advocate on behalf of the client in the parole
system. So we do envision their advocacy going beyond action. So that the victim can get matters before the parole board for someone who's been convicted of this crime. So we envision it going a little farther.

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

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

And where my questions, the first couple of questions I'm going to ask are going to be short questions. Do I understand that for the Air Force -- I think the Marine Corps, you said it's for all offenses. This isn't just sexual assault offenses that this special victim counsel will be available. Is that true?
COLONEL JOYCE: For the Marine Corps, it is victims of sexual assault and other crimes.

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

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

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

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

COLONEL (RET.) COOK: And Army?

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

COLONEL (RET.) COOK: Okay. And in the Army, it's where I have a small concern. In the Air Force and the Marine Corps, you both said you'd set up separate organizations to do this. You have separate rating commands. In the Air Force, a
special victim counsel, if I understood you correctly, if there is collateral misconduct, rather than referring them even to TDS at any point, that special victim counsel becomes the victim's counsel. They help them through all of it. There is no referral.

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

COLONEL JOYCE: Yes, that's right.

COLONEL (RET.) COOK: Okay. Okay?

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

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

   COLONEL MCKEE: Yes.

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

   But if it goes to a legal assistance
attorney, I think you said if there is collateral
misconduct, that will get referred to TDS. Do you
envision at some point then a victim could have two
counsel -- the special victim counsel, a TDS
attorney -- and then who resolves those conflicts?

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

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

COLONEL (RET.) COOK: Right. But I'm
sitting here thinking of -- since I didn't know
anything about the programs, hearing the Air Force
and what you've done was really helpful. But even
when you were saying that you've had a couple of
cases where one person has been asked at the
request of the judge to appear at the Article 32,
present evidence on a rape shield type of motion
412, I have this image, even if they're going to
just an interview, you know, at what point does an
SVC start advising if there is -- if they refer to
collateral misconduct someplace else and the SVC is
sitting there, and they want to advise them to keep
-- or advise you to keep your right to remain
silent from an SVC.

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

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

COLONEL MCKEE: That was all one case,
ma'am.

COlonel (RET.) COOK: All one case.

Colonel McKee: Yes, ma'am.

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

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

Colonel McKee: Yes, ma'am, it has been considered. I am their technical supervisor. So if there is a conflict or there is some kind of adverse relationship, they come directly to me, and I will -- I will raise that issue with the SJA and bring that to the forefront.
But our TJAG has considered that, and she believes that using the legal assistance model is the correct model, and they do have direct access to me. I talk to the SVCs every day. They email me every day. We talk about professional responsibility issues every day. We talk about these conflicts that they may have.

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

Including the military justice background if they're a direct commission and that's a first assignment, but then that might not be the person you choose.

Yes. And the SJA has directed in her TJAG sends that SVCs should have military justice experience, either trial defense or trial counsel, and they must be mature and have sound judgment.

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

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

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

CONGRESSWOMAN HOLTZMAN: Madam Chair?

CHAIRWOMAN JONES: Yeah. Ms. Holtzman?

CONGRESSWOMAN HOLTZMAN: Thank you very
much, Madam Chair.

Thanks to all the panel members for
coming and sharing this really important experience
with us. I personally am very grateful.

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

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

(Laughter.)

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

COLONEL MCKEE: Yes, ma'am. Actually,
we've modeled our survey after the Air Force's.

So, yes, we are doing that also.

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

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

CAPTAIN TYLER: We don't have a survey
that I'm aware of right now, but it would be great
to get that feedback. So we'll look into that as
well.
CONGRESSWOMAN HOLTZMAN: Excellent. The second question I have is with regard to the Marines. If the special victims' advocate service ends at the time that the matter is referred for court martial, how can that special victim advocate help the victim with regard, for example, to the victim impact statement?

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

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

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

I mean, our focus with victims is twofold. One, we want to empower them with the
ability to have an attorney. And secondly, we want to continue to ensure we give them confidence in the military justice system.

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

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

So these are things that we need to see changed also so that we can ensure that we can exercise those types of rights. But right now, at the appellate review process and the boards that
follow involving the accused, we clearly would like to have it. And if it requires a change of counsel, we want to make sure it's a warm handoff and ensure that we can keep that confidence in that victim.

CONGRESSWOMAN HOLTZMAN: Great. Going --

this question really arises from the testimony this morning where one of the witnesses mentioned that she had gone to the SARC and the issue of having to not -- of having to stay in the unit and also that would be the issue of collateral misconduct.

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

COLONEL HANKINS: Yes. Yes, ma'am. I'd like to take that one.
Well, first of all, that should never happen today because there is a regulation in place that says if someone comes in and reports a sexual assault, you must refer that to the criminal investigative agency. So my understanding was that happened in 2006. Whether or not that person was a full-time SARC who's gone through all the training that we've had since then, I don't know. But I would like to think that today, in 2013, that scenario would never happen. And if the SARC did say something like that today and did not refer the member to a criminal investigator, then that SARC should be disciplined, and I would expect that to happen, number one.

Secondly, how an SVC gets interjected into the process. The SARC, the first person who comes in contact with a victim of a sexual assault, someone who reports a sexual assault, whether it be a SARC, victim advocate, commander, law enforcement, trial counsel, legal office, whoever, you know, the first responder team, they are required to notify the victim that they are
eligible to have a victims' counsel appointed to them. And if the victim says, "Yes, I would like to have an SVC," then they make that referral over to us.

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

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

CONGRESSWOMAN HOLTZMAN: Thank you, Colonel.
Do the other systems, services, does it work the same way?

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

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

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

CONGRESSWOMAN HOLTZMAN: Is that true also for the Marines?

COLONEL JOYCE: Well, that's definitely true because it's a statutory requirement, and it's in 1565(b) that they must inform a victim that comes in through the SARC, the victim advocate, the victim witness liaison, the military criminal
investigator, and trial counsel must inform the victim that they can have an attorney, and now we would be referring to it as a victim legal counsel.

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

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

COLONEL HANKINS: Ma'am, the authority to provide the service under the legal assistance rubric is based on 10 U.S.C. 1044, and so the person has to have some sort of status in order to be eligible for legal assistance. And in those circumstances, if the person has just separated, they're not a retiree, for instance, then they're not eligible for any legal assistance by any
military, you know, Judge Advocate or civilian attorney.

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

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

CONGRESSWOMAN HOLTZMAN: Thank you very much.

CHAIRWOMAN JONES: Mai?

MS. FERNANDEZ: Just one question, would
it be easier for you to litigate for victims’
rights if their rights were embedded in the UCMJ?

COLONEL HANKINS: I’m a strong proponent of clarifying whether or not the Crime Victims’ Rights Act, the CVRA, explicitly applies to the military or not because I think that is an issue that is unclear. The military appellate courts have not made a -- there has been no final ruling on that.

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

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

CHAIRWOMAN JONES: The only thing I'd
like to say, I guess, here at the end is, you know, this is a program, even though it's only been going for a year in the Air Force and now it's service wide, that has the likelihood of being a tremendously popular program among victims. It sounds like it is empowering the victims who have had these services and will continue to do that, and it's also strengthening their confidence in the system, which are extremely important purposes, obviously. But I echo the concerns of Admiral Houck and others that the resources are going to have to keep coming because if you are a success, you're going to have a much larger caseload.

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

Thanks very much, every one of you, and it's been wonderful to hear from you. Terrific
program, and I admire all of the efforts that you're putting into it.

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

(Whereupon, a luncheon recess was taken.)

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

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

MR. MALLIOS: Yes. Thank you.

Good afternoon, and thank you for inviting me to speak. I am an attorney advisor at AEquitas, which is a resource center based in Washington, D.C., funded by the Department of Justice, and our mission is to improve the quality of justice in sexual assault, dating, and domestic violence cases, as well as stalking, elder abuse, and human trafficking.
We have six former prosecutors. I am a former prosecutor, and I travel around the country providing training and technical assistance to prosecutors, police, advocates, medical professionals in the response to violence against women. I have also trained hundreds of military prosecutors through contracts that AEquitas has had with the different branches of the armed services, and I've been to -- a faculty member at the Navy's Institute on the Prosecution of Alcohol-Facilitated Sexual Assault.

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

Starting with investigations, it seems to me that there are some differences in the way the military conducts its investigations, especially
with respect to these collateral crimes, or what I like to call petty crimes. Most civilian prosecutors are very eager to make it clear that victims will not get in trouble for admitting to things like underage drinking or smoking marijuana when they are victims of serious crimes such as rape or sexual assault.

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

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

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

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

In order to get into my unit, someone had to really excel in working their way up through the district attorney's office, two or three years of trying misdemeanor cases, a large volume of misdemeanor cases, before they could apply to come to my office, to my unit and have an interview with
me and other supervisors to make sure not only that
they had the legal skills that we were looking for,
but also the type of sensitivity that told us that
they were willing to learn about the dynamics of
sexual violence and that they were willing to
modify their approach to cases to work with victims
of sexual trauma in a way that ensured that the
criminal justice process, as much as we could, did
not victimize them any further.

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

And if there were some way to carve out
some specialized prosecutors who are attending
national trainings and local and regional
trainings, who are collaborating closely with
medical professionals, mental health professionals,
and victim advocates, that's such a powerful way to improve the justice response for victims and make the system work better.

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

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

And as I understand it, the Article 32...
hearing is both a test of the evidence for a prima facie case and also a sort of discovery deposition for the defense. And I just can't imagine putting a victim through that, that type of adversarial extensive cross-examination at such an early stage in the proceedings and then let -- with the understanding that they're going to have to go through even more of that at a later date.

And I'm not advocating that there be a different system just for sexual assault cases. I would suggest, humbly, that perhaps this is an area where the military justice system needs to look at the way the civilian system does it and keep the hearings, the test for prima facie case short and then have some later proceedings for dealing with discovery the way the civilian justice system does. In sexual assault cases, I think it would be especially important because victims do need those protections, and these cases are so adversarial, and victim credibility is such an issue. When you're dealing with non-stranger cases where the victim and perpetrator know each other,
the issue is always going to be the credibility of
the victim.

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

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

But in the area of adult sexual assault
victims, it was fairly rare in my experience to
have victims' rights attorneys or victim attorneys in our cases. If there was a civil case, if the victim was seeking damages from someone, an employer, from the perpetrator, from a landlord, from a university, we might have a civil attorney in those cases. But their role really was to advise the victim on the civil consequences, you know, on all aspects of civil litigation, as well as to act as a liaison to the prosecutor on the consequences of the prosecutorial decisions on civil cases.

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

And we would always do our best to try and encourage victims to go forward. Sometimes
their desire not to go forward would take the form
of a recantation. And in those cases, sometimes a
judge would appoint an attorney if the victim was
recanting because there are then Fifth Amendment
issues.

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

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

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

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

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

I do not represent the victim. I
represent the state, the government -- in my case,
the Commonwealth of Pennsylvania -- and there would
sometimes be personal, private information that
would be better protected by someone who had that confidentiality with the victim that I could not offer them. And that was fairly common.

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

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

With respect to post trial review, I'm
astounded by the fact that appellate -- military appellate courts are able to reweigh credibility in the post trial phase based on a cold record. I did two appellate clerkships myself, and you just can't make those types of credibility determinations. If a panel has looked someone in the eye after they have been subjected to adversarial cross-examination, and that panel has found proof beyond a reasonable doubt that they're credible and that the elements of the crime are met, these -- that type of review and that type of reassessment of credibility, it's just so counterintuitive to everything I learned in law school and everything I've ever seen in the practice of law, especially in the case of sexual assault cases. Sometimes the facts of these cases are, frankly, very unusual. They may seem implausible. Sex offenders, especially repeated sex offenders, whether they've been caught before or not, become very crafty in how to create situations that seem implausible. They pick victims who they think perhaps are not likely to report. They pick
victims who perhaps are not likely to be believed if they do report.

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

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

So the thought of either an appellate court reweighing and reviewing evidence or even a commander making the just word in favor of the accused after the trial, these are things that would not happen in the civilian world. And both aspects, the appellate review and the commander's power to adjust cases in favor of the accused, they only provide additional obstacles for victims to obtain justice, and they're additional obstacles
for offender accountability that do not exist in
the -- in the civilian justice system.

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

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

And of the 20 prosecutors in my unit, I
had about 4 or 5 go-to people in my bullpen that I could, when I assessed a case and I determined that I needed one of my heavy hitters, I had those people to go to. And I think that all branches of the military need that level of experience for the most serious cases, and I think that these types of cases should be within the group of the most serious cases that are going to the most experienced prosecutors.

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

CHAIRWOMAN JONES: Thank you very much.

MR. MALLIOS: You're welcome.

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

MS. STAMOS: Thank you.

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

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

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

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

The second most significant development, in my view, has been the creation of victim witness programs, which have grown up alongside the victims' rights movement. My office has a staff of seven victim witness specialists, who work
alongside our prosecution staff in preparing sexual assault victims for the rigors of a criminal trial.

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

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

The first concern is a very practical one. In Virginia, as elsewhere, the Code of
Professional Conduct prohibits a lawyer from communicating with an individual about the subject matter of the representation if that individual is represented by counsel. In order for me to meet with, interview, and prepare a rape victim for trial, I would first have to get the consent of the victim's lawyer.

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

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

Thank you, and I'd be happy to answer any
questions you might have.

CHAIRWOMAN JONES: Thank you, Ms. Stamos.

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

MS. FISHER: Okay. Thank you.

Can you hear me?

CHAIRWOMAN JONES: I can.

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

CHAIRWOMAN JONES: Now I can't hear you.

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

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

Thank you.

MS. FISHER: Thank you for having me.

As a sex crimes prosecutor for over 30
years and the bureau chief of a major metropolitan
sex crimes bureau for over 23 years, I have thought
a great deal about what prosecutors can do best to serve victims of sexual assaults.

So you know where I came from and where I work, Queens has been the most ethnically diverse county in our nation, with 2.2 million residents speaking over 140 languages. We have many challenges, and I would like to share a few investigative tools that we’ve been using that have really allowed us to be very successful in this field.

I was asked to come and speak to you to answer the question, what works best to achieve justice and optimum victim satisfaction and victims' rights protection in the civilian world of sexual assault prosecution? Thank you for the opportunity to share my insights.

My experience is that what serves all of our victims most and ultimately protects their rights is an effective and successful prosecution by well-trained and experienced ADAs. My bureau has 14 ADAs. As I said, I have 30 years of experience, and I try cases pretty regularly.
My bureau consists of people with 15 years, 18 years, 19 years of experience, and that is a critical contributor to a 95 percent conviction rate after pleas and trials. The components, I believe, of our program, along with extremely experienced and well-trained ADAs, are many. But if I could mention four of them that occur in the investigative stage, they would be our early case enhancement program, vertical prosecution, pre-arrest interviews of victims in difficult cases, and an effective team approach with our sexual assault forensic examiner program that is also linked to a 24-hour volunteer advocate program in our hospitals.

For each of these components, the critical word is "early." The primary determinant of the ultimate success of our prosecution is what happens before the handcuffs are placed on the wrists of the perpetrator. The determinations and the enhancements made to the case in the very, very first hours after the crime occurs or after the outcry is made account for our successes and
ultimately, I believe, for optimum victim
satisfaction.

Let me first talk to you about our early
case enhancement program. February 14, 1992,
that's over 20 years ago, the Special Victims
Bureau in Queens, under newly elected district
attorney Richard Brown, instituted an early case
enhancement program in special victims, known as
the Riding Program. And this program was devised
to address problems unique to the prosecution of
sex crimes cases by having an assistant DA meet
with the victim at the earliest stage of the case
to make the victim feel involved in the
investigation, to lessen his or her trauma, and to
work together to figure out where the evidence is.

To staff this program, I have an ADA on
call 24/7 every day of the year, and they work
probably once every two weeks on call. And
sometimes they get many calls, and sometimes for a
month they get no call. But every time there's an
arrest for a first-degree sex crime in Queens
County, a sex crimes prosecutor goes to the
precinct or the hospital to enhance the case. Why do we do this? We're seeking to establish a rapport with the victim, to explain to the victim what's going to happen next. And then, only after that, when she or he feels safe will the ADA proceed to interview the victim about what happened. And then they will supply immediate counseling referrals.

In most cases, we have vertical prosecution. What is this? The same ADA who meets the victim in the precinct, the hospital, the street will be responsible for handling that case through disposition if it's a negotiated plea or a trial. They work with the police to secure evidence, and one of their key goals is to take a videotaped statement from the defendant.

And we feel that by sending an experienced sex crimes prosecutor to the precinct immediately after the defendant's arrest, these goals can be achieved, and in doing so, we turn marginal cases into strong ones. I also feel, having gone out many nights myself, that there is a
real benefit when the ADA meets the victim, could
be in the middle of the night, and he or she sees
that this is the person who's going to handle the
prosecution and they don't have to repeat the story
over and over again to countless people over the
course of months while the case gets transferred
from one lawyer to another.

This is an ADA who is experienced in sex
crimes prosecution and sensitivity to these
victims. Over the past 20 years, we have ridden
hundreds of cases at all hours of the day or night.
In each of these cases, a special victims ADA will
go out to the precinct. They'll interview the
complainant, and they enhance the case with some
combination of identifying additional witnesses,
whether it be for the people or the defense, taking
a statement, as I said, drafting a search warrant
based upon what the complainant says, and going
right to court and getting it signed, and providing
counseling referrals.

And what I will tell you is that the
victim comes away feeling like, "My case is being
handled by a professional, a legal mind at the
scene who cares about my well-being and who will
remain my primary point of contact as the case
proceeds." And this has a tremendous effect of
reducing anxiety.

In about 25 percent of the cases, the ADA
who tries the case takes a videotaped statement
from the defendant. And they range from denials to
alibis to confessions.

I will tell you that this initial
counter really improves our chances of getting
the victim to come forward at the grand jury and
finally at trial. It helps eliminate the
psychological limbo that may happen between the
hospital and when they ultimately come to court.
And I can't tell you how many times that our
victims have said to their ADAs at trial a year or
two later, "The only reason I'm here to testify is
because you were there for me in the middle of the
night during the worst hours of my life."

I will tell you that that bond builds
trust, and it leads to greater openness on the part
of the victim in terms of her willingness to
completely and accurately and truthfully relate all
the information to the prosecutor without fear of
judgment. And of course, this ends up certainly
combining to achieve success at trial.
Also the fact that we have vertical
prosecution and the person who was on the street or
in the precinct who is going to try that case turns
out to give tremendous incentive to enhance the
case as well as you possibly can. And as I said,
in approximately 95 percent of the cases that were
enhanced at the beginning and indicted, convictions
resulted. And in close to 25 cases, defendants
made statements to the ADAs.
And just as important as to -- of those
cases that added to the success in getting a
conviction are those cases where the ADAs have
released defendants where there was insufficient
evidence to support an arrest. In approximately 10
percent of the rides done over the last 20 years,
our assistant DAs have exonerated suspects and
released them or, at the very least, deferred the
prosecution until additional evidence could be obtained.

Another component of our successful prosecutions and ensuring victims are satisfied is that we have a great relationship with our SANE, SAFE, SART program in the hospitals. Now in Queens and across the City of New York, when a rape victim gets into an ambulance, the ambulance will ask them do you want to go to a center of excellence for sexual assault? They give them the option of going outside of the catchment area and going to these wonderful hospitals where they seen within one hour by a sexual assault examiner on call.

This examiner is a person who has been trained extensively not only by doctors, but also by prosecutors on what to expect in court when they come in and testify. And it's wonderful. They are also extremely successful and much more successful at finding DNA evidence than the non-SART programs, and we have evidence to prove that.

I will tell you, in our county they've done over 1,000 exams. We talked to -- we can
reach them in the middle of the night to get results of exams. We work with them constantly to work on systemic problems in the hospital.

And gone are the days when victims of sexual assault are examined by a radiology resident who has no idea what these exams entail, hasn't ever conducted such an exam, and who are uncomfortable performing a sex assault exam and who have no particular interest or concern for the patient. So that's a wonderful team effort that we have been involved in.

One other thing that I'd like to mention is that we have another team effort with our detectives. And in about 25 percent of our cases, our detectives call us and bring in victims in cases where there has been intoxication, where they know each other very well, where there is some kind of complicating issue. And these are many of our cases.

And this is our pre-arrest interview program. And what we do is before -- it could be weeks before an arrest is made, we will do that
interview with the detectives, and we'll determine whether there's any more evidence that can be gathered before an arrest is made or whether there should never be an arrest made. And that's a wonderful program.

The most frequent thing that we do with our victims in this program is that if the perpetrator is not aware of the allegation, the detective and the ADA will work together with the victim to do a phone call, which is being recorded. And the ADA is integral to the production of this because they know what will work at trial.

And it shifts -- if we do get a statement, which in an amazing number of those cases, we get a recorded phone call that works in court, it shifts the burden of proceeding from the victim to the victim and a confession on this phone call. And it empowers the victims, and it makes them feel more involved.

Finally, one of the most important ingredients for a successful investigation of these cases is that you have a victim who's strong enough
to go forward. And we have a volunteer effort with a major hospital in New York, Mount Sinai, where they have hundreds of volunteer advocates that are trained by prosecutors, police, and doctors about how to respond to a rape victim.

And they will come out. They're on call maybe once a month or so, and they'll come out and sit with the victim in the hospital overnight. They can even go to the precinct with them. And they will be there for them to help them and to bridge the gap between when they leave the hospital and when they go to the precinct, and it's a wonderful program.

In addition, I would tell you that the value of having a nonparty, nonlawyer advocate to offer a victim emotional support at that stage is enormous. The ER advocates are trained and wonderful, and they hand off the case to a specially trained social worker once they get to the DA's office. And that combination of help helps victims and guides them through what, as you can imagine, is a very confusing and intimidating
process.

At the same time, the prosecutor, with that backup, can focus on the legal aspects of the criminal case, knowing that the victim's emotional needs are being taken care of, and the prosecution is strengthened by having a single attorney build a relationship with the attorney -- with the victim.

The advantage of this approach is clear. When it comes time for the victim to provide testimony, she's received emotional and psychological support in the aftermath of her attack, and she has a solid connection to the DA who's been with her throughout the process.

In New York City, the instances of victims retaining counsel is rare. It happens maybe twice a year in a very busy county in which I work. My view and that of many of the ADAs that I work with is different from many who've spoken today who have served as victims' counsel -- excuse me -- or have seen them in their courtrooms.

Some of the things that they offer are amazing and wonderful and seem to really fill a
need. But my concern with retained or victims' counsel is that just because we represent the people or the government in our cases, it doesn't mean that our work somehow ignores or neglects the rights of the victim. She or he is our paramount concern from the pretrial rape shield motions to ensuring her right to speak at sentencing. Our victims know this.

And after 30 years, I believe that -- that victims are comfortable with the combination of prosecutor and advocate that I have described. I worry that if the victim had their own lawyer in every single case, that the relationship that I think is sacrosanct in our office that exists between the victim and her counsel could circumvent or diminish the critical relationship that my ADAs have with their victim. And that is the one that fosters trust and full disclosure.

I'm also concerned that were the victim to have an attorney apart from the prosecutor, the victim could disclose facts to her counsel that were not disclosed to the ADA, and the counsel has

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a complete privilege with the victim, and they might not be able to share those facts with the prosecutor due to the limitations of the attorney-client privilege.

What then happens if the victims' counsel receives such information that could be exculpatory. That is Brady material, which must be disclosed to the defense in a criminal prosecution by the DA. What happens if the victims' rights attorney takes a position contrary to the prosecutor?

These are my concerns, and I would recommend a commitment to specialized training for sex assault prosecutors in the military who stay with that job on how to build an open, candid, and supportive relationship with victims, rather than wholeheartedly supporting a system that introduces another attorney into a delicate, sensitive, and difficult case.

I would close by saying to you that although my responsibility as a DA is to seek justice and I represent the government, the
relationship that I and my DAs have with their victims is extraordinary. It is not unusual for our victims to come back year after year and see us, regardless of the result.

Recently, one of my ADA's victims named their baby after our ADA. They send holiday cards. They send wedding and birth announcements to their prosecutors. This bond that's created through the early case enhancement and prosecutor's dedication to the victim from the hospital to the precinct, through the trial to the sentence, is a worthy goal that leads to not only just outcome, but it also leads to victims end healing.

And I just want to finish by reading you a letter that one of my ADAs got from a sex abuse case that was tried two years ago. A woman who was -- a woman and her sisters who were all raped by their father over and over again.

She writes, "I plan on going on to establish a foundation to help others in situations like mine who are just in need. In a situation like this, the typical thing is to be battered,
sad, scared, and defined by my past. But that is not me. I am an overcomer who has been blessed to have God put such amazing people in our lives to support and defend us. You have done everything you could.

"I know without a doubt if we had to go to court six times, you would stand by us. You are an amazing person. I admire what you do. You know what? In this process, I have walked away knowing amazing people like yourself that I will always hold very close to my heart.

"Thank you for your help and support, and may God bless you and your family beyond measure. Remember, this is the beginning of a beautiful story."

My conclusion is the components of a successful sexual assault prosecution that I have outlined here have produced just results in the courtroom while at the same time making it a priority to minimize further trauma to the victim. I believe that some of these tools might be able to be used in the military sexual assault arena.
without compromising in the slightest the
traditional relationship between the prosecutor and
the victim.

Thank you so much for allowing me to share these thoughts.

CHAIRWOMAN JONES: Thank you, Ms. Fisher.

We'll now hear from Ms. Keli Luther, who is the deputy county attorney, Maricopa County, Arizona. Ms. Luther?

MS. LUTHER: Thank you.

Your Honor, members of the committee, it is truly an honor to appear before you today and share with you my professional experience as a former victims' attorney, representing not only adult and child victims of sex crimes at the state and federal level, but also victims of homicide, aggravated assault, and even financial crimes, as well as currently a prosecutor in a jurisdiction that victims' rights have been embedded in our Constitution for over 20 years.

I'm currently a Maricopa County deputy attorney. I focus on victims' rights issues at
trial and appellate level for my office. The Maricopa County attorney's office serves metropolitan Phoenix and the surrounding areas. We're the fourth-largest county in the United States, with over 4 million residents. The Maricopa County attorney's office prosecuted over 314 sexual assaults and sexual abuse cases in 2012, and thus far in 2013, we have 220 filings.

Back in early 2002, constitutional protections for crime victims had been on the books for over 10 years. These constitutional protections even included an expedited appellate remedy for violations. Still, far too often, victims' rights violations were far too frequent.

My mentor and former Arizona assistant attorney general Steve Twist, who is a career prosecutor, dared to wonder out loud if the rights of crime victims might be better protected through the retention of specially trained counsel to assert the rights of victims throughout the criminal justice process. Again, this is 2002.

What if a crime victim retained an
attorney for the sole purpose of effectuating her rights within the criminal justice process? Such representation would include educating the victim on the criminal justice process, meeting with a prosecutor, appearing on behalf of the victim in court, filing appropriate motions, and preparing the victim for trial and sentencing.

The grand constitutional experiment began. Most importantly, we posited the question as to whether it was truly possible to protect the constitutional rights of both the accused and the victim. Well, in Arizona, after representing crime victims in felony cases for over a decade, the resounding answer is yes.

This is not a zero sum game. The rights of the defendant are not diminished by enforcing the rights of crime victims, including their right to counsel. In fact, it's our belief that representation may indeed increase the odds that the rights of the accused are protected.

While I represented victims, the Victims' Legal Assistance Project, as well as the Crime
Victim Enforcement Project -- one was a federal project and one was a state-based project -- we represented over 5,000 victims in both federal and state courts since 2002. And attorneys at the project have logged in more than 5,000 court appearances, including pretrial hearings, trials, and sentencings.

Additionally, victims' attorneys have filed numerous appellate briefs litigating various victims' rights violations at the trial court level or supporting trial court rulings upholding victims' rights that are challenged by defendants at the appellate level.

Looking back over the last decade, the progress has not been without strife. Our courts are built upon the shoulders of tradition and are resistant to significant change. Understandably, not every judge was a fan. However, the rule of law indeed paves the way. The constitutional calculus guides the judiciary in balancing the rights of all.

Upon applying the U.S. Constitution when
the assertion of a crime victim's right infringes on the right of the accused, the accused right will, indeed, trump. However, after litigating hundreds of victims' rights issues, it's been my experience that it's far more often the case that courts are very apt at enforcing the most common rights of the victim, and the enforcements of the right of the victim does not violate the rights of the defendant.

Beyond the law, we can't disregard the important emotional support provided by victims' counsel. It should not surprise any lawyer in the room that attorneys are retained to provide guidance and support to their client. With the support and advice of a well-trained victims' rights lawyer, victims can find their voice.

I've been told by my clients, most who have never stepped foot in a courtroom, that becoming a victim, obviously, is incredibly traumatic. We all know that. But then within the fog of trauma, they're tossed into the criminal justice system.
It's been explained to me that the experience is akin to landing on the moon or being dropped into enemy territory completely unprepared. This is not Law & Order or CSI. It's a frightening world that victims are ill-equipped to navigate on their own. The language, culture, environment are often untenable. The assistance of a properly trained attorney to translate the culture and provide counsel makes a world of difference.

In my experience, I don't think it's realistic for crime victims to expect a great experience within the criminal justice system, whether within the military or in the civilian system, whether the victim has counsel or not. The most we can do as professionals is to enforce the law at the federal and state level, to try to meet crime victims where they are, attempt to accommodate the victims' needs, and not always expect the victim to conform to our system.

Not surprisingly, accommodations can indeed be made for all -- defendants, jurors, and victims -- that prove the truth-seeking process for
all. We can ensure that victims are treated with
dignity, respect, as well as fairness, and to be
free from intimidation and harassment.

An attorney who is well trained in
victims' rights can successfully shepherd crime
victims through the gauntlet of our criminal
justice system. Additionally, it's important to
note that at least in Arizona, after over 20 years,
there are still far too few attorneys representing
victims in criminal court. I applaud the
innovative SVC programs and the efforts to provide
appointed counsel to every victim that desires
representation.

In Arizona, we're not there yet.

Prosecutors recognize that 99 percent of our
victims still will not have counsel, even after 20
years of victims' rights being on the books and
enforced. Our constitution guarantees each of
these victims numerous rights. These rights must
be protected and enforced.

As a prosecutor and a lawyer, it's my
sworn duty to enforce the constitution and laws of
Arizona. The Maricopa County attorney's office mandates victims' rights training not only for prosecutors, but for every employee. New trial judges in Arizona receive victims' rights training as part of their new judge orientation.

Finally, in Arizona, prosecutors have standing to assert any right of the victim. However, prosecutors are not victims' counsel, and attorney-client privilege does not apply. Prosecutors represent the State of Arizona. Prosecutors are bound by the Brady line of cases, necessitating the disclosure of exculpatory information to the defendant.

It's essential in our office to ensure justice for all, the victim and the accused. While SVC programs are applauded and welcomed, the entire criminal justice system must make the cultural shift, recognizing that crime victims are not mere pieces of evidence and victims' rights are indeed civil rights.

Victims are participants within the system that have constitutional and statutory
rights that shall be enforced. It's a compliance issue in Arizona and at the federal level under the Crime Victims' Rights Act. SVC programs can drive that cultural change one court appearance at a time. However, again, in our experience, most victims will not be represented, at least in the civilian system.

Strong laws that prosecutors must enforce and the courts must recognize, I think, is at least part of the solution. I'm happy to answer any questions.

CHAIRWOMAN JONES: Thank you very much.

And now we'll hear from Mike Andrews, managing attorney, D.C. Crime Victims' Resource Center. Thanks.

MR. ANDREWS: Thank you, Madam Chairwoman and the committee, for this opportunity to come and speak with you all today. I'm often reminded, having just heard from our distinguished panel, what my father used to say before giving a blessing before we sat down to eat, and his words were "make it brief." So,
with that, I understand that we probably want to get down to brass tacks, so to speak, and have a dialogue with Q&A, and I'll get to that. But just let me briefly just say a couple things. First, again, I'm very appreciative for this opportunity to speak with you. The D.C. Crime Victims' Resource Center is unique because we're the only pro bono legal clinic in the D.C. metropolitan area that represents crime victims. Years ago, there was several clinics, including ones that Ms. Luther had run, and with funding restraints, those clinics had kind of went by the wayside. I'm fortunate that D.C. has been able to maintain our financial stability, but for the most part, our template is with pro bono attorneys. Good, hard-working lawyers in the community that are willing to give their valuable time and effort to represent crime victims, and I'm very proud to be one of those individuals. To recommend solutions, I have really one for you all, and that is to adopt the Crime
Vicims' Rights Act, the CVRA. Real simple. It was passed by bipartisan support, both the House and the Senate. It's been tested. Many of the circuits have come down and on the enforceability. Interestingly enough, the head federal prosecutor in the United States, the Attorney General, he has set out guidance that has been straightforward. The CVRA must be applied to all their federal prosecutors.

There is no "shall." There is no wiggle room. His direction is to the U.S. attorneys this is the law of the land, and you must comport. And that, as a crime victims' rights attorney, really makes life a lot easier for me because at least from the prosecutor's perspective, the crime victims' attorney is nonthreatening. They know what the CVRA is.

I will tell you the majority of my time here in practicing law in D.C. is simply just educating the judiciary and, of course, the defense bar, and it wasn't always easy. I'll be honest with you. There was a lot of "Who are you? What
are you doing here?"

And I don't have one with me, but I'll
tell you, I used to have these three-by-five cards
of the CVRA, real simple, nonthreatening. How
about the first right? The right to be treated
with dignity and respect.

Really? We have to have a law that says
we have to treat human beings with dignity and
respect? And I usually used to tip off with that
one, and then we'd go right down, down the list.

But with dialogue and with continuing
education, I have to tell you, today I get
representations from not only the government, but
also from the defense bar. That didn't happen
overnight, but it took a lot of work for that, as
they see that it's a nonthreatening advocacy,
especially on certain elements of the CVRA.

I will highlight a couple where I think
are really relevant for the discussion that I
anticipate we're going to have today. The right to
be treated with fairness, with respect for the
victim's dignity and privacy. This right is
essential in preventing unwanted incursions in the victim's background, such as unwarranted subpoenas for medical, educational, and unemployment records that are often sought out against the victim of sexual assault simply for fishing expeditions.

And I have litigated this issue on and on again, and I've been successful just for the fact that it's a thrown against the wall subpoena, and there's nothing behind it that would put forth why there is a need.

And I'm often concerned that if that's not litigated, then the right, the privacy right of a victim would then be -- would be pierced simply for the fact that they're a victim of a crime. Had they not been a victim of a crime, they would be -- have the same protections as everybody else.

The second one that I'd like to talk to you about is the one that is also important, but it's the right to be reasonably protected from the accused. What do I mean by that? I have seen lately an uptick in increasing harassment through -- through the social media by posting graphic
pictures, statements, and other various electronic messaging against victims.

Well, the CVRA makes it clear that you cannot condone this behavior. As I indicated, my role is simple, I ensure that the victims are afforded the simple eight rights described in the CVRA.

One cannot simply look at a victim as a piecemeal approach. I understand that. But we must look at an entire body and that means that individual. I'm often reminded, and let me close by saying this, victims are not asked to be victims. But for one tragic event, they are at the mercy of others, and at the mercy for the passion and commitment of others to assist them.

And with that, I thank you, and I look forward to answering your questions.

CHAIRWOMAN JONES: Any questions? Okay.

VICE ADMIRAL (RET.) HOUCK: Oh, go ahead, please.

CHAIRWOMAN JONES: You know, the interesting thing here is that victims' rights are
a relatively new body both of law and certainly
relatively new in the consciousness of everyone.
And I think that one thing that is critical -- and
I don't think I'm saying anything different from
any of you, even though you take different
positions on the counsel issue, victims' counsel
issue -- is that the law exists and the -- it
should be enforced by the court, number one.

And I think it is in the manual for Judge
Advocates what the victims' rights, an essential
outline of the Victims' Rights Act. And it should
be enforced by the prosecutor because -- and not
all of it perhaps, and that's where the dividing
line comes in.

A prosecutor should understand that the
victim has a right to be present at certain
critical moments in the trial. Forget the trial.
I mean at before and at a plea, for instance, with
respect to bail issues, all of that sort of thing.

It seems to me that a well-trained,
experienced prosecutor who also has a victims'
advocate teamed up with them can be an extremely
perfect combination to provide all the support that victims need. And I understand, as an old prosecutor, both a former prosecutor and old, that -- that I had a very special relationship with all of my victim witnesses, and I never thought they needed anybody else.

So I considered them to be -- me to be their lawyer, as well as the state's lawyer. So I know where Ms. Stamos and Ms. Fisher are coming from.

I guess I wonder, though, whether there are -- and here's another problem. This notion of privacy rights. You -- and we've talked to a couple of people who have mentioned sheltering the victim from subpoenas, for instance. Well, the bottom line is some of that information may be relevant and exculpatory, and so that creates an issue in terms of the justice system.

You know, when a subpoena comes in, it's a case-by-case decision. Sometimes a judge will simply not grant it because it doesn't seem to have any basis at all by the defense. Other times, the
judge will look at it in camera before it's given over.

But it seems to me, I would prefer that system in terms of the defendant -- the accused rights to be the system rather than to have, at least in that one area, a victims' counsel who starts to get in the middle of a decision about what to turn over and what not to turn over in a criminal case. I think that ultimately has to be the decision of the prosecutor. This is just my own experience here.

So I do worry about a tension that gets created, but I think what I'm learning because, as I'll tell you, my knee-jerk reaction was you can't afford to have a civilian counsel in the civilian world. It's not happened. It's very difficult. There is no resources.

What I think I've seen in the military pilot project is that in that particular justice system for victims of sexual assault, this is an additional person who is a support to that person and empowers that person and is a sign that the
military considers this victim important and is going to be -- they're going to be taken care of. Those are valuable things. I know you were all here before, and my only concern is can it be sustained? It's extremely resource intensive, to say expensive is the same thing. So I don't know. I just throw all of that out as my reactions to what I've heard.

And Admiral Houck, you want to save me?

You had a question, which wasn't a question?

VICE ADMIRAL (RET.) HOUCK: Well, I mean, I think this is one of the great panels that we've had because it's really awesome to have your range of experience and expertise here and also terrific to see you taking different points of view, which is really helpful to us, I think.

The -- one of the things -- I guess to tack onto what Judge Jones said, one of the things that I wonder about is the role of if you have a classic prosecutor who works with the victim beyond the scope of the criminal case of the prosecution. Because I don't know if any of you were here this
morning, we talked about the array and the morass of other issues that are out there for survivors is extensive.

And I'd be -- one of the things that's attractive to me about the way that the military is going right now is the notion that this person is there for them during the criminal proceedings, but not necessarily exclusively for that. They can help the person navigate the rest of this process that's out there.

So, and I guess I would ask Ms. Fisher or Ms. Stamos, in a civilian system, what happens when the case is done? Do your prosecutors work with people throughout the whole range of other issues that are out there for victims? I would think not, but --

MS. FISHER: We have a justice center in our office that has a lot of volunteer lawyers and lawyers that work for different organizations around the city that has offices in this justice center that's attached to my office. So, oftentimes, I will send victims there to, you know,
get the divorce finalized, to, you know -- or to
legal services to sue the landlord if they've been
raped because the door was broken, and so on.
So we do try and help them with counsel
for that kind of thing for sure, and you know, we
do what we can. I just feel like having that
person in there, in the middle of it, possessing
information that I don't have that I could get
surprised with at trial could be devastating. And
maybe justice will be done in some of those cases,
and maybe it won't, depending on what the privilege
is. But we do try and assist them with those kinds
of issues.
And just to respond to you, Judge, and
your concerns, I will tell you that I recently
tried a case where a young woman came from Mexico
to live with her aunt and was raped by the uncle
because they wanted her to have their baby. And
there were -- she was in ICE custody for two
months. So I had this many records from ICE
custody. She had all kinds of problems when she
came here in the education system, child welfare,
since the rape happened.

I mean, I had probably 1,000 pages of records, and I believed that a lot of them should be turned over, but I wasn't sure about some of them. So I took them and I gave them to the judge, and I said these are the ones I think should be turned over, and these are the ones that shouldn't. But I rely on you, Judge.

I didn't feel that we needed another attorney to make that argument. I could do that, and so could my -- my assistants. So I think there are a lot of ways to resolve the privacy issues despite that.

But getting back to you, we try whatever we can. And that's why we have these many years of relationships with our victims after the trial is over, you know, because we try and help them.

MS. STAMOS: I would just echo what Marjory is saying. I mean, in our office, our victim witness unit really does provide a lot of what Marjory's office will provide. I mean, certainly services, directions for counseling.
In Virginia, we have the crime --

Criminal Injuries Compensation Fund. So, you know, they will help navigate a victim to get actually monetary compensation for injuries and other kinds of expenses.

I mean, does it go far enough?

Absolutely not. Does that need more money? Sure, it does. But you know, there are all sorts of services in Arlington County that we can provide victims and direct them to legal services for the same kinds of things.

And again, you know, I just echo Marjory.

It is a problem to have the notion that there would be in a prosecution -- and the judge has hit on this as well, you know, we are ministers of justice. We have to make sure that the right thing gets done.

And in this day and age, when prosecutors I think are being targeted left and right by good colleagues in the defense bar as far as, you know, failure to disclose exculpatory evidence and allegations, wanton allegations of prosecutorial
misconduct, we have to make sure when we're
prosecuting someone for a sexual assault crime that
we have the ability to get that exculpatory
evidence that might be, you know, between a victim
and her or his lawyer, and that lawyer does not
have to turn that over to us.

And to be in a trial and to know that
there might be important information, critical
information -- you know, a recantation, an
inconsistent statement, all the things that we have
to worry about that are landmines for prosecutors --
- to inject that person into the process troubles
me greatly.

And again, I will say this. The victims'
rights movement, in my view, grew because
prosecutors didn't do their jobs. Because there
were arrogant prosecutors who didn't consult with
victims, who didn't get input from victims, and
legislatures and general assemblies across the
country had panels just like this in Springfield,
Illinois; in Richmond, Virginia; hearing hellacious
stories from victims who were just completely
disregarded. The prosecutors in their case completely disregarded them and did not provide them with, as Mike says, you know, to be treated with dignity and respect. So we brought this on, but I also think that we are the answer for fixing it.

VICE ADMIRAL (RET.) HOUCK: If I could just ask one follow-up? With respect to the issues that you're raising in Arizona, how does this work? They posed the challenge. Have you had issues with Brady material and disclosure and those kind of things?

MS. LUTHER: Absolutely. I would say probably out of all the issues, victim issues that we face on a daily basis, I would say about 80 percent, 75-80 percent deal with victim discovery issues. And in Arizona, crime victims have the right to refuse a defense discovery request. So the biggest issue for victims' counsel, as well as a prosecutor, is determining is it Brady material or not?

It's our position that if a victim has
their own -- obviously, they have their own private life. They had constitutional rights before they were victimized. They still have constitutional rights. And because you're victimized does not give anyone permission to go into your private life and open it up for anyone and everyone, especially the accused.

So the big question is, is it Brady or is it not? And so, we litigate those issues. Are these records in the control, custody and control of the state? If they're investigatory records, law enforcement records, that sort of thing, case law is very clear that that is Brady, and we would review those records and turn over any records that would be exculpatory.

However, if they are a victim's own counseling records outside, let's say we -- in our office, we encourage free counseling service for crime victims. So we're saying, you know, we want to get you help. Here is free counseling. You know, go get better. Take care of yourself.

And then two weeks later, we have a
subpoena from defense counsel saying I want those records? I want to pull up a seat next to you in your counseling session. That's different. And so, we litigate those issues.

The close calls? Absolutely right. We turn those over to our judges and ask for an in camera inspection if the accused has made the proper showing of the need, and there is that close call. I mean, there are some where it is close. The records that we have that could potentially be Brady, but there are many victim records that are not Brady. They are their own private records. They are not parties. This is not a civil suit, and they should have some degree of protection, again where they're not -- a defendant's not pulling up a seat in their counseling session. So we do litigate those issues weekly, if not --

CHAIRWOMAN JONES: Do you do that, and is there any tension when you do that between yourself and the prosecutor?

MS. LUTHER: And I will tell you that a
lot of it is training, understanding the case law and that sort of thing. But there can be. And in fact, we have case law addressing that.

Say, in Arizona, even though the victim has a constitutional right to refuse a discovery request, if those records are in the hand of the prosecutor and they are exculpatory, those need to be turned over because, as we discussed earlier, the defendant's right would trump if it's Brady material.

So there can be tension. But victims have a voice in that, and it's about communication and understanding what the rights are and explaining when you have to turn over records why you're doing that. And why you may not want a situation where victims are turning over anything and everything to you, making sure they understand that they have privacy rights, and what our role is and what our role isn't.

Because in my experience, even when I was a victims' attorney, my client always thought the prosecutor was their attorney as well. And trying
to understand the different roles and what the
different jobs. What I liked as being a victims'
counsel is explaining the privacy rights to the
victim and making sure they understood that. So it
was their choice, you know, as what they wanted to
turn over and what they didn't.

Also sometimes explain to them if you go
to counseling, I mean, there's a good chance
defense counsel is going to ask for those records.
It seems unfair to the victim to have that
conversation, to say, you know, it's just another
example how a victim can be betrayed when we're
trying to provide healing to them. But again, for
the last 20 years, we've been litigating those
issues regularly and on a case-by-case basis.

Sometimes courts order those records to
be turned over. Sometimes they don't. And in our
office, sometimes we appeal those rulings if we
don't believe that it follows the law, and the
appellate courts then address those issues.

So the victim has a right to take it up
on appeal. We have a right to do that, and so we
kind of address on a case-by-case by enforcing the law.

COLONEL (RET.) COOK: Ma'am, if I may?

CHAIRWOMAN JONES: Sure.

COLONEL (RET.) COOK: Can I follow up with that? To make sure I understand it, the Crime Victim Legal Assistance Project that you are with, pro bono attorneys, but you weren't supported or staffed by the state in any way, were you?

MS. LUTHER: Yeah, and let me make it very clear. For 12 years, I worked for the Crime Victim Legal Assistance Project, which was a nongovernmental nonprofit. And now I'm actually a prosecutor, and I was actually brought over to make sure our office was complying with victims' rights and to actually have a more focused litigation strategy on victims' rights.

And so, if there's questions or litigation moments that need that specialty, I come in and do that.

COLONEL (RET.) COOK: Okay. And so, that's a system where Arizona has allowed that the
victims, to the extent that they choose to have a
counsel there, they can come to an entity like you
and get that counsel?

MS. LUTHER: That's right.

COLONEL (RET.) COOK: Now if you're
looking at a military environment where what's
being proposed is a government-appointed, funded
attorney being provided to that victim, which means
what happens -- you know, you talk about the
exculpatory and the Brady, now is the evidence
within the hands of the government? Because here's
a legal assistance or another Judge Advocate or
somebody who's been assigned to do that for the
government, their rights in terms of the medical
records, most military victims -- if it's a
civilian victim, it may be a different issue.

But if you're within the military system,
whether you're a dependent, family member, or the
military person yourself, most of your records are
within the government as well. You get your
medical care through them. So the fight for those
records isn't the same. Issues. I guess what my
concern is if you know that that's an environment that we're proposing, does your strong belief in the system still apply?

I mean, it's one thing to say victims should have rights and maybe codifying them. Maybe they get the opportunity to have a victim counsel to represent their interests. Do they procure it if they want a civilian counsel the same way our Trial Defense Services do? Do they do it on their own, and we just make an allowance that lets them do that?

But to the extent the government provides them, the professional responsibility issues, the constitutional rights involved in all people -- I mean, right to privacy. In military service, you do waive some rights to privacy. And I'm not saying all should be. I'm just saying it's a reality.

So it's a question of how do you balance that in the military culture and the system, all provided by the government and then sustain it if we do incorporate it? Anyone -- if you want to
comment on that, Ms. Luther, because you've been experienced with it. But for the rest of you, any comments on that?

MS. LUTHER: Yeah, and I think that is definitely a challenge that we were discussing that issue, the Brady issue. My understanding was I was informed that upon the development of the program I think with the Air Force, that the government attorneys are considered just like a public defender would be. And I'm not sure within the charter, and again, excuse my ignorance on some of the issues, how this was all formed and that sort of thing.

And my understanding was that was addressed one of the first issues. If that's been taken care of, great. But obviously, if it's not, that's going to be an issue that I would think defense counsel will be coming forward with and saying, arguing Brady issues.

However, of course, we know that not every single record is Brady. And so, prosecutors, you know, deal with records every day and not every
single record is a Brady concern. So my guess is you'll -- it would end up working a lot like we do every day, going through those records, finding out what, indeed, is exculpatory, what is not, what is a fishing expedition.

But I think it's something that will obviously have to be addressed, maybe on a case-by-case basis. But attorney-client privilege may be different depending on that charter how that's established.

COLONEL (RET.) COOK: And if the attorneys involved can't agree between a special victims' counsel and a prosecutor, who makes the decision that the prosecutor may not get access to it because it's a confidential relationship? I'm just trying to understand the whole proposal better. I'm not trying to say one way or the other.

You know, in a gold standard, it sounds great, especially if it allows some of our victims to come forward and report. Reality for the military is 26,000 victims reported being victims.
How do we get after it? So --

MS. FISHER: I think, you know, the value of having them there to get people to report, knowing that they're going to have an advocate is terrific. I guess my concern is not so much the records. My concern is, you know, and I met with many members of -- reps from the military in my office in Queens a couple of months ago, and you know, a lot of the cases are just like mine.

Eighty percent of them -- the people know each other. There's alcohol involved. There's drugs involved. It's a huge problem. And so, my concern is if the -- not so much the records, but if the victim believes they have an attorney with 100 percent attorney-client privilege, which was described earlier, it's not the records that I worry about so much. It's the victim telling them something and saying, "Do not tell the prosecutor," you know?

And so, and the defense -- the defendant has an attorney, and they know each other. So the defense attorney is going to know whatever it is
that she's told her lawyer, and the only person
that's left out in the cold at the trial might be
the prosecutor, and that's a concern. Because the
victims' advocate can't really share because they
have a privilege and they have no obligations under
Brady.

So I guess that when I was thinking about
it, I see a huge amount of advantages. But this is
one that really concerns me in terms of making sure
that justice is done.

CHAIRWOMAN JONES: Well, you know, it's
interesting, though, when you bring a witness in,
as the lawyer bringing a witness in who's going to
be prepared by a prosecutor and the prosecutor asks
those questions that a prosecutor has to ask about
what bad things have you done? Tell me every bad
thing you've done in your life because I'm going to
put you up there, and I want people to believe you,
and I have to know all the facts about this case.

Frequently, the counsel for that witness
is telling them whatever you do, don't lie and be
completely truthful. So if everything's working
right --

MS. FISHER: Right.

CHAIRWOMAN JONES: -- it might work. Or

it should work.

MS. FISHER: And we have those

conversations. You know, we say, listen, he knows. He's telling his attorney. And we have been doing

this, if it's me and another attorney, for a

century.

So whatever you perceive the weaknesses

in your case to be, if you were drinking, if you

were doing drugs, if you had sex with him before,

we can handle all of these things. We win a huge

number of our cases. But you got to be honest.

So I feel that we can do this, and we

don't need somebody intervening keeping that stuff

a secret from us. That's what I worry about. And

it should work if you handle it correctly.

CHAIRWOMAN JONES: Well, I was saying it

could work or should work if victims' counsel

understands how important it is that the witness,

the victim witness tells the complete truth to the
prosecutor when asked the questions. That was the model I was thinking of.

COLONEL (RET.) COOK: Madam Chair, if I can ask another one? This is something completely different.

The Article 32 investigation that you had mentioned, which, for us, is a pretrial type of investigation, and right now, what it becomes sometimes is a mini trial because there are no limits on what's placed. If the military were to move to a process where we limited that more to the prima facie type case like the civilian community, can you each comment to me that for the defense in the military system now, the Article 32 for the prosecution is the ability to present enough of your case to say is there sufficient evidence to send the case to trial?

But for the defense, it's also the opportunity to see the evidence against their client and, in some cases, to put on as much or as little of a defense of that case to show that person who's making a decision, is there enough to
go to trial or that there isn't. So it's a
discovery tool for them to see the evidence. It's
a defense tool to see maybe they could influence
what the next step would be.
If we take it away and we go limit it to
the prima facie case, and it just becomes -- and we
take away that discovery tool aspect, what
alternative should we be considering, based on your
experience? How else do you -- how does the
defense get a lot of that evidence through your
systems right now that the military may not have in
place?
MS. STAMOS: Well, I'll just really
quickly answer that and let Chris -- quite frankly,
when Chris mentioned in his testimony about the
Article 32, and I'm not steeped in the military
justice system at all, but I do read the papers.
And when the recent Article 32 hearing that we all
in this area were aware of, which was the Navy, the
Naval Academy Article 32 hearing, it was
unimaginable to me that that young woman was on the
stand for hour after hour. I think it was over the
course of several days perhaps.

So certainly, you know, a victims' rights issue is that, that someone can be cross-examined within an inch of her life before the trial even starts and have -- and use it as a discovery tool. That's where I think the military might want to focus its attention on changing those rules.

Because anyone who goes through that, I mean, you would have given -- and I'm not commenting on the merits of that case, but you know, what kind of person would go through that kind of crucible at a preliminary hearing and then be expected, you know, three months later or, you know, whatever to then stand trial and go through that again?

So that would be a place where I would want to look at, and then you would do your discovery rules. You know, open file discovery. I mean, Virginia is a very narrow discovery state. However, in my office, the tradition has been we do open file discovery. So you can come in. You can look at our police reports. We show you what we've
And in most cases, obviously, the case is resolved by way of pleas because we do provide the discovery. Does the victim have to get on the stand in most preliminary hearings in sexual assault cases in my jurisdiction? Absolutely.

But it's very circumscribed. It's very narrow. You can't do any kind of rape shield stuff there. There has to be a rape shield hearing if you're going to go into all that stuff, which I'm assuming the military would also have. Although from the sound of that Article 32 hearing, that was a free-for-all.

CHAIRWOMAN JONES: You know, Mr. Mallios, I think you said it right at the beginning of your statement with respect to Article 32. A probable cause hearing, and I think in 23 years as a federal and state prosecutor -- well, let me say as a federal prosecutor, I saw two, I think.

Because you only had them if you weren't able to get a grand jury indictment. And no magistrate or judge allowed any length of cross-
examination of the victim witness because it was only to be a probable cause determination, not anything to do with the victim's credibility.

What I learned at a previous panel was that the military does not have a discovery system and that that's what the Article 32 does. And in the dialogue, you know, the notion that the military justice system might well go to a probable cause hearing and then establish discovery rules, you know, there's a Federal Rule of Criminal Procedure that lays out everything a defendant is entitled to in discovery.

And that might have to be the substitute. And I think I don't know where the military is at in working on that, but I know that it's a subject that they're looking into at this point. But I think that was your suggestion right at the beginning.

MR. MALLIOS: And I'm a little bit --

COLONEL (RET.) COOK: Before you answer, I just want to clarify one thing. The military does -- it's not that the military doesn't have a
discovery rule. I mean, Brady applies to the military, as it does any other court.

CHAIRWOMAN JONES: I'm sorry. I meant what you can request --

COLONEL (RET.) COOK: It would have to be beefed up in some areas probably. I just want to make sure that it's clarified that we do have some discovery.

CHAIRWOMAN JONES: Right. Right. I meant the specific requests, not Brady.

MR. MALLIOS: And I've heard before that sometimes the commander or the person making prosecution decisions about whether and how to go forward, that sometimes they also rely on the Article 32 hearing to assess their case. That concerns me.

I think the prosecution should have access to a full and thorough investigation. And if there are things that have not been investigated, then they should have additional investigation. And if there are facts that the defense attorney is aware of that the defense
attorney wants to bring to the prosecutor's
attention, I think that they can do that without
doing it by subjecting a victim to that type of
cross-examination.

I had many attorneys contact me and say
could you take another look at this case? Or let
me give you some additional information. Or let me
bring my client in to proffer him about -- so you
can hear his version. Sometimes they talk to the
investigators, sometimes they don't, and that
happens later in the process.

That's all part of pursuing justice is
getting that type of information. But doing that
at the expense of subjecting a victim to that type
of cross-examination I think -- I think is
problematic in these cases and very, very different
than anything that happens in civilian criminal
justice systems.

CHAIRWOMAN JONES: Professor Hillman?
PROFESSOR HILLMAN: Thank you, Madam
Chair.

Thank you for your perspectives. They're
very helpful to me. I keep coming back to where Mr. Mallios started, which is the distinctions between military and civilian justice, state and federal. Military judges are not like federal judges. Military trial counsel are not like federal prosecutors. The preliminary hearing, the Article 32 is not like a preliminary hearing. The post trial review to which you referred under 66(c) of the UCMJ is not like the appellate review that happens in a civilian criminal conviction appeal.

Given all those distinctions, in addition, the JAG Corps is tasked with many responsibilities, military justice being a primary one, and we do have many experienced Judge Advocates, many of whom we've heard from, with tremendous experience. But they aren't like the prosecutors you describe with that career experience and extended experience.

And I wonder if given those differences, especially for those of you, for Ms. Stamos and Ms. Fisher, who really feel that this is a wedge, a
potential wedge that corrupts the capacity to prosecute effectively in these cases, did those differences temper your -- your sense that that really would be a wedge rather than a way to address some of those distinctions between civilian and military justice in sex crimes?

MS. STAMOS: Well, I mean, one of the -- it's an interesting question, and it is so different. The systems are very different. But, and I guess from where I sit, the question is, is the notion of -- and I'm not sure, I guess all you folks will come up with recommendations to Congress about what to change or what not to change, what to add or what not to add. And you know, it sounds to me like there might need to be some substantive changes in the way things are done in the military vis-à-vis criminal prosecutions. And certainly, sexual assault cases are sui generis. They are very different, and as we all know, most of our -- and same thing in my jurisdiction, you know, the bulk of our sexual assault cases, other than the child
sexual assault cases involving family members, is, you know, someone of an acquaintance type of situation. Alcohol or drugs are involved. Recollections are cloudy.

Prosecutions are difficult because the main reporter can't produce the evidence that we need to prosecute. And that's the problem in the military, too, I'm sure.

But I think, in addition, and Chris has made a couple of very good suggestions, just as a novice as I'm listening to him, the idea that, you know, if a young woman -- you know, there was like possession of cocaine. You know, when she goes to report, we find in her backpack or her handbag that she's got some cocaine in there when she's at the scene getting examined, well, we're not going to -- we're not going to prosecute her for possession of cocaine.

Do we have to turn that over to the defense? Do we have to tell? Yes, she had cocaine in her bag, but we dropped the charges. You know, have that on a cross-examination if you think
that's going to move the ball.

But it seems to me that in the military if they have the discretion to say to a young woman who was drunk and, you know, perhaps conducting herself in a way that the military says you cannot do, that they have the discretion to say, well, we're not going to pursue that. I mean, that's not going to be an issue. There are not going to be these collateral misconduct issues, which would make it easier for that person to report, more, you know, willing to report, and not have the worry of having these collateral things happen down the road for whom I guess -- for which they need that attorney.

So it sounds like there are a lot of changes that need to be made, and I'm not so sure that lawyer is what really is going to get to the crux of the problem.

MS. FISHER: I really think, if it were up to me -- and certainly it isn't. But the greatest bang for the buck would be to set up a special victims prosecution unit where people stay
and they don't switch to being defense attorneys and victims' lawyers. They just become super effective and super well trained in doing this, and they make a commitment to it.

And to me, that would, you know, take the place of, you know, the two years that someone is going to be in the job of a special victims' counsel. Like I said before and I think you said, you know, I have assistants who love the work, and there are some people who hate it. But I have assistants who love the work who have been with me for 15, 18 years, and they can try anything.

And if the woman was drunk or if she was on drugs or if she has committed 12 crimes beforehand, you know, knock yourself out. Cross-examine her. But we have a woman who was strangled and who has some injury, and we're going to do just fine.

But that's because of their experience, and that's because of their ability to create this rapport with the victim where they're getting the full and true story. And so, if it were up to me,
I'd take the 25 million bucks, and I'd set up a
unit that --

CHAIRWOMAN JONES: They wish they had 25
million bucks.

(Laughter.)

MS. FISHER: I know that. And that's
what I would do with it. It sounds like it's a
reality, and I wish them the best of luck, and
they're doing some wonderful things with it. But
my idea of getting the best value would be to set
up a consistent unit where people look like they're
invested in it for a career.

CHAIRWOMAN JONES: I have to make an
announcement now that there's going to be a fire
drill at 3:00 p.m. today, and once it starts, if
you were to leave the courtroom, you will be herded
out and put on the street somewhere until they let
you back in. And it's also going to be quite noisy
from about 3:00 p.m. to 3:10 p.m. or 3:15 p.m.

So since you all have free will, you can
make your own choices about what you want to do. I
don't know if people want to -- may have to get out
of here beforehand or if everybody just wants to
stay the course?

COLONEL HAM: So we are exempt from
departing the courtroom.

CHAIRWOMAN JONES: We don't have to
leave. Right.

MR. MALLIOS: Could I just -- I am going
to leave, but I just wanted to respond to that
issue. I have seen nonlawyer victim advocates who
are well trained and well versed in the law do a
phenomenal job protecting victim rights, working
closely with prosecutors. Victim advocates,
probably not government employees, but community-
based advocates or civilian who -- with whom the
victim does have confidentiality.

I think they could do a very good job of
doing most of the things that the victim rights
attorneys would do and in appropriate cases make
referrals to attorneys who are available. I think
that may be one way to fill that void, but also
make referrals to attorneys when necessary. That's
the system I worked under.
We had prosecution-based victim witness coordinators, and we had community-based victim advocates in our local rape crisis center and children's alliance. And they were just phenomenal, and they had pro bono attorneys on standby to make those types of referrals.

VICE ADMIRAL (RET.) HOUCK: I just had one observation I make, and this is the not the place, I think, to kind of litigate the issue. But a couple of comments have come up about the issue of collateral misconduct, and it's -- it's very difficult for us, and it's not to say that cocaine use, for example, is the equivalent of a sexual assault. I'm not saying that at all.

I think I'm just sort of putting down a placeholder that it's a different issue for us. It's relatively easy to say cocaine use, whatever, is different for us. And for reasons that -- you're all smart. It's probably really obvious to you why it's different for us.

But I just wanted to make that observation. And we -- it's -- we have a lot of
work to do in sorting through it, and so that's not to say that I think that anybody on this panel is close-minded to thinking about it in a different way, but it's a harder issue than it might be for you.

COLONEL (RET.) COOK: One brief question. CHAIRWOMAN JONES: Sure. Go ahead.

COLONEL (RET.) COOK: Can anybody just confirm for me, unless there's a victims' counsel, working with the prosecutors, working with your victim assistance programs, is there any place other than a counsel that the victim can come forward and make a statement confidentially in your civilian sectors? The counsel program, yes. Okay?

MS. LUTHER: Under Arizona law, our victim advocates in our office, and like you, we have victim advocates that are non-attorneys in our office. They do have victim-advocate privilege. But there is the Brady exception even for them. So we do have that for our victim advocates within our office.

COLONEL (RET.) COOK: Anyone else?
MS. FISHER: We have a social worker-client privilege, and we have a rape crisis counselor-client privilege. I would tell you that if -- and we have two rape crisis counselors that work for a hospital that just sit in our bureau.

So they are from an outside agency.

I will tell you that if a victim comes to them and says, "You know what, I lied to the DA. I don't want you to tell them." I think that person would probably work with the victim to get them to the point where they could disclose it.

But they do have, you know, people to talk to where they can have, you know, a cloak of confidentiality until it gets to the point where it's got to be turned over or someone's going to go to jail who shouldn't.

MR. ANDREWS: Clearly, I have the confidentiality, and it's one of the I think really no different than representing any other civil client I may have.

I do want to touch on a couple things, as I've been sitting here quietly. One, let's not --
and I know we haven't forgotten about this. But the government does not represent victims. I think that's pretty clear about that. Sometimes they believe they do, and as a prosecutor, you kind of take that role because but for them, you would not have a case.

But as I'm often reminded by the judiciary, the government doesn't represent the victim, and that's why attorneys or at least through the CVRA are carved out for that opportunity for that representation. I think that's very important.

The second is, of course, I fully support the way the Air Force has adopted their special victims unit of having legally trained attorneys. I can't emphasize the importance to have somebody legally versed especially in the mine field of crime victims' rights.

I mean, look at the discussion we've had today. I mean, it's been tantamount. It's been great. But can you imagine a layperson trying to explain this to a victim? I think it would be very

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difficult. That's why I think somebody that's a
trained lawyer would be happy to weave them through
that.

And if I could address the gentleman, the
vice admiral's comments about collateral charges.

Interesting enough, sir, I'm going through this
right now. I have my very first military client.

She's an officer in the Air Force, and she has been
brought up on an Article 15 charge collaterally.

She's a victim of a sexual assault in
which it's being investigated by the federal
government, and the charge is drinking alcohol.

And there may be some consequences for her for
having alcohol. But when we're talking about the
greater good of having her career taken from her
because she's violated that -- and I understand the
command, the chain of command, and I understand the
law and order. So, please, don't let me think I'm
mitigating that.

But when you weigh that, as opposed to
being brutally raped, I find that kind of
disingenuous. But that's just my opinion, and
again, I mean, I mean absolutely no disrespect for men and women who serve in that law -- in that armed forces that go by those military requirements. But as a victims' rights attorney for a number of years and as we've heard in the civilian world, that drinking charge probably would not see the light of day.

CHAIRWOMAN JONES: I think Professor Hillman has one last question.

PROFESSOR HILLMAN: I just -- I would stay on this and just for a moment to respond to Admiral Houck raising this. This is a critical issue for us to increase reporting to decide what to do, as with Mr. Mallios pointed out is especially an issue on campuses, the collateral misconduct issue.

The campus is the environment that has the demographic closest to our most problematic demographic in the armed forces. What to do with collateral misconduct in an environment where conduct unbecoming an officer and a gentleman is a crime in the military, and there's the general
article that criminalizes a huge range of things not only cocaine, illegal drug use, but so many other things that, in fact, are not criminal in the civil system.

It's a huge problem for us in terms of encouraging reporting until we deal with that issue of collateral misconduct and the potential for amnesty to increase reporting.

CHAIRWOMAN JONES: Did you have another question?

PROFESSOR HILLMAN: No, ma'am. Sorry.

CHAIRWOMAN JONES: That's okay. All right then. I think we'll take our break now, unless there are any final comments from the Panel?

(No response.)

CHAIRWOMAN JONES: Okay. And you may escape before the fire drill if you really hurry.

(Whereupon, a recess was taken.)

CHAIRWOMAN JONES: For our last panel of the day, we have Perspectives of the Military Defense Bar, and I want to begin with Colonel Cullen, who's the Chief of the U.S. Army Trial
Defense Service. Colonel?

COLONEL CULLEN: Judge Jones, members of the Panel, I am Colonel Peter Cullen, Chief of the U.S. Army Trial Defense Service, and I have served in this position since August of 2012.

Thank you for extending an invitation to the leaders of the Military Defense Bar and our civilian colleagues to address you this afternoon. We each have an important perspective on the practice of military justice as it pertains to the investigation, prosecution, and adjudication of crimes involving adult sexual assault and related offenses.

The views I am expressing today are my own, and they do not reflect the positions of the Judge Advocate General or the Department of the Army. I've submitted the complete text of my statement for the record and would like to take just a few minutes to highlight some sections of my statement.

Let me begin by providing you some background information about defense practice in...
the Army. Established in 1980, the mission of the
U.S. Army Trial Defense Service is to provide
independent, professional, and ethical defense
services to soldiers. I have the great privilege
of supervising approximately 150 talented and hard-
working defense counsel who are serving on active
duty in more than 50 offices worldwide.

I'm very proud of the tremendous work
being done on a daily basis by Army defense counsel
and the critical role they play in ensuring the
integrity and constitutional sufficiency of our
military justice system. The vast majority of
these defense counsel are young, company-grade
officers in their first or second tours as Judge
Advocates.

When they start out as defense counsel,
they frequently have limited military justice
experience. They normally serve 18 to 24 months as
defense counsel before moving on to another
assignment. They compensate for their lack of
experience with an impressive work ethic and a
selfless dedication to ensuring each soldier client
receives the best possible representation. In about 10 to 15 percent of cases, the Army trial defense counsel is joined on the case by a civilian defense counsel who has been retained by the soldier client at no expense to the government. In fiscal year 2013, the U.S. Army Trial Defense Service represented soldiers in approximately 910 general and BCD special courts martial. This averages out to fewer than 10 courts martial per military defense counsel per year. While the number of tried cases has leveled off in recent years, this should not mask the increasing complexity of our courts martial practice, especially the rising number of contested cases, over 40 percent of our general courts martial in FY '13, and a very robust motions practice. I attribute these trends to the growing number of sexual assault cases that occupy more and more time on the court martial docket. Well over one-third of all courts martial in FY '13 involved charges of sexual misconduct.
In representing an accused service member, the defense counsel is confronted with the tremendous resources of the command, military law enforcement, and prosecutors. It can be a lonely and often uphill struggle for the defense to gain access to the witnesses, evidence, and resources needed to properly defend a soldier and ensure a fair trial.

Increasingly, defense counsel must also confront and overcome instances of unlawful command influence in sexual assault cases. There is tremendous pressure on senior leaders to articulate zero tolerance policies and pass judgment on those merely accused of sexual assault. Even if command actions do not rise to the level of unlawful command influence, it contributes to an environment that unfairly prejudices an accused's right to a fair trial.

I highlight these matters to ensure that there is some awareness of the institutional and systemic challenges already faced by defense counsel in sexual assault cases. As you evaluate
various legislative proposals, I ask that you be cognizant of the additional burdens these proposals will place on defense counsel in terms of their ability to ensure service members receive a fair trial.

Our military justice system is not perfect, and it can always be strengthened. We must be open to all informed ideas on how to improve the system and make it better for all concerned. I support a deliberate and thoughtful approach to reform of the military justice system.

The system that we operate in the military was developed after long and careful study and incorporates various checks and balances that reflect appropriate compromises between the command's unique need for good order and discipline and the service member's fundamental right to a fair process. The military justice system differs from its civilian counterparts in many significant ways. Some of these differences favor the defense, and some benefit the prosecution.

Proponents for change have claimed that
the military justice system is hostile to
complaining witnesses and far too protective of the
rights of accused service members. In so doing,
they criticize procedures such as the Article 32
investigation while failing to acknowledge that
many of the procedural protections for defendants
in civilian jurisdictions are not available to
military accused. Here are just a few examples.

A service member does not enjoy the right
to a jury of his or her peers. Instead, members of
courts martial panels are hand-picked by the
convening authority. A service member can be
convicted of serious crimes by less than a
unanimous verdict. Only two-thirds of the Panel
members must agree before returning a guilty
verdict.

A general court martial panel can be
composed of as few as five members. This means a
service member can be convicted of crimes carrying
a maximum punishment of life imprisonment without
eligibility for parole on a two-thirds vote of only
four members. The requirements are even less for a
special court martial, which can be composed of as few as three members.

The defense does not enjoy the independent right to subpoena witnesses or documentary evidence. Instead, the defense must request witnesses or documents through the prosecutor, providing a justification, which the prosecutor can deny.

The defense counsel may take the issue up with the military judge, but not in an ex parte process. Instead, the prosecutor is present when the defense counsel explains to the military judge how the witness or evidence is relevant to the defense case. Of course, the prosecutor provides no such explanation to the defense before issuing a subpoena to secure witnesses helpful to the government.

Unfortunately, it appears that most of the changes to the military justice system that are under serious consideration are motivated in large part by a desire to make it easier for the government to convict service members accused of
sexual assault. As the Chief of the U.S. Army Trial Defense Service, I am understandably skeptical of such so-called reform. I'm deeply concerned that these proposals for change are being made without adequate regard for the rights of accused service members.

Viewed in isolation, many of the proposals have attracted broad support. If, however, they are considered in their entirety, I believe it becomes readily apparent that their cumulative impact will be to decisively tip the balance in favor of the prosecution and undermine the service member's right to a fair trial. In so doing, it fundamentally alters the character of the military justice system in a way that will risk depriving it of legitimacy.

As you continue your careful review of the response systems to adult sexual assaults and contemplate what recommendations to make to Congress, I would ask that you consider the following two matters. First, service members sacrifice a great deal when they enlist or are
commissioned in the military. They should know
that when they volunteer in the service of the
nation that they do not forfeit their right to a
fair and impartial process if ever accused of a
crime of sexual assault.

There should be no weakening of the
important procedural protections embedded in our
military justice system. These safeguards are
absolutely essential to ensure just outcomes at
courts martial.

And secondly, tremendous resources are
arrayed against a service member accused of a crime
of sexual assault. Service members deserve the
best possible representation, and this means that
we must continue to resource the defense function
even in today's constrained budget environment.

Thank you for your attention, and I look
forward to answering your questions.

CHAIRWOMAN JONES: Thank you very much,
Colonel.

Next we'll hear from Colonel Joseph
Perlak, who is the chief defense counsel of the
U.S. Marine Corps Defense Services Organization.

Colonel?

COLONEL PERLAK: Thank you, Judge Jones.

And I bid a good afternoon to this most distinguished Panel.

My name is Colonel Joe Perlak, and since 31 July, it's been my singular privilege to serve as the chief defense counsel of the United States Marine Corps and as the officer in charge of the Marine Corps Defense Services Organization. These remarks are mine and mine alone.

For the past 100 days, I've been leading, training, and supervising an impressive, committed group of advocates as they brilliantly carry out duties guaranteed by the Sixth Amendment. Our nearly 100 members consist of one highly qualified expert, four regional leaders, senior defenders and new defenders, and enlisted support personnel, and a small, but distinguished Reserve bar. There are approximately 80 attorneys in the DSO, and I'm part of the overhead. I'm not doing cases. I'm leading.
DSO personnel perform their mission on behalf of, and with my apologies to my colleagues here at this table, the most extraordinary clients. They are United States Marines, amongst whom I jealously include those superb and motivated sailors who selflessly serve and choose to serve among, with, and as United States Marines.

The clients of the DSO are drawn from the very greatest this nation has to offer. They are, to a woman and to a man, someone we must never forget is a volunteer serving their nation in time of war.

If they're 18, as many of our clients are, they have known for their entire cognitive life a nation at war. If they're 28, they've known a nation at war since at least high school, and they have done what so very, very few in a country of 330 million persons do, and that is volunteered to serve. And they continue to serve.

And if they're 38, they've dedicated their lives to the defense of this nation in a 30-year continuum of conflict we only now begin to
appreciate began on October 23, 1983, at an airport in Lebanon.

Many, if not most, of our clients have been to war. They've been exposed to extremes of sound, smell, sight, sleep deprivation, fear, and overwhelming responsibility -- responsibility for themselves in an unforgiving environment, responsibility they've never had before in their lives, responsibility for the lives of others. And they've done so in an environment where alcohol and intoxicants and diversions from harsh reality are prohibited, and they are unavailable.

But then they return to find the other extreme, often the polar opposite of what I just described to you. A lack of stimuli, no externally compelled emotion, extremes of boredom, and often returning with mental and physical injuries for which they are medicated or for which they self-medicate in a land where those medications, be they illicit or distilled, are commonly available.

They are exposed to two extremes of human experience in an incredibly brief window during
which even the fully developed human mind cannot be expected to flip a switch from one to the next. Science has shown us that for the males especially, of which the Marine Corps is vastly male, the mind is not fully developed until the mid to the late 20s. So when I talk to you about the DSO's clients, they are young men. Still boys, but expected to act like men one day. Kill or be killed. And then to return to be asked to be a gentleman and to be gentle the very next day, which, to an extraordinary degree, the vast majority are able to do nearly all of the time.

Please don't mistake anything I just said as an excuse for criminal behavior, but it is extraordinarily important context to the environment and the persons that we're talking about and the decisions that they make that put them in the crosshairs of the UCMJ.

As persons dedicating ourselves to the military, to the law, for the betterment of military law, we must likewise never forget that
the Marines and sailors defended by the DSO are not attackers, victimizers, assailants, rapists, or any other pejorative brand they have been given, and I'm disturbed by the loose and repeated application of those brands particularly in advance of a finding of guilty.

The point for labels and the point for brands, if appropriate, doesn't even occur in our military courtrooms. In our process, it does not even occur when a service court of criminal appeals decides a case. If only it applies, it is upon completion of the procedural due process put in place that includes either a decision or denial at the Court of Appeals for the Armed Forces directly below the Supreme Court. That's when a conviction is finalized in our system. That's when those terms pertain to these Marines and sailors and the other service members represented by my colleagues.

And we introduce an obvious prejudice in using these terms and brands in advance of findings, and I find that to be a challenge to due process that has taken the UCMJ over six decades to
develop for them. The presumption of innocence and
that application of due process of law demand much
better of us.

We're talking about an all-volunteer
force at continuous war who face prosecution in a
still imperfect, hybridized system mixed with
discipline and justice that has taken two
generations to place in whatever balance we think
it is in today. It seems a uniquely incongruous
time to be discussing revolutionary change and any
systematic curtailment of the rights of the accused
in the court martial process.

The mission of my organization, the DSO,
reads as follows. "The Marine Corps Defense
Services Organization provides zealous, ethical,
and effective defense counsel services to Marines
and sailors who are facing administrative,
nonjudicial, and judicial actions in order to
protect and promote due process, statutory and
constitutional rights, thereby ensuring the
military justice system is both fair and just."

The challenge you face is to rise above
these anecdotes, emotions, and premature and prejudicial use of these brands to ensure that the words in our mission statement, hard earned incrementally over time, can continue to ring true. And I thank you for your time and look forward to your questions.

CHAIRWOMAN JONES: Thank you, Colonel.

We'll now hear from Captain Charles Purnell, U.S. Navy Commanding Officer, Defense Service Office Southeast. Captain?

CAPTAIN PURNELL: Good afternoon, Judge Jones, members of the Panel. Thank you for having us.

As everyone else has said, the views expressed here are my own personal views. I'm the commanding officer of Defense Service Office Southeast. That's one of four Navy defense commands. We have 19 offices worldwide. Our mission is to defend service members, and that's our sole mission.

Since the October 12, 2012, establishment of the Defense Service Offices, we have reported to
an independent Chief of Staff for the Defense Service Offices and, ultimately, to Commander, Naval Legal Service Command.

Our defense counsel include about 74 officers and 38 legalmen defending service members. Of that number of 74 officers, slightly more than half are what we refer to as "core defense counsel," and their primary role and they spend 75, 80 percent of their time involved in courts martial litigation and in conducting supervisory counsel responsibilities.

The rest of our officers are accession officers who come to us for a six- to eight-month rotation during their first tour as Judge Advocates. Their responsibility is to defend service members at administrative boards and also to provide advice about other administrative matters and personnel law issues, such as nonjudicial punishment.

In addition to their supervisory counsel, our defense counsel have access to the Defense Counsel Assistance Program, which is staffed by two
officers and one highly qualified expert, who is a very senior civilian with 20, 30 years experience.

I don't recognize the picture of military justice that I see on the news. In my experience, commanders and commanding officers have been absolutely zealous in pursuing misconduct. I have never seen a commander or commanding officer not respond to an allegation of misconduct or to seek to hold a service member accountable. It's inconceivable to me that they would turn a blind eye or not to hold somebody accountable.

In my experience, the Navy strains toward accountability, and it produces in its military justice system I think results that some might perceive more harsh than merciful. So I never thought that I would come to a day where the conventional wisdom was that service members had too many rights under the Uniform Code. I don't think sailors share that view.

I think sailors don't understand their commands to be permissive. I think that they find it inconceivable that their commands would cover
for them or ignore an allegation of misconduct, and
I'm stunned by that portrayal.

I think that, you know, I rather expected
that we might see another Forrestal or Cox
commission that would provide a bridge to gap the
resources between the rights of the accused, and I
didn't expect to see that we'd be making the system
more harsh and provide fewer rights to service
members.

I agree with Colonel Cullen in absolutely
every respect in his submission, and so I took this
opportunity to write more in depth about one
particular point in which I agree with him, which
is that the Article 32, as a thorough investigation
with the right of discovery, should be maintained.
I believe that a preliminary hearing under Rule 5.1
of the Federal Rules of Criminal Procedure is an
inadequate substitute. I think it's ill advised to
pick and choose between the Federal Rules of
Criminal Procedure, selecting only those rules that
put the defense at a disadvantage and that
advantage the government.
My fear is that in taking the worst of both systems, we're going to create a system that's very unbalanced and that's not just. And so, I appreciate the very considered and deliberate approach that you're taking in your review. I thank you for accepting this undertaking. I'll look forward to your questions.

CHAIRWOMAN JONES: Thank you very much. Next is Colonel Dan Higgins, Chief of the Trial Defense Division, Air Force Legal Operations Agency. Colonel?

COLONEL HIGGINS: Judge Jones, members of the Panel, good afternoon. Thank you for the opportunity to be here today. As just mentioned, I am Colonel Dan Higgins, Chief of the Air Force's Trial Defense Division. In that capacity, I am privileged to lead a team of 109 defense counsel and 78 paralegals at 69 operating locations around the world.

Our charge is to further the Air Force's mission by providing America's airmen with
independent, world-class representation in a
zealous, ethical, and professional manner. Like
the others on this panel, the views today that I
express are my own and not necessarily those of the
Judge Advocate General.

Defense services within the Air Force are
delivered by trained professionals at the base
level. Most Air Force installations are serviced
by a single captain, or O-3, area defense counsel
and a single defense paralegal, typically an E-5.
At larger installations, we may have two or even
three defense counsel and multiple defense
paralegals. But typically, it's one defense
counsel and one paralegal per base.

These area defense counsel and defense
paralegal teams are organized into 19 regions
worldwide. Each of these regions is led by a more
experienced O-4 senior defense counsel who is
responsible for overseeing defense services at
three to five installations within their region.
Those 19 regions are again grouped into 3 global
regions. These are led by a lieutenant colonel, or
O-5, chief senior defense counsel, and those three chief senior defense counsels report to me.

As a defense counsel, I am especially concerned about a potential rush to modify the Uniform Code of Military Justice, the manual for courts martial in our military justice system, especially when these changes are not part of a larger systematic review of the process as a whole. I am very much concerned that many of the changes being proposed now would serve to remove or erode the accused's constitutionally guaranteed due process protections and place a metaphorical thumb on the scales of justice, which tips the balance in favor of the government and ultimately increases the risk of convicting an innocent airman.

I want to be brief in my comments. So let me just say in closing that I am very grateful to be here today. I appreciate the opportunity to discuss the issue of sexual assault in our armed forces. As you go forward with your efforts, I would encourage you to consider that, first, our military members deserve the best possible
representation, starting as early in the process as possible when they are suspected or accused of criminal wrongdoing.

Second, a disciplined force is essential to commanders and to our nation as a whole. Furthermore, the military justice system ensures a disciplined force only so long as it zealously protects the rights of the accused and is consequently viewed by those it serves as having legitimacy.

Third, there should be no dilution of the due process protections currently afforded to service members by law and regulation. Changes to the military justice system made without the benefit of a systemic review of the entire military justice process run the very real risk of eroding the legitimacy of the system necessary to ensure a disciplined force.

I look forward to your questions. Thank you.

CHAIRWOMAN JONES: Thank you, Commander. Or Colonel, rather.
Next we'll hear from Commander Ted Fowles, U.S. Coast Guard. And you are Deputy, Office of Legal and Defense Services.

COMMANDER FOWLES: Yes, ma'am.

CHAIRWOMAN JONES: Thank you.

COMMANDER FOWLES: Good afternoon, Honorable Judge Jones and distinguished members of the Panel. I am Commander Ted Fowles, Deputy Chief of the Coast Guard’s Office of Legal and Defense Services and senior military appellate defense counsel for the Coast Guard. I have served in these positions since July of 2012.

Thank you for providing me the opportunity to testify in front of this Panel, and I welcome any discussions on how we can protect the constitutional and legal rights of the accused while we work together to eliminate sexual assault from our service. I am also prepared to discuss the role of the commander in the military justice system.

Like my colleagues, in this regard, I am expressing my own views here today and not those of
the Judge Advocate General of the Coast Guard or the Department of Homeland Security.
I want to start by just describing briefly the Coast Guard's defense practice. As some of you may or may not know, trial defense services for Coast Guard members accused of violating the Uniform Code of Military Justice are actually provided by the Navy, pursuant to the terms of a Memorandum of Agreement.
Under this agreement, we have four Coast Guard lawyers that are stationed at each of the DSOs around the country. They work for the Navy. I do not have any direct supervisory role with respect to their positions. My office does provide the detailing function, and we also provide additional support when necessary.
I think it's also important to highlight that we don't have a separate training program for Coast Guard individuals that are performing a defense role. We do have a program where the Judge Advocate General of the Coast Guard encourages junior Judge Advocates to volunteer for
opportunities to represent individual clients. But that's on a volunteer basis.

Another important distinction in the Coast Guard is that each trial counsel is stationed in the Staff Judge Advocate office, and they control their own training budget. And they can travel as approved by their Staff Judge Advocate. Contrast that to defense counsel in -- that are in the Coast Guard serving for the Navy have to rely on asking the government for funds to attend training or to travel in any manner to represent their clients.

With this quick overview of the status of defense service in the Coast Guard, let me move on to discuss the issues that brought us here today. There can be no doubt that every sexual assault case that occurs in the Coast Guard poses a grave threat to the good order and discipline and undermines the great work that we do.

Around the globe, the work -- the Coast Guard works tirelessly to protect our borders, protect our natural marine resources, and save
those who are in distress at sea. One conviction for sexual assault certainly tarnishes all the hard work that goes into keeping our great reputation. As such, I'm here to work together with you to find a balanced solution that accomplishes the goal of eradicating sexual assault. However, we must charter a well-reasoned, rational, and cautious course towards accomplishing this goal to ensure that we do not diminish the value of the very freedoms that the armed services work so tirelessly to protect.

In short, I humbly submit to this Panel that as part of your duties, you must also work tirelessly to protect the rights of the accused. An unjust system of good order and discipline is just as detrimental to our services.

With respect to changes to the administrative military justice, I concur with my colleagues that a piecemeal approach will only -- will create imbalances. The history of the Uniform Code of Military Justice demonstrates that it's a constantly evolving process, and it's one of checks.
and balances.  

I also concur with my colleagues on the role of the commander in the military setting. Simply put, it seems odd that we would entrust commanders with the lives of -- literally the lives of their subordinates as well as millions of dollars of property, but to think that we can't trust them to make decisions regarding the role of military justice in their command.

Checks and balances are already in place in the Coast Guard with respect to the authority of commanders. In 2012, the Commandant of the Coast Guard issued a service-wide order limiting the disposition authority involving cases of sexual crimes to those officers in the pay grade of O-6 or above that have a dedicated Staff Judge Advocate assigned and are at least a special court martial convening authority.

The determination to limit the decision authority on cases involving sexual crime to not only the most senior officers makes sense.

However, rather than curtail the commander's role
any further, we need to shift the focus to holding commanders responsible for fostering a command climate that embraces the dignity and respect of all individuals. I submit that this will make the biggest impact on the military of the future.

In conclusion, and to keep my remarks short, I recognize that we can always find a case, an investigation, or facts that we should have handled better. The Coast Guard is built upon learning from history and improving in the future. As such, I am convinced that reasoned, rational changes to the UCMJ will accomplish this.

As we do so, however, I ask that we cautiously and carefully consider the impacts on the rights of the accused. Thank you for your time and consideration, and I look forward to answering any of your questions.

CHAIRWOMAN JONES: Thank you, Commander.

Next we have Mr. David Court, of Court & Carpenter from Stuttgart, Germany. And I know you've been here all day, Mr. Court, because we came into the courthouse at the same time. So
thank you for your patience, and we'd be pleased to hear from you.

MR. COURT: Thank you, Your Honor. Thank you for letting me be here.

Okay. Almost never have I been told I'm too quiet in the courtroom.

Thank you, Your Honor. Thank you, members of the Panel, for allowing me to be here.

Stuttgart is where my combined firm currently has its headquarters, but I've been in Frankfurt for 30-odd years. I started in military justice in 1977, and that's all I've ever done. I've defended thousands of service members, hundreds of courts martial. You can tell because of my gray hair.

I have been here for a couple of days. So I will apologize in advance if I yawn. It's the hours, not the company.

By being here, I've had an opportunity not only to sit in here, but on Wednesday to wander around. And I happened to come across a building, two, three blocks from here -- the Keck Institute
for the National Academies. And chiseled on the
front of that building -- I say chiseled, it's
probably lasered. On the front of that building is
a quote, which struck me as being appropriate not
only for science, but for the judicial process.
"The right to search for truth also
implies a duty. One must not conceal any part of
what one has recognized to be true." That was
Albert Einstein.
The connection I drew is that just as I
know without a doubt in my mind that there are
criminal sexual assaults occurring in the military,
I also know without a shadow of a doubt that there
are false reports of sexual assaults in the
military. And one cannot forget that at any stage
of the process.
I've prepared some remarks, which I'm not
going to read to you. It's the hours and all of
that. You can read them yourself. But I would
like to address a couple of points in that regard.
Sitting here for the past two days, I
didn't keep track, but I'd be willing to bet that
if you checked the record, the word "victim" was said probably 2,000 times. Maybe only 1,500. I don't recall more than half a dozen times that I heard the words "alleged victim." That, to me, is a problem.

What we're doing and what is being proposed is that as soon as a report is made, that person who makes the report -- male, female, doesn't matter -- is being immediately granted the crown of truth. That person is a victim. We say that word. We have a special victim counsel. We have special victim investigators. We have special victim prosecutors.

Can't we just have special prosecutors? Why must it be that we immediately identify the person to be a victim? I've been in numerous courts martial where the prosecutor has used that word in opening statement and been stopped by the judge, saying, "Counsel, that's not been established yet. Please say alleged," because the panel otherwise will get the wrong conclusion. Words are important, extremely important.
False reporting. I'm not going to sit here and go through a litany of all the cases I've been involved in. Why would people false report? That's the immediate question. Someone says why would a woman or a man say that this most intimate violation has occurred when it didn't?

Now it may be different in the civilian world, and we heard just recently from prosecutors and counsel who are in Queens, in Arlington, here in the area, they probably don't get the same reasons why there could be false reporting in the military.

What are some of the reasons? The classic remorse. Okay, the idea of in the military more it's important, revenge. Revenge against a superior. Revenge against the accused who cheated on me with someone else. These we're dealing with as issues. I've got all kinds of cases to support that -- anecdotal, mine.

Self-protection. Don't want the people in the unit to think I'm that kind of person that I would just do that on a second date.
Deflection from your own problems. I'm being called up in front of the commander because I was disrespectful to my NCO. And oh, by the way, I was disrespectful because he raped me two years ago.

I have a case right now that was alleged. Fortunately, after the Article 32 hearing, it was clear to all the attorneys that that was not a credible claim. There were other issues, and so there will, nonetheless, be a conviction, but not for rape.

What can you do about false reporting? Investigate impartially. Impartially. The investigators who I have dealt with in many cases start out believing it's the victim.

We heard the other day from someone in this very room talking about how it was inappropriate for the investigator to challenge the reporting witness because that makes them feel bad. Well, that also makes it seem like the investigator doesn't do his or her job. He's not looking into the issue.
We talk about investigations. Many of my co-panelists have talked about the Article 32 investigation. I, too, believe an Article 32 should not be changed into a preliminary hearing.

Listening to Mr. Mallios talking about making it just a preliminary hearing so that we don't have to worry about the credibility of the complainant. Why not? Why should she be presumed to be telling the truth any more than anyone else is? She's a witness.

We talk about the special victim counsel and the issues about Brady. I understood and was listening as Professor Hillman, who, unfortunately, is not here, was talking about continuity and turning the special victim counsel into or using the civilian component of the legal assistance function in the various services because they tend to be more stable. Not necessarily in Europe. They have a five-year rule and rotation. But nonetheless, they are more stable.

The idea that a special victim counsel who has six more months on his or her tour is going
to see a case through to completion is not realistic in the current military environment. The conversation has also talked about the rights of victims, CVRA. They are, if granted, as Ms. Luther talked about, not going to trump the constitutional rights of the accused.

The one that concerns me most are the rights of victims because most of them are common sense, okay? You're going to talk to the victim. You're going to tell her -- excuse me. I'm doing it myself. You're going to talk to the alleged victim and let her know what the process is. You're going to talk to the alleged victim and let him know when the next hearing is.

But the right to be in and sit in as an observer in the courtroom I find to be troubling in the military environment. The only provision in the current law that deals with presence of a witness, crime victim, is the right not to be excluded from any public court proceeding unless the court, after receiving clear and convincing evidence -- pretty high standard. Clear and
convincing evidence determines the testimony by the
victim would be materially affected.

That's a good standard, a good test. But
I would, if you're going to do this, incorporate
something that makes it more uniquely military and
add words to the effect "or would affect the
testimony of other witnesses by the alleged
victim's presence during that other testimony."
Because in a military environment, that can happen.
It is a smaller environment. It is a smaller unit.

If the alleged victim's friend is going
to come in and say he or she observed actions by
her, by the alleged victim, which are inconsistent
with the claim and has said that in interview, that
person might not be wanting to do that if he has to
look her in the eye. Does that mean it's true or
not true? Don't know. But it affects the person's
testimony. It affects the person's testimony. And
I think that's a problem with allowing any witness
to sit in on the testimony of any other witness,
with the exception of experts.

Finally, the system of military justice
that has been established over time, and when I began doing this, we didn't even have Trial Defense Service in the Army. It's been a while. We didn't have a rape shield law when I started. We've seen a lot of change and a lot of development to make the system fairer, to make it more appropriate. The rape shield law is correct. The protection of medical records except with an in camera review is correct because it allows both sides a fair shot. But the changes that are being suggested that I've been hearing about -- some rational, some not -- the past couple of days has made me realize that not only must the alleged victim have confidence in the system, but so must the accused, so must the sailor, soldier, the airman, the Marine, the Coasty.

They have to be confident that the system of justice that they have is going to be fair to them. And right now, we're in a -- I call it "Izzy Inbit" world. Too many people look at it and say if she says it, it must be true. We can't do that. We need to have confidence. We need to know that
both sides will be heard and heard fairly. That neither side will be granted any extra privileges. Colonel Cullen talked about all the military limitations that an accused does not have, sort of in exchange for the Article 32 hearing -- trial by peers, limited number of votes, not a trial of 12 panel members. I would think, and I don't know if my fellow panel members would agree, but if someone were to say to me, Dave, we're going to take away your Article 32 hearing. We're going to give you a probable cause hearing. We'll give you some discovery down the road, assuming the prosecutor understands that. Frequently, the young ones don't. But that's another issue.

In exchange for which you get a jury of 12 people who have to vote unanimously, I'd take it in a heartbeat. We're not going to get that. So please don't take away our Article 32 hearing.

Thank you, and I look forward to your questions.

CHAIRWOMAN JONES: Thank you, Mr. Court.

We now have Mr. Jack Zimmermann, of

Alderson Court Reporting
1-800-FOR-DEPO
Zimmermann, Lavine, Zimmermann, and Sampson. And you're here from Houston, Texas.

MR. ZIMMERMANN: I am, Judge. Thank you very much, and members of the Panel.

CHAIRWOMAN JONES: I think we need you to --

MR. ZIMMERMANN: Okay. How about that? Is that better?

CHAIRWOMAN JONES: That is -- closer, I think, is the answer.

MR. ZIMMERMANN: Okay. How about that?

CHAIRWOMAN JONES: Perfect.

MR. ZIMMERMANN: Ever since I was contacted and asked to review some proposed legislation to modify the Uniform Code of Military Justice and come talk to a distinguished Panel of experts and give you my opinion on those, I have looked forward to today.

I will tell you, though, that when I turn on the television and I see some commentator or some guest expert rendering an opinion, I want to know what that person's background is so I know how
much credibility to give to that talking head. So I thought I would just take maybe 15 or 20 seconds and tell you that I have served as a practitioner in the military justice system since 1975, for 38 years.

I have been a chief defense counsel, chief trial counsel, military trial judge, Staff Judge Advocate, and I am also able to give you the view of the commander. I've been an artillery battery commander in combat for two batteries, and I've served as an infantry battalion commander in the Reserve. So I feel like I have the handle on what lawyers and judges in the military think and at least formed my perspective as well as the commander.

I've been the chairman or the co-chairman of the Military Law Section for the National Association of Criminal Defense Lawyers since 1996. So it is with that background that I want to talk to you very briefly about some of the things that I think are good improvements to the Uniform Code of Military Justice and then take the rest of the
time, if it's all right with you, to talk to you
about some things that bother me and make me worry
about us diminishing the effectiveness of the
Uniform Code of Military Justice.

Let's talk quickly about those things
that I think are proposed that are good changes.
Many of the statutes that I saw, proposed statutes
talk about keeping better records. I think we
should keep better records. I think we should
prohibit the accession of candidates for enlistment
or commissioning who have sexual offense or any
felony conviction on their records, frankly.

I believe in strengthening whistleblower
protection, which is in that proposal. I think we
all agree with removing consensual sodomy as an
offense under the code, since the Supreme Court a
long time ago said that was not a crime.

I agree with the elimination of the
requirement that the defense seek the production of
witnesses through the trial counsel, and I agree
with changing the rules so that an appellant in the
military system can petition the Supreme Court for
review when the Court of Appeals for the Armed
Forces has denied review. We don't have that right
right now.

But I think this. Those who write the
law and write the changes to the law where the
rights of the alleged victim seem to preponderate
against the rights of the accused seem to me is
where we are with almost all of these proposals
that I've seen that were sent to me by your staff.
To me, we're almost writing out the presumption of
innocence and the burden of proof being on the
government.

And let me be specific. This idea of
creating two separate justice systems within the
military, one that deals with sexual assault cases
and one that doesn't, seems preposterous to me. It
has to have been proposed by someone who never put
on a uniform. You can't have two separate systems.
You get accused of homicide, you go to one chain of
courts or procedures, and if you get charged with
sexual assault, you go to a completely different
one. That makes no sense to me.
I think some of these proposals create unworkable processes in the courtroom, and I specifically refer to this what Mr. Court has already attacked. I agree with him. Victim, special victims' counsel that we just spent the two hours before this panel started. I'm going to come back to that in a few minutes.

I think that by stripping commanders of the authority they need to maintain discipline in a fair way is a mistake. I think that importing minimum mandatory sentencing provisions into the military justice system is a horrible mistake.

The civilians that have dealt with mandatory minimums have almost universally not liked that. It has not worked out to be good.

It's not a good thing.

We have our system now where members or military jurors have a range within the Manual for Courts Martial maximum punishment range to assess a sentence that they think is appropriate under the circumstances, taking in the severity of the offense, what the person's been convicted of, and
the background and character of the defendant. And
I think that system needs to stay.

This effort to stop sexual assault is
something, as Mr. Court said and all of the
uniformed defense counsel, chief defense counsel of
their respective services, all of us agree that we
need to stamp out sexual assault. I'm not here to
tell you that that's a good thing. It's not a good
thing.

I have a daughter in the military who's a
young colonel. I know that the words "young" and
"colonel" in the same sentence don't seem to jive,
but I'm an old colonel.

CHAIRWOMAN JONES: A lot of young
colonels here.

MR. ZIMMERMANN: Yeah, we got somebody on
the -- we got some young-looking colonels and even
young-looking brigadier generals on your Panel.
But I'm talking about we all want to stamp that
out.

And so, this SAPR training that's going
on everywhere, I'm going to tell, I spent yesterday
from 9:00 in the morning until about 3:30 in the afternoon litigating an unlawful command influence motion to dismiss a sexual assault case because of in part the SAPR training that's going on.

The SAPR training is creating unlawful command influence. Let me give you some feedback of what potential members in courts martial are being told.

They're being told that one drink of alcohol negates consent. One drink of alcohol will negate consent. They're being told in a laughing way, I think, but to try to keep attention that you ought to videotape or audiotape someone giving consent so in case it's questioned later.

They're told that everyone who gets convicted, I saw a slide that I introduced into evidence yesterday from a SAPR training session that said 100 percent and then semi-colon maximum punishment. Hundred percent of claims will be prosecuted, and you should give them the maximum punishment.

So this effort has gone overboard. Let
me say this. I'm going to tell you what I think. I'm unrestrained by having the uniform anymore on, and I'm going to tell you what my experience requires me to tell you, and I'm not trying to insult anybody or make fun of anybody. But when I think something's ridiculous, I'm going to tell you that it's ridiculous and I think something's good. I think that the members being told by the senior officer in one of our services that 80 percent of sexual assault claims are legitimate is ridiculous. But attached to my motion yesterday was a transcript of a voir dire from an actual case where two potential members said, well, if the Commandant says it's 80 percent, I agree with him. And then the other one says, as was emphasized in that brief presentation we got, I believe that 80 percent of these claims are legitimate. Now what does that do to the presumption of innocence when we've got senior military officers trying to stamp out something we all agree should be stamped out, but trespassing on the criminal justice system that we have in the
I have a major problem with this special counsel issue, and I was heartened to see that two civilian career prosecutors with 25 and 30 years experience are opposed to it as well. But I have a problem with it starting with the title, as Mr. Court said. I have objected every time I've ever heard this term "victim" used in voir dire or opening statement. In every case, it's been sustained.

In my view, nobody is a victim in a courtroom until a judge or a jury says that they are the victim. So that we should be using other terms if we're going to have this. But here's what bothers me about this concept. What role does this lawyer play in the courtroom? What ethical duty does this counsel have?

What if this counsel finds out that the alleged victim is lying, in the opinion of that lawyer? What's the ethical duty of what I'm going to call special counsel? What is his or her duty when this person who's now his or her client is
being untruthful, and the lawyer believes them to be untruthful?

Is he supposed to -- is the special counsel supposed to move to withdraw? Is he supposed to turn in the alleged victim? What's he supposed to do? Or what if he discovers during that that we have some of these collateral consequences we've talked about? What if he finds out she's been using illegal drugs?

What is his or her ethical duty at that point? It's completely undefined. And what about this attorney-client relationship? You heard the lady from New York saying she was worried that there might be something that the alleged victim tells special counsel that ought to go to the defense, but the special counsel interprets his or her responsibility to the client as that being privileged under the attorney-client privilege, and it's not talking about some future crime. So it's privileged. It's past conduct.

And so, special counsel does not tell the prosecutor. And she went into that how that can
cause problems. But she went into it from the idea of making it hard to prosecute. What I'm concerned about is what about that word not coming back to the defense lawyer? Because, as Mr. Court said, we know that there are false claims, even if you believe that there are 80 percent of the claims are true. That means 20 percent of them aren't. And let me tell you, if you're the accused and you're one of those 20 percent, according to him, you'd want all the protections you could have and which you're entitled to by our Constitution.

Somebody has already talked about importing civilian practices, such as the grand jury system, into our military justice system. Well, if we're going to do it, let's do it, as some others have suggested. Let's do it all the way. Let's have a 12 jury -- 12-member jury on all general courts martial because that's a felony level. I think all but one state in our union requires 12 jurors for felonies. And let's require unanimous verdict.
We've talked about the Article 32 should go away because it's unfair. Let me tell you, in conversation with a congressman who I help select candidates for his appointments to the service academies about all this flair-up, his comment was, you know, we have one event that occurs, and it causes a reaction in Congress because they all want to have something so they can tell their voters, their constituents that they're doing something about it.

And I think that the furor over the 32 has been exacerbated by this Naval Academy Article 32, where three football players were the accused. I don't know if there being three different sets of defense lawyers had something to do with the length of time that the alleged victim spent on the stand or what. I don't know the facts of that case. But I believe that's what's fueling a lot of this current effort to revise the 32.

But I can assure you this. I've been an Article 32 officer myself, and I've participated as defense counsel and prosecutor in many, many 32s.
That is a rarity. It is a rarity for anybody in a 32 to be on the stand for allegedly 20 hours or 30 hours. That does not happen in the normal 32.

I also think that if we're going to start changing the 32, it can be improved, and it ought to be this way. Every investigating officer ought to be a trained Judge Advocate.

I'll never forget representing a major who should never have gone to a general court martial for what was basically fraternization, but it was alleged as rape. I mean, it was not fraternization. It was adultery, but it was alleged as rape because we still have -- we had adultery at the time on the books.

And a helicopter pilot was the IO, the investigating officer. He knew nothing about the law, and I actually went and told the Staff Judge Advocate. I said we can go to all this trouble, but you're going to ruin this major's career because he's going to get acquitted of the rape, but he's going to -- by testifying, he's going to admit to adultery, which we don't really prosecute
anymore. And it went to general court martial. He got acquitted of the rape, and you know, so I think we need to have trained investigating officers, trained lawyers as investigating officers. You want to import the civilian grand jury practice to that, like some people have suggested today? Well, import the decision when no probable cause is found by a grand jury, they return a no bill of indictment, and that's the end of the case.

So if the investigating officer finds no probable cause, that ought to be the end of it. I think that should be in there now. I don't think that's a tradeoff. I think you should have trained investigating officer, and if that investigating officer says there's no probable cause, that's the end of the case. It's the equivalent of a no bill. If you all want to rewrite 32, let's do it that way.

And as far as the usefulness of the 32, as a prosecutor, you're only required to put on
some evidence on every element, all right? You're not supposed to prove your case beyond a reasonable doubt. I don't know who -- where do these people get this from?

I suspect sometimes that some of these changes -- the proposals to the UCMJ are being made by people who never served in the military, doesn't even have a relative that served in the military. That's how unfamiliar they seem to me to be with the military justice system.

However, prosecutors are helped by the 32, and defense lawyers are helped by the 32. And you know what happens in almost every case, the lawyers evaluate their case. The strong cases result in pleas. The weak cases get dismissed.

So they serve a purpose other than just investigating the case, in my opinion, based on my experience. The close cases are the only cases that go to trial after a properly done Article 32.

And with regard to the separate non-commanding officer convening authority, I don't think that's workable. In reality, you know, the
proposal is that you have a special senior prosecutor lawyer make these decisions. That's what I'm talking about, that proposal.

In reality, here's what really works, as it works. I'm telling as a former SJA as well. The SJA formally has to make a recommendation to the commanding general or whoever the convening authority is. But in reality, they talk about it ahead of time. And you know what? The convening authority almost always follows the SJA's recommendation. That's reality anyway.

He doesn't have to or she doesn't have to, but ordinarily, that's what happens. So, in effect, we have right now, a senior prosecutor -- because I never thought the SJAs when I was a defense counsel, I never thought they were neutral and impartial, I thought they were just super prosecutors. And I think that's the way it is in the real world. But they do have an impact on whether a case is referred to trial or not.

Now there was a suggestion that you have lawyers that do nothing but prosecute sexual
offense charges, and that's what they stay in. If you did that, you would stymie that lawyer's opportunity for promotion because you have to have a varied career to get promoted. You can't just be put in one niche and stay there forever.

Now some final thoughts. Again, let me emphasize how horrible sexual assault or any sexual offenses are in the civilian world or the military. But to me, a fair trial and a successful prosecution is not whether there was a conviction or not, like we heard today and we see in a lot of the proposals. To me, a fair trial and a successful prosecution is when the truth is found out.

But I think from some of these proposals, you'll see that people that sponsor them equate a successful prosecution with a conviction. And with regard to why we should -- and it's been brought up by one of my colleagues already, go back to the history of the Uniform Code of Military Justice when the World War II vets came back, and many of them got elected to Congress, and they were saying
how bad and how unfair the military justice system was that they experienced in World War II and then in Korea, that's why the Uniform Code of Military Justice got formed in 1951.

And that's why it was intentionally done and written so it protects the rights of the accused service member to protect against unlawful command influence. And think of the things that are written into it. I think 13 years before Miranda, military personnel were entitled to be warned of their rights under Article 31(b) before the Supreme Court said civilians had that right.

They put the 32 in there for a reason, to protect the rights of the accused. The right to qualified counsel in every case was in there long before civilians had that right, and the right to appeal automatic above a certain sentence was put in there to protect the rights.

Now none of these changes, in my opinion -- this is me speaking. None of these changes should be made until there are comprehensive public hearings by Congress and not just rushed through.
without people thinking about what that's going to
do to the whole thing.

And I leave you with this thought. I
understand that some people have said -- some
prominent people in this country have said, you
know, "If I had a daughter, I wouldn't want her to
enlist in the armed forces today because I don't
think it's safe." Well, let me tell you what.

I think parents of a son have a greater
concern. I think that parents of a son might
recommend that that son not enlist in the armed
forces today because, God forbid, he should get
falsely accused with a sexual assault case. The
way the deck is being stacked against the accused
here, he's liable to end up in jail for 20 or 30
years for something he didn't do if we allow these
changes to be made.

I'm asking you as a longtime practitioner
let's do the right thing. Let's protect the
constitutional rights of the accused, and let's
don't recommend the adoption of the proposals that
I have just mentioned in the last few minutes.
Thank you very much.

CHAIRWOMAN JONES: Thank you, Mr. Zimmermann.

Lastly, you've been very patient, Ms. Wilson. We have Bridgette Wilson, who's here from San Diego. Go ahead.

MS. WILSON: Good afternoon. I have the dubious distinction of being the last person testifying between you and a three-day weekend. And I appreciate your attention.

You know, Mr. Zimmermann said to me before this started, "So by the time they get to us, will there be anything left to say?" And so, I will try not to rumble through.

I think we're all horrified by the idea that there is serious talk about impairing access to Article 32 proceedings based on the perceived abuse in this matter at the Naval Academy. I don't know what happened in that hearing.

My recent experience has been, by the way, that in almost all the cases that I've dealt with for several years that the IOs are JAGs. I
very rarely -- it still happens, but most cases I'm still running into Judge Advocates doing 32s.

Now it may be because civilian counsel is onboard. Sometimes I think they up the ante on doing things. But I do see that. And I think it's a falsehood -- to say that 412, for example, 412 and 513 privilege is enforced at Article 32 hearings. The idea that it's not is simply false.

So I think that what we have is discussions being based on misconceptions of military justice that are being, you know, streamed out through the media day after day. And in the last two years, I've probably had more discussions with civilian -- and I say "civilian." I am prior service. I am now a civilian. But I say civilian mostly because of the world I practice in.

The -- that about military justice than I can remember having in years, probably since the Vietnam War, and I think Mr. Court and I are both old enough for that. That who all think that PFC Manning was subjected to a kangaroo court, but those accused of sexual assault are somehow getting
off scot free. Can I say I disagree with both of those conclusions? And I think that it's a broad misconception of what this system of justice is. Indeed, one of the things that all of you, I would bet, know is that military justice, the courts that we have serve a dual purpose: justice and discipline. And probably since Professor Winthrop, we've had arguments about the weight that discipline may take, whether it's equal to the justice concern, whether the rights of service members are greater to that balance, and the scale, I think, has rightly, since 1950, weighed more in the direction of justice for our service members.

And we do like to believe that our service members do not abandon their constitutional rights simply because they put on the uniform. So I do think that a lot of this is based on a misunderstanding.

One of the things that all of us have seen as defense counsel is cases being referred
that might otherwise have been set aside, and I will tell you that I have a case right now that went through an IO who recommended against prosecution, was reviewed by region, also recommended to decline prosecution, that was then referred.

Now I'm not saying that this particular admiral referred this case out of that sense of politics, but I don't know that these days. And here's what I know about those senior commanders. They're looking at a Congress in which people's advancements and appointments are being held up because they did their jobs under the code.

They're concerned that if they don't refer a sexual assault charge that it's going to come back and bite them, and that if they do refer it over, well, let the court sort it out. Not my problem.

After some of the discussions that have been going on publicly about Article 60 relief, can you even imagine a commanding officer who isn't -- a convening authority who isn't going to think
twice or three times or not at all about setting
aside a court martial conviction or even charges.
The kind of relief that we all depend upon because
we do have a unique and special and very odd little
system that is heavily weighed in favor of the
government, whether the government believes that or
not.

I don't care if you're talking about the
mutiny on the Somers or the sexual assault cases of
today. The confidence the service members have in
these courts martial, both as the alleged victims
of crimes and the accused, the alleged accused in
crimes, they must have confidence that that system
works. It is -- it remains a tool of command, and
I'm often frustrated by some of the things I have
not seen.

For example, it is possible to pull these
charges out of the standard court of command.
Those of you who have been around long enough to
remember Tailhook, scandal that occurred during
Tailhook, and I bet Admiral Houck, Vice Admiral
Houck remembers this. They pulled that entire
prosecution out of the hands of local commands and moved it up to departmental level.

It's a doable thing. So there are things that can be done to take a look at a specific situation. But indeed, I'm hearing the same things that these other defense counsel are. People being trained and being told that if a woman has a single drink, she can't consent to sex. That's absolutely craziness inducing.

And the voir dire that I'm doing in trials -- by the way, I just defended an adultery case. So they are still prosecuting it. At least the Marine Corps is still prosecuting it.

And what I have found on the ground is that there is such a distrust of these prosecutions that it discredits the entire process of vigorously pursuing sexual assault cases. That there is a widespread belief -- now that's anecdotal. That's my ear to the ground. That's my talking to sailors and soldiers and Marines that I know and many of whom I represent. But there is a very strong concern that I have that the belief in the fairness
of these processes has been tremendously impaired
by the politics that seem to be pushing this
forward.

I can't make being the victim of a rape
not be a horrible experience. Probably more than
anyone else sitting in this panel who has not been
some sort of victim advocate, I have probably
spoken with more victims of sexual assault over the
years who felt that they were not being heard, who
were railroaded, who were put in psych hospitals,
who were demoted, who were prosecuted, all kinds of
things that happened to them. The sobbing father
whose daughter was raped in Iraq some years ago,
who was shanghaied off and sent back and pushed out
with a personality disorder, those things do
happen.

And I am female. Yours truly is the
female on the panel, and here’s what I know. Is
the military a safe place for a woman? Society is
not a safe place for a woman. How often do you
park far away from your car in the dark?

What happens with most of these cases is
no different than what happens on any college
campus in America. A unique military problem we
have is how that gets handled by commands. The
abuse of power syndrome where senior -- senior
NCOs, commanders have used that authority to abuse
and coerce physically or otherwise subordinates
that are a hard thing to answer.

And it doesn't all happen in a courtroom,
and it's not just enough to give the mantra of
"believe the victim." We have to take a look at
how we -- for example, how we perceive women in the
armed forces.

The other reality is this. The vast
numerical majority of sexual assault victims in the
military are not women. They are men, just based
on the fact that 85 percent plus of our armed
forces is male. I spent years fighting "don't ask,
don't tell" and the provisions that preceded it and
dealt with numerous male victims of sexual assault
who were facing discharge when they reported that
assault on the grounds that it was homosexual
activity.
So don't tell me. I get the collateral misconduct problem, but I figure that not prosecuting that collateral misconduct is the best gift any prosecutor or convening authority could ever give me as defense counsel because I get to walk into that courtroom and point out to that panel that this alleged victim has been drinking underage, fraternizing or engaging in inappropriate superior-subordinate relationship, and that nothing has happened to that individual.

And who's in the courtroom to be punished? My client. This person walks scot free. The Perry Mason moment I had in my last court at Camp Pendleton was the ability to look at this female, and this was an adultery trial. How much has the sexual assault stain leached over into other prosecutions?

I got to walk in. My guy is on trial. And I looked at her and said, "Hmm, is that a good conduct ribbon you're wearing?" And the eyes of that panel switched rapidly.

So if you keep building in incentives for
people to fabricate and if you don't believe it happens in a military environment, what would you do to get out of a war zone? What would you do to get off a ship? And if you don't think it happens, then we're all being naïve.

But I do think sexual assault is a problem. It's a problem society wide, and it has its specific tone and its specific issues in our armed forces. The reality is that in a combat zone in Iraq or now in Afghanistan more often, female soldiers carry their weapons to the latrine and to the showers. Not to protect themselves against the enemy.

When I was young and training up with the Army Reserve, we used to post our own security at night because we didn't necessarily trust the males who were on guard duty for the night to keep an eye on all of us. That's not that uncommon.

You know, if you're talking to women in the enlisted ranks, they have a significantly different experience than men. But we cannot abandon the concept that these accused are innocent.
until proven guilty, and right now in our armed forces, Marines, soldiers, sailors, airmen, Coast Guard, very, very many of them believe that you cannot get a fair trial in a court martial. Now that's a time-honored tradition in our armed forces. None of us would have any business if that wasn't the case. Literally every person who calls me, calls me saying "I don't trust that JAG," and I disabuse them of that rapidly because I can't work without that JAG. And some of that's a hangover from the days that Mr. Court and Mr. Zimmermann and I remember, where there was no separate Trial Defense Service were people served in the same unit and the head of the prosecution was rating the junior officers who were in the defense deck. And if they did too good a job, they might not get a very good OAR. So, you know, those things are hangover, but the reality is that the confidence in the ranks about the fairness of these prosecutions has been seriously damaged by decisions that appear to be
being made not on reality, not on what we need to
do as a force, and not what we need to do to
protect the rights of the accused, as well as to
protect the alleged victims of crime. They're
being made on largely political considerations.

I'm pleased to hear all of these panel
members here with so much knowledge of this system,
and you know, if we're going to review this, I hope
we don't deal with these things on a piecemeal
basis and start hacking this out bit by bit only to
the detriment of the accused. If we want to have a
longer discussion about UCMJ reform, let's have it.
But let's not do this one piece at a time.

So I hope I haven't repeated too much
what has already been said here today, and I thank
you very much for inviting me to speak to you.

CHAIRWOMAN JONES: Thank you very much,
Ms. Wilson.

I want to thank each and every one of
you. And are there any questions or comments? I
have one, but why don't you go first?

COLONEL (RET.) COOK: Okay. Again, thank
you all for being here because that perspective, as
Mr. Court had said, you don't hear a lot of the
perspective of all sides in this. And it is a
justice system where you're balancing all the
interests -- the command, the accused, and the
victims, the alleged victims -- in these cases.
But the one thing, the emphasis on sexual
assaults and sexual harassment has been there and
some of the unlawful command influence issues that
are coming up in court probably not quite as new.
I guess my question was to go to what is very new
is this concept of a special victim counsel.
And Colonel Higgins, since you are with
the Air Force and they've had that program now for
the last 10 months. You've been in your position
since, only since about July, if I read your bio
correctly, can you tell me about what your
experience is?
And if I look at Colonel Cullen, we heard
from Colonel McKee this morning, and he said that
at least in the Army, there was a case yesterday --
a case recently where there was a special victim
counsel that appeared. They got to argue on part
of a motion during the court at the request of the
judge. Are you hearing any feedback about that?

And Colonel McKee also said, my question
was, look, you got special victim counsel, and then
you're going to turn it over to a TDS attorney for
the collateral matter if there is any at the
appropriate time. Well, when I asked him about,
well, when does that happen and how do you -- you
know, does the special victim counsel tell the
victim -- excuse me -- when to remain silent if
there's something that can come out against her?

Do they call TDS?

Who trumps, and how is that handoff going
to work in the Army? And the response was you're
still working all that out. Are you part of that
discussion?

But I'd like to start with Colonel
Higgins on that.

COLONEL HIGGINS: Thank you, ma'am.

In large respects, it is still unsettled.

I mean, the decision that the appellate courts have
reached just a few months ago in giving the special
victims' counsel the right to be heard at -- at
these trials is still, I think, being felt in the
field. What does it really mean? What is going to
be the practical impact of that decision in
practice?

I think our fear, as the Air Force
defense community, is that we are going to take
what has been a traditional one v. one system and
we are going to put a special victims' counsel in
the courtroom, partnering with the prosecution.
And in a lot of the cases that we're seeing, we are
seeing anecdotally the special victims' counsel
sitting down with the prosecution and talking
through case strategies and things like that. And
so, that the prosecution now is basically in a
partnership in some cases with the special victims'
counsel.

And that concerns us a great deal because
that special victims' counsel is not a government
counsel in the sense of someone who is, as you've
heard earlier today, constrained by Brady with the
obligation to provide discovery to the defense. And so, what that role of that special victims' counsel is going to be is something that I think is unsettled, and it is something that concerns us greatly, just on the anecdotal stuff we're seeing thus far.

COLONEL CULLEN: As you know, the Army's Special Victim Counsel Program was recently established. I think the initial operating capability was 1 November, with a full -- fully operational capability as of 1 January, I believe. So we're still early in the process. I have identified, along with Colonel McKee, that there is the potential there for a friction point in the case of collateral misconduct, where the alleged victim has already formed an attorney-client relationship with the special victim counsel. But that special victim counsel is not authorized to represent that client in any disciplinary proceedings. That matter has to be turned over to the trial defense counsel.

So you will have an alleged victim with
two lawyers representing them. My position would be that the trial defense counsel takes priority in making any tactical decisions that could potentially have implications for the culpability of the alleged victim.

But it's a matter that we're going to have to work with our Professional Responsibility Branch. We adhere to very strict professional responsibility rules that outline the roles and responsibilities of counsel, and my commitment to Colonel McKee is that we will do this right. We will do it in accordance with our rules of professional responsibility.

And when it comes to any client, the trial defense counsel is committed to independent, ethical, and professional representation.

CHAIRWOMAN JONES: You know, this is the second time that we have come up to or come to a discussion about Article 32, which almost every one of you mentioned. And it's the end of the day, and we haven't heard exactly what function in detail it does serve.
Someone who comes from the federal system and even the state civil prosecution system is used to a probable cause finding by a grand jury and then rules of discovery. It was a surprise to me when I found out that the Article 32 was a discovery mechanism, and I know I think it's Captain Purnell, in your written statement, you've gone into a description of what Article 32 actually does and what its purpose is and why it's a good thing.

And I would like to hear that, with apologies to those of you on the Panel who already know the answers. But I think it would be good for the rest of us, and those who aren't here can read it.

CAPTAIN PURNELL: Okay. Well, in the investigation -- was that a question, ma'am?

CHAIRWOMAN JONES: Pardon me?

CAPTAIN PURNELL: Was that a question?

CHAIRWOMAN JONES: That was a question.

I have a problem that way, but yes, that was a question.
CAPTAIN PURNELL: Okay. From the investigation perspective, it's to make sure there has been an adequate investigation. And I think what the defense counsel brings to that process is that's often the first person in the process who has looked skeptically at the charges. And so, it brings some sunshine. It serves as a check and balance. But in terms of the investigative function, it can allow -- you know, oftentimes we think about cases having been investigated solely by NCIS. But some military offenses are convened by command investigations that aren't always very, um, very strong. Or there can be a need for a command investigation to build confidence in the results that the report releases. So you sometimes might see in a deployed environment or in a -- like a friendly fire or something, there might be benefits from the transparency that an Article 32 investigation brings. But the one purpose is investigative, to see if there is some evidence that the offense was committed, and then the other
process is for discovery.

And the Article 32 is what makes our discovery process work because we have constrained rules of discovery. We don't have the right to subpoena witnesses. We don't have the right to subpoena evidence. We have to go to the government and ask "Mother, may I?" every time we want to do something.

We don't have travel funding. We don't have investigative assistance from trained defense investigators. And the Article 32 is our way to compel production of witnesses and have an opportunity to interview them.

So those primarily are the two functions.

I mean, I think the Supreme Court said that the purpose was to ensure adequate preparation to avoid hasty or ill-considered charges, to save the accused from wrongful stigmatization, and to avoid trivial cases going forward. And I think those things happen today still.

CHAIRWOMAN JONES: So the mechanics are that, I guess, if I can call it this, the direct
case would be the prosecutors calling the witnesses they believe they need to establish the crime. And then what -- what power does the defense have? You can compel your witnesses during this proceeding?

CAPTAIN PURNELL: We can compel military witnesses that are reasonably available. Reasonably available means within 100 miles of the site of the investigation. They can be excused from attendance for good cause. So if they were involved in a military mission or some other reason, but we might very well have a right later then to depose or reopen the Article 32 investigation for the absence of essential military witnesses.

We have the right to request the attendance of civilian witnesses, but they cannot be compelled to attend the Article 32 investigation. And so, what often happens is the government may bring a paper case, may just call the NCIS agent and put in the NCIS investigation. But then we have the opportunity to call witnesses that we think should be explored and to ask them...
And what it does is to jump-start our entire discovery process. It gets us going. It's very effective, I think, in the military environment where there's a more rapid pace. I mean, I know that one of the criticisms from our commanders is that our system is ponderously slow. But in comparison to some civilian systems, I think it moves much more rapidly. And to have that sort of clarifying deadline, you know, to get this thing going and it's very helpful to get it jump-started.

And that's who we have the right to call in an Article 32 and what we ask them about.

COLONEL (RET.) COOK: Before you move on, let me just clarify two points that you made because what happens in the Navy may not be the same for some of the other services. The one point that you made about the Article 32 being used because -- as a discovery tool because sometimes there was a command investigation as opposed to a criminal investigation, and the evidence is not as
well developed or done as appropriately.

I think that now has changed that at least in sexual assault cases, it has to -- if it's a sexual assault allegation, it must be turned over to one of the criminal investigative services, and they do it. So, in the sexual assault arena, that concern valid across the board maybe, but maybe not as much in sexual assault?

CAPTAIN PURNELL: Absolutely not in sexual assault.

COLONEL (RET.) COOK: Okay. And the other point, just to clarify, is in terms of witnesses who are reasonably available that can be compelled to appear at an Article 32, 100-mile radius may be a policy determination made within the Navy. But that may not be the same standard that's applicable in the other services.

If somebody happens to be in an area or somebody is considered important enough, that person may be ordered to be presented as well.

CHAIRWOMAN JONES: Yes, Mr. Court?

MR. COURT: With regard to the 100-mile
matter, that's in the discussion of the reasonable availability portion of Rule 405, Rules for Court Martial. It's not part of the actual rule, but it's the discussion to the rule saying reasonable availability could be, for example, 100 miles.

One slight point. I have the potentially unique position of understanding that we're dealing with service members who are not necessarily in the United States. In Germany, there is a Status of Forces Agreement between the German government and the American government, which, among other things, relates to judicial process. And that provision, I believe it's Article 37 of the Status of Forces Agreement, permits -- actually requires the host nation, in that case Germany, to assist the sending state, U.S., in quasi-judicial -- and that's exactly what the Article 32 is -- quasi-judicial matters by subpoenaing witnesses.

I find across the board the government counsel do not understand that. They don't know that. They just say because they're used to what's 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

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that person has a much greater understanding of whether a witness will or will not be relevant, how it might fit. But you can request that.

As a tactic, I have frequently invoked one of the phrases that the Article 32 officer states at the beginning of the proceeding. That is, "If you're aware of any military records that you have been unable to obtain, let me know, and I will get them for you." Well, that's a pretty broad statement.

Now I frequently don't need his assistance in that regard, but I can get it and have him try to obtain records which, for some reason, I don't yet have. The Article 32 purpose, ma'am, there are fundamentally two that I see as a practitioner.

One is to either poke holes in the government's case to the extent that I cross-examine witnesses and then at trial can drive through those holes because I've already investigated the case before the 32. I have a right, and I almost universally will get the
investigative report before a 32 is conducted so
that I can then interview people, talk to witnesses
and decide who I want to call as witnesses.

The other reason is if we have a reason
to believe that the government thinks this case, or
at least some charges on the charge sheet, would
die at the 32, then it may be tactically smart to
show enough of your defense hand to present that at
the 32 to get that piece dropped out. But that's
the way I approach a 32, one or the other, and I
discuss it, of course, with my client and we go
through all of that ahead of time.

CHAIRWOMAN JONES: So presumably -- I
think you said you usually have all the
investigative reports. In the -- look, in a
federal context, you would have the right to all
the statements made by any of the government
witnesses that were going to be getting on the
stand. Maybe not too much before the trial, but
you'd get them.

You'd have a right to any tangible
evidence that they were going to present. You'd
have a right to a preview of expert testimony.

Those sorts of things. You'd be -- you have right
to notice of an alibi. Where do those things fit
in this system?

MR. COURT: Ma'am, the preview of expert
testimony doesn't fit in at all. We have no right.

CHAIRWOMAN JONES: You have what? No	right?

MR. COURT: No right to know what the
expert is going to say. I have attempted on
occasion to include in my discovery request a
synopsis under one of the federal rules, I believe
it's 16(b), that requires that.

CHAIRWOMAN JONES: Mm-hmm.

MR. COURT: I've never had it enforced in
the military. I have to figure out what the expert
is going to say, and this causes delay because
until I can find out and interview the expert, then
I don't know if I need an expert to explain what
that expert is telling me or not.

So then, once I've done that, I then
petition the convening authority and say I need an
expert in this field because the government has an
expert in that field, and that causes further delay
in the process. The other matters you're talking
about --

CHAIRWOMAN JONES: But is this all going
on during the Article 32?

MR. COURT: No, ma'am. No. Very, very
seldom is an expert called at an Article 32
hearing. The government doesn't want to spend the
resources, spend the money, whatever reason. They
almost never call an expert at an Article 32
hearing in my 30-odd years of experience.

The other matters of discovery, I can
usually obtain access to the law enforcement
records. You asked if I get all the files. I get
what they give me. Whether that's all of it or
not, I don't know until I've gone and looked at the
source.

And I frequently find where there are
young trial counsel who may not have been very
experienced that they just accept what the law
enforcement people give them as "the file." I then
go down and look at the real file, the one that's
maintained, and there have been many times when I
found statements of witnesses that law enforcement
didn't think was important enough to give out to
the government, and the government didn't go down
and look. And that has led me -- anyway, war
stories, I could go on for days.
   But the physical evidence, if it's
available, if it's not at the lab, which it could
be because they don't have to wait for it. They
can just say it's at the lab, and we don't need
that for preliminary Article 32 hearing. I'm
rambling. I'm sorry.

CHAIRWOMAN JONES: I'm just trying to get
a feel for how this whole process works. It's not
easy for me. It's not used to the system I come
from. The Article 32 sounds like a mini trial.

MR. COURT: Yes and no, ma'am. It can be
turned into that if you wish. But again, from a
tactical point of view, since probably 70 to 80
percent of all cases that go to an Article 32 go
forward to trial in some form or other --
CHAIRWOMAN JONES: Mm-hmm.

MR. COURT: -- it may not be tactically smart for a defense counsel to show too much at the Article 32 hearing.

CHAIRWOMAN JONES: Right.

MR. COURT: So it's not in that sense a mini trial. But it is a mini trial if you can cross-examine the witnesses sufficiently to prepare your cross-examination at trial. And you can, with luck, get the charges dropped at an Article 32 hearing, if you know what you're doing and if you have the case for that.

CHAIRWOMAN JONES: Okay. Mr. Zimmermann?

MR. ZIMMERMANN: I'm going to add quickly. Our attitude -- our attitude toward the Article 32, as far as what the defense objective is, there's two possibilities. It depends on the strength of the case that we learn from the pretrial discovery.

If we know it's going to go to trial no matter what we do, we cross-examine their witnesses the best we can, and we don't put anything on.
CHAIRWOMAN JONES: Right.

MR. ZIMMERMANN: If we think we can "win it," defined as knock it out at the 32 by convincing the investigating officer to recommend dismissal because there's no probable cause, then we will put on a defense many times and with the idea that we're going to show this investigating officer who in the Marine Corps is always a Judge Advocate, often special court martial judge. And therefore, why I think that my experience has been the dismissal recommendations have been followed in all but one Marine Corps case that we've had, and that would be to win it by getting a recommendation for dismissal.

CHAIRWOMAN JONES: Ms. Wilson?

MS. WILSON: I think there's also another alternative, which is that after the Article 32 -- yes, your great goal in life, if you're a defense counsel, is to make the case go away. But often, some of the charges may drop off because, you know, the prosecution tends to kitchen sink plead.

But also it may be that the strength of
the case, you may end up with the willingness to
have the client plead to a lesser included offense.
You know, one of the charges, if you'll drop all of
these, you get plea bargains out of it.

With some frequency, matters are deferred
to administrative processing versus, you know,
continuing to court martial. So it's not all black
and white, and it's a good place -- at the end of a
32 hearing is a good place to do whatever
negotiation you may have to do on the case to go
back to that convening authority and sit down and
say, well, let's talk about this.

So it is not a useless institution.
CHAIRWOMAN JONES: Oh, I don't -- I don't
find it useless at all. It seems very useful.
It's just different.

MS. WILSON: Yes, ma'am.

COMMANDER FOWLES: Ma'am, just because
you asked, process wise, I think it's important to
keep in mind that the Article 32 officer's report
is just a recommendation. The convening authority
is not bound by that. So no matter what the report
CHAIWOMAN JONES: And I guess the Article 32 is the only way that the convening authority is presented with the facts or a version of the facts from the investigating officer to make their decisions?

MR. COURT: Yes, ma'am. Anything beyond what the investigative group -- anything beyond what the investigative agency has developed. I mean, the convening authority could always read that. But the purpose of a 32 is to develop and flesh it out and give in some cases the convening authority a reason to decide that this is not a case that should go forward or not this charge.

And one other reason, which I'm sure we've all had for an Article 32, is client control. To let your client understand the nature of what he's up against so then we can do some sensible negotiating.

CHAIRWOMAN JONES: So he or she can see what the proof is.
MR. ZIMMERMANN: And not just hearing it from the defense lawyer.

CHAIRWOMAN JONES: Right.

COLONEL HAM: Ma'am, may I ask a question, please? We heard yesterday of abusive interviews by defense counsel, and I'd like to hear whether or not any witness can be forced to be interviewed by defense counsel. I'd like to hear your views on that, please.

CAPTAIN PURNELL: Well, Professor Fidell seems to think that that's -- we have plenty of discovery because we'll always be able to interview witnesses or we'll always be able to compel a deposition. But I don't see what right there would be to compel a witness to talk with you, and I don't know of any precedent.

A judge might use their good offices to encourage the trial counsel or the witness to speak with the defense counsel, will remind the trial counsel and the witness that both sides are supposed to, under Article 46, have equal access to witnesses and to evidence. But short of using a
judge's good offices, I know of no precedent which
would allow a witness, require or compel, you know,
a witness to be interviewed.

COLONEL HAM: Those of you who have been
trial counsel, do you make that part of your
initial discussion with the witness? Is that a
common question, "Do I have to talk to the defense
counsel?" And how would you answer that question?

MR. ZIMMERMANN: I think it depends on
the status of the witness. I think a civilian has
absolute right to talk or not talk pretrial, to be
interviewed. I think a military witness can be
told to talk to defense counsel.

I've never run into a situation where we
were unable to interview a military witness.

Maybe, maybe there's something different now, but -

COMMANDER FOWLES: Colonel Ham, in the
Coast Guard context, I've been trial counsel for
eight years, and I've never told them they have to
talk to defense counsel, but I've always encouraged
that it's an open discovery system. And I think
cooperation makes the process easier on the victim.

MR. COURT: If I can, ma'am?

COLONEL HAM: Mr. Court, yes?

MR. COURT: Moving this into the purpose of this panel, let's talk about talking to an alleged victim because I think that's what we're really here talking about. There is no requirement of which I am aware that says any uniformed service member must submit to a defense interview.

Now in the practice, they do. Why? In large part because they're used to following orders. Their first sergeant tells them to go down there and see the defense counsel because we've asked the first sergeant to send the guy down or the whatever.

We're talking about an alleged victim. It's obviously different. Whether there is a special victim counsel or not, almost invariably there is at least one baffle or two baffles that must be gone through by the defense to be able to speak to the alleged victim.

Whether it's a protective trial counsel,
whether it's a victims' advocate, whether it's a witness/victim liaison, someone is going to be there. And parts of what I'm hearing about abusive interviews, I had never, ever had a problem with allowing an alleged victim to have a helper, social worker, victims' liaison, be present in the interview to make sure I'm not going to beat the person up.

As a practical matter, I find that to be totally ineffective in an interview session anyway. It makes no sense. You can get a lot more -- anyway. I'm not going to go too far down that one. But the requirement that I've heard bandied about that the trial counsel be present on the interview, absolutely not. That's absolutely inappropriate unless, of course, I get to be present for all of his interviews with the alleged victim. What's sauce for the goose is sauce for the gander.

But, no, ma'am. There is no requirement I am aware of to require a witness to testify. I've only had one case in 30-odd years where I
recall an alleged victim refused to grant me an interview. The judge tried, wouldn't do it.

So I get into the courtroom, and that's my first question. And the cross-examination for her went downhill from there because the panel does not understand why not? Why won't you grant an interview?

CHAIRWOMAN JONES: Well, I would assume with a sexual assault case, the prosecutor would have to, almost in every case, put the sexual assault victim on at an Article 32. Is that not the case?

Or is it hearsay? It doesn't have to be direct evidence? Colonel Higgins?

COLONEL HIGGINS: I think as a practice, the prosecutor is generally going to put their victim on. If they're a civilian, they cannot be compelled to attend the hearing, and you will find civilian victims that refuse to attend the hearing, in which case --

CHAIRWOMAN JONES: Right. In a military --
COLONEL HIGGINS: In which case a written statement is often offered in its place. But you're going to have some statement from the victim in almost every sexual assault case.

CHAIRWOMAN JONES: So you can actually use hearsay? You can use a written statement from the assault victim?

MR. COURT: Under certain circumstances.

COLONEL HIGGINS: Yes, under certain circumstances. You can put in a prior statement of a witness.

MR. COURT: The issue of rules of evidence at an Article 32 hearing, ma'am. The rules of evidence do not apply, except for privileges and 412 and relevance. Those are the only ones that matter that can keep evidence away from an Article 32 hearing so that hearsay or out of court statements, in some circumstances, are admissible and frequently are used, particularly if the witness is not reasonably available, for whatever reason.

Although on that point, at Article 32s,
we routinely of late, as the technology has gotten better, use VTCs or telephonic testimony to capture it for the investigating officer.

CHAIRWOMAN JONES: Thank you. That's all very helpful to me.

Colonel?

COLONEL (RET.) COOK: Okay. Another question. We've heard a lot in the last two days about the special prosecutors, the special investigators, the special victim counsel. What kind of assets, if any, have been put to each of the services on the defense side, the specialness of this whole process?

Okay. Mr. Court's hands say zero. Are there any special defense counsel or special training that's been allocated to the defense community, again thinking it's a justice system and trying to keep everything balanced.

CAPTAIN PURNELL: Well, I think that -- I mean, the Defense Counsel Assistance Program was stood up to make sure that counsel were having the training and resources they wanted. We did add a
defending sexual assault course and a defense
counsel orientation course that we had not had in
prior years.

So I think, you know, I think Judge
Advocate -- the Judge Advocate General that's
present here on your panel today was instrumental
in making sure that there was balance to both sides
and did a nice job of that. So we did see some
resources.

I don't think they compensate for now
giving with the special victims' counsel what we
view as an additional attorney to the trial team,
but we have seen some increase in resources.

COLONEL (RET.) COOK: For the other
services?

COLONEL CULLEN: In the case of the Army,
we are very proud of the Defense Counsel Assistance
Program, which was stood up in 2007. We have two
highly qualified experts, both former military
judges with a career of experience in the military
justice system that provide tremendous assistance
to our counsel in the field.
They are also utilized as instructors, and we operate training program, an extensive training program for our counsel. And I believe you will hear about that at your session in Austin, Texas, next month.

But the biggest frustration I have as the Chief of the Army Trial Defense Service is the relative lack of experience of new trial defense counsel. They bring a great work ethic and a sense of selfless service, and towards the end of their tour, they can become highly skilled courtroom advocates. But there is certainly a train-up period there where they are having to represent clients. We will normally assign more experienced counsel with them to assist them, but there has been a great diversion of talent into the prosecution side.

In the Army, we have 23 special victim prosecutors who are mostly field grade officers that in past years might have been candidates to be senior defense counsel. They have now been diverted into the prosecution side, which has
limited then the talent pool that's available to serve as senior defense counsel.

So that's a challenge that we face, but we work very hard through our training program to compensate for that and to ensure that every one of our clients between the counsel and the supervisory support that they receive can always deliver competent representation at every courts martial.

BRIGADIER GENERAL (RET.) MCGUIRE: Just a quick question. Thank you, ma'am.

CHAIRWOMAN JONES: General?

BRIGADIER GENERAL (RET.) MCGUIRE: Is I've failed to ask this question prior to those who prosecute, but in the case of defense, do you have any opinion or comments of the efficacy or quality of the investigations that you receive?

MR. COURT: Ma'am, when you say "the investigation" --

BRIGADIER GENERAL (RET.) MCGUIRE: Criminal investigations.

MR. COURT: You're talking about the initial --
BRIGADIER GENERAL (RET.) MCGUIRE: From NCIS, OSI, CID?

MR. COURT: Going back to what some of my opening remarks were, I find that many criminal investigators begin with the attitude of they have a crime here that they must resolve. They're not going into it openly and thinking did it happen or did it not?

That said, there have been cases where, for whatever reason, the particular investigator didn't seem to be accepting the version he was being given and went the extra mile to find defense-friendly evidence. In my comments, I pointed out that invariably in the report there is a background check on the accused. There is never one on the alleged victim.

Now I understand privacy, and I understand fishing expeditions, and I understand what was talked about. And I'm not talking about seeking that routinely. But if there were to be a background check on an alleged victim and it were to be positive for something, I don't care what,
all the report should say is positive. Then the
defense could seek, for example, a ruling from a
military judge akin to 513 for medical records and
mental health records, asking for an in camera
review.

Because we know there is something, and
it could well be, has happened to me in a case
within the past two years, that it wasn't a
background check. It was an Article 15 that should
not have still been in the records, but it was.
And what was it for? Lying to your superior.
Now that's something that you want to
know about in a court martial and question the
witness so that if all the CID report in that case
had done was run a background check and popped up
Article 15, we wouldn't have had to have a three-
week delay when it developed in last-minute
discussion with the victim that she had had an
Article 15 years ago. Not the victim, or maybe. I
don't recall anymore. My facts are --
But the point is, that is an example of
something that we don't get that I think would help
balance the system. Those are the kinds of things that are not ever in the law enforcement report. Ever -- okay, seldom in the law enforcement report that the defense then has to go look for. And that's another reason to have the alleged victim at the 32 because there you can ask questions like have you ever been in trouble? So that you have a basis to seek a subpoena. Otherwise, you'll never know. You can ask a question like have you sought mental health counseling? So that you know you can request records under 513. Because you frequently, if ever, will get that in the initial report. She may tell you in an interview, but you may not want to do that in an interview. You'd rather wait until it's under oath at the 32, where you can rely on the representation. But I do find on balance that the investigations are not as even-handed as one would wish.

CHAIRWOMAN JONES: Anything else?
(No response.)

CHAIRWOMAN JONES: Well, thank you very much. It was very important for us to hear from each of you and receive your perspectives on this. I'm going to adjourn now. Some of us have to catch trains, like me, and we've lost a few Panel members already. But just because you were the last panel, I don't want you think that you haven't been heard, and we very much appreciate your coming.

Thanks.

MS. FRIED: This meeting is closed.

(Whereupon, at 5:10 p.m., the public hearing was concluded.)