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Subject: Comment for May 5-6 Panel Meeting
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Ms. Saunders:

I would like to highlight for the panel an important issue related to Dr. Spohn's analysis of the waterfall slides for the Comparative Systems Sub-Committee. In comparison to civilian criminal justice systems, very little published empirical research on the military justice system exists; yet, this panel and the Military Justice Review Group are expected to make findings and recommendations on issues that military and criminal justice researchers have not been allowed to investigate. The extensive amount of empirical research on civilian court processes exists in large part because those organizations provide data and access to researchers like Dr. Spohn. Additionally, state and federal court systems often have agencies or in-house research divisions that collect and analyze data for the purpose of evaluating and informing policy decisions. Although the individual Judge Advocate General (JAG) Corps collect data on the court-martial process (some collect more data than others), they do not conduct empirical research and are often resistant to external research efforts. As a result, when The Judge Advocate Generals (TJAGs) and senior judge advocates testify before Congress about military justice issues like sexual assault prosecutions, they can only offer opinion and conjecture on the factors influencing the court-martial process and its outcomes. Instead of asking for more judge advocate billets and administering the same Department of Defense surveys, the military and Congress would be better served by expending funds on developing better data collection methods and conducting rigorous empirical research.

If this panel and Congress want to know the factors influencing the military's prosecutorial decisions and the likelihood of convictions for sexual assaults, then empirical research needs to be conducted on the court-martial process and sexual assault cases in particular. If Congress wants to gain some insight into how removing commander/convening authority discretion in favor of a judge advocate-run system might alter outcomes, then empirical research needs to be conducted on the role of judge advocates and the exercise of commander/convening authority discretion in the current system. Before imposing sentencing guidelines and mandatory minimums for military sentences, research should examine the determinants of court-martial process outcomes and administrative alternatives. Law professors, former judge advocates, and commanders can offer a plethora of rationales for and against reforms, and although this information is useful, it does not provide the empirical evidence this panel and Congress appear to seek. I urge this panel to recommend that Congress require empirical research on these matters so that evidence-based recommendations can be developed and the effects of future reforms can be properly evaluated. Our government tax dollars would be better spent on more rigorous research efforts instead of administering another methodologically flawed rape and sexual assault survey or creating more judge advocate billets to implement significant reforms to a justice system with so few research findings.

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