JUDICIAL PROCEEDINGS PANEL

REPORT ON SEXUAL ASSAULT INVESTIGATIONS IN THE MILITARY

September 2017
JUDICIAL PROCEEDINGS PANEL

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Dear Chairs, Ranking Members, and Mr. Secretary:

We are pleased to submit this report of the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (JPP) on sexual assault investigations in the military. This report includes five recommendations on the topics of investigative resources, initial interviews of sexual assault victims, the thoroughness of investigative interviews of sexual assault victims, the collection of cell phone and other digital evidence, and forensic laboratory resources and procedures.

To assess the effects of numerous changes in law and policy on sexual assault offenses in the military, the JPP tasked the JPP Subcommittee with conducting site visits to military installations in the United States and Asia. From June through September 2016, members of the JPP Subcommittee heard from panels of more than 280 individuals from all of the military Services involved in the investigation, prosecution, and defense of sexual assault offenses. The JPP Subcommittee reviewed the information gathered from these site visits, as well as information on this topic received by the JPP in public meetings, and submitted its findings and recommendations to the JPP. After hearing testimony from the JPP Subcommittee members who attended the installation site visits, and deliberating on the Subcommittee’s report and recommendations, the JPP makes five recommendations.
recommendations concerning the issues identified by the JPP Subcommittee. The JPP expresses its sincere appreciation to the members of the JPP Subcommittee and everyone who contributed to this report.

Respectfully submitted,

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Elizabeth Holtzman, Chair

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Barbara S. Jones                       Victor Stone

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Thomas W. Taylor                        Patricia A. Tracey
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In order to assess the effects of numerous changes in law and policy on the investigation, prosecution, and defense of sexual assault offenses in the military, the Judicial Proceedings Panel (JPP) tasked the Subcommittee of the JPP with conducting site visits to military installations to talk to the men and women who work in the military justice system. The JPP had previously received information on many of the changes to law and policy, and wanted to determine how these changes were being carried out and perceived at military installations by investigators, prosecutors, defense counsel, and others involved in sexual assault investigation, litigation, or victim support.

From July through September 2016, members of the JPP Subcommittee visited military installations in the United States and Asia. They met with panels of more than 280 individuals from 25 military installations and all of the military Services, including prosecutors, defense counsel, special victims’ counsel/victims’ legal counsel, paralegals, commanders, investigators, sexual assault response coordinators and other victim support personnel. These individuals spoke without attribution so that the Subcommittee could gain an unfiltered, candid assessment of how changes in sexual assault laws and policies have, in their view, affected the military justice system.

On the basis of information from these site visits, the Subcommittee elected to issue reports on several topics. The Subcommittee issued its first report to the JPP—the Report on Military Defense Counsel Resources and Experience in Sexual Assault Cases—on December 9, 2016. The JPP subsequently made recommendations based on the issues identified by the JPP Subcommittee and issued its Report on Military Defense Counsel Resources and Experience in Sexual Assault Cases in April 2017. The JPP received the Subcommittee’s second report to the JPP—the Report on Sexual Assault Investigations in the Military—on February 17, 2017. The JPP deliberated on the information presented by the Subcommittee and had the opportunity to question the JPP Subcommittee members who attended the installation site visits. As a result of this deliberation and review of the Subcommittee report, included as Appendix A, the JPP issues five recommendations.1

In its report, the JPP Subcommittee identified a number of issues in military sexual assault investigations that it discovered during its site visits: (1) the strain on resources experienced by military criminal investigative organizations (MCIOs) that are responsible for investigating all allegations of sexual assault, (2) delays in the initial interview of sexual assault victims by MCIO investigators, (3) impediments to thorough interviews of sexual assault victims by MCIO investigators, (4) difficulties experienced by MCIO investigators in obtaining evidence from sexual assault victims, and (5) delays in the receipt of forensic laboratory test results in sexual assault cases. The Subcommittee made recommendations in each of these areas. The JPP recognizes that its report and recommendations are based on specific anecdotes from individuals who participated in the site visits, and that these individuals’ views are not necessarily universally shared. Individual experiences may depend in some measure on the military Service, location, and level of experience of the participants; however, the

1 Both this JPP report and the JPP’s Report on Military Defense Counsel Resources and Experience in Sexual Assault Cases address the adequacy of investigative resources. However, given that the Services’ criminal investigative branches are stovepiped organizations with responsibilities that differ in many respects from those of the Service defense organizations that represent Service members in the military justice system, the JPP chose to address issues related to investigations in two separate reports.
views addressed in this report were brought to the Subcommittee’s attention during every installation site visit, were supported by specific examples, and were also informed by the Subcommittee’s subsequent research into related policies and statutes, as well as by testimony before the JPP and the Response Systems to Adult Sexual Assault Crimes Panel. Taken together, these considerations suggest that the issues could be systemic and should be addressed.

The JPP makes five recommendations to deal with the issues affecting the proper investigation of sexual assault cases. One of these issues is the inadequacy of investigative resources available for the most serious sexual assault cases. This concern is addressed in a new Department of Defense (DoD) policy that allows the MCIOs to use non-MCIO resources to investigate some sexual assault cases.\(^2\) The JPP concurs with DoD’s implementation of this policy as a way to alleviate the immense strain on investigative resources for sexual assault cases, with one important caveat: the JPP recommends that the advisory committee that follows the JPP, the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, monitor the effects of this DoD policy to see if it improves the MCIOs’ ability to focus on the most serious sexual assault cases, and make findings and recommendations to the Secretary of Defense as it deems appropriate. The JPP also recommends that the Secretary of Defense identify and remove barriers to prompt initial victim interviews in sexual assault cases, identify and remove barriers to thorough questioning of sexual assault victims by MCIO investigators or other law enforcement agencies, examine and remove impediments to MCIO access to tangible evidence in the possession of sexual assault victims, and review the resources, staffing, procedures, and policies at forensic laboratories within the Department of Defense to ensure expeditious testing of evidence by forensic laboratories.

\(^2\) Dep’t. of Def. Instruction 5505.18, Investigation of Adult Sexual Assault in the Department of Defense, ¶ 1.2 (March 22, 2017) (“Other DoD law enforcement activity (LEA) resources, as defined in the Glossary, may assist MCIOs while MCIOs investigate offenses of adult sexual assault provided they meet the training requirements established in Paragraph 3.3.”). Previous versions of this regulation did not expressly permit other military law enforcement agencies to assist MCIOs in sexual assault investigations.
**Recommendation 47:** In order to ensure that MCIOs can focus investigative resources on the most serious sexual assault cases, the advisory committee that follows the JPP, the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, monitor the effects of the DoD policy that allows Service law enforcement agencies to assist the MCIOs with sexual assault investigations, and make findings and recommendations to the Secretary of Defense as it deems appropriate.

- MCIOs have substantial and sophisticated expertise in the investigation of sexual assault cases.
- According to site visit feedback provided to the JPP Subcommittee, the MCIOs are spread too thin, and their ability to investigate the penetrative and other cases requiring more investigative expertise is seriously hampered—largely because of policies that required them to investigate every case of sexual contact, as well as sexual assault.
- Because of the MCIOs’ lack of time and resources, MCIO investigators are not always able to conduct the additional investigative steps needed to prepare a case for prosecution.
- Under new policy guidance for the MCIOs issued by the Department of Defense Office of Inspector General on March 22, 2017, Service law enforcement agencies are allowed to assist the MCIOs with sexual assault investigations, under the supervision of the MCIOs.
- One year after its implementation, the Department of Defense Office of Inspector General should assess whether this new policy has been effective in ensuring that the MCIOs focus on the most serious sexual assault cases. As part of its assessment, the DoD Office of Inspector General should conduct site visits at several installations and seek information, preferably on a non-attribution basis, directly from special agents in the field.

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Recommendation 48: The Secretary of Defense take the necessary steps to ensure that special victims’ counsel and victims’ legal counsel (1) have the resources to schedule and attend the initial victim interview promptly after a report of sexual assault, and (2) receive the training necessary to recognize the importance of a prompt initial victim interview by the MCIO to an effective and just prosecution.

- It is helpful to MCIO investigators to have the initial interview of the victim be conducted promptly after MCIOs receive a report of sexual assault.

- According to site visit feedback provided to the JPP Subcommittee, the MCIOs’ initial victim interviews are substantially delayed, often because special victims’ counsel (SVCs) or victims’ legal counsel (VLCs) are unavailable to attend the interview.

- A delay in the initial victim interview could cause MCIO investigators to lose valuable physical or digital evidence, as well as impair a victim’s ability to clearly remember important details. Moreover, other avenues of investigation cannot, for practical reasons, be identified and pursued until this initial interview is conducted.

Recommendation 49: The Secretary of Defense identify and remove barriers to thorough questioning of a sexual assault victim by the MCIOs or other law enforcement agencies.

- Current MCIO policies and practices discourage or prohibit investigators from asking any question that could be perceived as “confrontational” during either the initial or the follow-up interview of a sexual assault victim, even when, in their professional judgment, such questions are vital to address conflicting statements given by the victim or other evidence contradicting the victim’s account.

- MCIO policies and/or practices require a supervisor’s approval before an investigator can conduct a subsequent interview of a sexual assault victim, which is perceived by investigators as a barrier to questioning a victim after the initial interview.

- Some SVCs/VLCs who attend investigative interviews limit the scope of questioning, and sometimes object to investigators’ requests for any follow-up interviews with the victim.

- As a result of the barriers to thorough questioning by MCIOs, investigators lose rapport-building opportunities, as well as important details about the reported offense, since details about an incident are commonly gathered over time after a traumatic event such as sexual assault.

Recommendation 50: The Secretary of Defense remove impediments to MCIOs’ obtaining tangible evidence from a sexual assault victim, particularly information contained on a cell phone or other digital devices, and develop appropriate remedies that address victims’ legitimate concerns about turning over this evidence to ensure that sexual assault investigations are complete and thorough.

- MCIO investigators have reported difficulties voluntarily obtaining a cell phone or other digital device from sexual assault victims. While the opportunity exists to obtain a military search authorization, there are practical and timing difficulties that impede both the ability to obtain a search authorization and the investigation as a whole. Furthermore, obtaining access to cell phones or other digital devices involuntarily may create an adversarial relationship between the
victim and the investigator, and between the victim and the prosecutor, which would ultimately inhibit the effective prosecution of a case.

- Victims’ cell phones may contain a wealth of evidence in sexual assault cases. When a victim refuses to turn over relevant evidence—such as photographs, text messages, or social media information contained on his or her cell phone—investigators and prosecutors make decisions about investigating and charging without possessing all available evidence.

- Many victims’ concerns about providing their cell phone to investigators center on the financial loss to the victim when investigators retain the phone for forensic analysis, as well as the loss of the use of the phone. In addition, victims have concerns related to the disclosure of the vast amount of personal, confidential, privileged, or potentially self-incriminating information that may be contained on a smartphone.

- Some SVCs/VLCs reported that they advise victims that they should not voluntarily turn over their cell phone to investigators. This advice is intended to preserve victims’ legitimate and well-established privacy rights and privileges in the information on their cell phone, regardless of whether the cell phone or other device is likely to contain potential evidence that could be used against the accused or help prepare victim testimony at trial.

- Modern forensic techniques for imaging and searching cell phones, coupled with the use of well-crafted consent forms, may minimize, if not eliminate, victims’ legitimate concerns about cell phone searches, and they therefore should be fully explored.

**Recommendation 51:** The Secretary of Defense review the resources, staffing, procedures, and policies at forensic laboratories within the Department of Defense to ensure expeditious testing of evidence by forensic laboratories.

- Forensic evidence such as that obtained from DNA testing and digital device examination can yield critical information, particularly in sexual assault cases, and can further guide MCIOs’ or other law enforcement agencies’ investigations as well as a prosecutor’s charging decisions.

- The length of time it takes to obtain results from forensic laboratories’ testing of evidence impedes the timely completion of sexual assault investigations.

- DoD laboratories generally prioritize cases that are pending court-martial, but notifying the laboratory that a court-martial is pending does not, in the view of some interviewees, necessarily result in expeditious testing.
APPENDIX A: Subcommittee of the Judicial Proceedings Panel Report on Sexual Assault Investigations in the Military

SUBCOMMITTEE OF THE JUDICIAL PROCEEDINGS PANEL

REPORT ON SEXUAL ASSAULT INVESTIGATIONS IN THE MILITARY

February 2017
SUBCOMMITTEE OF THE JUDICIAL PROCEEDINGS PANEL

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MEMORANDUM FOR MEMBERS OF THE JUDICIAL PROCEEDINGS PANEL

SUBJECT: Report of the Subcommittee

On April 9, 2015, the Secretary of Defense established this Subcommittee to support the Judicial Proceedings Panel in its duties under Section 576(d) of the National Defense Authorization Act for Fiscal Year 2013. Following the Secretary’s objectives and at the request of the Judicial Proceedings Panel, the Subcommittee conducted military installation site visits throughout the United States and Asia. Based upon information received during these site visits, the Subcommittee undertook additional research of several topics. The Subcommittee has completed its review on the topic of sexual assault investigations and submits to the Judicial Proceedings Panel its report with our assessment, conclusions, and recommendations.

Barbara S. Jones
Subcommittee Chair
Executive Summary

SUBCOMMITTEE OF THE JUDICIAL PROCEEDINGS PANEL REPORT ON SEXUAL ASSAULT INVESTIGATIONS IN THE MILITARY

From July through September 2016, members of the Judicial Proceedings Panel (JPP) Subcommittee, at the request of the JPP, spoke to more than 280 individuals—all involved in the military justice process, from 25 military installations in the United States and Asia—about the investigation, prosecution, and defense of sexual assault offenses.

On the basis of information received at the site visits, the Subcommittee identified several topics to present to the JPP and a need to conduct additional research on some of those topics. Therefore, the Subcommittee decided to issue separate reports on each of the identified subjects. The Subcommittee issued its first report in December 2016 on the subject of military defense counsel resources and experience in sexual assault cases.

This second report focuses on military sexual assault investigations and on Department of Defense (DoD) policies that place responsibility for all sexual assault investigations with the military criminal investigative organizations (MCIOs). It reflects both comments made to Subcommittee members during site visits and the Subcommittee's independent research. The Subcommittee reviewed relevant statutes, DoD policies, the Report of the Response Systems to Adult Sexual Assault Crimes Panel (the RSP), and witness testimony provided to the JPP. The Subcommittee also collected information from DoD and the military Services through formal requests for information and received testimony from a Supervisory Criminal Investigator within the DoD Office of Inspector General in order to fully inform its recommendations to the JPP. The Subcommittee met in September, October, and December of 2016 and in January 2017 to review and deliberate on the information that it had received on the topic of investigations. The Subcommittee will continue to meet in 2017 and will publish additional reports based on information received at the site visits.

While the Subcommittee was formulating this report and its recommendations, the DoD Office of Inspector General provided the Subcommittee with an excerpt of a proposed policy change to DoD investigative policies that directly affects one of the recommendations we were reviewing. If implemented as expected in early 2017, the change would allow the MCIOs to obtain the assistance of other military law enforcement agencies in conducting sexual assault investigations, something not currently permitted but identified as an issue during the Subcommittee’s site visits. The Subcommittee therefore considered the DoD proposal in making its recommendation below, with the understanding that the revised policy provided to the Subcommittee in draft will be adopted and published in the very near future.

The Subcommittee makes five recommendations about military sexual assault investigations.

1 MCIOs are the U.S. Army Criminal Investigation Command, Naval Criminal Investigative Service, and Air Force Office of Special Investigations. These organizations, which are typically responsible for investigating more serious crimes, also perform other force protection or intelligence-gathering missions.
Recommendation 1: Allow MCIOs to use non-MCIO resources for some sexual contact and sexual assault cases. MCIOs have substantial and sophisticated expertise in the investigation of sexual assault cases. The Subcommittee heard, however, that the MCIOs are spread too thin and their ability to investigate the penetrative and other cases requiring more investigative expertise is seriously hampered—largely because of policies that require them to investigate every case of sexual contact as well as sexual assault.

The Subcommittee believes this policy should be changed in order to ensure that MCIOs can focus on the most serious sexual assault cases. Under new policy guidance for the MCIOs developed by the Department of Defense Office of Inspector General, Service law enforcement agencies would be allowed to assist the MCIOs with sexual assault investigations, under the supervision of the MCIOs.

Therefore, the Subcommittee recommends that the policy guidance be implemented as soon as possible and that one year after its implementation, the Department of Defense Office of Inspector General assess whether this policy has been effective in ensuring that the MCIOs focus on the most serious sexual assault cases. As part of its assessment, the DoD Office of Inspector General should conduct site visits at several installations and seek information, preferably on a non-attribution basis, directly from special agents in the field.

The Subcommittee also recommends that the advisory committee that follows the JPP, the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, monitor the effects of this DoD policy and make findings and recommendations to the Secretary of Defense as it deems appropriate.

Recommendation 2: Ensure prompt initial victim interviews. It is critical that the initial interview of the victim by MCIOs or other law enforcement agencies be conducted promptly after MCIOs receive a report of sexual assault. Yet the Subcommittee heard frequent complaints that the MCIOs’ initial interviews were being substantially delayed, often because special victims’ counsel or victims’ legal counsel were unavailable to attend the interview.

The Subcommittee recommends that the Secretary of Defense take the necessary steps to ensure that special victims’ counsel and victims’ legal counsel (1) have the resources to schedule and attend the initial victim interview promptly after a report of sexual assault and (2) receive the training necessary to recognize the importance of a prompt victim interview by the MCIO to an effective and just prosecution.

Recommendation 3: Remove impediments to thorough victim interviews. The Subcommittee heard complaints from all MCIO special agents interviewed that various impediments prevented or discouraged them from conducting victim interviews that were as thorough as they consider necessary. Specifically, they felt procedures and policies discouraged or prohibited investigators from asking any question that could be perceived as “confrontational” during either the initial or the follow-up interview even when, in their professional judgment, such questions were vital to address conflicting statements given by the victim or other evidence contradicting the victim’s account. They also felt investigations were impeded by policies and procedures that discouraged them from conducting follow-up interviews. The Subcommittee accordingly recommends that the Secretary of Defense identify and remove these and any other identified barriers to thorough questioning of the victim by MCIOs or other law enforcement agencies.
Recommendation 4: Examine and remove impediments to MCIO access to tangible evidence. The Subcommittee heard numerous complaints that investigators have difficulties obtaining evidence from the victim, particularly information on cellular phones or other digital devices. Investigators said the reasons that victims and/or their attorneys gave for not turning over cellular and digital devices included the financial loss to the victim when investigators retain the phone for forensic analysis and privacy concerns over the vast amount of personal information typically contained on a smartphone. These concerns, while legitimate, can be minimized or eliminated by modern forensic techniques for imaging and searching digital devices. Therefore, the Subcommittee recommends that the Secretary of Defense examine these problems and develop appropriate remedies that address victims’ legitimate concerns and ensure that sexual assault investigations are complete and thorough.

Recommendation 5: Reduce delays at forensic laboratories. The Subcommittee heard complaints from MCIOs and prosecutors that the length of time it takes to obtain results from forensic laboratories’ testing of evidence impedes the timely completion of sexual assault investigations. Therefore, the Subcommittee recommends that the Secretary of Defense review the resources, staffing, procedures, and policies at forensic laboratories within the Department of Defense to ensure more expeditious testing of evidence by forensic laboratories.
Sexual Assault Investigations in the Military

From July through September 2016, members of the Judicial Proceedings Panel (JPP) Subcommittee, at the request of the JPP, spoke to more than 280 individuals from 25 military installations in the United States and Asia involved in the military justice process; these conversations focused on the investigation, prosecution, and defense of sexual assault offenses. Discussions were held without attribution so that Subcommittee members could hear candid perceptions of the military’s handling of sexual assault cases from the men and women who are investigating and litigating those cases. The Subcommittee spoke to groups of military prosecutors, defense counsel, special victims’ counsel/victims’ legal counsel, paralegals, and investigators, as well as commanders, sexual assault response coordinators, victim advocates, and victim-witness liaisons from all military Services.

On the basis of the information received during these site visits, the Subcommittee determined that it would have to conduct further research into several topic areas so that its recommendations to the JPP would be fully informed. The Subcommittee held meetings in September, October, and December of 2016, and in January 2017 in order to develop the information and research needed to report on issues identified at the site visits. In December 2016, the Subcommittee completed its research on the subject of military defense counsel resources and experience in sexual assault cases and issued its first report. The Subcommittee will continue to meet in 2017 to examine other issues and publish additional reports. This report summarizes site visit comments and the Subcommittee’s research into military sexual assault investigations and Department of Defense (DoD) policies affecting sexual assault allegations, including policies that place responsibility for all sexual assault investigations with the military criminal investigative organizations (MCIOs).

I. MCIO INVESTIGATORS LACK NECESSARY DISCRETION AND RESOURCES IN HANDLING SEXUAL ASSAULT ALLEGATIONS

A. Site Visit Information

Investigators in every military Service explained that a number of factors have stretched their resources and eliminated their discretion in investigating alleged cases of sexual assault. Perhaps the most often cited problem is that MCIOs are no longer able to refer the less serious cases to other military law enforcement agencies, even when the MCIO investigators say those other agencies have adequate training for doing so. Prior to January 2013, sexual contact offense cases, as opposed to penetrative offense cases, were generally handled by military police investigators, with some variation among the Services. With the DoD policy change in 2013, MCIOs have been required to investigate every sexual assault allegation, regardless of the severity of the alleged offense. The pre-2013 approach allowed...
MCIO special agents discretion to determine which offenses were more appropriately handled by military police investigators or by the accused’s unit, depending on the severity of the allegation and on the victim’s desire to participate in an investigation. MCIO investigators almost universally felt that the 2013 policy change has severely strained MCIO resources and undermined their ability to investigate more serious sex offenses effectively and thoroughly. At several installations, special agents reported that these difficulties have lowered morale within their organizations.

A majority of agents emphasized that investigations involving sexual contact offenses, though often less complex than a rape case, must be given the same emphasis, time, and resources as the most serious sexual assault offenses. Sexual contact cases include such cases as a touching of the shoulder or the buttocks, or an attempted kiss on the mouth. Investigators within the MCIOs also noted that even when the reported facts of what allegedly took place make prosecution of these sexual contact offenses unlikely, they are still required to devote significant time and resources to investigate them. Further, as sexual offenses make up an increasing share of MCIOs’ caseloads—investigators at one installation stated that 60%–80% of their cases involve sexual assault allegations—the bulk of their work involves intensive, lengthy investigations.

The investigators from each Service also identified other situations in which they felt that their specialized training and experience in sexual assault investigations were diverted from the most serious sex offenses. As one example, they pointed to some cases referred to MCIOs by a sexual assault response coordinator (SARC). They said that if a SARC reports an allegation to an MCIO, the MCIO must treat the allegation as a sexual assault even if the alleged facts do not meet all of the elements of the crime (e.g., what occurred was actually a simple assault or no crime at all). Once reported by a SARC, investigators stated, it is very difficult for investigators to reclassify these incidents as non-sex offenses or noncriminal behavior, and these incidents must be fully investigated.

Another example of their lack of discretion involved sexual assaults reported by a third-party witness rather than the putative victim. In some instances, the MCIO investigators told the Subcommittee members, a third party reports an incident as a possible sexual assault and the apparent victim disagrees with this assessment, disputing either the facts alleged or the need for a criminal investigation. Special agents from the MCIOs told the Subcommittee that they are required to vigorously pursue all of these third-party reports, even if the victim does not want to cooperate or disagrees with the alleged facts. One agent highlighted a case in which he had to interview the victim’s friends and family despite her express desire that the complaint not be investigated at all and that neither her friends nor family be contacted.

Military Criminal Investigative Organizations (MCIOs) will initiate investigations of all offenses of adult sexual assault of which they become aware, as listed in the Glossary, that occur within their jurisdiction regardless of the severity of the allegation. “Sexual assault” is defined in the Glossary as “An intentional sexual contact characterized by the use of force, threats, intimidation, abuse of authority, or when the victim does not or cannot consent.” The term “sexual assault” includes aggravated sexual contact and abusive sexual contact in violation of Article 120 of the Uniform Code of Military Justice (UCMJ).

5 10 U.S.C. § 920 (UCMJ, art. 120). See infra note 10. Sexual contact cases represent a wide range of criminal behavior and may be disposed of in a variety of ways, from a general court-martial—typically reserved for more serious offenses—to non-judicial punishment or a written admonition.

6 See U.S. DEP’T OF DEF, DIRECTIVE 6495.01, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM, ¶ 4(e) (Jan. 23, 2012) (Incorporating Change 2, Effective January 20, 2015) (“The SARC shall serve as the single point of contact for coordinating appropriate and responsive care for sexual assault victims. SARCs shall coordinate sexual assault victim care and sexual assault response when a sexual assault is reported.”).

This report is prepared by the JPP Subcommittee, and the observations and recommendations herein are those of the Subcommittee. The contents of the Subcommittee report have not yet been considered or deliberated on by members of the JPP.
APPENDIX A: SUBCOMMITTEE OF THE JUDICIAL PROCEEDINGS PANEL REPORT ON SEXUAL ASSAULT INVESTIGATIONS IN THE MILITARY

In addition, investigators noted an ever-growing number of administrative requirements for sexual assault investigations, which contribute to the strain of having to investigate every reported sexual contact offense. The burdensome administrative tasks described by investigators included additional requirements for documenting investigative activity, retaining evidence, and generating duplicative internal reports within the MCIO.

B. Other Sources of Information

1. Revisions to the definition of sexual contact in Article 120, Uniform Code of Military Justice (UCMJ).

As noted by participants on the site visits, changes made to the definition of sexual contact under Article 120 of the UCMJ in 2012 expanded the number and type of potential offenses that now fall under the purview of the MCIOs. The 2012 version of Article 120 made the touching of any body part for sexual gratification a sexual offense. All offenses under this statute are punishable with up to seven years’ confinement and a dishonorable discharge. Previous versions of the statute limited sexual contact crimes to the touching of certain areas of the body—the genitalia, anus, groin, breast, inner thigh, or buttocks of any person; an unwanted touching of other areas of the body was treated as a simple assault, which is a less serious, non-sex offense. In 2016, just four years after expanding the definition of sexual contact offenses, Congress passed legislation that will once again narrow the range of conduct considered a sexual offense. While this law may reduce the number of sexual contact cases that the MCIOs investigate, the reduction will take place very gradually, and all offenses occurring prior to the new legislation’s effective date (June 2017, at the earliest) would be governed by the broad definition now in effect. In addition, the new legislation will not solve the primary problem identified by the MCIOs: the diversion of their specialized expertise and experience from more serious sexual assault cases.


The Response Systems Panel (RSP), an advisory panel succeeded by the JPP, also commented in its June 2014 report on the impact of the January 2013 DOD policy change, explaining how it significantly increased MCIOs’ caseloads:

Historically, Army Criminal Investigation Command (Army CID) investigated all adult sexual assault cases for the Army, while the Naval Criminal Investigative Service (NCIS) and Air Force Office of Special Investigations (AFOSI) often referred some non-penetrative (e.g., unwanted touching) sexual assault offenses to Marine Corps Criminal

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7 Appendix 23, Analysis of Punitive Articles, Paragraph 45, Article 120—Rape and Sexual Assault Generally, Manual for Courts-Martial, United States (2012). This change was effective for all offenses committed on or after June 28, 2012.
10 Section 5430 of the National Defense Authorization Act for Fiscal Year 2017 defines sexual contact as “touching, or causing another person to touch, either directly or through the clothing, the vulva, penis, scrotum, anus, groin, breast, inner thigh, or buttocks of any person, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person. Touching may be accomplished by any part of the body or an object.” This legislative provision incorporates proposed statutory language authored by the JPP Subcommittee and adopted by the JPP in its Report on Article 120 of the Uniform Code of Military Justice (February 2016). The effective date for this change will be designated by the President, and shall occur no later than two years after enactment of the legislation. National Defense Authorization Act for Fiscal Year 2017, Pub. L. 114-328, § 5430, 130 Stat. 2000 (2016).
Investigation Division (Marine Corps CID) agents and Air Force Security Forces investigators, respectively. Since the January 2013 policy change requiring that all adult sexual assault cases be investigated by the MCIOs, cases previously investigated by Marine Corps CID and Air Force Security Forces investigators have shifted to NCIS and AFOSI, significantly increasing their case loads.\(^{11}\)

After finding that the various military law enforcement agencies other than the MCIOs are also qualified to investigate sexual assault offenses, and particularly “touching offenses,” the RSP recommended (in RSP Recommendation 89) that

The Secretary of Defense direct the commanders and directors of the military criminal investigative organizations to authorize the utilization of Marine Corps Investigation Division, military police investigators, and/or security forces investigators to assist in the investigation of some non-penetrative sexual assault cases under the direct supervision of a special victim unit investigator to retain oversight.\(^{12}\)

On December 15, 2014, DoD approved this recommendation in part, referring the matter for further examination to the DoD Office of Inspector General (DoD IG), which is responsible for establishing law enforcement policies. Meanwhile, as reported above, MCIOs currently have to investigate both penetrative and contact cases, and they continue to feel that the addition of these non-penetrative (contact) cases to their already large caseloads overburdens them and reduces their ability to investigate the most serious sexual assault cases.

3. Information presented to the JPP in April 2016.

At its public meeting on April 8, 2016, the JPP heard testimony on the implementation of a Special Victim Capability within each of the military Services.\(^{13}\) The chiefs in charge of the MCIOs testified before the JPP that they continue to investigate all reports of sexual assault, referring none of their cases to the military police or security forces.\(^{14}\) The witnesses also described how the MCIOs have ensured that an increasing number of special agents have the training and expertise to investigate sexual assault cases.\(^{15}\) According to a senior official in the Air Force Office of Special Investigations


\(^{12}\) Id. at 40. In a footnote, the RSP Report explains that “special victim unit” is a “generic term for any unit designated to handle sexual assault and other crimes with a more vulnerable victim; police agencies use a variety of terms for these specialized units.” Id. at 118, n.495.

\(^{13}\) In the National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, § 573, 126 Stat. 1632 (2013), Congress required DoD and the Services to implement a “Special Victim Capability”: it called for the Services to provide specially trained prosecutors, MCIO investigators, victim witness assistance personnel, paralegals, and administrative legal support personnel to collaborate in the handling of sexual assault reports. In response, DoD mandated that all sexual assault crimes (i.e., both penetrative and contact offenses) be investigated by the MCIOs, not by any other law enforcement agencies.

\(^{14}\) See Transcript of JPP Public Meeting 210, 216 (April 8, 2016) (testimony of Mr. Guy Surian, U.S. Army, Deputy Chief of Investigative Operations, Investigative Policy and Criminal Intelligence, Headquarters, U.S. Army Criminal Investigation Command (CID)) (testimony of Mr. Kevin Poorman, U.S. Air Force, Associate Director, Criminal Headquarters, Air Force Office of Special Investigations) (“We open [an investigation] on all sexual assaults falling within our jurisdiction.”).

\(^{15}\) Id. at 209–10, 217 (testimony of Mr. Guy Surian, U.S. Army, Deputy Chief of Investigative Operations, Investigative Policy and Criminal Intelligence, U.S. Army Criminal Investigation Command (CID), and Mr. Jeremy Gauthier, U.S. Navy,
APPENDIX A: SUBCOMMITTEE OF THE JUDICIAL PROCEEDINGS PANEL REPORT ON SEXUAL ASSAULT INVESTIGATIONS IN THE MILITARY

This report is prepared by the JPP Subcommittee, and the observations and recommendations herein are those of the Subcommittee. The contents of the Subcommittee report have not yet been considered or deliberated on by members of the JPP.

(AFOSI), the quality of sexual assault investigations has improved in recent years, and AFOSI is completing investigations faster than in previous years. This assessment may be inconsistent with the reports of strained investigative resources repeated at every site visit; however, because the testimony relies in part on the DoD Inspector General’s review of MCIO investigations conducted from 2012 to 2013, it may not reflect current trends.

4. Forthcoming changes in DoD investigative policies.

On December 28, 2016, the Subcommittee received a letter from the DoD Acting Inspector General explaining that the Office of Inspector General has proposed revisions to DoD’s policies concerning sexual assault investigations, and that DoD is in the final stages of reviewing and updating existing policies. The Acting Inspector General did not list all of the policy changes under consideration by DoD. However, he provided a relevant excerpt from the proposed modifications: the new policy would allow law enforcement agencies to “assist MCIOs while MCIOs investigate offenses of adult sexual assault.” This policy, in draft form, states:

a. Only the MCIOs will conduct the formal victim interview.

b. The investigation will be considered an MCIO investigation and the responsible MCIO will provide direct supervision of all investigative work conducted by the DoD LEA [law enforcement agency] resources.

c. Under no circumstances may an MCIO refer an adult sexual assault investigation to an installation LEA regardless of the severity of the offense.

d. When LEA resources assist MCIOs with sexual assault investigations, the MCIO investigator will maintain full responsibility for the investigation and assign tasks. Before assisting the MCIOs, the LEA resources will receive training on the topics required in Paragraph 3.3 [of this instruction] by a certified MCIO sexual assault investigator. Ideally the LEA resources will receive the same training and certification as outlined in DoDI 5505.19 (Establishment of Special Victim Investigation and Prosecution (SVIP) Capability within the Military

Deputy Assistant Director, Criminal Investigations and Operations Directorate, Naval Criminal Investigation Service Headquarters).

16 Transcript of JPP Public Meeting 228–29 (April 8, 2016) (testimony of Mr. Kevin Poorman, U.S. Air Force, Associate Director, Criminal Headquarters, Air Force Office of Special Investigations.) (“As verified in the DoD IG 2015 assessment of the MCIO investigations in which 99 percent of our investigations collectively were found to be—that the investigations were sufficient. In the last two years we’ve also improved the median timeliness of our investigations from about 130 days on median to75 days on median. And we’ve sustained that median 75-day turnaround time for over a year now.”) (Referring to the Dep’t of Def. Inspector Gen., Report No. DODIG-2015-094, Evaluation of Military Criminal Investigative Organizations’ Adult Sexual Assault Investigations (March 24, 2015) [Final], infra note 17.).


18 See Letter to the Chair of the Judicial Proceedings Panel from Mr. Glenn A. Fine, Acting Inspector General, Department of Defense Office of Inspector General to the Honorable Elizabeth Holtzman, Chair, JPP (Dec. 28, 2016) (providing the JPP with DoD’s response to RSP recommendation 89 that alternate military law enforcement agencies should be allowed to assist with the investigation of non-penetrative sexual assault cases. DoD explained that it would implement RSP recommendation 89 by changing its existing policy on sexual assault investigations, DoDI 5505.18, supra note 4).
This policy proposal implements RSP Recommendation 89 (quoted above), and includes two requirements that were not specified in the RSP recommendation: that only the MCIOs will conduct the formal victim interview and that the assisting law enforcement agencies must receive the requisite training on sexual assault investigations before they can assist the MCIOs.

C. SUBCOMMITTEE ASSESSMENT AND RECOMMENDATIONS

The changes in 2012 to Article 120 of the UCMJ and the changes in 2013 to DoD’s policies concerning sexual assault investigations have significantly increased the volume of investigations for which the MCIOs are solely responsible. Collectively, these changes and other administrative policies have generated a flood of investigative activity for strong and weak, serious and less serious cases alike. Special agents at the site visits stressed that the increase in their caseload has severely strained their investigative resources and harmed their ability to pursue the most serious sex crimes in the manner they feel is appropriate. These individuals all concurred that the increase in their workload is primarily due to DoD’s mandate that MCIOs investigate all reports of sexual contact—cases that may involve a relatively simple, onetime touching of the leg or buttocks rather than more serious and violent conduct.

The Subcommittee recommends implementing the December 2016 draft changes to DoD’s sexual assault investigations policy. The proposal, if implemented, will provide the MCIOs with access to needed additional resources. Although MCIOs will remain responsible for all sexual assault investigations, permitting other law enforcement agencies to assist with those investigations should ease the current strain on MCIO resources and allow the MCIOs to focus on the most serious cases.

The Subcommittee further recommends that the new policy be closely monitored and thoroughly reviewed one year after it takes effect, and that the DoD Inspector General assess the effects of the new policy on the MCIOs’ ability to focus their time and effort on the most serious cases of sexual assault. Because the Subcommittee found that its field interviews of investigators were essential to understanding the effects of statutory and policy changes, it also recommends that DoD’s review should similarly incorporate site visits at several installations and interviews with special agents as well as military justice practitioners. During its field interviews, DoD should allow interview participants to speak without attribution in order to fully inform DoD’s evaluation of the policy’s effects.

Should the DoD review find that MCIOs continue to experience strains on their resources and the diversion of their expertise from the most serious sexual assault cases, then the DoD IG might consider allowing MCIOs to transfer full responsibility for some less serious sexual assault offenses, with the approval of a supervisor, to alternative military law enforcement agencies to address the problem. The Subcommittee does not make this recommendation now, in recognition that there are inherent difficulties in such transfers, including but not limited to accurately determining the seriousness of some offenses in the early stages of an investigation. The Subcommittee believes that it is prudent to give the IG’s proposed policy changes a chance to be implemented before suggesting that more extensive policy changes are needed.

The JPP, together with its Subcommittee, will reach the end of its statutory term in September 2017. Therefore, it will not be able to monitor the effects of this policy or make additional recommendations.

19 Id.
about it to the Secretary of Defense. Congress has created a successor panel—the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces— which, the Subcommittee respectfully recommends, should continue to monitor this issue.

Recommendation 1: Allow MCIOs to use non-MCIO resources for some sexual contact and sexual assault cases. MCIOs have substantial and sophisticated expertise in the investigation of sexual assault cases. The Subcommittee heard, however, that the MCIOs are spread too thin and their ability to investigate the penetrative and other cases requiring more investigative expertise is seriously hampered—largely because of policies that require them to investigate every case of sexual contact as well as sexual assault.

The Subcommittee believes this policy should be changed in order to ensure that MCIOs can focus on the most serious sexual assault cases. Under new policy guidance for the MCIOs developed by the Department of Defense Office of Inspector General, Service law enforcement agencies would be allowed to assist the MCIOs with sexual assault investigations, under the supervision of the MCIOs.

Therefore, the Subcommittee recommends that the policy guidance be implemented as soon as possible and that one year after its implementation, the Department of Defense Office of Inspector General assess whether this policy has been effective in ensuring that the MCIOs focus on the most serious sexual assault cases. As part of its assessment, the DoD Office of Inspector General should conduct site visits at several installations and seek information, preferably on a non-attribution basis, directly from special agents in the field.

The Subcommittee also recommends that the advisory committee that follows the JPP, the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, monitor the effects of this DoD policy and make findings and recommendations to the Secretary of Defense as it deems appropriate.

II. CURRENT POLICIES AND PRACTICE RENDER INVESTIGATIONS LESS THOROUGH AND LESS EXPEDITIOUS THAN THEY SHOULD BE

A. Site Visit Information

Participants in the Subcommittee’s site visits raised a number of other issues that they felt collectively hamper an investigator’s ability to conduct thorough investigations. The Subcommittee recognizes that the comments it heard depend in some measure on the military Service, location, and level of experience of the participants, and that a single anecdote does not necessarily indicate a broader trend or a widespread problem. However, the general themes identified below were raised at every site visited by the Subcommittee and were often supported by specific examples, suggesting that some systemic problems may exist that can and should be addressed.

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20 The Secretary of Defense, pursuant to Section 546 of the National Defense Authorization Act for Fiscal Year 2015, as modified by section 537 of the National Defense Authorization Act for Fiscal Year 2016, established this nondiscretionary advisory committee. Section 546 of the FY15 NDAA provides that it shall review, on an ongoing basis, cases involving allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.
1. **The initial investigatory interview of a sexual assault victim is often delayed, to the detriment of the case.**

It is important to note that since the establishment of SARCs, military investigators and military police are no longer the first people to receive sexual assault reports. MCIO investigators in all Services told the Subcommittee that today the vast majority of sexual assault reports from Service members are made to the SARC office, which then informs the MCIO of the allegation. They said that this is a relatively recent development. Most site visit participants noted that in the past, victims contacted their command, the military police (or other Service equivalent), or the MCIO to report an alleged sexual assault. While the option of reporting to MCIOs remains, the agents said that they typically do not hear from victims directly.

Investigators uniformly reported that the first interview of a victim must be scheduled through the special victims' counsel or victims' legal counsel (SVC/VLC), if the victim has already obtained counsel. If the complaining witness has not yet retained counsel and reports a sexual assault directly to the MCIO, MCIOs must notify victims of their right to SVC/VLC representation before beginning the interview. MCIO investigators at site visits reported that victims almost always elect to meet with counsel before agreeing to be interviewed; as a result, the initial investigatory interview is delayed until an SVC/VLC can be assigned and the initial interview can be scheduled. Several special agents indicated that finding a time when the SVC/VLC can attend the initial interview can delay the interview by weeks, or in some cases months, depending on the attorney’s availability. A majority of the agents expressed concern that this passage of time could cause them to lose valuable physical or digital evidence, as well as impair a victim’s ability to clearly remember details. Moreover, other avenues of investigation cannot, for practical reasons, be identified and pursued until this initial interview is conducted.

2. **Investigators feel discouraged from asking sexual assault victims questions that might be seen as “confrontational.”**

Many senior investigators expressed a concern that they are no longer interviewing the victim in a manner that is best suited to eliciting all the facts and circumstances necessary to discover what occurred. The Subcommittee was told that investigators are now taught not to probe too deeply into

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21 See DoDI 5505.18, supra note 4, encl. 2.11 (requiring an MCIO investigator assigned to conduct an adult sexual assault investigation to inform a sexual assault victim of availability of legal assistance); see also DEP'T OF DEF. INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, encl. 2, para. 6(m) (Feb. 12, 2014) (requiring Service Secretaries to “[e]stablish procedures that require, upon seeking assistance from a SARC, SAPR VA, MCIO, the Victim Witness Assistance Program (VWAP), or trial counsel, that each Service member who reports that he or she has been a victim of a sexual assault be informed of and given the opportunity to . . . [c]onsult with legal assistance counsel . . .”).

22 See also Transcript of JPP Public Meeting 215 (April 8, 2016) (testimony of Mr. Guy Surian, U.S. Army, Deputy Chief of Investigative Operations, Investigative Policy and Criminal Intelligence, U.S. Army Criminal Investigation Command (CID)) (“The requirement to notify the SVC prior to interviewing the victim along with the SVC’s primary duty to best represent their client’s interests have on occasion been problematic. We have an example recently in which two soldiers both arrived at a CID office and both claimed to have been sexually assaulted. So we had to notify two SVCs. After the victims had talked to their SVCs they declined to make any statements to the CID which was problematic.”).

23 Prosecutors who spoke to the Subcommittee expressed the same frustration with their attempts to schedule interviews with victims. This topic will be addressed in subsequent reports issued by the JPP Subcommittee.

24 A few investigators at the site visits noted that the vast majority of sexual assault cases they deal with involve “delayed” reports (witnesses did not specify the length of the delay), and that in such cases the loss of access to potential evidence could be attributed to delayed reporting rather than to the schedule of the SVC/VLC.
the details of a sexual assault victim's account. In addition, they are discouraged from “confronting” a complaining witness with aspects of his or her account that do not make logical sense or that conflict with other evidence, including the victim's own inconsistent statements. The investigators stated that, when done appropriately, such questioning is not insensitive and indeed is a crucial investigative practice. As one senior agent explained, in investigative circles “confrontation” is a term of art and does not entail the hostility connoted by the common use of the word. A confrontational, or clarifying, interview involves questions that invite a witness to explain new or inconsistent evidence and statements. While it is clear from the site visits that the Services differ in their approach to this technique, MCIO training, internal practices, or both give many agents the impression that they have to accept the complainant's account at face value, without thoroughly exploring discrepancies or seeking more detail in the complainant's account. One MCIO investigator described being trained to investigate the sexual assault “that did happen” and not the possibility that it did not happen. This approach was problematic, the special agent implied, because it could lead them to overlook important facts and evidence, obscuring the reality of what had occurred.

Internal MCIO policies may likewise discourage thorough questioning of sexual assault victims. Many agents explained that they are required to obtain a supervisor's approval before conducting any interview subsequent to the initial victim interview. The imposition of bureaucratic obstacles to interviewing a victim was widely viewed as a deterrent, and field agents felt dismayed that their MCIO leadership would question their determination that a subsequent interview was a critical investigative step.

3. SVCs/VLCs limit contact with the victim and the scope of victim interviews.

In addition, a number of agents told Subcommittee members that SVCs/VLCs who attend the investigative interviews sometimes object to certain necessary and relevant questions or advise the victim not to answer them. Other investigators reported that the mere presence of the SVC/VLC dissuades them from asking probing questions out of fear that they will be accused of being inappropriate or being too hard on the victim. The Subcommittee heard at one site visit that an SVC/VLC objected every time an agent asked a victim what sort of resolution of the case he or she wanted, even though his training courses had taught the agent that this was an important and routine question to ask. The SVC/VLC's position was that the client's answer could later be exploited by a defense attorney on cross-examination.25

The Subcommittee was told that some SVCs/VLCs request that investigators who want to do follow-up interviews with a victim provide the questions in writing in advance of the interview, while others object to any follow-up interviews at all. Some investigators indicated that if inconsistencies in the victim's statement arise during the course of the investigation, they must ask the SVC/VLC to speak with the client to clarify the points because the SVC/VLC do not permit investigators to speak directly with the victim. The SVCs/VLCs then relay back the responses. The Subcommittee heard from SVCs/VLCs that they wanted their clients to be interviewed only one time so that defense counsel cannot claim at trial that the victim made inconsistent statements.26 Investigators almost universally lamented the resulting loss of rapport-building opportunities, as well as the potential loss of information, since details about an incident are commonly gathered over time after a traumatic event such as sexual

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25 The Subcommittee notes that while a defense attorney might portray a victim's statement to investigators in a light most favorable to the defense for various reasons, this is not a reason to curtail appropriate questioning of a victim.

26 This is a summary of the most common explanation provided at site visits by SVCs/VLCs for advising clients to agree to only one interview. The Subcommittee recognizes that other concerns, such as a victim's potential liability for collateral misconduct, may also influence the SVCs/VLCs' advice to clients, if applicable to the case.
assault. Indeed, they also pointed out that follow-up interviews are the norm in the private sector during sexual assault investigations.27

4. **Investigators experience difficulties in obtaining needed and relevant evidence from victims who file unrestricted reports of sexual assault.**

At several site visit locations, trial counsel and investigators recounted cases in which victims, on the advice of their SVC/VLC, declined to turn over potential evidence to investigators. Some SVCs/VLCs openly acknowledged that they advise clients not to turn over their cell phones to investigators even when it is likely to contain potential evidence.28 Among the reasons offered for this advice were the financial loss to the victim when investigators retain the phone for forensic analysis and privacy concerns over the vast amount of personal information typically contained on a smartphone. Both of these problems can be minimized if not eliminated by modern forensic techniques for imaging and searching cell phones. None of the SVCs/VLCs interviewed expressed a concern that their advice or advocacy could hamper the investigation or prosecution of the case. Some SVCs/VLCs explained that their paramount concern is the victims’ privacy, and they view the possibility that their advice might lower the chances for a successful prosecution as of little consequence.

Investigators stressed that the issue of searching a victim’s cell phone or other digital devices for evidence frequently arises, because the victim and accused are often acquaintances who may have communicated by phone or social media around the time of the alleged offense. A victim may also have contacted a friend shortly after the incident, and those communications with an outcry witness—the person who first hears an allegation of abuse—can be critical to corroborating a complaint. In the instance of a delayed report, a witness’s digital footprint often assumes greater importance because other physical evidence, such as DNA, may degrade or disappear over time. Photographs and online activity can assist agents in establishing a timeline of relevant events and provide the only corroboration of a victim’s allegation. Still, investigators acknowledged that the amount and value of the evidence contained on a cell phone will vary greatly from one case to the next, depending on the facts.

Investigators explained that they continue the investigation without access to evidence on cell phones, at times with negative consequences. One agent described a case in which an SVC informed a victim that she did not have to disclose text messages she exchanged with the accused. The victim took this advice and refused to give the investigator or the prosecutor the text messages. The accused predictably gave these texts to his attorney, who confronted the victim with them while she was on the witness stand at trial. The prosecutor, having never seen these texts, had not prepared the victim for this line of cross-examination and, as a result, the victim’s testimony was seriously undermined.

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27 A number of MCIO special agents were familiar with civilian criminal investigative practice through their prior experience working for civilian law enforcement agencies, and through the training they routinely receive at federal law enforcement training centers.

28 Investigators generally need to have credible information establishing probable cause to believe that an item such as a cell phone contains evidence that corroborates a victim’s statement or bears on the guilt or innocence of the accused. Investigators may obtain the item with the victim’s consent or by obtaining a warrant, known in the military as a “search authorization,” to seize and search the item. Military Rule of Evidence (M.R.E.) 315, Probable Cause Searches, provides that a commander, military magistrate, or military judge may issue a search authorization of persons or property under military control. M.R.E. 315(c) specifically states “a search authorization may be valid under this rule for a search of (1) the physical person of anyone subject to military law or the law of war wherever found; (2) military property of the United States or of nonappropriated fund activities of an Armed Force of the United States wherever located; (3) persons or property situated on or in a military installation, encampment, vessel, aircraft, vehicle, or any other location under military control, wherever located; or (4) nonmilitary property within a foreign country.” Manual for Court-Martial, United States (2016 ed.), Mil. R. Evid. 315.
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5. Despite recent improvements in prosecutor-MCIO relationships, tensions persist and impair the thoroughness of investigations.

Prosecutors and investigators repeatedly described tensions in their working relationships with one another. Trial counsel generally agreed that coordination on sexual assault investigations has improved, but many complained that investigators all too often decline to follow up on important leads. For their part, investigators expressed the view that many requests for additional investigative activity from trial counsel are unnecessary or are difficult for an investigative unit that is already overburdened and understaffed to execute. Some prosecutors ventured that these difficulties may be the result of internal MCIO protocols that stress timely completion of investigative tasks and pressure agents to close a case quickly. In the same vein, prosecutors noted, investigators are reluctant to reopen a closed case except to document newly received lab results or a similarly significant event.

Internal MCIO policies were not clearly defined in site visit discussions, but some agents mentioned internal deadlines of six months to close a case in one Service, and 90 days in another Service. Anecdotally, the investigators clarified that despite these guidelines, they have seen instances in which sexual contact offense investigations take one year to complete. Both investigators and trial counsel stated that before agents close a case, they have to consult with a prosecutor and a commander to make a probable cause determination and document the final decision on case disposition; thus prosecutors do have input before a case is closed. However, should subsequent developments in a case reveal the need for additional investigative steps, prosecutors described real difficulties in getting this additional investigative work completed.

6. Cases are delayed by the length of time taken by forensic labs to test potential evidence.

Several prosecutors and investigators raised the issue of delays caused by the time it takes for forensic lab analysis of evidence. At one installation, prosecutors reported that they typically wait six months for DNA test results. The Subcommittee members were told that DoD labs generally prioritize cases that are pending court-martial, but notifying the lab that a court-martial is pending does not necessarily result in expeditious testing. Trial counsel at one installation said that they will sometimes charge an accused just to hasten the receipt of digital or DNA evidence from the lab, even when the sum total of existing evidence may not support a successful prosecution.

Experiences at other installations varied: one location reported that a Service-specific lab could test evidence in less than 60 days, while at another, agents stated that they wait more than 90 days for lab results, and for that reason they are unable to close their cases expeditiously. By comparison, a civilian detective who participated in one site visit said that he has to wait 12–16 months for forensic testing in his civilian jurisdiction, and afterward collects a DNA swab from the defendant to confirm the results; in his observation, civilian sexual assault investigations take longer than comparable military criminal investigations.

B. Other Sources of Information

1. MCIO structure.

The MCIOs are generally responsible for investigating the most serious offenses committed by members of the military Services. Each Service maintains a stovepiped organization that does not answer to a military commander or to a commander’s staff judge advocate (SJA). These independent law enforcement organizations receive investigative policy and guidance from the Department of

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Defense Office of the Inspector General, and the MCIO in each Service establishes its own policies and protocols consistent with DoD IG directives.

2. Information presented to the JPP in April 2016.

The JPP examined how MCIOs and other stakeholders in the military justice process interact with SVCs/VLCs and addressed some of the issues identified above. The JPP heard testimony in its April 2016 public meeting from senior officials within each MCIO regarding the impact of SVC/VLC representation and corresponding policies on sexual assault investigations. The witnesses echoed the concerns heard by the Subcommittee members at the site visits regarding investigative delays caused by SVCs/VLCs and noted that policies continue to evolve to accommodate SVC/VLC representation.29 As one senior MCIO official testified:

In regards to special victim counsel, we consider the introduction of the special victim counsel to still be a work in progress in some respects. The agents have been provided extensive guidance on how to work with the SVC. The agent has the responsibility of notifying the victim of their right to an SVC representation. The victim’s SVC is allowed to be present during the interviews. The requirement to notify the SVC prior to interviewing the victim along with the SVC’s primary duty to best represent their client’s interests have on occasion been problematic.30

Another senior MCIO official suggested that trends in his organization are similar, explaining:

The special victim counsel program has come a long way since its inception. . . . The advent of this service has had an impact on our investigations. The coordination required to ensure all victim service personnel can attend interviews oftentimes delays the interview process. Collateral misconduct in service can impact victim disclosure and evidence collection. In some instances the victim has elected not to meet with NCIS at all which negates our ability to explain the investigative process and ensure the victim is making a fully informed decision as to their level of participation. We have maintained positive relationships, engaged early and often, and in most instances can quickly address the issues.31

JPP presenters also acknowledged that it is difficult to assess the impact of these delays on the overall quality of the investigation, and that these issues have become less pronounced over time.32

29 Transcript of JPP Public Meeting 220–21 (April 8, 2016) (testimony of Mr. Jeremy Gauthier, U.S. Navy, Deputy Assistant Director, Criminal Investigations and Operations Directorate, NCIS Headquarters). Id. at 225–27 (testimony of Mr. Kevin Poorman, U.S. Air Force, Associate Director, Criminal Headquarters, Air Force Office of Special Investigations).

30 Id. at 215 (testimony of Mr. Guy Surian, U.S. Army, Deputy Chief of Investigative Operations, Investigative Policy and Criminal Intelligence, U.S. Army Criminal Investigation Command (CID)).

31 Id. at 220–21 (testimony of Mr. Jeremy Gauthier, U.S. Navy, Deputy Assistant Director, Criminal Investigations and Operations Directorate, NCIS Headquarters).

32 Id. at 257–58.
3. **RSP Findings and Recommendations in 2014.**

In its June 2014 report the RSP made the following recommendation, which Congress enacted in part in the National Defense Authorization Act for Fiscal Year 2016 (FY16 NDAA):

**RSP Recommendation 62:** The Secretary of Defense develop and implement policy that, when information comes to military police about an instance of sexual assault by whatever means, the first step in an investigation is to advise the victim that she or he has the right to speak with a special victim counsel before determining whether to file a restricted or unrestricted report, or no report at all.

The FY16 NDAA specifically requires that MCIO agents advise victims of their right to an SVC or VLC before the initial interview. Congress did not adopt the portion of RSP Recommendation 62 regarding victims’ being advised of the right to a SVC/VLC prior to their electing to file an unrestricted or restricted report. MCIOs ensure that investigators speak to a victim only with his or her attorney present, subject to exceptions for exigent circumstances.

In addition to reviewing how MCIOs safeguard victims’ rights and interests in the investigative process, the RSP examined the thoroughness of sexual assault investigations. On this subject, the RSP heard testimony in 2013 and 2014 from prosecutors who voiced concerns similar to those raised during the JPP Subcommittee’s site visits in 2016 about the premature closing of sexual assault investigations. The RSP noted the disagreements between trial counsel and MCIOs, stating:

According to MCIO agents, investigators complete thorough investigations, following all logical leads prior to reaching any conclusions. Military prosecutors, however, provided mixed reviews of the quality of MCIO investigations and often felt additional investigation was necessary. Military prosecutors also conveyed that investigations are considered closed when they are passed to the commander for review and that it is difficult to “reopen” cases for further investigation.

On the basis of this information, the RSP recommended the following:

**Recommendation 94-A.** The Secretary of Defense should direct MCIOs to standardize their procedures to require that MCIO investigators coordinate with the trial counsel to review all of the evidence, and to annotate in the case file that the trial counsel agrees all appropriate investigation has taken place before providing a report to the appropriate commander for a disposition decision. Neither the trial counsel, nor the investigator, should be permitted to make a dispositive opinion whether probable cause exists.

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34 RSP Report at 32.


36 RSP Report at 123.

37 RSP Report at 42.
Recommendation 94-B. To ensure investigators continue to remain responsive to investigative requests after the commander receives the case file, the MCIO commanders and directors should continue to ensure investigators are trained that all sexual assault cases remain open for further investigation until final disposition of the case.\textsuperscript{38}

DoD did not adopt these recommendations, but they have been referred to various working groups within the military Services. At present, MCIOs have to include in each investigative report the commander’s decision whether probable cause exists to believe an offense was committed, as well as the appropriate disposition for the case—and to include this information, they must either leave open or reopen cases.

Finally, the RSP’s Comparative Systems Subcommittee (CSS) examined processing times at military and civilian crime lab facilities. The military’s primary laboratory, the Defense Forensic Science Center (formerly the U.S. Army Criminal Investigation Laboratory), located in Forest Park, Georgia, informed the CSS that in 2014, the turnaround time for a laboratory request—the time from when the lab receives the evidence until the lab completes its analysis and sends a report to the requesting agent—was 77 days.\textsuperscript{39} Witnesses noted that this time frame is dependent on several factors, such as lab resources, current caseload, and the amount of evidence to be examined in response to a request.\textsuperscript{40} The JPP Subcommittee did not seek specific, updated information from military lab facilities to supplement the RSP and site visit information.

C. Subcommittee Assessment and Recommendations

In the wake of Congress’s emphasis on sexual assault cases, DoD and the MCIOs have written numerous policies designed to enhance the quality of sexual assault investigations. Unfortunately, most MCIO-specific policies are not publicly available, owing to the sensitive nature of investigative methods. However, the Subcommittee repeatedly received comments during site visits to the effect that investigators today have reduced access to evidence and to victims but are responsible for investigating a broader spectrum of misconduct than ever before. Their investigations also carry more administrative burdens, such as duplicative reports and forms, but contain less evidence, owing in part to their own internal policies and practices regarding victim interviews. Because of the strain on investigative resources, and for all of the reasons stated above, some investigators resist undertaking or are simply unable to do the additional investigative work needed to fully prepare a case for prosecution.

Further complicating the completion of a thorough investigation is a method of SVC/VLC advocacy that restricts the information that investigators and prosecutors can gather from victims. Investigators are likely to be the second or third person victims speak with about the offense, and they can talk only in the presence of the victim’s attorney, who may limit the breadth of the inquiry or advise victims not to speak with investigators more than once. A victim’s decision to act on the advice of his or her counsel is not inherently problematic. Rather, the problems occur when, on the advice of counsel or on their own, victims limit their participation and fail to provide investigators with evidence relevant to the investigation. Even when the SVC/VLC provides the investigator’s question to the victim and communicates the response back to the investigator, the investigator loses valuable information because

\textsuperscript{38} Id.


\textsuperscript{40} Id.
he or she is unable to personally observe a victim’s demeanor or reaction to an investigator’s question. Moreover, investigators may not fully comprehend, or may have additional questions based on the written or verbal responses of an SVC/VLC who does not allow the victim to be questioned directly after the initial interview. Denying follow-up interviews therefore prevents investigators from fully exploring and understanding what could potentially become very important issues in a case.

When a victim either declines subsequent investigative interviews, or refuses to turn over relevant evidence—such as photographs, text messages, or social media information contained on the victim’s cell phone—investigators and prosecutors make decisions about investigating and charging without possessing all available evidence. There is a general sense among the investigators and prosecutors interviewed at the site visits that they must press forward without a victim’s full cooperation, an approach that raises concerns about not just the fairness of an investigation, but also the overall fairness of a prosecution.

The Subcommittee heard a number of reasons why victims might not cooperate with requests for evidence from the victim’s cell phone, from concerns they would not have access to their phones for extended periods of time to concerns about the privacy of information in their phones not related to their case. However, the Subcommittee heard from the investigators and others that these kinds of concerns are somewhat misguided as the technology for imaging and searching cell phones has advanced to the point that both the time it takes to image a phone and the intrusion into irrelevant information have been minimized or altogether eliminated.41

Case delays take many forms, and waiting on forensic laboratory analysis was one raised by investigators and prosecutors alike during the site visits. Forensic evidence such as DNA testing and digital device examination can yield critical information, particularly in sexual assault cases, and can further guide MCIOs’ investigation as well as a prosecutor’s charging decisions. The Subcommittee cautions that while labs may prioritize cases pending court-martial, prosecutors should not prefer charges in order to prioritize a case for laboratory testing if the evidence already available does not support such a decision.

Recommendation 2: Ensure prompt initial victim interviews. It is critical that the initial interview of the victim by MCIOs or other law enforcement agencies be conducted promptly after MCIOs receive a report of sexual assault. Yet the Subcommittee heard frequent complaints that the MCIOs’ initial interviews were being substantially delayed, often because special victims’ counsel or victims’ legal counsel were unavailable to attend the interview.

The Subcommittee recommends that the Secretary of Defense take the necessary steps to ensure that special victims’ counsel and victims’ legal counsel (1) have the resources to schedule and attend the initial victim interview promptly after a report of sexual assault and (2) receive the training necessary to recognize the importance of a prompt victim interview by the MCIO to an effective and just prosecution.

41 See Service Responses to JPP Request for Information Set 9, Question 162 (Dec. 30, 2016). Options include requesting that the victim provide only limited consent for specific items of evidence such as photos, text messages, call logs, or app data. MCIOs can photograph text messages or make a forensic copy of select information before returning the phone to the victim. RFI responses also indicated that the MCIOs possess the expertise and technology to perform data extraction on-site using Cellebrite technology. Only if further data extraction is needed will the MCIO send the cell phone to the Defense Computer Forensic Laboratory for examination.

This report is prepared by the JPP Subcommittee, and the observations and recommendations herein are those of the Subcommittee. The contents of the Subcommittee report have not yet been considered or deliberated on by members of the JPP.
Recommendation 3: Remove impediments to thorough victim interviews. The Subcommittee heard complaints from all MCIO special agents interviewed that various impediments prevented or discouraged them from conducting victim interviews that were as thorough as they consider necessary. Specifically, they felt procedures and policies discouraged or prohibited investigators from asking any question that could be perceived as “confrontational” during either the initial or the follow-up interview even when, in their professional judgment, such questions were vital to address conflicting statements given by the victim or other evidence contradicting the victim’s account. They also felt investigations were impeded by policies and procedures that discouraged them from conducting follow-up interviews. The Subcommittee accordingly recommends that the Secretary of Defense identify and remove these and any other identified barriers to thorough questioning of the victim by MCIOs or other law enforcement agencies.

Recommendation 4: Examine and remove impediments to MCIO access to tangible evidence. The Subcommittee heard numerous complaints that investigators have difficulties obtaining evidence from the victim, particularly information on cellular phones or other digital devices. Investigators said the reasons that victims and/or their attorneys gave for not turning over cellular and digital devices included the financial loss to the victim when investigators retain the phone for forensic analysis and privacy concerns over the vast amount of personal information typically contained on a smartphone. These concerns, while legitimate, can be minimized or eliminated by modern forensic techniques for imaging and searching digital devices. Therefore, the Subcommittee recommends that the Secretary of Defense examine these problems and develop appropriate remedies that address victims’ legitimate concerns and ensure that sexual assault investigations are complete and thorough.

Recommendation 5: Reduce delays at forensic laboratories. The Subcommittee heard complaints from MCIOs and prosecutors that the length of time it takes to obtain results from forensic laboratories’ testing of evidence impedes the timely completion of sexual assault investigations. Therefore, the Subcommittee recommends that the Secretary of Defense review the resources, staffing, procedures, and policies at forensic laboratories within the Department of Defense to ensure more expeditious testing of evidence by forensic laboratories.
## Installation Site Visits Attended by Members of the JPP Subcommittee

<table>
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<tr>
<th>Dates</th>
<th>Installations Represented</th>
<th>Subcommittee Members</th>
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<tbody>
<tr>
<td>July 11–12, 2016</td>
<td>Naval Station Norfolk, VA&lt;sup&gt;49&lt;/sup&gt;</td>
<td>Hon. Elizabeth Holtzman</td>
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<td></td>
<td>Joint Base Langley-Eustis, VA</td>
<td>Dean Lisa Schenck</td>
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<td>BGen (R) James Schwenk</td>
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<td>July 27–28, 2016</td>
<td>Fort Carson, CO</td>
<td>Ms. Lisa Friel</td>
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<td>Peterson Air Force Base, CO</td>
<td>Ms. Laurie Kepros</td>
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<td>Schriever Air Force Base, CO</td>
<td>Professor Lee Schinasi</td>
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<td>U.S. Air Force Academy, CO</td>
<td>Ms. Jill Wine-Banks</td>
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<td>August 1–2, 2016</td>
<td>Fort Bragg, NC</td>
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<td>Camp Lejeune, NC</td>
<td>Professor Lee Schinasi</td>
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<td>BGen (R) James Schwenk</td>
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<tr>
<td>August 8–9, 2016</td>
<td>Naval Station San Diego, CA</td>
<td>Hon. Barbara Jones</td>
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<td>Marine Corps Recruiting Depot San Diego, CA</td>
<td>Ms. Laurie Kepros</td>
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<td>Marine Corps Air Station Miramar, CA</td>
<td>Ms. Jill Wine-Banks</td>
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<tr>
<td>August 22–23, 2016</td>
<td>Marine Corps Base Quantico, VA</td>
<td>Dean Lisa Schenck</td>
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<td>Joint Base Andrews, MD</td>
<td>BGen (R) James Schwenk</td>
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<td></td>
<td>U.S. Naval Academy, MD</td>
<td>Ms. Jill Wine-Banks</td>
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<tr>
<td>September 12–14, 2016</td>
<td>Osan Air Base, South Korea</td>
<td>Hon. Elizabeth Holtzman</td>
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<td>Camp Humphreys, South Korea</td>
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<td>Yokota Air Base, Japan</td>
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<sup>42</sup> Installations in bold type are the actual meeting locations for the site visits.

This report is prepared by the JPP Subcommittee, and the observations and recommendations herein are those of the Subcommittee. The contents of the Subcommittee report have not yet been considered or deliberated on by members of the JPP.
REPORT ON SEXUAL ASSAULT INVESTIGATIONS IN THE MILITARY
APPENDIX B: Judicial Proceedings Panel
Authorizing Statutes and Charter

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2013

SECTION 576. INDEPENDENT REVIEWS AND ASSESSMENTS OF UNIFORM CODE OF MILITARY JUSTICE AND JUDICIAL PROCEEDINGS OF SEXUAL ASSAULT CASES.

(a) INDEPENDENT REVIEWS AND ASSESSMENTS REQUIRED.—

(2) JUDICIAL PROCEEDINGS SINCE FISCAL YEAR 2012 AMENDMENTS.—The Secretary of Defense shall establish a panel to conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice involving adult sexual assault and related offenses since the amendments made to the Uniform Code of Military Justice by section 541 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1404) for the purpose of developing recommendations for improvements to such proceedings.

(b) ESTABLISHMENT OF INDEPENDENT REVIEW PANELS.

(1) COMPOSITION.

(B) JUDICIAL PROCEEDINGS PANEL.—The panel required by subsection (a)(2) shall be appointed by the Secretary of Defense and consist of five members, two of whom must have also served on the panel established under subsection (a)(1).

(2) QUALIFICATIONS.—The members of each panel shall be selected from among private United States citizens who collectively possess expertise in military law, civilian law, the investigation, prosecution, and adjudication of sexual assaults in State and Federal criminal courts, victim advocacy, treatment for victims, military justice, the organization and missions of the Armed Forces, and offenses relating to rape, sexual assault, and other adult sexual assault crimes.

(3) CHAIR.—The chair of each panel shall be appointed by the Secretary of Defense from among the members of the panel.

(4) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the panel. Any vacancy in a panel shall be filled in the same manner as the original appointment.

(5) DEADLINE FOR APPOINTMENTS.—

(B) JUDICIAL PROCEEDINGS PANEL.—All original appointments to the panel required by subsection (a)(2) shall be made before the termination date of the panel established under subsection (a)(1), but no later than 30 days before the termination date.

(6) MEETINGS.—A panel shall meet at the call of the chair.
(7) FIRST MEETING.—The chair shall call the first meeting of a panel not later than 60 days after the date of the appointment of all the members of the panel.

(c) REPORTS AND DURATION.—

(2) JUDICIAL PROCEEDINGS PANEL.—

(A) FIRST REPORT.—The panel established under subsection (a)(2) shall submit a first report, including any proposals for legislative or administrative changes the panel considers appropriate, to the Secretary of Defense and the Committees on Armed Services of the Senate and the House of Representatives not later than 180 days after the first meeting of the panel.

(B) SUBSEQUENT REPORTS.—The panel established under subsection (a)(2) shall submit subsequent reports during fiscal years 2014 through 2017.

(C) TERMINATION.—The panel established under subsection (a)(2) shall terminate on September 30, 2017.

(d) DUTIES OF PANELS.—

(2) JUDICIAL PROCEEDINGS PANEL.—The panel required by subsection (a)(2) shall perform the following duties:

(A) Assess and make recommendations for improvements in the implementation of the reforms to the offenses relating to rape, sexual assault, and other sexual misconduct under the Uniform Code of Military Justice that were enacted by section 541 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1404).

(B) Review and evaluate current trends in response to sexual assault crimes whether by courts-martial proceedings, non-judicial punishment and administrative actions, including the number of punishments by type, and the consistency and appropriateness of the decisions, punishments, and administrative actions based on the facts of individual cases.

(C) Identify any trends in punishments rendered by military courts, including general, special, and summary courts-martial, in response to sexual assault, including the number of punishments by type, and the consistency of the punishments, based on the facts of each case compared with the punishments rendered by Federal and State criminal courts.

(D) Review and evaluate court-martial convictions for sexual assault in the year covered by the most-recent report required by subsection (c)(2) and the number and description of instances when punishments were reduced or set aside upon appeal and the instances in which the defendant appealed following a plea agreement, if such information is available.

(E) Review and assess those instances in which prior sexual conduct of the alleged victim was considered in a proceeding under section 832 of title 10, United States Code (article 32 of the Uniform Code of Military Justice), and any instances in which prior sexual conduct was determined to be inadmissible.
(F) Review and assess those instances in which evidence of prior sexual conduct of the alleged victim was introduced by the defense in a court-martial and what impact that evidence had on the case.

(G) Building on the data compiled as a result of paragraph (1)(D), assess the trends in the training and experience levels of military defense and trial counsel in adult sexual assault cases and the impact of those trends in the prosecution and adjudication of such cases.

(H) Monitor trends in the development, utilization and effectiveness of the special victims capabilities required by section 573 of this Act.

(I) Monitor the implementation of the April 20, 2012, Secretary of Defense policy memorandum regarding withholding initial disposition authority under the Uniform Code of Military Justice in certain sexual assault cases.

(J) Consider such other matters and materials as the panel considers appropriate for purposes of the reports.

(3) UTILIZATION OF OTHER STUDIES.—In conducting reviews and assessments and preparing reports, a panel may review, and incorporate as appropriate, the data and findings of applicable ongoing and completed studies.

(e) AUTHORITY OF PANELS.—

(1) HEARINGS.—A panel may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the panel considers appropriate to carry out its duties under this section.

(2) INFORMATION FROM FEDERAL AGENCIES.—Upon request by the chair of a panel, a department or agency of the Federal Government shall provide information that the panel considers necessary to carry out its duties under this section.

(f) PERSONNEL MATTERS.—

(1) PAY OF MEMBERS.—Members of a panel shall serve without pay by reason of their work on the panel.

(2) TRAVEL EXPENSES.—The members of a panel shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance or services for the panel.

(3) STAFFING AND RESOURCES.—The Secretary of Defense shall provide staffing and resources to support the panels, except that the Secretary may not assign primary responsibility for such staffing and resources to the Sexual Assault Prevention and Response Office.
SEC. 1731. INDEPENDENT REVIEWS AND ASSESSMENTS OF UNIFORM CODE OF MILITARY JUSTICE AND JUDICIAL PROCEEDINGS OF SEXUAL ASSAULT CASES.

(b) ADDITIONAL DUTIES FOR JUDICIAL PROCEEDINGS PANEL.—

(1) ADDITIONAL ASSESSMENTS SPECIFIED.—The independent panel established by the Secretary of Defense under subsection (a)(2) of section 576 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1758), known as the “judicial proceedings panel”, shall conduct the following:

(A) An assessment of the likely consequences of amending the definition of rape and sexual assault under section 920 of title 10, United States Code (article 120 of the Uniform Code of Military Justice), to expressly cover a situation in which a person subject to chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), commits a sexual act upon another person by abusing one’s position in the chain of command of the other person to gain access to or coerce the other person.

(B) An assessment of the implementation and effect of section 1044e of title 10, United States Code, as added by section 1716, and make such recommendations for modification of such section 1044e as the judicial proceedings panel considers appropriate.

(C) An assessment of the implementation and effect of the mandatory minimum sentences established by section 856(b) of title 10, United States Code (article 56(b) of the Uniform Code of Military Justice), as added by section 1705, and the appropriateness of statutorily mandated minimum sentencing provisions for additional offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).

(D) An assessment of the adequacy of the provision of compensation and restitution for victims of offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), and develop recommendations on expanding such compensation and restitution, including consideration of the options as follows:

(i) Providing the forfeited wages of incarcerated members of the Armed Forces to victims of offenses as compensation.

(ii) Including bodily harm among the injuries meriting compensation for redress under section 939 of title 10, United States Code (article 139 of the Uniform Code of Military Justice).

(iii) Requiring restitution by members of the Armed Forces to victims of their offenses upon the direction of a court-martial.

(2) SUBMISSION OF RESULTS.—The judicial proceedings panel shall include the results of the assessments required by paragraph (1) in one of the reports required by subsection (c)(2)(B) of section 576 of the National Defense Authorization Act for Fiscal Year 2013.
NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2015

SEC. 545. ADDITIONAL DUTIES FOR JUDICIAL PROCEEDINGS PANEL.

(a) ADDITIONAL DUTIES IMPOSED.—The independent panel established by the Secretary of Defense under section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1758), known as the ‘‘judicial proceedings panel’’, shall perform the following additional duties:

(1) Conduct a review and assessment regarding the impact of the use of any mental health records of the victim of an offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), by the accused during the preliminary hearing conducted under section 832 of such title (article 32 of the Uniform Code of Military Justice), and during court-martial proceedings, as compared to the use of similar records in civilian criminal legal proceedings.

(2) Conduct a review and assessment regarding the establishment of a privilege under the Military Rules of Evidence against the disclosure of communications between—

(A) users of and personnel staffing the Department of Defense Safe Helpline; and

(B) users of and personnel staffing of the 26 Department of Defense Safe Help Room.

(b) SUBMISSION OF RESULTS.—The judicial proceedings panel shall include the results of the reviews and assessments conducted under subsection (a) in one of the reports required by section 576(c)(2)(B) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1760).

SEC. 546. DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES

(f) DUE DATE FOR ANNUAL REPORT OF JUDICIAL PROCEEDINGS PANEL – Section 576(c)(2)(B) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 126 Stat. 1760) is amended by inserting ‘‘annually thereafter’’ after ‘‘reports’’. 
CHARTER
Judicial Proceedings Since Fiscal Year 2012 Amendments Panel

1. **Committee’s Official Designation:** The committee shall be known as the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (“the Judicial Proceedings Panel”).

2. **Authority:** The Secretary of Defense, as required by section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013 (“the FY 2013 NDAA”) (Public Law 112-239), as modified by section 1731(b) of the National Defense Authorization Act for Fiscal Year 2014 (“the FY 2014 NDAA”) (Public Law 113-66), and in accordance with the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C., Appendix, as amended) and 41 C.F.R. § 102-3.50(a), established the Judicial Proceedings Panel.

3. **Objectives and Scope of Activities:** The Judicial Proceedings Panel will conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice (UCMJ) involving adult sexual assault and related offenses since the amendments made to the UCMJ by section 541 of the National Defense Authorization Act for Fiscal Year 2012 (“the FY 2012 NDAA”) (Public Law 112-81) for the purpose of developing recommendations for improvements to such proceedings.

4. **Description of Duties:** Section 576(d)(2) directs the Judicial Proceedings Panel to perform the following duties, with additional duties as added by section 1731(b)(1) of the FY 2014 NDAA:
   a. Assess and make recommendations for improvements in the implementation of the reforms to the offenses relating to rape, sexual assault, and other sexual misconduct under the UCMJ that were enacted by section 541 of the FY 2012 NDAA.
   b. Review and evaluate current trends in response to sexual assault crimes whether by courts-martial proceedings, non-judicial punishment and administrative actions, including the number of punishments by type, and the consistency and appropriateness of the decisions, punishments, and administrative actions based on the facts of individual cases.
   c. Identify any trends in punishments rendered by military courts, including general, special, and summary courts-martial, in response to sexual assault, including the number of punishments by type, and the consistency of the punishments, based on the facts of each case compared with the punishments rendered by Federal and State criminal courts.
   d. Review and evaluate court-martial convictions for sexual assault in the year covered by the most-recent report of the Judicial Proceedings Panel and the number and description of instances when punishments were reduced or set aside upon appeal and the instances in which the defendant appealed following a plea agreement, if such information is available.
   e. Review and assess those instances in which prior sexual conduct of the alleged victim was considered in a proceeding under section 832 of title 10, United States Code (article 32 of the UCMJ), and any instances in which prior sexual conduct was determined to be inadmissible.
f. Review and assess those instances in which evidence of prior sexual conduct of the alleged victim was introduced by the defense in a court-martial and what impact that evidence had on the case.

g. Building on the data compiled as a result of the assessment conducted by the Response Systems to Adult Sexual Assault Crimes Panel (“the Response Systems Panel”), a Federal advisory committee established pursuant to section 576(a)(1) of the FY 2013 NDAA and in accordance with FACA, of the training level of military defense and trial counsel, assess the trends in the training and experience levels of military defense and trial counsel in adult sexual assault cases and the impact of those trends in the prosecution and adjudication of such cases.

h. Monitor trends in the development, utilization and effectiveness of the special victims capabilities required by Section 573 of the FY 2013 NDAA.

i. Monitor the implementation of the April 20, 2012, Secretary of Defense policy memorandum regarding withholding initial disposition authority under the UCMJ in certain sexual assault cases.

j. Assess the likely consequences of amending the definition of rape and sexual assault under section 920 of title 10, United States Code (article 120 of the UCMJ), to expressly cover a situation in which a person subject to the UCMJ commits a sexual act upon another person by abusing one’s position in the chain of command of the other person to gain access to or coerce the other person.

k. Assess the implementation and effect of the Special Victim’s Counsel for victims of sex-related offenses established by the Secretary of Defense on August 14, 2013 and codified in Section 1044e of title 10, United States Code, by the enactment of Section 1716 of the FY 2014 NDAA on December 26, 2013. The panel shall make such recommendations for modifications of section 1044e as the Judicial Proceedings Panel considers appropriate.

l. Assess the implementation and effect of the mandatory minimum sentences established by section 856(b) of title 10, United States Code (article 56(b) of the UCMJ), as added by section 1705 of the FY 2014 NDAA, which requires at a minimum, that upon a finding of guilt for the offenses of rape, sexual assault, rape and sexual assault of a child, forcible sodomy, and attempts to commit such acts, the punishment include dismissal or dishonorable discharge, except as provided for by Article 60 of the UCMJ, and the appropriateness of statutorily mandated minimum sentencing provisions for additional offenses under chapter 47 of title 10, United States Code (the UCMJ).

m. Assess the adequacy of the provision of compensation and restitution for victims of offenses under chapter 47 of title 10, United States Code (the UCMJ), and develop recommendations on expanding such compensation and restitution, including consideration of the options as follows:
   i. Providing the forfeited wages of incarcerated members of the Armed Forces to victims of offenses as compensation.
   ii. Including bodily harm among the injuries meriting compensation for redress under section 939 of title 10, United States Code (article 139 of the UCMJ).
CHARTER
Judicial Proceedings Since Fiscal Year 2012 Amendments Panel

iii. Requiring restitution by members of the Armed Forces to victims of their offenses upon the direction of a court-martial.

n. Consider such other matters and materials as the Judicial Proceedings Panel considers appropriate for purposes of the reports.

In conducting reviews and assessments and preparing reports, the Judicial Proceedings Panel may review, and incorporate as appropriate, the data and findings of applicable ongoing and completed studies. The Judicial Proceedings Panel may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as it considers appropriate to carry out its duties. Upon request by the Chair of the Judicial Proceedings Panel, a department or agency of the Federal Government shall provide information that the Judicial Proceedings Panel considers necessary to carry out its duties.

5. Agency or Official to Whom the Committee Reports: The Judicial Proceedings Panel shall provide its first report, including any proposals for legislative or administrative changes it considers appropriate, to the Secretary of Defense through the Department of Defense (DoD) General Counsel (GC), and the Committees on Armed Services of the Senate and the House of Representatives, not later than 180 days after its first meeting. The Judicial Proceedings Panel shall submit subsequent reports during fiscal years 2014 through 2017.

6. Support: The DoD, through the DoD Office of General Counsel (DoD OGC), the Washington Headquarters Services, and the Office of the Under Secretary of Defense for Personnel and Readiness, shall provide staffing and resources as deemed necessary for the performance of the Judicial Proceedings Panel’s functions, and shall ensure compliance with the requirements of the FACA, the Government in the Sunshine Act of 1976 (“the Sunshine Act”) (5 U.S.C. § 552b, as amended), governing federal statutes and regulations, and established DoD policies and procedures. Primary responsibility for such staffing and resourcing may not be assigned to the Sexual Assault Prevention and Response Office.

7. Estimated Annual Operating Costs and Staff Years: The estimated annual operating cost, to include travel, meetings, and contract support, is approximately $4,000,000 and 15 full-time equivalents.

8. Designated Federal Officer: The Designated Federal Officer (DFO), pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with governing DoD policies and procedures.

In addition, the Judicial Proceedings Panel’s DFO is required to be in attendance at all meetings of the Panel and its subcommittees for the entire duration of each and every meeting. However, in the absence of the DFO, the Alternate DFO, duly appointed to the Judicial Proceedings Panel according to DoD policies and procedures, shall attend the entire duration of the Judicial Proceedings Panel and any subcommittee meetings.
CHARTER
Judicial Proceedings Since Fiscal Year 2012 Amendments Panel

The DFO, or the Alternate DFO, shall approve all of the meetings of the Judicial Proceedings Panel as called by the Chair; shall call all meetings of its subcommittees, in coordination with the Chair; prepare and approve all meeting agendas for the Judicial Proceedings Panel and any subcommittees; and adjourn any meeting when the DFO or the Alternate DFO determines adjournment to be in the public’s interest or required by governing regulations or DoD policies and procedures.

9. **Estimated Number and Frequency of Meetings:** Consistent with sections 576(b)(6) and (7) of the FY 2013 NDAA, the Judicial Proceedings Panel shall meet at the call of the Chair, and the Chair shall call the first meeting of the Judicial Proceedings Panel not later than 60 days after the date of the appointment of all the members of the Judicial Proceedings Panel. The Judicial Proceedings Panel shall meet at a minimum once per year.

10. **Duration:** The Judicial Proceedings Panel shall remain in effect until terminated, as provided for and as required by section 576(c)(2)(C) of the FY 2013 NDAA; however, the charter is subject to renewal every two years.

11. **Termination:** According to section 576(c)(2)(C) of the FY 2013 NDAA, the Judicial Proceedings Panel shall terminate on September 30, 2017.

12. **Membership and Designation:** Pursuant to sections 576(b)(1)(B) and (b)(2), the Judicial Proceedings Panel shall be appointed by the Secretary of Defense and consist of five members, two of whom must have served on the Response Systems Panel.

The members shall be selected from among private United States citizens who collectively possess expertise in military law, civilian law, the investigation, prosecution, and adjudication of sexual assaults in State and Federal criminal courts, victim advocacy, treatment for victims, military justice, the organization and missions of the Armed Force, and offenses relating to rape, sexual assault, and other adult sexual assault crimes. The Chair shall be appointed by the Secretary of Defense from among the members of the Judicial Proceedings Panel.

Members shall be appointed for the life of the Judicial Proceedings Panel, subject to annual renewals. Any vacancy on the Judicial Proceedings Panel shall be filled in the same manner as the original appointment. Panel members shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as special government employee (SGE) members. With the exception of reimbursement of official travel and per diem, Judicial Proceedings Panel members shall serve without compensation.

The DoD GC, according to DoD policies and procedures, may select experts and consultants as subject matter experts under the authority of 5 U.S.C. § 3109 to advise the Judicial Proceedings Panel or its subcommittees; these individuals do not count toward the Judicial Proceedings Panel’s total membership nor do they have voting privileges. In addition, these subject matter experts shall not participate in any deliberations dealing with
CHARTER
Judicial Proceedings Since Fiscal Year 2012 Amendments Panel

the substantive matters before the Judicial Proceedings Panel or its subcommittees nor shall they participate in any voting.

13. **Subcommittees:** The Department, when necessary and consistent with the Judicial Proceedings Panel’s mission and DoD policies and procedures, may establish subcommittees, task groups, or working groups to support the Judicial Proceedings Panel. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the DoD GC.

These subcommittees shall not work independently of the Judicial Proceedings Panel and shall report all of their recommendations and advice to the Judicial Proceedings Panel for full deliberation and discussion. Subcommittees have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Judicial Proceedings Panel. No subcommittee or any of its members may update or report directly to the DoD or any Federal officers or employees.

The Secretary of Defense shall appoint subcommittee members even if the member in question is already a member of the Judicial Proceedings Panel. All subcommittee appointments shall be subject to annual renewal. Such individuals, if not full-time or part-time government personnel, shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as SGE members. Those individuals who are full-time or permanent part-time Federal employees shall be appointed pursuant to 41 C.F.R. § 102-3.130(a) as RGE members. Subcommittee members shall serve for the life of the subcommittee. With the exception of reimbursement of official travel and per diem, subcommittee members shall serve without compensation.

All subcommittees operate pursuant to the provisions of FACA, the Sunshine Act, governing Federal statutes and regulations, and established DoD policies and procedures.

14. **Recordkeeping:** The records of the Judicial Proceedings Panel and its subcommittees shall be handled according to section 2, General Records Schedule 26, and appropriate Department of Defense policies and procedures. These records shall be available for public inspection and copying, subject to the Freedom of Information Act of 1966 (5 U.S.C. § 552, as amended).

15. **Filing Date:** June 24, 2014
APPENDIX C: Judicial Proceedings Panel Committee and Subcommittee Member Biographies

JUDICIAL PROCEEDINGS PANEL MEMBERS

THE HONORABLE ELIZABETH HOLTZMAN — CHAIR OF THE JPP

Elizabeth Holtzman is counsel with the law firm Herrick, Feinstein LLP. Ms. Holtzman served for eight years as a U.S. representative (D-NY, 1973–81). While in office, she authored the Rape Privacy Act. She then served for eight years as District Attorney of Kings County, New York (Brooklyn), the fourth-largest DA’s office in the country, where she helped change rape laws, improve standards and methods for prosecution, and develop programs to train police and medical personnel. In 1989 Ms. Holtzman became the only woman ever elected Comptroller of New York City. Ms. Holtzman graduated from Radcliffe College, magna cum laude, and received her law degree from Harvard Law School.

THE HONORABLE BARBARA S. JONES

Barbara Jones is a partner at the law firm Bracewell, LLP. She served as a judge in the U.S. District Court for the Southern District of New York for 16 years and heard a wide range of cases relating to accounting and securities fraud, antitrust, fraud and corruption involving city contracts and federal loan programs, labor racketeering, and terrorism. Before being nominated to the bench in 1995, Judge Jones was the Chief Assistant to Robert M. Morgenthau, then the District Attorney of New York County (Manhattan). In that role she supervised community affairs, handled public information, and oversaw the work of the Homicide Investigation Unit. In addition to her judicial service, she spent more than two decades as a prosecutor. Judge Jones was a special attorney of the United States Department of Justice (DOJ) Organized Crime & Racketeering, Criminal Division, and the Manhattan Strike Force Against Organized Crime and Racketeering. Previously, Judge Jones served as an Assistant U.S. Attorney, as chief of the General Crimes Unit, and as chief of the Organized Crime Unit in the Southern District of New York.

MR. VICTOR STONE

Victor Stone represents crime victims at the Maryland Crime Victims Resource Center, Inc. Previously, Mr. Stone served as Special Counsel at the United States Department of Justice. He spent 40 years with the Department of Justice in numerous positions, including as Chief Counsel, FBI Foreign Terrorist Task Force, and as Assistant U.S. Attorney in Oregon and the District of Columbia. He has experience working on victims’ and prisoners’ rights, serving on committees that resulted in the enactment of the Crime Victims’ Rights Act and updates to the ABA Standards for Prisoner Rights. After graduating from Harvard Law School, he clerked on the United States Court of Appeals for the Ninth Circuit.
PROFESSOR THOMAS W. TAYLOR

Tom Taylor teaches graduate courses at Duke University’s Sanford School of Public Policy. Previously, he served as a decorated and distinguished Army officer, civil servant, and member of the Senior Executive Service. During a 27-year career in the Pentagon, he advised seven secretaries and seven Chiefs of Staff of the Army, and as the senior leader of the Army legal community he worked on a wide variety of operational, personnel, and intelligence issues. He graduated with high honors from Guilford College, Greensboro, N.C., and with honors from the University of North Carolina at Chapel Hill law school, where he was a Morehead Fellow, a member of the law review, and a member of the Order of the Coif.

VICE ADMIRAL PATRICIA A. TRACEY, U.S. NAVY (RETIRED)

Pat Tracey was most recently the Vice President of Homeland Security and Defense for Hewlett Packard Enterprise Services, U.S. Public Sector, developing dynamic strategies and providing support to various agencies including the U.S. Department of Homeland Security, U.S. Department of Justice, U.S. Department of State, and U.S. Department of Defense. She completed a distinguished 34-year naval career in 2004, retiring as a vice admiral and the most senior woman officer in the history of the U.S. Navy. As chief of the Navy’s $5 billion global education and training enterprise, Admiral Tracey led a successful revolution in training technology to improve the quality, access, effectiveness, and cost of Navy training. She graduated from the College of New Rochelle and the Naval Postgraduate School, with distinction, and completed a Fellowship with the Chief of Naval Operations’ Strategic Studies Group.
JUDICIAL PROCEEDINGS PANEL SUBCOMMITTEE MEMBERS

THE HONORABLE BARBARA S. JONES — CHAIR OF THE JPP SUBCOMMITTEE

Barbara Jones is a partner at the law firm Bracewell, LLP. She served as a judge in the U.S. District Court for the Southern District of New York for 16 years and heard a wide range of cases relating to accounting and securities fraud, antitrust, fraud and corruption involving city contracts and federal loan programs, labor racketeering, and terrorism. Before being nominated to the bench in 1995, Judge Jones was the Chief Assistant to Robert M. Morgenthau, then the District Attorney of New York County (Manhattan). In that role she supervised community affairs, handled public information, and oversaw the work of the Homicide Investigation Unit. In addition to her judicial service, she spent more than two decades as a prosecutor. Judge Jones was a special attorney of the United States Department of Justice (DOJ) Organized Crime & Racketeering, Criminal Division, and the Manhattan Strike Force Against Organized Crime and Racketeering. Previously, Judge Jones served as an Assistant U.S. Attorney, as chief of the General Crimes Unit, and as chief of the Organized Crime Unit in the Southern District of New York.

THE HONORABLE ELIZABETH HOLTZMAN — CHAIR OF THE JPP

Elizabeth Holtzman, who took office as the youngest woman ever elected to Congress, served in the House of Representatives from 1973 to 1981, representing New York’s 16th Congressional District. While in Congress, she served on the House Judiciary and Budget Committees and chaired the Immigration and Refugees Subcommittee. She co-founded the Congressional Women’s Caucus and was elected its first Democratic chair. She subsequently was elected Brooklyn District Attorney (where she pioneered new strategies for the prosecution of rape cases)—the only woman ever elected DA in New York City. She was then elected New York City Comptroller, the only woman ever to hold that position. Ms. Holtzman was appointed by President Bill Clinton to the Interagency Working Group (on declassifying secret Nazi war crimes files), and by Secretary Hagel to the Response Systems to Adult Sexual Assault Crimes Panel. She has also been appointed to the Department of Homeland Security Advisory Committee. Ms. Holtzman is a graduate of Harvard Law School and Harvard University’s Radcliffe College, magna cum laude. She practices law in New York City with the firm Herrick, Feinstein, LLP.
MS. LISA FRIEL

Lisa Friel is an internationally recognized expert on sexual assault. Ms. Friel has investigated and supervised complex cases involving sexual assault and harassment, human trafficking, workplace violence, child pornography, Internet predators, unlawful surveillance, theft, and fraud. Ms. Friel began her professional career at the New York County District Attorney’s Office, specializing in sexual assault cases. She was the Chief of the Sex Crimes Prosecution Unit for nearly a decade and the Deputy Chief for 11 years. Supervising more than 40 assistant district attorneys, support staff, and investigators, she typically managed 300 cases and investigations at any one time.

Ms. Friel has directed thousands of investigations into allegations of sexual assault and other misconduct and has trained hundreds of law enforcement personnel throughout the world. In October 2011, following a distinguished 28-year career as a Manhattan prosecutor, Ms. Friel joined T&M Protection Resources as Vice President of the Sexual Misconduct Consulting & Investigations division. Ms. Friel and her staff developed policies and procedures, provided training workshops, and conducted sensitive investigations into a myriad of issues, including sexual misconduct (both sexual assault and sexual harassment) and domestic violence. In September 2014, Ms. Friel was appointed as T&M’s Special Advisor to the NFL Commissioner, consulting on domestic violence, child abuse, and sexual assault within the National Football League. In April 2015, Ms. Friel accepted a permanent position with the NFL: an appointment by Commissioner Goodell as the NFL’s Special Counsel for Investigations, where she is responsible for all investigations related to possible violations of the NFL’s Personal Conduct Policy.

MS. LAURIE ROSE KEPROS

Laurie Rose Kepros is the Director of Sexual Litigation for the Colorado Office of the State Public Defender, where she trains and advises more than 700 lawyers and other staff statewide in their representation of adults and juveniles accused or convicted of sexual crimes. Ms. Kepros has personally represented thousands of criminal defendants, including many victims of sexual assault. She has tried and consulted on thousands of sexual offense cases across the state of Colorado. She has served on dozens of subcommittees of the Colorado Sex Offender Management Board and as a member of both the Sex Offense Task Force and the Sex Offense Working Group of the Sentencing Task Force of the Colorado Commission on Criminal and Juvenile Justice. Ms. Kepros was on the Board of Directors of the Colorado Criminal Defense Bar for 10 years and currently serves on the board of the CCDB’s sister policy organization, the Colorado Criminal Defense Institute. She is a member of the Association for the Treatment of Sexual Abusers and an adjunct professor at the University of Denver School of Law. She has repeatedly testified before the Colorado legislature as a subject matter expert in sexual crime law and as an expert witness in Colorado sex offense law in federal district court. In 2012, the CCDB awarded her the Gideon Award for upholding and preserving the principles captured by Gideon v. Wainwright.
DEAN LISA SCHENCK (COLONEL, U.S. ARMY, RETIRED)

Lisa Schenck became Associate Dean for Academic Affairs at the George Washington University Law School in 2009 after serving in the Army’s Judge Advocate General’s Corps for more than 25 years. She also has served as a judge, lawyer, and educator. While in the military, she was an appellate military judge on the U.S. Army Court of Criminal Appeals in 2002 and received the 2003 Judge Advocates Association Outstanding Career Armed Services Attorney Award (Army). In 2005, Dean Schenck was the first woman appointed as a Senior Judge on that court, where she served until she retired. In 2007, the Secretary of Defense also appointed her to serve concurrently as Associate Judge on the U.S. Court of Military Commission Review. After retiring from the military as a colonel in 2008, Dean Schenck served as Senior Advisor to the Defense Task Force on Sexual Assault in Military Services.

PROFESSOR LEE SCHINASI (COLONEL, U.S. ARMY, RETIRED)

Lee Schinasi began his legal career as a trial attorney for the Office of Economic Opportunity before starting a 23-year career in the Army’s Judge Advocate General’s Corps. His final assignment was as Dean of Academics and Vice Dean of the Army’s JAGC School. Professor Schinasi attended the resident Command and General Staff College and the resident Army War College. He has served as military legal advisor to the Army’s Chief of Staff for Intelligence and as Staff Judge Advocate of the 3rd Infantry Division (in Germany) and United States Army South (in Panama). Professor Schinasi is co-author of several books on evidence and litigation, including *The Military Rules of Evidence Manual*, *Military Evidentiary Foundations*, *The Florida Evidence Code Trial Book*, *Florida Evidentiary Foundations*, *Evidence in Florida*, *Emerging Problems under the Federal Rules of Evidence*, and *Lawyers Cooperative Practice Guide: Florida Evidence*. He received a bachelor’s degree in economics and a J.D. degree from the University of Toledo. Before joining the Barry Law faculty, Professor Schinasi taught at the University of Miami School of Law. He currently teaches evidence, torts, civil procedure, and national security law.
BRIGADIER GENERAL JAMES SCHWENK, U.S. MARINE CORPS (RETIRED)

James Schwenk retired from the Marine Corps in 2000 and from civil service in 2014, after 49 years of federal service. As a Marine Corps judge advocate, he served as a trial counsel, defense counsel, Deputy Staff Judge Advocate, Staff Judge Advocate, Special Assistant to the General Counsel of the Navy, Head of Operational Law Branch at Headquarters Marine Corps, Deputy Director of Legal and Legislative Policy for the Office of the Assistant Secretary of Defense for Force Management and Policy, Assistant Judge Advocate General of the Navy for Military Law, and Military Assistant to the DoD General Counsel. Upon retiring from active duty, BGen Schwenk served for 14 years in the Office of the General Counsel of the Department of Defense as Senior Associate Deputy General Counsel, specializing in personnel policy, military justice, and civil support. He was the principal legal advisor for the repeal of “don’t ask, don’t tell” and the provision of benefits to same-sex spouses of military personnel. In addition, he was the principal legal advisor to numerous DoD working groups in the area of military personnel policy, working extensively with the White House and Congress. BGen Schwenk attended the Washington College of Law, American University, earning his J.D. in 1977.

MS. JILL WINE-BANKS

Jill Wine-Banks has a background as a corporate executive in manufacturing and telecommunications and as an attorney and not-for-profit and government leader. Ms. Wine-Banks started her career at the Department of Justice prosecuting organized crime and labor racketeering cases and then played a crucial role as an assistant special prosecutor investigating and trying the Watergate obstruction of justice case. Ms. Wine-Banks also served as the General Counsel of the United States Army. In that position, Ms. Wine-Banks dealt with environmental, procurement, Panama Canal, intelligence, military justice, and political issues, including the integration of women into basic training and West Point. After leaving the Pentagon, she was a litigation partner at Jenner and Block, the Solicitor General and Deputy Attorney General of Illinois, and later the Executive Vice President and Chief Operating Officer of the American Bar Association, the world’s largest legal publisher and professional association with almost 400,000 members. That experience led to her becoming a senior corporate executive at Motorola and then Maytag, handling international business development, global operations, alliance creation and management, and government relations in Pakistan, China, Ukraine, Russia, France, Germany, Japan, and Singapore. Recently, Ms. Wine-Banks was head of career and technical education for the Chicago Public Schools and a business consultant. Ms. Wine-Banks is currently writing a book about her life and career, with a special focus on her experiences during Watergate.
APPENDIX D: Judicial Proceedings
Panel Staff Members and Designated Federal Officials

JUDICIAL PROCEEDINGS
PANEL STAFF

Captain Tammy P. Tideswell,
Judge Advocate General's Corps,
U.S. Navy, Staff Director

Lieutenant Colonel Patricia H. Lewis,
Judge Advocate General's Corps,
U.S. Army, Deputy Staff Director

Mr. Dale Trexler, Chief of Staff

Ms. Julie Carson, Attorney

Dr. Janice Chayt, Investigator

Dr. Alice Falk, Editor

Ms. Theresa Gallagher, Attorney

Ms. Nalini Gupta, Attorney

Ms. Amanda Hagy, Senior Paralegal

Ms. Laurel Prucha Moran,
Graphic Designer

Ms. Meghan Peters,
Attorney and Lead Report Writer

Ms. Stayce Rozell, Senior Paralegal

Ms. Terri A. Saunders, Attorney

Ms. Tiffany M. Williams,
Supervising Paralegal

DESIGNATED FEDERAL OFFICIALS

Ms. Maria Fried,
Associate Deputy General Counsel (Personnel
and Health Policy),
U.S. Department of Defense,
Designated Federal Official

Mr. William Sprance,
Associate Deputy General Counsel (Personnel
and Health Policy),
U.S. Department of Defense,
Alternate Designated Federal Official

Lieutenant Colonel Jacqueline M. Stingl,
Judge Advocate General's Corps,
U.S. Air Force, Associate Deputy General
Counsel (Personnel and Health Policy),
U.S. Department of Defense,
Alternate Designated Federal Official

Mr. Dwight Sullivan,
Senior Associate Deputy General Counsel
(Military Justice and Personnel Policy),
U.S. Department of Defense,
Alternate Designated Federal Official
## APPENDIX E: Presenters on Sexual Assault Investigations in the Military at Judicial Proceedings Panel Public and Subcommittee Meetings

<table>
<thead>
<tr>
<th>JUDICIAL PROCEEDINGS PANEL PUBLIC MEETINGS</th>
<th>PRESENTERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 8, 2016</td>
<td>• Mr. Guy Surian, U.S. Army, Deputy Chief of Investigative Operations, Investigative Policy and Criminal Intelligence</td>
</tr>
<tr>
<td>Public Meeting of the JPP</td>
<td>• Special Agent Jeremy Gauthier, U.S. Navy, Deputy Assistant Director, Criminal Investigations &amp; Operations Directorate, Naval Criminal Investigative Service Headquarters</td>
</tr>
<tr>
<td>Holiday Inn Arlington at Ballston</td>
<td>• Mr. Kevin Poorman, U.S. Air Force, Associate Director, Criminal Headquarters, Air Force Office of Special Investigations</td>
</tr>
<tr>
<td>Arlington, VA</td>
<td>• Ms. Beverly Vogel, Sex Crimes Program Manager, U.S. Coast Guard Investigative Service</td>
</tr>
<tr>
<td>February 24, 2017</td>
<td>• Ms. Lisa Friel, JPP Subcommittee Member</td>
</tr>
<tr>
<td>Public Meeting of the JPP</td>
<td>• Ms. Laurie Kepros, JPP Subcommittee Member</td>
</tr>
<tr>
<td>Holiday Inn Arlington at Ballston</td>
<td>• Ms. Jill Wine-Banks, JPP Subcommittee Member</td>
</tr>
<tr>
<td>Arlington, VA</td>
<td>• Dean Lisa Schenck, Colonel, U.S. Army, Retired, JPP Subcommittee Member</td>
</tr>
<tr>
<td>May 19, 2017</td>
<td>• Panel deliberations</td>
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<tr>
<td>Public Meeting of the JPP</td>
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<tr>
<td>Holiday Inn Arlington at Ballston</td>
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<tr>
<td>Arlington, VA</td>
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<tr>
<td><strong>JUDICIAL PROCEEDINGS PANEL PUBLIC MEETINGS</strong></td>
<td><strong>PRESENTERS</strong></td>
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</tr>
<tr>
<td>June 16, 2017</td>
<td>• Panel deliberations</td>
</tr>
<tr>
<td>Public Meeting of the JPP</td>
<td>One Liberty Center Arlington, VA</td>
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<tr>
<th><strong>JUDICIAL PROCEEDINGS PANEL SUBCOMMITTEE MEETINGS</strong></th>
<th><strong>PRESENTERS</strong></th>
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<tr>
<td>October 14, 2016</td>
<td>• JPP Subcommittee deliberations and review of draft report</td>
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<tr>
<td>JPP Subcommittee Meeting</td>
<td>One Liberty Center Arlington, VA</td>
</tr>
</tbody>
</table>

| December 8, 2016 | • JPP Subcommittee deliberations and review of draft report |
| JPP Subcommittee Meeting | Telephonic |
## JUDICIAL PROCEEDINGS PANEL SUBCOMMITTEE MEETINGS

<table>
<thead>
<tr>
<th>Date</th>
<th>Meeting Details</th>
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<tr>
<td>December 21, 2016</td>
<td>• JPP Subcommittee deliberations and review of draft report</td>
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<td>December 23, 2016</td>
<td>• JPP Subcommittee deliberations and review of draft report</td>
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<td>January 5, 2017</td>
<td>• Mr. Steven Knight, Department of Defense Office of Inspector General</td>
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<td></td>
<td>• JPP Subcommittee deliberations and review of draft report</td>
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<td>One Liberty Center</td>
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<td>January 24, 2017</td>
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<td>Telephonic</td>
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<tr>
<td>February 23, 2017</td>
<td>• JPP Subcommittee discussion on presentation of Subcommittee report to JPP</td>
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<td>JPP Subcommittee Meeting</td>
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<td></td>
<td>One Liberty Center</td>
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<td></td>
<td>Arlington, VA</td>
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<tr>
<td>Acronym</td>
<td>Definition</td>
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<tr>
<td>AFOSI</td>
<td>U.S. Air Force Office of Special Investigations</td>
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<tr>
<td>CID</td>
<td>U.S. Army Criminal Investigation Command (Division)</td>
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<tr>
<td>CSS</td>
<td>Comparative Systems Subcommittee of the Response Systems Panel</td>
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<tr>
<td>DoD</td>
<td>Department of Defense</td>
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<tr>
<td>DODIG</td>
<td>Department of Defense Office of Inspector General</td>
</tr>
<tr>
<td>FY</td>
<td>Fiscal Year</td>
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<tr>
<td>JPP</td>
<td>Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (Judicial Proceedings Panel)</td>
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<tr>
<td>LEA</td>
<td>law enforcement agency</td>
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<tr>
<td>MCIO</td>
<td>military criminal investigative organization</td>
</tr>
<tr>
<td>MCM</td>
<td>Manual for Courts-Martial</td>
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<tr>
<td>NCIS</td>
<td>Naval Criminal Investigative Service</td>
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<tr>
<td>NDAA</td>
<td>National Defense Authorization Act</td>
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<tr>
<td>RFI</td>
<td>request for information</td>
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<tr>
<td>RSP</td>
<td>Response Systems to Adult Sexual Assault Crimes Panel (Response Systems Panel)</td>
</tr>
<tr>
<td>SARC</td>
<td>sexual assault response coordinator</td>
</tr>
<tr>
<td>SJA</td>
<td>staff judge advocate</td>
</tr>
<tr>
<td>SVC</td>
<td>special victims’ counsel</td>
</tr>
<tr>
<td>SVIP</td>
<td>special victim investigation and prosecution capability</td>
</tr>
<tr>
<td>UCMJ</td>
<td>Uniform Code of Military Justice</td>
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<tr>
<td>VLC</td>
<td>victims’ legal counsel</td>
</tr>
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</table>
APPENDIX G: Sources Consulted

1. LEGISLATIVE SOURCES

a. Enacted Statutes

10 U.S.C. §§ 801-946 (Uniform Code of Military Justice)


2. RULES AND REGULATIONS

a. Executive Orders


b. Department of Defense Directives


c. Department of Defense Instructions

Dep’t of Def. Instruction 5505.18, Investigation of Adult Sexual Assault in the Department of Defense (March 22, 2017)

Dep’t of Def. Instruction 6495.02, Sexual Assault Prevention and Response (SAPR) Program Procedures (March 28, 2013) (Incorporating Change 2, Effective July 7, 2015)

3. MEETINGS

a. Public Meetings of the Judicial Proceedings Panel


4. OFFICIAL REPORTS


b. Reports of the Subcommittee of the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel


c. Department of Defense Reports


5. RESPONSES TO JUDICIAL PROCEEDINGS PANEL REQUESTS FOR INFORMATION

Department of Defense Office of Inspector General’s Response to JPP Request for Information 161 (December 28, 2016)

Army’s Response to JPP Request for Information 162 (December 29, 2016)

Navy and Marine Corps’ Combined Response to JPP Request for Information 162 (January 4, 2017)

Air Force’s Response to JPP Request for Information 162 (December 30, 2016)

Coast Guard’s Response to JPP Request for Information 162 (January 3, 2017)

6. MEMORANDA

U.S. Dep’t of Def., Memorandum from the Secretary of Defense on Implementation of the Recommendations of the Response Systems to Adult Sexual Assault Crimes Panel (December 15, 2014)