

*Measuring Justice*  
**United States Court of Appeals for the Armed Forces**  
**2014 Continuing Legal Education**  
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1. How do we use hard data to prove efficacy and that justice is being delivered?
  - a. Benefits: High quality research offers us the ability to understand, evaluate and improve the delivery of justice in our legal system.
  - b. Recent empirical studies in legal representation
    - i. Greiner & Pattanyak
    - ii. Randomized control trials in legal contexts
    - iii. Ways in which empirical studies can inform systems change
  
2. Military Justice: A call for accountability
  - a. Example:: Dealing with sexual assault in the military.
    - i. Facts: In 2012, there were 26,000 anonymous reports of sexual assault. 3,300 identified service members made reports. 1,714 of these cases were identified as qualified for possible disciplinary action, only 594 went to courts-martial.
  
  - b. The unique position of the military to generate data:
    - i. In the Sexual Assault Prevention and Response Office (SAPRO) annual report, the Department of Defense acknowledged the unique position of the military to collect data and create evidence-based solutions:

“Few organizations in the world have the ability to develop evidence-based curricula, train millions of people, invest substantial resources, and measure outcomes over time. The U.S. Armed Forces has this capability and leverages it to develop, implement, evaluate, and revise their comprehensive prevention approach. The Department believes that these capabilities will ultimately allow it to model effective solutions for the nation.”
    - ii. In October 2013, DOD completed a case-level incident data base authorized by Congress in 2009.
    - iii. The 2013 National Defense Authorization Act (NDAA) required the Secretary of Defense to establish an independent panel to conduct an assessment of UCMJ judicial proceedings that involve sexual assault and related offenses. The panel was to

develop potential improvements in sentencing guidelines, punishment or administrative actions taken in response, overview of court-martial convictions of sexual assault, description of cases where the charges have been reduced upon appeal or plea agreement, the number of cases in which the previous conduct of the victim was admissible or had an impact on the case, and the training level of the judge advocate general.

1. Experts on the panel were asked to determine what data should be collected and analyzed.
- iv. The 2014 NDAA requires the panel to assess
    1. Whether removing the convening authority from commanders would affect reporting and prosecution of sexual assaults
    2. Whether the role of Special Victim's Counsel should be expanded to include legal standing in a sexual assault proceeding
    3. Whether it is feasible to extend certain civilian victim's rights to Uniform Code of Military Justice
    4. How a database of offender information from restricted reports could be compiled
    5. A study of clemency
    6. Whether the Department of Defense should promulgate a formal statement of the rights and responsibilities of service members with regard to sexual assault.
- c. Identified benefits of data-driven research on sexual assault in the military
    - i. Permits evidence-based systems to be put in place to improve the delivery of justice
    - ii. Can educate the military and the public about sexual assault in the military both in numbers and how it is handled
    - iii. Creates greater transparency generally and therefore more accountability
    - iv. Can help uncover hard to get data such as the number of male victims, thought to be as high as 7%, or whether alleged perpetrators generally outrank their victims or whether the military is prosecuting cases even when the civilian courts decline
    - v. Helps create a credible and objective justice system
3. The challenges of measuring access to justice
    - a. What constitutes "effectiveness?"
    - b. The challenge of evaluation

c. Measuring the unquantifiable

4. Conclusion: The way forward