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1 RESPONSE SYSTEMS TO ADULT
2 SEXUAL ASSAULT CRIMES PANEL
3 - - -
4 MEETING OF THE
5 ROLE OF THE COMMANDER SUBCOMMITTEE
6
7 Wednesday, November 20, 2013
8 Suite 150
9 875 N. Randolph Street
10 Arlington, Virginia 22203
11
12 The meeting was convened at 9:12 a.m.,
13 HON. JUDGE BARBARA JONES, Chair, presiding.
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1 SUBCOMMITTEE MEMBERS PRESENT:
2 HON. JUDGE BARBARA JONES, Chair, presiding
3 HON. ELIZABETH HOLTZMAN
4 GENERAL (R) CARTER HAM
5 VICE ADMIRAL (R) JAMES HOUCK (by telephone)
6 MAJOR GENERAL (R) JOHN ALTENBURG
7 COLONEL LISA TURNER
8 JOYE FROST
9
10 ALSO PRESENT:
11 COLONEL PATRICIA HAM, Staff Director
12 MARIA FRIED, Esq., Designated Federal Official
13 LT. COLONEL KYLE GREEN, Supervising Attorney
14 SHANNON GREEN, Legislative Analyst
15 MAJOR RANAE DOSER-PASCUAL, Attorney
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1 P R O C E E D I N G S
2 (9:12 a.m.)
3 CHAIRWOMAN JONES: All right, Maria. Go
4 ahead.
5 MS. FRIED: The meeting is open. Thank
6 you.
7 PROPOSED MJIA AMENDMENT TO FY14 NDAA
8 [Professor Eugene Fidell participates in
9 the following conversation by telephone. The
10 connection is not perfect and sometimes his words
11 are dropped.]
12 CHAIRWOMAN JONES: Good morning,
13 Professor Fidell. This is Barbara Jones. Thanks
14 for --
15 PROFESSOR FIDELL: Good morning, Judge.
16 CHAIRWOMAN JONES: Thanks for being
17 willing to talk to us from Chile. I'm impressed.
18 A quick question. We just received
19 amendments to Senator Gillibrand's bill. Do you
20 have those?
21 PROFESSOR FIDELL: I think I do. I got
22 an email of what I was told was being introduced, I


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1 think yesterday. So I think I have in front of me
2 what you have, although really it's your call as to
3 what you want to discuss. You may feel that you
4 need some time to study those before having a
5 conversation about them. But it's your call.
6 CHAIRWOMAN JONES: All right. Did you
7 want to start with a presentation or just take
8 questions?
9 PROFESSOR FIDELL: I'm most anxious to
10 take questions. I'll just say this. I was quite
11 flattered that Senator Gillibrand, whom I have never
12 met, thought that I should be involved in this
13 discussion. I will say that I've consulted with her
14 staff as this process has unfolded. I will also say
15 I have no pride of authorship and I have tried to
16 maintain my own independence stance on these
17 matters.
18 But if I can be of help, I'm happy to be
19 of help. I'm actually very gratified as a private
20 citizen to be part of the conversation.
21 There's only one other thing I would say
22 that occurred to me specifically. I have see a


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1 letter, a "Dear Colleague" letter that a number of
2 Senators have circulated, headed by Senator
3 McCaskill and Senator Ayotte and I think Senator
4 Levin, that (dropped words?) without elaboration to
5 constitutional issues.
6 And apparently there were attachments,
7 one or more attachments to that letter. I haven't
8 seen the attachments, so I'm somewhat at a
9 disadvantage. But I will make this observation. If
10 I were to look in the annals of federal law
11 generally, I would be hard pressed to find an area
12 where Congress is entitled to and has traditionally
13 received greater deference from the courts than the
14 military area. The cases are legion on this.
15 I don't know of any provision in the
16 measure that Senator Gillibrand has sponsored that
17 comes close to being a (dropped words?) plausible
18 constitutional issue. That was the only preliminary
19 comment that occurred to me.
20 CHAIRWOMAN JONES: I don't know if anyone
21 else on the subcommittee has seen that letter. So I
22 don't think we've been provided with it. But thank


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1 you for those comments.
2 All right. Then I think we should try to
3 open this up for questions. I think one of the
4 areas of concern, if I can just start off here, was
5 the notion that one office, not the disposition, but
6 the convening authority, would designate the defense
7 lawyers, the prosecutors, the judges, and the
8 members of the courts-martial panel. I don't know
9 whether that's been clarified in the amendments or
10 not, but can you speak to that?
11 PROFESSOR FIDELL: Yes. It's clear that
12 over time the military justice system has tried to
13 get those other functionaries, those players in the
14 system, in an independent mode. Judges, for
15 example, are as a practical matter designated by the
16 chief judge of the trial judiciary of each service.
17 Each service has its own trial judiciary.
18 I'm told that prosecutors are typically
19 designated by the command or someone working for the
20 command. For example, in the Marine Corps I think
21 it's the commander of what they call the LSSS.
22 There are acronyms for everything, as I'm sure


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1 you're all deeply aware by now. But the Legal
2 Services Support Section I think is what the Marine
3 Corps uses. I think they basically work for the
4 commander or work for somebody who works for the
5 commander.
6 The defense shops in the services have
7 evolved in a way that is substantially independent.
8 Once upon a time it wasn't that way. The commander
9 would simply pick a lawyer in the staff judge
10 advocate shop and that person would be the defense
11 counsel. Somebody else would be the trial counsel.
12 So I think the systems have moved towards
13 independent arrangements. I don't see any reason
14 why through the Manual for Courts-Martial a person
15 with very broad power with similar assurance
16 couldn't be provided.
17 In fact, let me add, by the way. I'm not
18 a legislative maven, so things like technical
19 amendments, which just as a practicing lawyer
20 (dropped words?) regularly throughout my career.
21 Some things may lend themselves to that. I can't
22 speak for Senator Gillibrand particularly as to


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1 that.
2 But I don't see this as an insuperable
3 obstacle by any means. I can't imagine there would
4 be (dropped words?) development so that you'd wind
5 up with a system that produced, ironically produced,
6 less independent decisionmaking than we currently
7 have. So I'm not -- I'm not horrified by that.
8 That seems to me to be workable one way or the
9 other.
10 CHAIRWOMAN JONES: So it doesn't -- if
11 the bill now appears to have one office performing
12 all those functions, the convening authority, you
13 just think we can fix that?
14 PROFESSOR FIDELL: Yes, right. But the
15 heart of the matter is this convening authority is a
16 non-line convening authority. It's not a commander.
17 So those issues that have been so much of concern
18 would simply be -- they would be nonexistent,
19 because the real concern before was that it in
20 theory could be a tool of the commander. The
21 commander would own all those resources. And as I
22 understand it, the new arrangement would be out of


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1 the chain of command.
2 I see no difficulty in developing
3 arrangements, whether in the Manual for Courts-
4 Martial or otherwise, that would make sure that
5 nobody could impugn the independence either of the
6 judges -- the judges wouldn't put up with it,
7 obviously; and the defense counsel wouldn't put up
8 with it.
9 And as far as the independence of the
10 prosecutors, that's the whole point of the exercise.
11 CHAIRWOMAN JONES: Ms. Holtzman.
12 MS. HOLTZMAN: Professor Fidell, thank
13 you very much for your time.
14 Let me just narrow the question to get a
15 precise answer from you. If under the present bill
16 the same authority, whether it's a commander or a
17 functionary, has the power to appoint the judges,
18 the defense counsel, and the prosecutor -- let's
19 take a hypothetical -- is that constitutional? Does
20 that pass due process in your view?
21 PROFESSOR FIDELL: Yes, yes. Good
22 morning, ma'am.


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1 Yes. If I were on the Supreme Court,
2 which I'm not and I'm never going to be, thank
3 goodness, would I --
4 MS. HOLTZMAN: No, I didn't ask you from
5 the point of view of being on the court --
6 PROFESSOR FIDELL: -- would I have had
7 some difficulty with the old system, the old old
8 system? Sure, I would have. But the Supreme Court
9 has blessed the system and is highly deferential to
10 Congress's judgment on these matters. So I actually
11 don't think there are any votes that would find that
12 problematic, given the current construction, the
13 current array of justices. I just don't see it
14 happening.
15 MS. HOLTZMAN: So your view, you're
16 giving me an answer --
17 PROFESSOR FIDELL: I was going to say --
18 MS. HOLTZMAN: May I just ask the
19 question, please? My question really was what your
20 view is, not you sitting as a Supreme Court -- not
21 your view of how the Supreme Court would rule. We
22 don't know how the Supreme Court would rule. That's


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1 not my question.
2 My question is you as a professor of
3 military law and an expert on this issue; what is
4 your personal view of the due process implications
5 of having the same office, officer, appoint now --
6 not talking about history; talking about now -- what
7 is your view about the due process implications of
8 having the same office, officer, appoint the
9 prosecutor, the defense counsel, and the judges?
10 Not whether they would stand for it or
11 not. We don't know what people can stand for or not
12 stand for in the military. Just that simple
13 question: What's your view of that?
14 PROFESSOR FIDELL: I think arrangements
15 should be made, whether by regulation or technical
16 amendment, to make sure that the independence of
17 decisionmaking by the judges and by the defense
18 counsel is assured.
19 MS. HOLTZMAN: Are you saying that it
20 should be assured because you think it's a good
21 thing or do you think it's constitutionally required
22 as a due process matter?


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1 (Pause.)
2 PROFESSOR FIDELL: I'm pausing because
3 your question is a serious one and you'll have to
4 bear with me.
5 (Pause.)
6 PROFESSOR FIDELL: My own view is that an
7 arrangement that gave the prosecutor the power to
8 select the judge or to select the defense counsel
9 would be a due process violation.
10 MS. HOLTZMAN: Thank you, sir. I
11 appreciate that clarification, and I appreciate that
12 you took the time to consider it.
13 Thank you.
14 CHAIRWOMAN JONES: General Ham.
15 GENERAL HAM: Professor, Carter Ham.
16 Thanks again for making time available.
17 I guess one of the fundamental questions
18 here -- folks who are supportive of the proposed
19 bill say that, while commanders no longer have the
20 convening authority responsibility, they still have
21 the responsibility for maintenance of good order and
22 discipline in their units. Some who oppose the


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1 bill say that's responsibility without authority and
2 undermines the commander's ability to maintain good
3 order and discipline.
4 I'd be interested in your perspectives on
5 those two viewpoints.
6 PROFESSOR FIDELL: Right. Was that the
7 end of the question?
8 GENERAL HAM: Yes.
9 PROFESSOR FIDELL: Thank you and good
10 morning. We haven't met, I don't believe, but it's
11 a privilege to talk to you.
12 I have not been persuaded and I am not
13 persuaded that a commander in order to be effective
14 has to have the power, the specific power to decide
15 which cases, serious criminal cases, should be
16 prosecuted. The prosecution function is something
17 that should be independent of the command.
18 I think that the experience of other
19 countries is very telling in this regard. I don't
20 think there has been a dearth of the military
21 effectiveness of the countries that have moved in
22 the direction that obviously we're talking about


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1 here as a result of the reallocation of the
2 disposition function.
3 I think that there are certain functions
4 that can and should be performed independently. For
5 example, we have, as you know -- you're an Army
6 general, General, is that correct?
7 GENERAL HAM: I used to be.
8 PROFESSOR FIDELL: Used to be.
9 GENERAL HAM: I'm one of those -- I'm a
10 guy who used to be somebody.
11 MS. HOLTZMAN: Emily Dickinson said "I'm
12 a nobody."
13 (Laughter.)
14 PROFESSOR FIDELL: We're all just faces
15 in the crowd.
16 I think that the Army, for example, uses
17 a (dropped words?) investigation function. The
18 MCIO's, the military civil investigative
19 organizations, tend to be (dropped words?). Indeed,
20 some of the discussion that I've seen about these
21 subjects has emphasized the independence of the
22 investigative function.


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1 But it's the investigative function -- if
2 the independence of the investigative function is as
3 critical as it's made out to be, why not the ability
4 to decide which cases go into, which serious cases,
5 go into courts-martial?
6 I think the contention that the sky would
7 fall if we did what the mother country and all these
8 other modern democratic states have done is
9 unfounded. I understand the point, but it's a point
10 that is one that doesn't -- it simply doesn't move
11 me.
12 I'm aware of the fact that many (dropped
13 words?) officers hold a different view. I respect
14 their view, but at the end of the day I would say
15 that I believe that decisions as to who gets
16 prosecuted for serious criminal conduct -- that
17 those decisions ought to be made by attorneys.
18 I don't know. I will also say this. I
19 have been keeping a -- I don't have it accessible
20 because I'm in Chile and communications are not
21 great here. But I've been keeping a chart of the
22 different rationales that have been offered in favor


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1 of the current command-centric concept. I'm up to
2 number 38, I think, and they are different ways that
3 turn out to be different ways of saying the same
4 thing.
5 So I have to say I'm not persuaded on
6 this. I believe that a commander who believes that
7 there is serious criminal conduct in his or her
8 command is doing his or her duty by ensuring that
9 the facts of such a case are brought to the
10 attention of an independent prosecution or office
11 with the power to take things into court.
12 And I don't think anybody would say that
13 a commander who did that was somehow remiss or that
14 a commander who did that would be -- that it would
15 somehow be unfair to evaluate that commander as
16 escaping justice for himself or herself because he
17 or she was unable to actually pull the trigger and
18 send the case into the courtroom.
19 But come back, come back at me. What --
20 is there some other dimension of this that I have
21 missed? I don't think so, and I've listened very
22 attentively to the justifications for the current


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1 system, and I just think events and the way we do
2 the law and frankly the sophistication of the
3 Uniform Code of Military Justice, with all the
4 protections we've built in; this is actually not a
5 radical change.
6 It could change the sort of logical step
7 and the progress that the country has made since,
8 let's say, 1920 -- that's nearly 100 years ago --
9 when the Article 32 investigation was invented. So
10 we now have judges. We want to keep judges
11 independent. We have lawyers doing a whole lot of
12 things that they didn't do before.
13 I think this is something that is,
14 frankly, overdue. I think we were unwilling as a
15 country to do it in 1950 because we didn't know how
16 the rest of the code was really going to work. But
17 now we've had another, we've had 50-plus years of
18 experience, and our values have continued to evolve.
19 We're not frozen in 1775 any more than we're frozen
20 in 1950. Values have changed in the country and
21 also around the world.
22 This is an artifact, to be frank, and I


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1 think it's time we lose the artifact and just have a
2 modern criminal justice system for those parts of
3 military behavior that rise above the level of minor
4 disciplinary offenses.
5 GENERAL HAM: Thanks very much for that.
6 I suppose we could probably come up with the 38
7 arguments that you've heard without too much
8 difficulty. And I suspect you're right, that
9 they're all relatively similar.
10 But one that underpins that, that again
11 those, I think that the service chiefs and others
12 have voiced, is a perception at least that if this
13 bill passes and is implemented in law one of the
14 messages to the troops is: The nation does not
15 trust your commander. I again would welcome your
16 thoughts about that particular argument that is
17 sometimes proffered.
18 PROFESSOR FIDELL: That's one of them,
19 General.
20 GENERAL HAM: Yes, sure.
21 PROFESSOR FIDELL: That's somewhere on
22 the list.


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1 GENERAL HAM: Yes, that's one of the 38.
2 PROFESSOR FIDELL: I'm not persuaded by
3 that. Yes, that's one that's been brought up, and
4 it's an elusive notion, but yes, I understand the
5 point. But if the Congress of the United States,
6 which has responsibility under Article I, Section 8,
7 Clause 14, to make rules for the government and
8 regulation of the land and naval forces, decides
9 that it's time to get a 21st century disposition
10 system in place, Congress is supreme in this area.
11 And I don't think it's a putdown of
12 senior officers. I don't think it erodes their
13 authority. I don't think it erodes their standing.
14 I think we look to general officers and flag
15 officers for leadership and skill and talent and
16 insight and intelligence, style, and we want to get
17 all of those things.
18 I don't think the fact that -- let me put
19 it this way. I don't think there is actually any
20 daylight in terms of the impact among the troops in
21 the piperacks on the ships out in the field between
22 a general officer who can say "Jones, I am sending


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1 you to a general court-martial" on the one hand and
2 a general officer who says -- excuse me, I didn't
3 mean to pick on you, Judge Jones.
4 CHAIRWOMAN JONES: No, no. I forgive
5 you.
6 PROFESSOR FIDELL: I'm sure it's not the
7 first time.
8 -- and on the other hand, a general
9 officer who says: "Smith, I'm sending you to the
10 chief prosecutor with a recommendation that you get
11 a general court-martial."
12 In my view, by the way, I think senior
13 officers -- I'm just speaking for myself here -- I
14 think senior officers who have a view on how a
15 particular case should be disposed of ought to
16 communicate that view and put it in writing. And by
17 the way, I'd make that available to the defense,
18 just to make sure there's nothing irregular going
19 on, transparency and all that.
20 But you know, I think that there is
21 essentially no difference from the standpoint of the
22 perspective of the E-1's, and the E-2's and the E-


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1 3's of the world between a general officer who can
2 say "I'm signing the referral now" as opposed to the
3 general officer who says "Hold on a second; I'm
4 going to sign off on this memo sending the file to
5 the chief trial counsel" or whoever, whatever it's
6 called.
7 I just don't -- I don't -- people will
8 notice that. People will know that, that it's the
9 general taking this step. I think if the system is
10 fair it'll be okay.
11 By the way, again in some number of cases
12 people are acquitted. It's true. Well, if the
13 power to refer a case, the disposition power, is in
14 the hands of a general officer and it's an
15 acquittal, what do the people in the trenches think
16 about that general officer?
17 In other words, it may be a blessing in
18 disguise from the standpoint of the general officer
19 corps and the flag officers, so that people can't
20 turn around and say: Look, the general sends that
21 case to a general court-martial and there's an
22 acquittal. Is that good for the general's standing


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1 among the troops? I don't think so.
2 COLONEL HAM: Gene, this is Colonel Ham.
3 I beg to differ with you --
4 PROFESSOR FIDELL: And if the general
5 says, well --
6 COLONEL HAM: I think that enhances the
7 standing --
8 PROFESSOR FIDELL: -- if the general
9 says, all I've done is, justice was done, there has
10 to be a trial, well, you know --
11 CHAIRWOMAN JONES: Colonel Ham.
12 COLONEL HAM: Gene, this is Colonel Ham.
13 Good morning.
14 PROFESSOR FIDELL: Good morning.
15 COLONEL HAM: I beg to differ with you.
16 I think an acquittal engenders faith in the system,
17 that the system is fair, and that increases and
18 maintains good order and discipline. If every case
19 sent to court-martial resulted in a conviction --
20 PROFESSOR FIDELL: Would you say that
21 again? Say that again? You broke up a little bit.
22 CHAIRWOMAN JONES: He's not hearing you.


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1 COLONEL HAM: Okay. Gene, it's Colonel
2 Ham. I think that acquittals engender faith in the
3 system and engender the belief that the system is
4 fair, rather than the opposite, rather than that a
5 general sent a bogus case to trial. Don't you? I
6 mean, if every case went to conviction what faith
7 would the --
8 PROFESSOR FIDELL: I'm missing the gist
9 of your question. It's a little choppy. If you'd
10 come close to the microphone or whatever it is,
11 maybe that would be better.
12 COLONEL HAM: Yes, I'm sorry. Can you
13 hear me now?
14 PROFESSOR FIDELL: Yes.
15 COLONEL HAM: It's Colonel Ham and thank
16 you for talking to the panel.
17 As a current serving officer, I disagree
18 with you that an acquittal undermines faith in the
19 general's authority. I think it's exactly the
20 opposite, that it engenders trust and faith in the
21 system.
22 PROFESSOR FIDELL: Right. That's the


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1 point, trust and faith in the system. And what
2 General Ham drove at in the last question was
3 whether commanders -- whether people will see the
4 commander as -- I forget how he put. I apologize,
5 General; maybe you can restate your own point.
6 But the point is it's not supposed to be
7 -- the administration of justice should not be
8 personalized, not the decision to charge. And if
9 there are acquittals -- and there are going to be
10 acquittals -- it seems to me that that is best done
11 by an office whose function is to decide what cases
12 should go to trial, rather than a commander who has
13 a million other things -- this is not unimportant,
14 obviously -- but who has other things to do, where
15 this draws on a particular skill set which one picks
16 up in law school for three years.
17 CHAIRWOMAN JONES: Are there other
18 questions?
19 MS. FROST: I have a question.
20 CHAIRWOMAN JONES: Yes, Ms. Frost.
21
22 MS. FROST: Good morning.


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1 PROFESSOR FIDELL: Good morning.
2 MS. FROST: Good morning. And I realize
3 that you didn't develop the legislation, but can you
4 explain what you think the philosophy is behind the
5 bifurcation of disposition? Certain offenses -- you
6 said previously that decisions on serious criminal
7 charges should not be made by the commander, but by
8 the prosecutor. Looking at --
9 PROFESSOR FIDELL: Yes. I mean --
10 MS. FROST: Pardon?
11 PROFESSOR FIDELL: Right. There's a
12 dividing line that (dropped words?). There are
13 certainly offenses that go to military discipline.
14 If you had four people who were asked about this
15 subject, you'd get four different boundaries,
16 boundary lines.
17 So I think this is simply an effort to
18 identify in ways that are broadly acceptable, to
19 separate out those offenses that are truly of a
20 criminal character, that are (dropped words?) to
21 society as the types of things that are prosecuted
22 in local courts and federal courts, as opposed to


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1 those things that are by their nature and also by
2 their maximum punishment to be more in the nature of
3 disciplinary matters.
4 It's in the eye of the beholder. As you
5 say, you or I could draw the line differently and
6 include some offenses, exclude other offenses.
7 Congress -- that's within Congress's power.
8 (dropped words?) distinguished in a variety of ways
9 between kinds of conduct that is handled by summary
10 proceedings -- we happen to call it non-judicial
11 punishment, or office hours or Article 15 mast --
12 and those things that are more serious and that tend
13 to get handled through something that looks like a
14 trial.
15 As I say, (dropped words?) a dividing
16 line right now. The dividing line in Article 15 of
17 the UCMJ is minor offenses. But in fact "minor
18 offenses," that turns out to be a highly
19 discretionary judgment made by commanders. I can
20 think of cases that were handled under Article 15
21 that surprised me, that I thought should have been
22 handled at a higher level of formality, and also


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1 situations where conduct is handled in a court-
2 martial that you would have thought would likely be
3 handled in a more summary fashion that maybe didn't
4 leave permanent scars on a person's record.
5 There's no -- in other words, there is no
6 clear solution to this. Countries around the world
7 deal with -- attempt to distinguish between those
8 kinds of conduct that are more in the nature of
9 criminal conduct -- sometimes they're called common
10 law crimes -- and (dropped words?) boundary lines
11 that separate these, either by the duration of the
12 punishment, the duration of the punishment or the
13 nature of the crime itself.
14 So it's not an entirely tidy decision
15 that has to be made.
16 MS. FROST: Professor, can you explain to
17 us what the bill intends the division to be here?
18 PROFESSOR FIDELL: Let's see if I have --
19 I think it's a combination. I'm looking at Section
20 552. If you look at 552, it has basically two
21 concepts. One is offenses for which the authorized
22 maximum punishment is more than a year; and then


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1 there's a metric to identify offenses that are
2 excluded, and that is found in -- I'm looking --
3 yes, there's some reference to the articles, the
4 sections called punitive articles, that currently
5 list offenses. I think it's something like 33
6 offenses.
7 Yes, it's Articles 83 through 117 of the
8 UCMJ. Those are the excluded offenses and those are
9 the instances which include things like AWOL,
10 unauthorized absence, desertion, disobedience
11 (dropped words?) somewhat more serious offenses.
12 So those would be -- those would remain within
13 the purview of normal convening authorities, as I
14 read this proposal.
15 MS. FROST: I'm sorry, Professor. There
16 are offenses that would remain with the commander
17 that are extremely serious, and I don't quite
18 understand how that's supposed to work. Are you
19 saying they can just fix that? I know you mentioned
20 a couple, but there are other offenses --
21 kidnapping, negligent homicide. There are all sorts
22 of other quite serious offenses that would under the


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1 current format of this bill remain with the
2 commander, but the commander doesn't have convening
3 authority -- or disposition authority, rather, to
4 say that they should be -- there should be a general
5 court-martial.
6 PROFESSOR FIDELL: The answer is serious
7 offenses, wherever they are found, that do not,
8 let's say, directly implicate discipline --
9 everything implicates discipline on a certain level;
10 we all know that. But that what I'll call core
11 discipline issue, classic military issues, for
12 serious offenses they are to be handled outside the
13 chain of command convening authority.
14 CHAIRWOMAN JONES: Colonel Turner.
15 COLONEL TURNER: Professor Fidell, thank
16 you so much for joining us today, particularly from
17 such a distance.
18 I want to make sure I really understand
19 your outcome. For example, Senator Gillibrand
20 recently testified to the RSP to the effect that we
21 don't know if removing commanders will actually
22 increase reporting, but that's one of the desired


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1 goals, to increase reporting.
2 Some people have talked about increasing
3 prosecution rates. Some have talked about
4 increasing conviction rates. But what I hear you
5 saying is instead that your desired recommendation
6 end state is a, quote unquote, "modern criminal
7 justice system."
8 From reading some of your previous
9 writings, what I understand that to be is a
10 civilianized system. So correct me if I'm wrong,
11 but I understand that you don't believe that this
12 bill goes far enough because it doesn't remove
13 military members from the trial-judiciary-
14 prosecution process; is that correct?
15 (Pause.)
16 CHAIRWOMAN JONES: Professor, are you
17 still there?
18 (No response.)
19 CHAIRWOMAN JONES: Professor Fidell?
20 (Phone rings.)
21 PROFESSOR FIDELL: Hi.
22 CHAIRWOMAN JONES: Sorry.


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1 PROFESSOR FIDELL: The phone call cut --
2 the phone call cut out just as somebody was about to
3 ask me a question about something Senator Gillibrand
4 said when she met with the RSP. So that's where the
5 phone line dropped.
6 CHAIRWOMAN JONES: That was Colonel
7 Turner. She'll put her question again, Professor.
8 PROFESSOR FIDELL: Okay. Thanks a lot.
9 COLONEL TURNER: I think we're fixing
10 something technically right now.
11 PROFESSOR FIDELL: Okay. Assuming that
12 we do this at all, let me also say, as I did at the
13 beginning, that I appreciate once again the RSP
14 affording me a chance to visit with you by phone.
15 I'm usually not this hard to reach.
16 COLONEL TURNER: Professor, this is Lisa
17 Turner, Colonel Lisa Turner. I appreciate you
18 joining us, from such a distance particularly.
19 I just want to make sure I understand the
20 desired outcome and understand your perspective. So
21 I'm going to try and articulate that, and if you'll
22 correct me, please, if I'm incorrect.


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1 PROFESSOR FIDELL: Yes, of course.
2 COLONEL TURNER: Recently Senator
3 Gillibrand testified to the Response Systems Panel
4 words to the effect that: We don't know for that
5 removing commanders from convening authorities in
6 these particular cases will increase reporting, but
7 that's the desired end state.
8 I've also heard others talk about the
9 desired end state to this change as increasing
10 prosecution rates, and some have said it's
11 increasing conviction rates. But what I think I
12 heard you saying is that your desired end state is
13 a, quote, "modern criminal justice system." Having
14 read some of your previous writings, I understand
15 that to be that you believe this bill does not go
16 far enough in that it still retains military
17 personnel in the process. Your desired end state
18 instead or recommendation in this evolutionary
19 process is to have a civilianized system. Is that
20 correct?
21 PROFESSOR FIDELL: It's not correct.
22 COLONEL TURNER: So do you believe this


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1 bill --
2 PROFESSOR FIDELL: I would be interested
3 in knowing what you're citing for that proposition,
4 and you can communicate that to me separately. But
5 I will be happy to summarize what my view is.
6 COLONEL TURNER: In terms of what -- how
7 do we know we've succeeded in something? What's the
8 way that we look at this change and say, yes, it was
9 effective, or no, it was not? And then what do you
10 think is the next logical step, if any? Thank you.
11 PROFESSOR FIDELL: Right, right. I have
12 not been -- I'm speaking here for myself in response
13 to this question. I have not been invested in the
14 current issue, aside from in general the proposition
15 that sexual assault is a terrible thing and we
16 should do whatever we can to punish it and deter it.
17 However, I believe that the highest good
18 here goes beyond -- the goal goes beyond the
19 suppression and deterrence of sexual assault within
20 the armed forces and in fact is a structural goal.
21 The structural goal is to foster public confidence
22 in the administration of justice regardless of the


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1 offense.
2 Therefore my own take -- and this is not
3 intended to be harsh. I am, for example, somewhat
4 skeptical of some of the numbers that have been
5 bandied about. Intuitively they strike me as high,
6 but who knows? I really -- I'm not a numbers
7 person. I don't know if you all are. But it is
8 what it is.
9 If this or any other legislation, because
10 there are competing proposals on the Hill, drives up
11 the number of cases that go to trial, that will be
12 okay. If it drives up the number of convictions
13 obtained, that'll be okay.
14 I think there's a proposal that requires
15 a dishonorable discharge. Isn't that in the Senate
16 bill at the moment?
17 MS. FROST: Yes.
18 PROFESSOR FIDELL: That's a ridiculous
19 proposal. I mean, seriously, to have a mandatory
20 dishonorable discharge for a sexual assault when you
21 don't have it for murder? Things like that drive me
22 crazy.


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1 But if the proposals, whatever gets
2 enacted, has no discernible impact on the number of
3 convictions or cases that go to trial or the number
4 -- or if at the end of the day there are fewer cases
5 that are reported, that go to trial, that lead to
6 convictions, that lead to harsh sentences, that's
7 not the question from where I sit.
8 The question is do we have a system for
9 this and other kinds of offenses that fosters public
10 confidence in the administration of justice? I have
11 to tell you, I don't think that's measurable.
12 That's why it's impressive to me that other
13 countries that share our value systems have quite
14 routinely and increasingly moved in the direction of
15 taking the charging power out of the hands of
16 commanders and putting it in the hands of trained
17 prosecutors who are independent of the chain of
18 command.
19 So to me it is not -- I hope I'm
20 connecting with your question. It is not a question
21 of driving up the reports, cases referred, or
22 convictions, or much less sentences. Instead it's a


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1 question of fostering the highest possible level of
2 public confidence, including public confidence
3 within the armed services, in the administration of
4 justice.
5 That's where I am. That's the seat that
6 I occupy in this conversation. Other people have
7 different priorities. That's my priority. Now,
8 what other things or the end state in my dreams? I
9 don't know that I've got a total end state.
10 Personally, if I were a member of Congress I would
11 say that cases, charges that do not have some
12 service connection -- you know, the person who robs
13 a bank downtown -- that should be tried downtown,
14 not in the military. That's my own view and I think
15 Congress ought to do that. I think I've expressed
16 that before.
17 I do favor changing Article 32, trimming
18 it way back to a mere probable cause hearing, which
19 would actually tend to encourage victims of sexual
20 assault to come forward because they would know that
21 they weren't going to be subjected to the third
22 degree twice. So I think that's a very important


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1 priority. I'm glad that something is being done
2 along those lines.
3 In terms of the post-trial, the other
4 functions of the convening authority, I would have a
5 jury commissioner -- they call it a court-martial
6 administrator or administration office -- the way
7 the U.K. and Canada have. That would be the person
8 who would pick the juries, instead of -- or detail
9 the juries, instead of having a constant temptation
10 towards unlawful command influence in the selection
11 of juries.
12 I would get commanders out of the
13 business entirely of negotiating pretrial agreements
14 and I'd let the pretrial agreement be negotiated by
15 the chief trial counsel, the chief prosecutor.
16 I would have military judges available
17 who could rule on resource questions, such as I need
18 an expert witness or I need another investigator or
19 I need to have my client shrunk before trial.
20 That's not a big deal, but it's something that ought
21 to be done.
22 I'd also get rid of the limitations on


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1 Supreme Court jurisdiction of the court-martial.
2 Something like 90 percent of courts-martial are
3 never subject to review by the U.S. Supreme Court,
4 even permissive. You can't even appeal to the
5 Supreme Court. You can't even submit a certiorari
6 petition. They'll throw it out.
7 I think there's no excuse for the fact
8 that military judges don't have a statutory term of
9 office. This is preposterous. I also think it's
10 ridiculous that two services, the Army and the Coast
11 Guard, have terms of office by regulation -- they're
12 modest terms, they're just three-year terms -- and
13 the others have none. How can you have a criminal
14 case presided over by a judge who serves at will?
15 So the long and short is there are
16 certainly things that need to be done and frankly I
17 think the UCMJ would benefit from a top to bottom
18 review. I'm thought about that and I hope at some
19 point to be able to give more thought to that.
20 But in the mean time, we ought to do what
21 we can do, and I think reducing the powers of
22 commanders with respect to the charging decision and


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1 also with respect to the post-trial (dropped
2 words?), which are unnecessary and unwise. I think
3 we ought to do those things.
4 We can debate and the members of the
5 Senate and the House Armed Services Committees can
6 debate about the details. I don't mean to call them
7 minutia. They're important details. But there's a
8 conversation to be had there. I'm not a member of
9 the House or Senate. They'll figure that out.
10 And it may be, it may be, that there's
11 some tinkering that's going to have to go on as this
12 legislation moves forward, and I would hope that as
13 the Department of Defense and the services come to
14 view this -- and if I can, this is probably the
15 thing that I feel most strongly about in this
16 conversation -- come to view this exercise as an
17 opportunity, because that's what I think it is, and
18 I think one of the great misfortunes as that,
19 instead of figuring out constructive ways to make
20 the transition to a professional charging system,
21 instead there's been a million questions raised, a
22 million obstacles, a million different versions of


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1 the same justification for George the III's military
2 justice system, instead of saying: You know,
3 history for whatever reason -- and it's because of
4 the sexual assault issues -- history has presented
5 us with an opportunity here; let's seize the
6 opportunity, let's put our thinking caps on, let's
7 influence things in an intelligent, constructive
8 way, instead of just throwing up roadblocks.
9 It's not too late for that. I have many
10 friends in the Pentagon that I have the highest
11 regards for their intelligence, their patriotism,
12 obviously courage, and I'd like to see those skills
13 -- and their leadership -- those skills marshalled
14 in a way that turns this, instead of -- that turns
15 this from a sort of warring parties on the
16 battlefield into a collaborative effort to try to
17 move forward and to move our system forward into the
18 21st century.
19 We're not there. So that's a long, long
20 answer to your question, but that's where I'm coming
21 from.
22 MS. FROST: I have a follow-up question.


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1 This is Joye Frost again.
2 I'm the Director of the Office for
3 Victims of Crime at the Department of Justice. I've
4 actually worked with sexual assault -- on sexual
5 assault issues and with sexual assault victims for
6 over 17 years. I've worked on the issue of child
7 sexual abuse since the seventies.
8 When you state that ultimately you think
9 the goal should be to foster public confidence in
10 the military justice system --
11 PROFESSOR FIDELL: Yes.
12 MS. FROST: -- and then you say, but
13 that's not measurable, I have to say, as someone who
14 has advocated on behalf of victims for decades, I
15 think I certainly support a fair and balanced
16 justice system, whether it's in the civilian or
17 military sector, but I can assure you that if
18 reporting and prosecution rates go down public
19 confidence in the military justice system will be
20 measurable, and I think, even more importantly, the
21 chilling effect that it would have on victims.
22 In the civilian sector, it's interesting.


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1 I don't think there's any more difficult issue that
2 the criminal justice system deals with than the
3 issue of rape, sexual assault, and child sexual
4 abuse. We don't have stellar reporting rates and we
5 certainly don't have dramatically great prosecution
6 and conviction rates. So few of these cases are
7 ever prosecuted.
8 I will say, that is my big concern.
9 PROFESSOR FIDELL: Yes. Well, I take
10 your point and I value your thoughts on this. I
11 think it's a more elusive issue. I think the
12 country should feel that it has a state of the art
13 military justice system that satisfies very high
14 standards. The federal district courts are the
15 jewel in the crown of our democracy and I think that
16 to foster the kind of confidence that we need I
17 would look to having lawyers make those difficult
18 decisions.
19 I must say, by the way, in my own view
20 the people who ought to have these responsibilities
21 ought to be people of considerable substance. I
22 think the measure calls for an O-6, Army colonel,


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1 maybe captain, to have this kind of responsibility.
2 In my own mind -- and he'll kill me for saying this,
3 but in my own mind I'm thinking of somebody like
4 Brigadier General Mart Martins, who's leading the
5 charge on the military commissions.
6 Even though I'm critical of the military
7 commissions, I respect his work. He's done yeoman
8 service and better in terms of presenting the public
9 face of the commissions. I think that that's the
10 kind of distinction that the government should look
11 for when these positions are assigned. It should be
12 people with really sterling credentials --
13 CHAIRWOMAN JONES: Professor.
14 PROFESSOR FIDELL: -- who will help
15 foster public confidence.
16 CHAIRWOMAN JONES: Professor Fidell.
17 PROFESSOR FIDELL: Yes?
18 CHAIRWOMAN JONES: We're running a little
19 behind. I don't want to cut you off. Let me just
20 ask if there are some additional questions from any
21 of the other panel members.
22 Also, essentially we were hoping that you


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1 would be able to talk to us about some of the
2 provisions of the exact legislation. I'm always
3 happy to hear your thoughts about the military
4 justice system in general, but let me just find out
5 if there are any additional questions that relate to
6 the legislation. Senator Gillibrand asked us to
7 hear from you so that we could ask this particular
8 type of question.
9 Anyone?
10 MS. HOLTZMAN: Thank you, Madam Chair.
11 Thank you again, Professor Fidell. I
12 don't know if you have received a copy of a letter
13 dated October 28, 2013, to Carl Levin from -- I
14 think these are staff judge advocates and judge
15 advocates of the five military branches. Are you
16 familiar with that letter?
17 PROFESSOR FIDELL: No.
18 MS. HOLTZMAN: Well, I would -- I'm sorry
19 you're not because the letter raises, not issues
20 about philosophy -- we could debate those; maybe we
21 will and will not persuade each other -- but the
22 letter raises very serious questions about the


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1 substance -- not the substance -- the functioning of
2 the legislation and its consequences, not
3 necessarily in terms of public confidence, but how
4 the bill would actually function.
5 So I'm going to try to raise these with
6 you. I would appreciate if the staff or maybe Mrs.
7 Gillibrand could send you a copy of the letter. But
8 I'll quote a little bit from it. At the bottom of
9 page 1 the letter -- the paragraph deals with the
10 fact that there are two sets of offenses which are
11 dealt with in different ways under the legislation.
12 And it says:
13 "The legislative proposal fails to
14 establish a process for disposition of cases in
15 which the two systems intersect, i.e., in cases
16 involving multiple offenses that fall into both
17 systems. Such cases arise quite frequently in our
18 practice. On its face, the legislative proposal
19 would result in parallel prosecutions for such
20 cases, doubling the prosecution's caseload.
21 "The alternative is for one system to
22 take the case in its entirety, which could give rise


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1 to jurisdictional problems, given the proposed
2 legislation's explicit provision, and would further
3 erode a commander's authority over good order and
4 discipline. In fact, the legislative proposal
5 actually removes almost every military commander's
6 authority to convene general courts-martial for
7 members of their command, even for military-specific
8 offenses. So for example, the division commander" -
9 -
10 So what is your response to the concern
11 of how to handle cases in which -- I think our staff
12 may have prepared some questions along this line --
13 where you have, for example, a rape and a
14 kidnapping? Kidnapping is not within the offense --
15 PROFESSOR FIDELL: Yes, I --
16 MS. HOLTZMAN: Let me finish my question,
17 sir, please.
18 PROFESSOR FIDELL: Sure.
19 MS. HOLTZMAN: Kidnapping is not within
20 the offense -- kidnapping remains with the commander
21 and rape does not. How does that get resolved under
22 the legislation?


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1 PROFESSOR FIDELL: I believe that there
2 are changes that have been generated, which I don't
3 have in front of me, which I haven't seen, but I've
4 heard about, that would address the problem of what
5 I would call a hybrid -- I think that's what you're
6 describing -- a hybrid case that had --
7 MS. HOLTZMAN: Let me --
8 PROFESSOR FIDELL: I believe that is
9 being attended to, and the only thing I can do is
10 refer you to Hill staff on that because I don't have
11 language.
12 MS. HOLTZMAN: But let me ask a
13 preliminary question.
14 PROFESSOR FIDELL: I had heard --
15 MS. HOLTZMAN: Do you agree that there is
16 a problem?
17 PROFESSOR FIDELL: Yes, sure. You have
18 cases that are going to be -- that are going to
19 straddle the dividing line and there has to be a
20 rule that would resolve which side of the line such
21 a mixed case would fall on.
22 MS. HOLTZMAN: Okay, great.


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1 PROFESSOR FIDELL: And I believe this is
2 being attended to. You have me at a disadvantage
3 because I'm not privy to the details of either the
4 letter you're reading from or the fix that I
5 understand has been generated in that connection.
6 MS. HOLTZMAN: Well, okay.
7 PROFESSOR FIDELL: So if I can, that's
8 what I have to say.
9 MS. HOLTZMAN: I appreciate your
10 statement that you believe, however, that a fix is
11 required.
12 PROFESSOR FIDELL: Yes, they'll have to
13 figure out something to do on that, sure. It's
14 probably something that could be handled by a Manual
15 change, but they can work out something on the Hill.
16 MS. HOLTZMAN: Excuse me? Probably?
17 Have you studied the legislation to give us a
18 deliberative answer on that point? Can it be
19 resolved by changing the Manual or will you need
20 legislation? Can you address that?
21 PROFESSOR FIDELL: Without seeing what
22 the current state of play is -- I have to reiterate,


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1 I'm here in Santiago, Chile. I've been out of the
2 country for ten days now. So there are a lot of
3 things that have gone on that I'm not privy to and
4 I'm doing the best I can under these circumstances.
5 MS. HOLTZMAN: I appreciate that. I'm
6 not asking you about the nature of --
7 PROFESSOR FIDELL: You're asking me
8 something. I'm an attorney. I like to be a little
9 careful with what I say. Obviously, you all are
10 trying to do what Congress has asked you to do, but
11 there are limits to what I can do responsibly
12 without having hard copy in front of me and without
13 knowing the precise state of play in terms of the
14 legislative process.
15 MS. HOLTZMAN: But I'm not asking you
16 about the nature -- I appreciate your answer and I
17 respect that very much. No one wants to speculate.
18 I'm not asking you about the nature of the fix. I'm
19 asking you about the legislation in front of --
20 well, I don't know if you have it in front of you.
21 But I'm asking you about Senator Gillibrand's
22 legislation.


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1 Under that legislation, would you need --
2 could you solve the problem we've identified of
3 hybrid charges by a change in the Courts-Martial
4 Manual, or would you need legislation?
5 PROFESSOR FIDELL: I think you could
6 probably do it by the Manual. That's the best I can
7 do from where I am right now.
8 MS. HOLTZMAN: So probably --
9 PROFESSOR FIDELL: There's very broad
10 power under Article 36 and they've done things that
11 were at times quite dramatic, and I think that could
12 be handled through a Manual change. But --
13 MS. HOLTZMAN: But you're not sure?
14 PROFESSOR FIDELL: That's the best I can
15 do. Right, I don't have the Manual in front of me.
16 Seriously, this is not fair.
17 MS. HOLTZMAN: Well, but we were -- it's
18 not fair. I understand these are tough questions,
19 but what we're trying to do is understand what the
20 implications of this legislation are. And if they
21 create the problem that we've just discussed, we
22 need to know how to solve that problem and whether


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1 it can be solved in the way you suggest, which could
2 be the case, or whether it requires legislation.
3 That's what we were looking to you to educate us
4 about.
5 Let me just go to a couple of other areas
6 that were pointed out in this letter, which have to
7 do with the refusal --
8 PROFESSOR FIDELL: This is a letter I
9 haven't seen. You know, to be honest, to ask me
10 questions about a letter I haven't seen is not --
11 I'm feeling a little frustrated.
12 MS. HOLTZMAN: But the letter you haven't
13 seen goes to issues in the legislation, that's all.
14 It just goes to issues in the legislation that are
15 created by the legislation, such as what we've
16 discussed already. Now, maybe Senator Gillibrand
17 didn't advise you of what we were interested in
18 talking to you about or how she expected you to
19 respond to these issues. I don't know about that.
20 But I'm just concerned about -- I'm not
21 concerned about the philosophical question, should
22 we remove the commander's role or not. That's


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1 another issue. I'm just saying, if this legislation
2 seeks to do that, what are the other things that
3 will have to be addressed as a result of the
4 legislative changes and what are the problems the
5 legislation may cause? That's just the ambit of my
6 inquiry here.
7 PROFESSOR FIDELL: Right, I understand
8 that.
9 MS. HOLTZMAN: So it's very technical. I
10 know the staff had some other questions in this
11 area.
12 CHAIRWOMAN JONES: Well, one that
13 interests me relates to issues with plea bargaining.
14 I believe in the bill the decision of the original
15 authority that decides what the charges will be is
16 binding. So then it goes to the convening authority
17 and it's totally unclear -- at least I couldn't
18 figure it out -- what happens to plea bargaining in
19 a situation like this.
20 That's in the bill. Can you comment on
21 that?
22 PROFESSOR FIDELL: Which provision? I'm


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1 looking at an amendment. I don't have an amendment
2 number, but it's an amendment that I believe is Mrs.
3 Gillibrand's amendment. If you can point me to what
4 you're referring to. Where are you in the bill, or
5 the amendment?
6 You know, there's nothing in the statute
7 now about pretrial agreements. It's simply not
8 addressed at all in the statute.
9 CHAIRWOMAN JONES: But the bill addresses
10 them, in the sense that it -- and I'm sorry, I don't
11 have the section. I'm still looking for it. The
12 bill addresses it when it says that whatever the
13 disposition authority, or whatever you want to call
14 that group of O-6's who decide what the charges are,
15 whatever they decide is binding.
16 So I'm just curious as to whether
17 anybody's thought about what that does to plea
18 bargaining.
19 PROFESSOR FIDELL: Well, if what you're
20 looking at is the provision that appears --
21 CHAIRWOMAN JONES: I'm sorry. It's 4 --
22 PROFESSOR FIDELL: That's page 6? Is


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1 this on page 6, lines 10, 11, and so forth?
2 CHAIRWOMAN JONES: I'm looking at
3 something else, but hold on and I'll find it.
4 (Pause.)
5 CHAIRWOMAN JONES: We're all looking at -
6 - I must be looking at something different.
7 Well, perhaps you could tell me,
8 Professor, has the language now been removed, that
9 whatever charges are decided by the original
10 disposition authority are no longer binding?
11 PROFESSOR FIDELL: I have to refer you to
12 staff on that. I'm sorry, I'm laboring as best I
13 can under difficult communications conditions here.
14 CHAIRWOMAN JONES: Okay. Well, let me
15 just read what I was referring to. It seems to say:
16 "The determination to try such charges by court-
17 martial under subparagraph (a) and by type of court-
18 martial under subparagraph (b) shall be binding on
19 any applicable convening authority for a trial by
20 court-martial on such charges."
21 I don't know whether that's been amended
22 or not, but do you know what the intent of the


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1 legislation is with respect to plea bargaining?
2 PROFESSOR FIDELL: I think the -- well, I
3 think the intent is that pretrial agreements would
4 be made with the officer referred to in subparagraph
5 (a).
6 CHAIRWOMAN JONES: So they would make the
7 plea bargain? The original authority that --
8 PROFESSOR FIDELL: Yes.
9 CHAIRWOMAN JONES: -- would decide what
10 the charge was --
11 PROFESSOR FIDELL: They'd do the pretrial
12 agreement.
13 CHAIRWOMAN JONES: -- and send it out for
14 court-martial would make the decision as to what the
15 plea bargain was?
16 PROFESSOR FIDELL: Sure.
17 CHAIRWOMAN JONES: You believe that's the
18 intent of the legislation?
19 PROFESSOR FIDELL: Yes. That's my
20 understanding, yes.
21 CHAIRWOMAN JONES: Okay.
22 PROFESSOR FIDELL: Incidentally, just


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1 looking at paragraph C right above what we've been
2 talking about here, "The determination under
3 subparagraph (a) to try charges shall include a
4 determination to try all known offenses." I'm
5 looking at that and thinking that might be relevant
6 to the question that you or someone else raised a
7 few minutes ago about what I called hybrid offenses.
8 It looks like it to me.
9 CHAIRWOMAN JONES: Well, I don't know if
10 that helps or hurts the analysis, because if they
11 start deciding, making decisions about all known
12 offenses, I don't know what that does for the
13 difference between included and excluded offenses.
14 I don't know if they have jurisdiction.
15 But in any event, thank you for that
16 comment.
17 PROFESSOR FIDELL: Sure.
18 CHAIRWOMAN JONES: Any other questions?
19 MS. HOLTZMAN: Just one other question
20 about the nonjudicial punishment. Since non-
21 judicial punishment can be appealed, in a summary
22 court-martial -- I may get this wrong. Colonel Ham,


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1 can you help me?
2 COLONEL HAM: Turned down, declined.
3 MS. HOLTZMAN: The summary court-martial
4 or the non-judicial punishment can be -- which the
5 commander still has the right to impose -- can be
6 rejected by the accused and a court-martial could be
7 sought. If the court-martial -- if the accused is
8 then acquitted at the court-martial, then there
9 would be no opportunity to impose a non-judicial
10 punishment. How does that work?
11 PROFESSOR FIDELL: Yes, that's true.
12 MS. HOLTZMAN: Oh, so it's true? You see
13 the system as working that way. So in essence --
14 PROFESSOR FIDELL: If a person turns down
15 NJP or a summary court and a court-martial ensues
16 and there's an acquittal, that's the end of the
17 line. That's the way it is. That's the way it is
18 now.
19 MS. HOLTZMAN: Am I misstating the
20 question?
21 CHAIRWOMAN JONES: I think the problem is
22 that when the disposition authority determines that


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1 there will be no general court-martial and then the
2 -- pardon me? -- and then it goes to the commander,
3 and then the person, the soldier, is entitled to
4 say, no, sorry, I want a court-martial, I think that
5 was the situation that Ms. Holtzman was referring
6 to.
7 I don't know what the intention of the
8 bill is when that happens. You've already had the
9 disposition or the charging authority say court-
10 martial's not warranted, and then it goes back to
11 the commander and they try to impose non-judicial
12 punishment, but the soldier says: Sorry, I want my
13 court-martial. I think that's the situation.
14 Do you know what the intent -- do you
15 know what the intent of the legislation was in that
16 regard?
17 PROFESSOR FIDELL: I'm aware that a
18 question was raised about this, but I'm not sure
19 it's that scenario or the scenario where an
20 individual turns down non-judicial punishment and
21 the matter is then referred to what I'll call the
22 new convening authority for court-martial, and the


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1 general court-martial, the new convening authority,
2 so to speak, says: Well, I'm not taking this to
3 trial.
4 MS. HOLTZMAN: Right, that's correct.
5 Then what happens?
6 PROFESSOR FIDELL: I don't know what
7 happens, but that ought to be covered. It's an easy
8 fix. I don't know quite what language. But sure,
9 I'd cover that.
10 CHAIRWOMAN JONES: All right, any other
11 comments, questions? General Altenburg?
12 PROFESSOR FIDELL: By the way, let me
13 just note this. You're talking about the so-called
14 new convening authority. It would only have
15 jurisdiction over quite significant offenses, which
16 probably ought not to be referred to a summary
17 court-martial or non-judicial punishment in any
18 event. So there's something wrong with the
19 hypothetical, I think, from that perspective.
20 But if there is a problem there, I don't
21 see a problem with fixing it. But I'm not sure
22 there is a problem.


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1 GENERAL ALTENBURG: Well, except for
2 hybrid offenses?
3 PROFESSOR FIDELL: Except -- yes, that's
4 true, except, as I said before, I think there's
5 something in the language in subparagraph (c) -- in
6 the print I have, it's page 6, lines 3 through 7 --
7 that says all known offenses would be governed. So
8 that looks to me like if anything goes over it all
9 goes over.
10 The military justice system has always
11 been predicated on the notion that all known charges
12 would be tried in a single proceeding at the lowest
13 possible level. So the notion of everything being
14 wrapped together at once is deeply rooted into the
15 military justice system, has been forever.
16 GENERAL ALTENBURG: Professor Fidell,
17 this is John Altenburg. How are you today?
18 PROFESSOR FIDELL: John, how are you?
19 GENERAL ALTENBURG: Good. As an aside,
20 the role of the commander as the convening authority
21 is pretty deeply rooted also. I just wanted to say
22 that in passing.


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1 You know, Article 60, the Senator's bill
2 pulls it away from convening authorities to
3 disapprove sentences.
4 PROFESSOR FIDELL: Yes.
5 GENERAL ALTENBURG: I think that's where
6 the pretrial agreement issue arises, because that's
7 the mechanical way that we implement pretrial
8 agreements now, is the convening authority
9 disapproves those appropriate portions pursuant to
10 the pretrial agreement. And this legislation
11 doesn't seem to provide for a mechanism to
12 accomplish that under the new system. Do you see
13 that?
14 PROFESSOR FIDELL: Right. It would be
15 done by the -- yes, it would be done by -- as I
16 understand it, it would be done under the new system
17 in the courtroom by the military judge and the
18 prosecutor. The prosecutor would announce what the
19 arrangements were and the judge would then reduce
20 the sentence, as the convening authority currently
21 does. It would simply move forward in the process
22 something that currently gets done thereafter.


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1 GENERAL ALTENBURG: That probably
2 requires an amendment to --
3 PROFESSOR FIDELL: As you know, as you
4 know, pretrial agreements themselves are not
5 provided for in the statute at the moment. The
6 process has grown up, evolved, over the last few
7 decades. I don't see that as a significant issue.
8 GENERAL ALTENBURG: You don't think it
9 takes a statutory fix?
10 PROFESSOR FIDELL: No, aside from
11 repealing Article 60, no.
12 GENERAL ALTENBURG: You're familiar with
13 the 7 June letter or document signed by the law
14 professors?
15 PROFESSOR FIDELL: Yes.
16 GENERAL ALTENBURG: You're one of the
17 signatories?
18 PROFESSOR FIDELL: Absolutely.
19 GENERAL ALTENBURG: Paragraph 2 says
20 that: "Congress should take the time needed to make
21 a careful study of these issues. It should not use
22 study as a substitute for action. Further hearings


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1 are needed and promptly."
2 This letter was signed after the 4 June
3 hearing. There have been no other hearings. The
4 Congress last year appointed this Response Panel to
5 take 18 months to review all these issues and
6 analyze them. And yet people are pushing changes to
7 the UCMJ without waiting for the Systems Response
8 Panel to do its job pursuant to last year's
9 legislation.
10 When you think about all that in the
11 context of the Morgan Commission, the Doolittle
12 Commission, the Vanderbilt study, all in the wake of
13 World War Two before the UCMJ amendments, all the
14 commissions and studies and hearings that were held
15 in '67 and '68 before the '68 amendments, and all
16 the hearings that you and I attended and were a
17 participant in in '82 and '83 before the '83
18 amendments, do you think that November of 2013 is
19 the time for major revisions to the UCMJ?
20 PROFESSOR FIDELL: Well, I don't know
21 that Congress is actually going to function on this
22 this month, by the way. I don't have -- I can't


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1 read the tea leaves, particularly from a great
2 distance. I don't know when the Senate is planning
3 to vote. I think the Senate is going to be in
4 business on this subject for a great long time and
5 the House is going to be in business some time in
6 the next calendar year.
7 So do I think that's a reason for the
8 Senate not to make a basic decision which way it
9 wants to go on this at this point? No, I think the
10 Senate is probably in the position where it could
11 make the basic decision on where it wants to go. Do
12 I think the legislative process will end tonight?
13 No. I think the legislative process is going to go
14 on for months, during which time I think the RFP
15 will have an opportunity to gather its thoughts in
16 sessions like this, and in the fullness of time, not
17 far from now, render a report.
18 GENERAL ALTENBURG: Do you think that
19 before there were major --
20 PROFESSOR FIDELL: Hold on. Hold on one
21 second. My concern is that if the opportunity is
22 not seized in basically this time frame -- and I


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1 don't mean today or tomorrow, but basically this
2 time frame -- that it will be years before some
3 fundamental systemic issues that I believe Congress
4 ought to be addressing can be addressed.
5 I don't know about you, but I'm 68. I'd
6 like to see this done in my lifetime, and I think
7 Congress on a number of issues is overdue to attend
8 to this. My big concern is that calls for a study
9 can be abused, and I think that calls for study can
10 mask inaction. So there's a tension between the
11 need for study and the needs of the political
12 climate and the needs of the political system.
13 We all want Congress to do the wise
14 thing, to do it in the fullness of time, to do it
15 when it's had an opportunity to gather its thoughts.
16 Certainly our elected leaders have been functioning
17 on this at a level of intensity that I cannot
18 remember, aside perhaps from the Affordable Care
19 Act, in recent years.
20 So what's the right time, John? I don't
21 know. But do I think it should be done this
22 afternoon? No. Do I think we should wait a year?


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1 No. And I don't know what the schedule is for
2 enactment of the current iteration of the National
3 Defense Act, completing the process. Will they
4 still be at it in May or June? I don't know. But
5 that's what I assume. What about you?
6 GENERAL ALTENBURG: Thanks very much.
7 CHAIRWOMAN JONES: All right. Anything
8 else?
9 (No response.)
10 CHAIRWOMAN JONES: Thank you, Professor
11 Fidell. You've given us a great deal of your time
12 and we very much appreciate it.
13 PROFESSOR FIDELL: I'm sorry if I have
14 frustrated you on a number of points. I have done
15 the best I can. Senator Gillibrand is the person
16 with the vote on this and people who have been far
17 more closely involved in the give and take can I'm
18 sure shed light on some of the issues where I may
19 have frustrated you.
20 I'm frustrated, too, but I feel that I've
21 done the best I can in the circumstances.
22 Thank you so much for letting me chat


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1 with you.
2 CHAIRWOMAN JONES: I understand. Thank
3 you.
4 Jim, are you still here?
5 ADMIRAL HOUCK: I am.
6 CHAIRWOMAN JONES: And you heard all of
7 that?
8 ADMIRAL HOUCK: I heard it all.
9 CHAIRWOMAN JONES: Just checking.
10 MS. FROST: Can I ask a question? The
11 subcommittee comparing the civil and military
12 justice systems, are they looking at rates of
13 reporting and rates of prosecution and convictions?
14 CHAIRWOMAN JONES: They are, and it's
15 actually required as tasks within the statute.
16 They're doing it. I don't think we have results
17 yet, but they're doing it.
18 COLONEL TURNER: If I could make a point,
19 too, ma'am.
20 CHAIRWOMAN JONES: I'm sorry, Colonel. I
21 can't hear you.
22 COLONEL TURNER: I'm sorry. If I could


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1 just real quickly make a point. He mentioned
2 somebody who robs a bank downtown should have this
3 independent military convening authority process.
4 Again, the civilian prosecutors already have primary
5 jurisdiction. They can always do, already do that.
6 And they don't give us the jurisdiction unless they
7 have confidence that we'll take care of it. Thank
8 you.
9 CHAIRWOMAN JONES: Well, I guess my
10 reaction to this interview is that Professor Fidell
11 has a lot of ideas for how to change pretty much the
12 entire military justice system. But I don't think
13 if you -- well, we're the Response Systems to Adult
14 Sexual Assault Crimes Panel and I think that most of
15 the legislators that are involved in both sides of
16 this bill in terms of Senator Gillibrand's bill
17 think that they're changing the entire military
18 justice system. I think what everyone has been
19 motivated by was the report in May of this year
20 about sexual assault crimes in the military.
21 So part of the problem I find with
22 Professor Fidell's statements is that they go way


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1 beyond whether the proposed changes are actually
2 going to have an efficacious effect with respect to
3 responding to sexual assaults, and to that extent
4 they're really an overhaul of the entire military
5 justice system as he would propose that it be made.
6 So an awful lot of his responses were
7 really not relevant to the question of whether or
8 not this bill internally is consistent or will need
9 a lot of fixes, but were also not responsive to
10 whether or not its intended purpose, which is to
11 help to prevent and deal better with sexual assaults
12 in the military is going to be realized from it.
13 That's my general reaction.
14 MS. FROST: Yes, his comment about
15 holding up federal district courts as a model. Most
16 sexual assaults are not prosecuted in federal
17 district courts. The places where they are are in
18 Indian country and there are some serious problems
19 there.
20 CHAIRWOMAN JONES: They certainly aren't
21 prosecuted in most federal courts. I mean, I sat
22 for 17 years and never saw a single sexual assault


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1 case.
2 Jim?
3 ADMIRAL HOUCK: I guess I agree with
4 everything that's been said. I'm troubled by the
5 overstatement that accompanies many of these things.
6 I guess it's the province of academics, because I
7 now am one, but comments that we have a George the
8 III military justice system and that a system of --
9 that the judiciary that we have, that it's a
10 preposterous system. I understand there's
11 some hyperbole in that, but I find those comments
12 troubling.
13 MS. HOLTZMAN: If I might just add
14 something, I thought he was going to be prepared to
15 discuss the substance of the legislation and he
16 wasn't. His statements that this probably would
17 solve the problem or look at this section of the
18 statute, maybe it's covered under that, I thought
19 were highly unsatisfactory.
20 Also his statement that Congress can
21 handle the principle. Congress doesn't act on
22 principles except when it votes for a resolution.


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1 When it votes, Congress acts through legislation.
2 So the legislation is going to have concrete
3 consequences and we need to know what they are. I'm
4 disappointed that we were not given someone to help
5 analyze the legislation when we asked for it.
6 That's my point.
7 GENERAL ALTENBURG: Following up on what
8 Jim said about judge tenure, just for the heck of
9 it, because it really should affect, I think, our
10 view of what we just heard overall, he talked about
11 how terrible this is, how he can't perceive why we
12 wouldn't have tenure. That issue, that specific
13 issue, has been to the Supreme Court and our system
14 of picking judges and the fact that its regulatory
15 in two of the services and not at all in the other
16 services has been upheld by the Supreme Court of the
17 United States, which is consistent with his other
18 comment about their deference to the military
19 justice system.
20 But it's not like that issue hasn't been
21 considered, and he's still beating that drum ten
22 years after the Supreme Court considered it and


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1 upheld it.
2 CHAIRWOMAN JONES: Well, I would also
3 add, I didn't even ask a question about whether
4 anyone had considered whether considerable extra
5 resources would have to be brought to bear in order
6 to create this new structure, because I don't think
7 Professor Fidell, justifiably I suppose, would have
8 known the answer to that. So that remains
9 unanswered. And I just didn't see any purpose in
10 asking him because I don't think he knows.
11 GENERAL ALTENBURG: Well, also consistent
12 with your concern that there's this interplay that's
13 not appropriate between solving the sexual assault
14 issue on the one hand and people taking advantage of
15 that to open a door and try to change the whole
16 system, is the concern that -- I forgot what I was
17 going to say. CRS. I'll come back to it.
18 COLONEL TURNER: Ma'am.
19 CHAIRWOMAN JONES: Yes, Colonel?
20 COLONEL TURNER: If you want more
21 information on how trial judges, defense counsel,
22 and prosecutors are assigned, I'd recommend we


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1 consider asking for the right testimony on that,
2 because it was not nuanced in the way it was
3 presented by Professor Fidell.
4 GENERAL ALTENBURG: I've gotten my moment
5 back.
6 CHAIRWOMAN JONES: Yes, go ahead.
7 GENERAL ALTENBURG: I would have wanted
8 to ask him, since he's been involved with military
9 justice since '69, how many times in those years has
10 he seen a staff judge advocate recommend trial and
11 the convening authority say no trial. Because
12 that's pertinent to this issue that they're talking
13 about this is going to solve sexual assault.
14 I would tell you, if he was familiar with
15 some in the seventies and eighties, I don't think
16 there have been any in the last ten years in any of
17 the services where a staff judge advocate said this
18 case needs to go to trial -- this is your
19 professional, your prosecutor -- and a convening
20 authority, the avowed "untrained" non-lawyer, has
21 said no, it's not going to go to trial. That
22 doesn't happen, and yet that's what they purport to


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1 solve.
2 CHAIRWOMAN JONES: Well, I was just going
3 to say, I think we're going to -- not just in view
4 of Professor Fidell's presentation, but also because
5 we got amendments this morning, I think we should go
6 back to Senator Gillibrand and ask our questions
7 again after we've had a chance to look at the
8 amendments and ask her for a presentation.
9 I think our original request was for
10 either some analysis that she might wish to send
11 over or a staffer who could come over and answer our
12 questions. So I just think that's something that we
13 should do.
14 GENERAL HAM: We might, Judge, also
15 consider asking the judge advocates general if they
16 would consider revising their October 28th letter
17 based on the modifications to the bill.
18 CHAIRWOMAN JONES: Yes, that's a great
19 idea. I think we would certainly have to give them
20 that opportunity as well.
21 MS. HOLTZMAN: But I also think that when
22 we send something to Senator Gillibrand that we


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1 alert her to the fact that Mr. Fidell, Professor
2 Fidell, said that there was a due process problem
3 with the statute and how does she intend -- assuming
4 that that's not been corrected, how should would
5 deal with it.
6 CHAIRWOMAN JONES: I think that's right.
7 Anything further?
8 (No response.)
9 CHAIRWOMAN JONES: All right. Shall we
10 take a five-minute break at this point?
11 (Recess from 11:40 a.m. to 11:51 a.m.)
12 CHAIRWOMAN JONES: Let's resume our
13 subcommittee session now. I want to welcome Mr.
14 James Love, Mr. Love who is Acting Director of
15 Military Equal Opportunity and DEOMI Liaison, and
16 Mr. -- rather, Dr. Dan McDonald, who's here from
17 DEOMI, Defense Equal Opportunity Management
18 Institute.
19 Gentlemen, I'm going to apologize quickly
20 for the delay and let you get started. Mr. Love.
21 ORGANIZATIONAL CLIMATE SURVEYS (DEOCS)
22 MR. LOVE: Thank you. First of all, I'd


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1 like to thank you for the opportunity to come and
2 provide information to you and to this group.
3 Hopefully, we can answer all the questions that you
4 have and provide information that will help in your
5 deliberations later in this whole process.
6 As mentioned, I'm Jimmy Love. I serve as
7 the Acting Director for Military Equal Opportunity
8 in the Office of Diversity Management and Equal
9 Opportunity. We are a policy office on the staff of
10 the Secretary of Defense. So our primary role is to
11 recommend policy decisions, to oversee policy as it
12 plays out in the services, for the military equal
13 opportunity program in my specific instance.
14 What I'll also point out is that under
15 the military equal opportunity program sexual
16 harassment falls under that purview. I mention that
17 because there's a tendency sometimes for people to
18 combine sexual assault and sexual harassment and
19 think that it's all handled as part of one program.
20 That distinction is made primarily because, as you
21 know, sexual harassment is an administrative matter
22 and sexual assault is a crime.


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1 Mr. Clarence Johnson, who's my Director,
2 who was here --
3 COLONEL GREEN: He had to depart.
4 MR. LOVE: Mr. Johnson exercises the
5 oversight of the Defense Equal Opportunity
6 Management Institute, which falls under the auspices
7 of our office on the Secretary of Defense staff.
8 My plan this morning is to give you a
9 very quick overview of DEOMI, the command climate
10 process, and then turn it over to Dr. McDonald, who
11 is our head researcher at DEOMI, who really works
12 with the nuts and bolts of the Defense Equal
13 Opportunity Climate Survey and the command climate
14 program.
15 So let's get started. I'm not sure how
16 familiar you are with DEOMI. It got its start about
17 42 years ago. It grew out of racial disturbances,
18 civil disturbances, that were happening within the
19 military and even some instances of race riots that
20 had shut down our ability to function as a military
21 service.
22 As a result of that, General Lucius Theus


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1 and several other appointees became part of the
2 commission to look at what to do about race
3 relations in the military. This was around the
4 1960-70 time frame and, as you know, during that
5 time the United States was having its share of
6 racial turbulence across the board.
7 DEOMI, as we call it today, got its start
8 as the Defense Race Relations Institute and it
9 became the location in the Department of Defense for
10 sending service members and civilians at that time
11 to become facilitators and conduct what was called
12 mandatory human relations or race relations
13 training. That program lasted for a few years,
14 quite honestly, and at every installation we had
15 mandatory training, mandatory participation in this
16 human relations, race relations program.
17 The mission of DEOMI today is to provide
18 equity training, training in equal opportunity,
19 training in human relations, training in diversity,
20 in order to influence and enhance mission
21 accomplishment within an organization. So that's
22 their primary goal today.


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1 In 1979 we changed the name of the
2 institute from the Defense Race Relations Institute
3 to the Defense Equal Opportunity Management
4 Institute as part of that evolutionary process to
5 deal more with other aspects of equal opportunity
6 and treatment in race relations, in order to deal
7 with organizational management, in order to deal
8 with relationships between individuals and
9 commanders and resolve personal problems.
10 Out of that evolution grew what we called
11 at that time, which was in the nineties, the
12 Military Equal Opportunity Climate Survey. That
13 effort was initiated by researchers at DEOMI, very
14 bright, intelligent folks who were looking for ways
15 that we could help commanders get a sense of what
16 was happening within their organizations, what's the
17 climate of the organizations.
18 In the sixties and the seventies we
19 called those sessions "rap sessions," where we'd
20 either walk around through units to find out what
21 the pulse is. But we had no scientific way of
22 really getting at that kind of information until we


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1 developed this instrument called the Military Equal
2 Opportunity Climate Survey.
3 It was not mandatory. It was a tool that
4 was offered to commanders for their use, to give
5 them a sense of what was happening. It also was a
6 starting point. It was not to be, designed to be
7 the beginning and the end to tell you this is what
8 my organization looks like from a race, ethnic
9 perception standpoint. It was one of several other
10 dot points involved in an organizational climate
11 assessment.
12 Today we call that instrument the Defense
13 Equal Opportunity Climate Survey. Dr. McDonald will
14 talk to you shortly about some of the details
15 involved with that instrument, but it was Dr.
16 McDonald and his team that brought this evolution of
17 the Military Equal Opportunity Climate Survey
18 forward, so that today this instrument deals with a
19 wider variety of human relations kinds of issues.
20 In the latest version we even get into dealing with
21 issues of sexual assault, sexual harassment,
22 bullying, hazing, all of those kinds of issues that


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1 are wrapped up within organizations.
2 In July of this year, Secretary Wright,
3 our Under Secretary, in support of guidance that
4 came from the Secretary of Defense and from the
5 National Defense Authorization Act, issued policy to
6 move the DEOCS to another level. What do I mean by
7 another level? The DEOCS, just like the MEOCS, was
8 initially an instrument that was offered to
9 commanders for their use, but the recent guidance
10 from the Secretary of Defense and also from the
11 National Defense Authorization Act changed that
12 guidance in hopes of looking more at how we can hold
13 commanders accountable for that climate within their
14 organization.
15 There were three main points that were
16 part of the Secretary's guidance. First of all was
17 to ensure climate assessments are conducted within
18 120 days after assumption of command. The second
19 point was to ensure assessments provided an
20 opportunity for service members to respond about how
21 well their commanders addressed issues like sexual
22 harassment and sexual assault. Then the third point


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1 was that the analysis from annual surveys should be
2 provided to the commander above you in the chain of
3 command within 30 days.
4 So now we've taken a document or an
5 instrument or a tool, however you choose to look at
6 it, and elevated it to the status of providing
7 information, not just for the commander, but also
8 for the commander's commander, to ensure that we're
9 addressing the myriad of issues that are included in
10 that survey.
11 So at this point what I'd like to do is
12 turn the remainder of our presentation time over to
13 Dr. Dan McDonald to talk specifically about the
14 instrument, known as the Defense Equal Opportunity
15 Climate Survey, and also address any questions that
16 you may have concerning that instrument.
17 CHAIRWOMAN JONES: Thank you.
18 COLONEL HAM: Just for the members, in
19 your folder at tabs 5 and 6 you have two different
20 versions of the climate survey, version 3.3.5 and
21 4.0.
22 MS. FROST: I do have a couple of


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1 questions. When you say "commander," at what level?
2 I mean, for the Army, for example, are you talking
3 all the way down to the platoon level?
4 DR. McDONALD: Company commanders, yes.
5 It's at all levels right now. So it varies
6 depending. Once assumption of command is made,
7 within the 90, some services 90, some 120 days, the
8 commander is required to do a command climate
9 assessment.
10 MS. FROST: So any command position
11 whatsoever?
12 DR. McDONALD: Yes, ma'am.
13 MR. LOVE: We've had individuals
14 requesting the survey from various levels of
15 command, from the most junior levels of command all
16 the way to the, for example, the Chairman of the
17 Joint Chiefs of Staff has requested a DEOCS. And
18 they've been doing that now for a couple of years at
19 least they've gone through that process.
20 MS. FROST: But this is not mandatory?
21 MR. LOVE: What's not mandatory is the
22 use of this particular instrument.


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1 MS. FROST: Okay.
2 CHAIRWOMAN JONES: Doctor, do you want to
3 take it from there?
4 DR. McDONALD: Good morning, everyone. I
5 want to thank the committee for the time and
6 allowing me to share some of the work that's been
7 done here at DEOMI and with the Office of Diversity
8 Management and Equal Opportunity and with the
9 services. Today I will talk a little bit about the
10 DEOCS. As Mr. Love mentioned, it is a command
11 climate assessment. It is to assess the perceptions
12 of individuals within the organization with respect
13 to various human relations issues.
14 When I came on board in about 2005, it
15 had just been instantiated as an online version to
16 basically provide by demand for commanders to be
17 able to provide part of their assessment of their
18 command's organizational climate. When I say part,
19 I mean that the rule of thumb is for most of the
20 services that this is just a portion of a complete
21 climate assessment. They also conduct focus groups
22 and interviews. They're to look at records and


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1 other things to get a more holistic look at an
2 organization when they actually do an assessment.
3 So the DEOCS is part of that tool.
4 When I came on board, we were doing about
5 10 to 15 of these a week. Right now the volume is
6 about 250 commanders a week are requesting this
7 instrument, to the tune of about 50,000 soldiers,
8 sailors taking or being administered the DEOCS, with
9 about a 53 percent return rate on it.
10 Mr. Love also mentioned that DEOCS was
11 initially more of a volunteer type of instrument.
12 There were other -- the services had their own
13 instruments as well of various versions. The Army
14 had theirs, the Navy, and so on. But what has
15 happened -- and I think it's because we've worked
16 closely with the services -- is that this has
17 evolved as the tool of choice, and that's where we
18 are today.
19 Beginning about January 1st, all of the
20 services are using the DEOCS as their command
21 climate survey instrument to assess perceptions
22 within the organization.


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1 As I mentioned, it is a tool for unit
2 commanders, but it has evolved. It has evolved from
3 a by-choice to more, with the NDAA and these other
4 movements with respect to sexual assault, more into
5 the realm of accountability. So it changes the
6 complexion of the instrument.
7 We continue to try to evolve this
8 instrument to meet those needs, one of which being
9 now rollup data is being asked for at higher levels.
10 We work very closely with the SAPRO office, DOD, to
11 do that, very closely in terms of the types of
12 questions to be asked and how we can provide that
13 information to them on a monthly basis and to the
14 services on a quarterly basis, so that they can keep
15 their finger on the pulse with respect to various
16 issues concerning things such as the knowledge, the
17 basic knowledge level of individuals within the
18 command about avenues for reporting, the barriers to
19 reporting, what kind of leadership support is there
20 for SAPR. So that's one of the instruments. So now
21 it has evolved into much more.
22 I look forward to your questions on the


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1 matter and I open it up.
2 CHAIRWOMAN JONES: Could I just ask you,
3 when SAPR came in they told us about their survey
4 and it was administered by computer. I assume yours
5 is as well?
6 DR. McDONALD: Yes, ma'am, by computer
7 and also, because some service members don't have
8 access, full access to computers at various times,
9 we provide a paper and pencil version. There will
10 be SAPR questions on a paper and pencil version for
11 version 4.0, which is the new one.
12 CHAIRWOMAN JONES: I think you said you
13 have a 53 percent response rate?
14 DR. McDONALD: Yes.
15 CHAIRWOMAN JONES: Which is much higher
16 than the SAPR response rate. Do you know what the
17 cause of that is, or what do you attribute that to?
18 DR. McDONALD: They use the methodology,
19 randomized stratified sampling technique. So they
20 go out, they look at the different demographic
21 groups and they do a shotgun to those demographic
22 groups to provide some level of response. They tend


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1 to get a much lower response rate than a commander
2 who provides to their unit, the full unit: We're
3 going to do a command climate assessment so we can
4 improve things. So they tend to get a -- I think
5 there's a little more motivation and direct
6 motivation as a result of that, would be my
7 assumption. So we do get a nice response rate.
8 As it's now becoming more of an
9 accountability tool, I'm anxious to see how those
10 response rates may change, may actually -- I
11 anticipate perhaps even an elevation from 53
12 percent.
13 MS. FROST: But the mechanics of this at
14 the unit level. You say a commander encourages
15 members to fill out this survey. If it's paper and
16 pencil, which has me concerned, where does the paper
17 and pencil survey -- who does that go to?
18 DR. McDONALD: The paper and pencil
19 survey is sent back to DEOMI to process.
20 MS. FROST: By whom?
21 DR. McDONALD: By their administrator,
22 their appointed administrator. The DEOCS process is


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1 such that an administrator will request on line or
2 over the phone a survey, and typically they will
3 actually put the information in on line. They're
4 appointed by their commander, and then they provide
5 the commander's information.
6 From there they will indicate whether
7 it's paper and pencil or if it's on line. We have
8 specialized bubble Scantron sheets that we then, if
9 it's on line, send to the command. From there the
10 administrator is guided through the process of
11 administering the survey instrument to the command.
12 Then it's sent back to us for processing
13 and the results, and it's compiled into an
14 automated, generated report.
15 GENERAL HAM: At what levels are you able
16 to aggregate responses and over what periods of
17 time?
18 DR. McDONALD: We can aggregate responses
19 to the level of the DOD. We have done snapshots,
20 six-month snapshots. We can do quarterly
21 aggregations and whatever is asked for. There are
22 some challenges, methodological challenges, with


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1 what we do, which we're working on at the present
2 time, which includes ensuring that the sample is
3 representative.
4 The power of what we have is we're
5 sampling half the force, which is a much greater
6 number than these randomized surveys that are out
7 there. So the power of it suggests that it's very
8 valid. But we're going through some additional
9 precautions in order to ensure that. That's some of
10 the things we're working on as this evolves.
11 Yes, ma'am?
12 MS. HOLTZMAN: I just took a real quick
13 look at the DEOCS 3.3.5.
14 DR. McDONALD: Yes, ma'am.
15 MS. HOLTZMAN: And I see that there are
16 some questions, for example, about gender are not
17 included. Maybe you could tell me whether this form
18 has been changed, upgraded, or not?
19 DR. McDONALD: May I ask the question
20 again? I'm sorry, I didn't understand.
21 MS. HOLTZMAN: Has this form been
22 changed, updated?


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1 DR. McDONALD: Is that the survey
2 instrument itself?
3 MS. HOLTZMAN: I don't know. 3.3.5.
4 DR. McDONALD: It is being -- it will be
5 updated in January. We'll have a version 4.0.
6 COLONEL HAM: 4.0 is your next tab.
7 CHAIRWOMAN JONES: We already have 4.0.
8 MS. HOLTZMAN: For example, I hope you're
9 going to include some questions that you don't seem
10 to -- you have: "A demeaning comment was made about
11 a certain religious group," but you don't have
12 demeaning comments made about women, for example.
13 That's not covered here.
14 DR. McDONALD: Well, we have sexual
15 harassment, four questions on sexual harassment and
16 discrimination.
17 MS. HOLTZMAN: Where?
18 DR. McDONALD: In the survey. I'll have
19 to find it.
20 MS. HOLTZMAN: Right, "Sexist jokes are
21 frequently heard, "Sexually suggestive remarks were
22 made." But you don't have -- the next issue is "A


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1 well-qualified person was denied a job because the
2 supervisor didn't like their religious beliefs."
3 You don't have that question with regard to gender.
4 DR. McDONALD: And that's why we moved in
5 version 4.0 to be more inclusive of those types of
6 things.
7 MS. HOLTZMAN: Okay. I'm glad to hear
8 that.
9 DR. McDONALD: And that's one of the
10 things that, this is an evolving survey.
11 MS. HOLTZMAN: Okay, thank you.
12 MS. FROST: Just to understand, because
13 looking at the memo from the Secretary of the Air
14 Force, and they're stating that across the Air Force
15 the use of your form or your survey will be
16 mandatory beginning January 1, 2014.
17 DR. McDONALD: That's what I believe.
18 MS. FROST: And what about the other
19 services? Is the Air Force the only?
20 DR. McDONALD: No. The other services
21 have their own individual policies that they'll be
22 able to speak to when they come up. But they have


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1 their own individual policies that also mandate the
2 DEOCS. The Army, it's a preferred tool at this
3 time. I don't believe it's mandated. But by just
4 the essence of it being used, our numbers are really
5 high for all of them.
6 CHAIRWOMAN JONES: Just to say, in part 7
7 even of 3.3.5 has some questions: "My leadership
8 promotes a climate that is free of sexual assault,"
9 and you can choose one out of five from strongly
10 agree to strongly disagree. "My leadership would
11 respond appropriately in the event a sexual assault
12 was reported"; the same array of choices. And it
13 goes on.
14 When did you start using this? I missed
15 that. Sorry.
16 DR. McDONALD: These SAPR questions came
17 about March of 2012. We worked closely with the
18 SAPRO office to develop these in the first phase of
19 instantiating this in 3.3.5, with the notion that we
20 would enhance it during 4.0.
21 CHAIRWOMAN JONES: So you've been using
22 3.3.5?


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1 DR. McDONALD: Yes, ma'am.
2 CHAIRWOMAN JONES: Since when?
3 DR. McDONALD: 3.3.5 without the SAPRO
4 items has been around for a few years. In 2012 we
5 included -- we added the SAPRO items to 3.3.5.
6 CHAIRWOMAN JONES: Okay. And do we have
7 any statistics from that?
8 DR. McDONALD: At what level? In terms
9 of usage?
10 CHAIRWOMAN JONES: You told me there are
11 50,000 survey results?
12 DR. McDONALD: Yes, ma'am. Last year we
13 administered 1.8 million surveys across the force.
14 We're on pace this year to do nearly 3 million
15 surveys administered and just with the 53 percent
16 return rate looking at 1.5 million data points.
17 GENERAL HAM: Do you have FY '13 data
18 accumulated already?
19 DR. McDONALD: Yes, sir. You mean data
20 from the surveys?
21 GENERAL HAM: Yes.
22 DR. McDONALD: Yes. We provide rollups,


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1 rollup reports to the services.
2 MS. HOLTZMAN: What's a rollup report?
3 DR. McDONALD: A rollup would be all of
4 their data from a period of time, and we would roll
5 it up and aggregate it, so to give them a big
6 picture of the force.
7 GENERAL HAM: Mr. Love, I'm old enough to
8 remember rap sessions. While the intent may have
9 been that they were not mandatory, they were
10 mandatory when we did that.
11 In the change of policy from being
12 responses provided only to the commander, to the
13 commander of that unit, so the commander would have
14 a glimpse of the conditions that he or she has
15 inherited or developed, depending on when the survey
16 was administered, to now it's mandated you will do
17 it and your boss is going to see it, have you seen
18 any noticeable difference, A, in responses or, B, in
19 the support that commanders have previously shown in
20 implementing the instrument?
21 MR. LOVE: I'm going to start out with
22 the response. From my own level, at the OSD level,


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1 we have noticed increased interest, primarily from
2 senior leaders about the survey, the survey results,
3 information about the surveys, questions about the
4 kinds of questions that are on the survey.
5 So the interest has heightened. I don't
6 know that -- and I'll let Dr. McDonald talk to this
7 -- I don't know that we have physically seen a
8 change in the increase of the number of surveys.
9 The primary reason that we went to -- initially when
10 we started out with the MEOCS and then the DEOCS,
11 the idea was that we would encourage commanders to
12 use this instrument more if they didn't think it was
13 part of their report card, so to speak.
14 But Dr. McDonald could tell you what the
15 usage looks like today.
16 DR. McDONALD: Yes. What I see is a
17 definite increase, about a 70 percent increase in
18 usage across the board as a result of NDAA in terms
19 of demand. Also I see an increase in the level at
20 which the climate surveys are being requested.
21 About ten general officers or so a week are
22 requesting the survey. So that I see kind of an


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1 elevation in terms of the level at which the surveys
2 are being requested.
3 When the survey is requested, they can
4 request up to 16 breakout reports from their lower
5 levels. So there seems to be an elevation there.
6 We get more customer service requests because now
7 that information is being shared with their boss,
8 what do I do and how do I make sure that I'm
9 communicating this well?
10 In my opinion it's putting more emphasis
11 on our equal opportunity advisers, who are the
12 agents of this survey instrument and the holders of
13 this information, if you will, to interpret and then
14 to provide the information to the commanding
15 officer. It's putting more emphasis on them in
16 terms of how having to understand sexual assault
17 prevention and other things and how to work with the
18 SARC's and work with other folks in their
19 organization so that they can come together and
20 provide a comprehensive solution for the commander.
21 Some of this is happening, but I see some
22 of this also evolving as this has emerged into more


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1 of an accountability tool.
2 I hope that answered your question.
3 GENERAL HAM: Yes.
4 Who determines the locally developed
5 questions? Is it the requesting commander?
6 DR. McDONALD: Yes, sir.
7 GENERAL HAM: So a senior commander does
8 not have an authority to say, a battalion commander
9 in the Army as an example, does not have the
10 authority to say: When you conduct a DEOCS of my
11 subordinate units, you will ask these questions.
12 DR. McDONALD: Of the senior commander
13 becomes the requester and they have 16 breakouts,
14 then they do that. For example, we're working with
15 the Chairman of the Joint Chiefs right now. The
16 Chairman -- each directorate has their own
17 individual set of locally developed questions that
18 they ask as a result of that. So it can be
19 engineered that way in order to do that.
20 And we'll work with the customers on the
21 locally developed questions. We have examples on
22 our web site that they can choose from. But also if


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1 there are some individual issues outside of the
2 realm of what we provide, we work with them to craft
3 questions that have good face validity at least, so
4 that they can ask appropriate questions and get some
5 meaningful information.
6 GENERAL ALTENBURG: What happened to your
7 number of requests for the surveys between 2006 and
8 2009, when the operational tempo was so high?
9 DR. McDONALD: I think the -- well, I
10 won't attribute it to the OPTEMPO, but I think I'll
11 attribute it to the quality of the survey instrument
12 in that the requests went -- more than a tenfold
13 increase in demand as a result.
14 GENERAL ALTENBURG: You were getting more
15 requests for your troops to take these surveys when
16 the operational tempo was even higher?
17 DR. McDONALD: Yes, but I'm not sure if I
18 could link that to that.
19 GENERAL ALTENBURG: My instinct would be
20 that it would lower it because they didn't have time
21 to focus on stuff like that, they were so busy
22 getting ready to go to war. I think it's


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1 remarkable. It's a compliment to the process that
2 they were requested that much.
3 GENERAL HAM: But my recollection is,
4 though, it wasn't mandated at DOD level. Some
5 services did put -- did establish periodic reporting
6 requirements, survey requirements.
7 DR. McDONALD: Yes, sir. Yes, sir.
8 CHAIRWOMAN JONES: Yes, Liz?
9 MS. HOLTZMAN: I want to make sure I
10 understand this. How many -- so this is you compile
11 the information on this. Is it generally available
12 to the public, to the Secretary of Defense? To
13 what? To whom is it provided?
14 DR. McDONALD: Well, for the SAPR-related
15 questions we would provide the information monthly
16 to the SAPRO office. On a quarterly basis, to each
17 of the service SAPRO offices, we provide rollups to
18 them. To really the agents within the services, the
19 EO headquarters, the EO offices, we provide GEOCS
20 rollups on a periodic basis to those folks so that
21 they can keep their finger on the pulse, tell what's
22 going on with respect to equal opportunity and


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1 organizational effectiveness.
2 MS. HOLTZMAN: What happens when -- let's
3 say you have question 82, "To what extent is your
4 chain of command, for example, promoting unit
5 climate based on mutual respect and trust and
6 refrain from sexist comments and behavior?" Suppose
7 those are answered in the negative. What happens?
8 DR. McDONALD: The services each handle
9 that separately and that's probably something that
10 they'll be able to answer.
11 MS. HOLTZMAN: So there's no standard
12 format or standard protocol for responding to
13 situations in which a unit says that, there's a
14 terrible climate in my unit? The commander can just
15 say: Well, so what? I'm not going to do anything
16 about it.
17 DR. McDONALD: I think formerly, yes, in
18 a former life. But now that they're having to share
19 the results with their boss, the accountability
20 level is going to go up on those types of flags.
21 MS. HOLTZMAN: Well, but is anybody --
22 okay. But you have no way of calculating -- well,


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1 first of all, there's no protocol requiring any
2 commander to address any of these issues that are
3 identified in this survey?
4 MR. LOVE: Let me jump in just a second.
5 In the Military Equal Opportunity Program, DOD
6 1350.1, which is the guidance from the DOD level, we
7 state in there that service secretaries shall hold
8 commanders accountable for their command climate
9 within their organizations.
10 Now, the technique of doing that varies
11 to some degree. Some services look at remarks and
12 evaluation reports. Others services have other ways
13 of dealing with that accountability piece. What
14 we're finding out -- that instrument, that
15 directive, was published in 1995. What we're
16 finding out is that we did not have in fact a
17 performance measurement to tell us who was doing
18 what to whom, partly because the results were --
19 belonged to the commander only.
20 For example, if -- and this was before
21 the policy changed. if you requested a climate
22 survey and we administered the climate survey to


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1 you, you have the results, you were not required by
2 policy to take that up to anybody. So you could
3 hoard it and keep it. Or if you're proactive you
4 can say: Hey, boss, I've got something I want to
5 show you and talk with you about. So that
6 opportunity was there, and we were not tracking it.
7 MS. HOLTZMAN: But now are you?
8 MR. LOVE: Well, we don't have the
9 mechanism yet to track the individual actions, and
10 that's what the services can talk to.
11 MS. HOLTZMAN: Okay.
12 MR. LOVE: But we do have, obviously, the
13 results and the rollup report. We don't maintain
14 the individual unit reports, I think, no longer than
15 a certain period of time. But we do roll the data
16 and information up. Now, the services may retain
17 that information and have ready access to it, but we
18 don't at DOD.
19 MS. HOLTZMAN: So you don't really have
20 any statistical way or any other way of knowing what
21 the response has been by the services, within the
22 services, to the information gained in this report?


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1 Or do you? I'm sorry, I just don't know.
2 DR. McDONALD: I think you're correct, at
3 this point we don't know. We don't have any --
4 MR. LOVE: At this point.
5 DR. McDONALD: -- specific information
6 about how --
7 MS. HOLTZMAN: "At this point." Are you
8 thinking you have a new job ahead of you, right?
9 (Laughter.)
10 DR. McDONALD: One of the other aspects
11 of the DEOCS is that we provide that assessment, but
12 now we're migrating to a notion of assessment,
13 linking them to follow-up on solutions. So on our
14 web site, for example, we can provide specialized
15 training materials, information, policies, resources
16 that are particular to each of the factors that are
17 provided on DEOCS 4.0.
18 So from a diagnostic standpoint, if we
19 identify some areas below average, we'll say, what
20 we're going to do is provide recommendations.
21 First, first and foremost: Hey, this isn't the end
22 of the assessment; you've got focus groups,


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1 interviews, look at other records. You need a
2 holistic look at the organization to do a complete
3 command climate assessment.
4 Next, here's a training video, here's
5 some other information, here's some resources that
6 are particular to your diagnosis, so that they can
7 quickly have something at their fingertips and the
8 commander can quickly address the issue.
9 What we'll be able to do in the future is
10 to look at how those things are being downloaded at
11 least.
12 MS. HOLTZMAN: When is that future?
13 DR. McDONALD: Well, the first version is
14 coming out in January for this new concept. But
15 it's spiral development. We're still working with
16 the services on getting more solutions, best
17 practices from the services, and other types of
18 things.
19 MS. HOLTZMAN: So that was going to be my
20 next question.
21 I'm sorry. May I?
22 CHAIRWOMAN JONES: Yes, go ahead.


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1 MS. HOLTZMAN: So who develops the
2 standards for what's acceptable? I mean, let's just
3 take this: "Refrain from sexist comments and
4 behaviors." I don't know how you grade this, if
5 it's one to five or one to ten. But is a two -- at
6 what point do you think that action is warranted?
7 Are you suggesting the standards? Do you
8 have to have ten complaints or one complaint? What
9 are your standards for action and determining if
10 there's a problem?
11 DR. McDONALD: The method that we're
12 using right now is we're leaving some of the
13 interpretation up to the services. However, what
14 we're doing is taking the normal distribution of a
15 given service. And any score that a commander
16 receives on a particular factor will be graded as
17 either below average, average, or above average.
18 MS. HOLTZMAN: That's in comparison with
19 others?
20 DR. McDONALD: In comparison with the
21 rest of the service, yes.
22 MS. HOLTZMAN: But doesn't that raise the


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1 question that if you have rampant, let's say,
2 demeaning treatment of women, you're not going to
3 catch that because everybody does it?
4 DR. McDONALD: Everybody's average,
5 correct. So the notion is that we are always trying
6 to move into the next rung, above average.
7 MS. HOLTZMAN: And how do we do that?
8 DR. McDONALD: By policies such as --
9 MS. HOLTZMAN: Oh, you mean above
10 average? Okay, I got it.
11 DR. McDONALD: Yes. And then the notion
12 that you have to share it with your boss. And if
13 you're only average now, then you're striving for
14 excellence.
15 MS. HOLTZMAN: Thank you for explaining
16 this to me.
17 MS. FROST: May I ask a question? How
18 does this pertain to senior NCO's?
19 DR. McDONALD: In terms of?
20 MS. FROST: I think they play a critical
21 role in creating command climate.
22 DR. McDONALD: Yes, and many of our EOA's


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1 are senior NCO's. They're part of the command just
2 like the rest. So when we go through a survey --
3 are you talking about like an NCO IC or something,
4 someone in charge of --
5 MS. FROST: Senior NCO's in leadership.
6 DR. McDONALD: They're included in the
7 survey. They may be the administrator for a
8 commander.
9 MS. FROST: They could be the
10 administrator for the commander, and what if it's
11 the senior NCO that is perpetrating some of the
12 sexual harassment?
13 MR. LOVE: We're not designed at our
14 level to identify that. Much of that is going to
15 have to come from the commanding officer in the
16 organization, to realize what's happening in his or
17 her organization.
18 MS. FROST: Well, then why does he need a
19 survey, he or she, if they realize? I just have
20 some concerns about --
21 MR. LOVE: The survey is really the
22 starting point, the starting point to open the door,


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1 to highlight issues. The other part of the
2 assessment includes, as Dr. McDonald mentioned, a
3 review of the records, a review of your complaints,
4 paper records, review focus groups. So the process
5 itself is not complete with just the survey
6 administration.
7 MS. FROST: Do you know if the services
8 systematically use these, the survey results, in
9 OER's?
10 GENERAL HAM: Performance reports.
11 DR. McDONALD: They will talk about that.
12 I think there is consideration there.
13 COLONEL HAM: But when your survey asks
14 about my leadership, the leadership of the unit is
15 not just the commander alone.
16 MS. FROST: That's my question. In one
17 question you talk about organization and leadership,
18 in the other one you talk about chain of command.
19 Do you define either of those, and if so does it
20 include -- technically, we know chain of command is
21 one thing, but perceptually it often includes those
22 mid-level and senior NCO's. Do you define those


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1 terms anywhere?
2 DR. McDONALD: Probably not to the level
3 that -- we keep it somewhat broad for the command
4 climate assessment.
5 GENERAL HAM: Are 3.3.5 and 4.0
6 sufficiently compatible that you'll be able to
7 continue trend analysis, or will the world start
8 anew on 1 January?
9 DR. McDONALD: The world's going to start
10 anew pretty much.
11 GENERAL ALTENBURG: I can tell you as a
12 former E-4 that when I had that place in life
13 everybody between E-7 and E-8 or E-6 and E-8, that
14 was the command. I can remember going up to deliver
15 something and coming back and telling my buddies: I
16 saw a major today.
17 (Laughter.)
18 GENERAL ALTENBURG: Seeing a major,
19 because all we had were lieutenants and sergeants
20 where I was. So really I think that's probably
21 pretty important for survey purposes, is to, if
22 nothing else, just define it a little bit better,


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1 because I think we found that sometimes when people
2 say the command did this or the command didn't take
3 action, they're talking about a buck sergeant or a
4 staff sergeant in the Army, because that's the
5 command to them. They don't know who these other
6 people are.
7 I'll bet you 200 people out of 600 in the
8 battalion don't know, sometimes don't know the name
9 of their battalion commander.
10 MR. LOVE: Which is a good point and kind
11 of reinforces the idea that perhaps a focus group is
12 needed to get at clarity in some of the responses
13 that come up from the survey.
14 COLONEL HAM: So the soldiers' idea of
15 leadership, to a private might be his squad leader
16 or his platoon sergeant. And the focus group would
17 get at --
18 DR. McDONALD: It would be more
19 diagnostic at that point, yes, to get to the nitty-
20 gritty.
21 To answer again the question about the
22 senior NCO, our EOA's, our NCO's, are oftentimes not


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1 within the chain of command. So the EOA's are
2 agents and advocates for this instrument, so often
3 they aren't the right-hand person of the commanding
4 officer, let's say. So it's sort of a somewhat
5 removed process. Sometimes they are, sometimes they
6 aren't.
7 Also, the command themselves have other
8 EO representatives. For example, in the Navy
9 they're called CMEO's, in the Army EOL's, which is a
10 collateral duty, so that they answer to the EOA in
11 terms of those types of things.
12 CHAIRWOMAN JONES: The more I hear about
13 this, the more I think that more specificity in the
14 survey would help a great deal, because when you're
15 trying to figure out not just what the problem is,
16 but where it is, that would be tremendously helpful.
17 DR. McDONALD: There's another level to
18 this as well that we haven't discussed. We have the
19 organizational averages across all of these factors,
20 for example, but we also provide comparisons. We
21 can compare men versus women in their responses.
22 We'll compare minorities and majorities and other


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1 types of groups.
2 What we often find is a fault line in
3 perception between groups, which allows us then to
4 kind of start to diagnose where the perception
5 differences are. That's another aspect of the
6 survey instrument that provides more knowledge about
7 what's going on.
8 MS. FROST: When SAPRO administers their
9 survey, how do they reach out to service members?
10 DR. McDONALD: The gender relations
11 survey instrument?
12 MS. FROST: Yes.
13 DR. McDONALD: They work through DMDC and
14 they reach out through a process where they have
15 records of all service members and the demographics,
16 and they adjust specifically to specific
17 demographics, specific numbers, and to specific
18 units, and a stratified randomized sampling
19 technique, and then they hope for a response.
20 MS. FROST: But I mean, literally,
21 physically, logically, mechanically, how do they
22 reach out to that service member?


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1 DR. McDONALD: You'll have to have them.
2 I can't.
3 MR. LOVE: I think most of it is
4 electronically. I think you may have a Defense
5 Manpower Data Center representative that's going to
6 speak to you.
7 MS. FROST: Okay.
8 MR. LOVE: Their survey instrument is a
9 Congressionally mandated instrument, started around
10 the 1995 time frame, both for sexual harassment and
11 equal opportunity, and then in later years sexual
12 assault and other areas.
13 COLONEL HAM: DMDC has appeared before
14 one of the other subcommittees. They were here with
15 Colonel Messler. DMDC sat next to Colonel Messler
16 in the subcommittee. That was DMDC, Defense
17 Manpower Data Center.
18 And you get an email. I have one today.
19 They're constantly surveying. You get an email
20 telling you: I want you to fill out this survey.
21 And it continues to ping you until you fill it out.
22 CHAIRWOMAN JONES: Anything further?


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1 Colonel?
2 COLONEL TURNER: I apologize. This is
3 not about the survey, but it is related to your
4 opening remarks, Mr. Love. I'll tell you why I'm
5 asking the question and then I'll ask you the
6 question.
7 Part of our charter is to look at the
8 appropriateness of -- what is the appropriate role
9 of the commander in DOD's greater effort to reduce
10 sexual assault. You talked about race relations.
11 My understanding of race relations from the sixties
12 and the seventies is it's dramatically better race
13 relations and the crimes associated therewith is
14 dramatically better today.
15 What, if any, significance did the
16 commander have in that cultural and climate change?
17 MR. LOVE: That's a great question and
18 I'd like to talk for a long time on it. Let me give
19 you the short version based on really just my
20 personal experience. I attended the Defense Equal
21 Opportunity Management Institute when it was the
22 Defense Race Relations Institute, so I went through


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1 that program, 16 weeks of training then, maybe 12
2 weeks of training today.
3 I worked as a race relations or a human
4 relations instructor at Little Rock Air Force Base
5 for at least two years before doing something a
6 little bit differently. One of the things that I've
7 noticed in my 25-year career is that that training
8 period, even though a lot of people hated it, they
9 still talked about it in circles, in large groups,
10 about the impact that the training had on their way
11 about doing business.
12 The focus was on behavior, not attitudes,
13 and it was -- we were criticized significantly for
14 the training being sensitivity training. If it was
15 done correctly, it really wasn't sensitivity
16 training, but it did get people to open up, to
17 share, in an audience that involved your most senior
18 officers and your most junior people on the
19 installation.
20 I think that contributed in large part to
21 the increased involvement of these young leaders at
22 the time, as they grew up through the system,


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1 becoming a little bit more sensitive and proactive
2 in dealing with race relation issues.
3 We have not done that on the same scale
4 when we talk about sexual assaults. We did some of
5 it. Some of that training involved sexual
6 harassment. But it laid the foundation for the
7 policies that kind of followed in the later years.
8 People had to understand why we were doing what we
9 were doing and all that kind of stuff.
10 That's very unscientific. That's just my
11 personal experience from that time frame.
12 CHAIRWOMAN JONES: Thank you both,
13 gentlemen, very much.
14 We're now going to hear o the
15 administration and reporting of the command climate
16 surveys.
17 COLONEL GREEN: Yes, ma'am. We have the
18 service reps.
19 CHAIRWOMAN JONES: Okay, great.
20 COLONEL GREEN: Mr. Love, Dr. McDonald,
21 if you want to stay, if you think that's
22 appropriate, that's fine while we have the service


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1 reps. Or you're welcome to --
2 MR. LOVE: We'll stay.
3 GENERAL HAM: Rap session.
4 (Laughter.)
5 (Pause.)
6 CHAIRWOMAN JONES: Again, let me
7 apologize that we're running so late today. Thanks
8 for being so patient. I'd like to begin with
9 Colonel Emerson, Army, Office of Diversity and
10 Leadership.
11 COLONEL EMERSON: Good morning.
12 CHAIRWOMAN JONES: Good morning.
13 COLONEL EMERSON: I serve as the Equal
14 Opportunity Policy Branch Chief in the Army
15 Resiliency Directorate, Army G-1. This is my third
16 equal opportunity assignment. Previously I served
17 at the United States Military Academy as a diversity
18 officer, responsible for both the equal opportunity
19 program and the sexual harassment -- excuse me,
20 sexual harassment/SALT response and prevention
21 program.
22 Before my assignment to West Point, I was


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1 actually at DEOMI as the chief of senior leader
2 training. I completed the equal opportunity adviser
3 course in September 2007.
4 In my current role, I advise -- I'm
5 responsible for advising and revising portions of
6 the Army command policy, Army Regulation 600-20,
7 pertaining to the equal opportunity program, as well
8 as treatment of persons, which is formally known as
9 hazing, and command climate assessments, to include
10 surveys.
11 I have been a respondent on command
12 climate surveys, meaning I have actually filled them
13 out. As an equal opportunity practitioner, I have
14 helped interpret the results for our leaders who
15 requested the survey. I have supported post-survey
16 follow-up activities as well, such as focus groups
17 and individual interviews, and been on action teams.
18 In accordance with current Army command
19 policy, commanders, company commanders or their
20 equivalents, are required to conduct command climate
21 surveys at the following times: within 30 days of
22 command, 120 days for Army Reserve and Army National


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1 Guard commanders; again at 6 months; and annually
2 thereafter. Surveys will be conducted with other
3 assessment activities.
4 Above the company level, right now it is
5 voluntary for other leaders and commanders. As
6 Secretary of the Army directive is currently under
7 legal review which will mandate it at other levels
8 all the way up to the ACON, ASEC, and direct
9 reporting unit levels.
10 I'd like to explain the process actually
11 in the Army, how we execute a DEOCS. The equal
12 opportunity adviser should be actually monitoring
13 changes of command dates so that they are the ones
14 that are responsible for monitoring that time line
15 for the commander. They set up a meeting with the
16 commander to establish the survey window in
17 accordance with the unit's training schedule and to
18 figure out which ten questions, locally developed,
19 and the short answer, five questions max, that they
20 would like answered by the unit members.
21 The equal opportunity adviser then goes
22 into the DEOCS.net website to request the survey.


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1 The results in the Army are accessible to that equal
2 opportunity adviser and that commander. Up until
3 January 31 of this year, those were the only people
4 that actually looked at it and it was up to the
5 commander in the Army to say, yes, boss, or boss's
6 boss or somebody else, here's what my survey said.
7 Since the 31st of July, the actual
8 capability to request the survey mandates the
9 supervisor's email address and so he or she receives
10 an automatic link to the survey results at the same
11 time the company commander or the upper level leader
12 requests it, and the EOA.
13 The commander communicates, or should
14 communicate, with his or her members. It's not just
15 presto, here's an email in your box, fill out the
16 survey. The leader should be actually notifying his
17 or her unit that, I would like your honest feedback.
18 And they should tell that unit what kind of format
19 you're going to be requested to provide that,
20 whether it's a scantron form or the online
21 functionality.
22 DEOMI has a phenomenal briefing that does


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1 a very good job of explaining how one might actually
2 self-identify, but otherwise that the survey results
3 actually protect the anonymity of the respondents.
4 So we encourage folks to use that as well.
5 The commander should state how the
6 results will be incorporated into the feedback back
7 to the unit at some subsequent date and that any
8 allegations, say, of criminal behavior may result in
9 actual investigation, and I've been a part of
10 something like that as well.
11 The survey instruments are then shared
12 with the unit and subsequently typically the window
13 of opportunity to fill out the survey is open. Once
14 the window is closed, DEOMI compiles the results,
15 they merge the results of the Scantrons and the
16 online functionality, and they conduct analysis of
17 the results, draw conclusions, and prepare
18 recommendations for the commander.
19 They post that report to the website and
20 the commander receives an email that says
21 "Notification of survey result" and it has a
22 password, a link to the survey results, and they go


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1 in and they can download it themselves, the
2 commander.
3 The equal opportunity adviser is also
4 taught how to download the results and conduct his
5 or her own analysis of the data with the thought of
6 looking at it from the unit's mission, their
7 OPTEMPO, and the current operational environment, so
8 that if DEOMI missed the boat because they are not
9 Army, it's okay, because that's what we're here for.
10 It's a team effort and maybe they know something we
11 don't know and we might know something they don't.
12 The equal opportunity adviser then meets
13 with the commander to discuss those results and
14 provide their analysis and review DEOMI's
15 conclusions. Together or the commander on their own
16 develops their action plan that comes out of that to
17 address any identified weaknesses or, while this
18 information is confusing in the survey results, some
19 people said this, but the actual handwritten, or
20 that are subsequently typed for us if it's online,
21 results may be confusing, so we can conduct focus
22 groups or conduct individual interviews of any unit


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1 members that would provide clarification.
2 Commanders are required to conduct a
3 briefing to their command, their next level leader,
4 on their action plans and the results of their
5 surveys. They're encouraged to also inform their
6 unit, such that you're not just filling out a survey
7 and it goes into the ethernet, but they actually get
8 feedback on the results of the survey, and also
9 identify unit members or volunteers that would like
10 to work on action teams for any subsequent follow-up
11 to the survey to improve -- or seek out confusing
12 things or core policies that are established, say,
13 on an installation.
14 With respect to the Army's FY '13 rollup
15 of surveys, the Army had a 56 percent response rate
16 compared to the number of surveys, so the
17 denominator of surveys. So that's considered
18 phenomenal. Are there any people that don't respond
19 to the survey? Yes. Compared to the population,
20 the demographic of the Army -- and I know it's an
21 apples to oranges comparison because you don't just
22 get one survey every year. Sometimes you might get


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1 two, and if you PCS you might get surveyed three
2 times. Just because you get surveyed doesn't
3 mean you fill it out, because some people get tired
4 of filling out surveys.
5 In general, the enlisted population
6 actually responds to the survey in the same
7 frequency to their same population. DEOMI breaks it
8 down E-1 to E-6 and E-7 to E-9, and we have the same
9 percentage rate responses for those two populations.
10 So the lower enlisted do not respond higher than the
11 senior level.
12 Officers have a lower response rate
13 compared to their demographic, as well as civilians
14 do, which makes sense to me because the officers are
15 the ones requesting the survey and they don't
16 respond to their own survey. And although we have
17 moved to the DEOCS, away from the Military Equal
18 Opportunity Command Climate Survey, the MEOCS to
19 DEOCS, the civilians aren't actually seen as
20 respondents to the survey as a whole. But they do.
21 A significant population percentage actually
22 responds. It's not a representative sample. It's


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1 much more.
2 So we believe that the survey results
3 provide a valuable tool and they do, or could,
4 inform commanders of potential actions that they
5 could take to improve their command climate.
6 I'm here to answer your questions if I
7 can be of help.
8 CHAIRWOMAN JONES: Any specific
9 questions?
10 (No response.)
11 CHAIRWOMAN JONES: All right, thank you
12 very much.
13 Mr. Bradshaw, 21st Century Sailor Office.
14 MR. BRADSHAW: Sounds great.
15 (Laughter.)
16 MR. BRADSHAW: The Navy's 21st Century
17 Sailor Office was actually stood up in June by the
18 Secretary of the Navy as the 21st Century Sailor
19 Program. So each of the tenets are represented
20 within the 21st Century Sailor Office. We represent
21 inclusion. Our office originally fell under the
22 Diversity Office and when the 21st Century Sailor


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1 Office opened or was stood up we transferred from
2 Diversity over to the 21st Century Sailor Office.
3 I'm going to use a little different
4 approach. I want to give you kind of a time line
5 approach to how the Navy has worked with the command
6 climate assessment. If you have a copy of our
7 instrument, the Navy EO policy, you'll see that the
8 latest policy was drafted on 25 July 2007. This
9 process that I'm going to talk to you about has been
10 in existence since 2007.
11 Within the policy it states: "The
12 immediate superior in command, or ISIC, shall ensure
13 subordinate commanders assess their command climate
14 within 90 days of assuming command and annual
15 follow-up assessment during their command's tenure,
16 monitor the command climate of subordinate
17 commands."
18 And then it says for commanders,
19 commanding officers, and officers in charge. So I
20 heard the question earlier, at what level. If you
21 have the title of commander, commanding officer, or
22 officer in charge, you are required to complete the


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1 command climate assessment process.
2 These folks who are titled commanders
3 assess their command climate within 90 days of
4 assuming command and annual follow-up assessments
5 during their command tenure, and the purpose of the
6 climate assessment is to determine the health and
7 mission readiness of the unit.
8 This process shall be accomplished by
9 utilizing the triangulation method. Now, we don't
10 just use the DEOCS alone. The DEOCS is the survey
11 instrument that allows the commander to identify
12 perceptions. Every command has what's called a
13 command assessment team. The command assessment
14 team is led by the executive officer. The executive
15 officer on the command assessment team has a
16 representation of the command. So we have junior
17 enlisted, senior enlisted, junior officers, senior
18 officers, civilians, who are represented on the
19 command assessment team, to review the results of
20 the DEOCS.
21 Once they get the results of the DEOCS,
22 they conduct records and reports. So for example,


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1 if the command has 20 percent African Americans and
2 they notice that only 5 percent of the respondents
3 from the DEOCS are African American, they want to
4 find out -- It's kind of a barrier analysis -- why
5 are African Americans not taking the survey. So
6 that may be a focus group question.
7 So records and reports, focus groups,
8 observations. And observations by the command
9 assessment team, they're done year long. It's not
10 just during the period when the survey is being
11 conducted.
12 So the DEOCS alone -- I just want to
13 emphasize that -- for the Navy does not constitute
14 the command climate assessment. It is the mandatory
15 portion for every command to use. They have to use
16 the survey instrument. This was put in place in
17 2007.
18 Once again, the results of the DEOCS,
19 they're perceptions. So we want to validate the
20 perceptions from the respondents utilizing the
21 triangulation method. On a quarterly basis, we
22 track DEOCS completion by echelon two command, and


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1 we report the status to the Chief of Navy Personnel.
2 What CNP has done is, if he notices that one of the
3 echelon two commanders percentage rates are low
4 during the quarterly tracking, he will personally
5 call them to find out what's --
6 GENERAL HAM: What's an echelon two?
7 MR. BRADSHAW: Echelon two, they oversee
8 Fleet Forces Command, COMPAC Fleet. They oversee
9 all of the --
10 GENERAL HAM: Three and four-star
11 commands.
12 MR. BRADSHAW: That's correct. That's
13 correct, yes, sir, three and four-star commands,
14 major commands.
15 MS. HOLTZMAN: Excuse me. When you say
16 the percentage report, what are you talking about?
17 MR. BRADSHAW: DEOCS completion. So we
18 track unit DEOCS completion. If you recall, 90 days
19 upon assumption of command and annually thereafter,
20 so we're tracking that. And if CNP identifies that,
21 he sees that a percentage is low from one of the
22 Ech-2 commanders, he picks up the phone or emails


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1 him and says: Hey, what's going on? And there
2 could be a valid reason. Maybe it's due to a high
3 OPTEMPO. However, they still have to complete it.
4 And it may be because they're waiting for the third
5 quarter to complete those surveys.
6 The Navy's made significant progress
7 since 2009, when we had 56 percent of the Navy's
8 commands who had completed the DEOCS. We just
9 wrapped up this year and we had 97 percent of DEOCS
10 completion. The 97 percent is not accurate. I
11 think it could be higher. But due to the recent
12 incident with NAVSEA, they were unable to provide us
13 with their end of the year report -- the shooting
14 that occurred at NAVSEA. They don't have their --
15 they did not have their information, so we had to go
16 off of the third quarter information. So we feel as
17 though that percentage is probably even higher than
18 97 percent. But 97 percent from 56 percent in 2009
19 is a significant improvement.
20 On an annual basis, the Navy Sexual
21 Harassment Prevention-Equal Opportunity Office --
22 that's the office that I oversee -- provides a Navy


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1 climate assessment report that goes to the Vice
2 Chief of Naval Operations via Chief of Navy
3 Personnel. The report includes an executive summary
4 of fleet input, an assessment from the Navy Sexual
5 Harassment Prevention Office that identifies areas
6 of strength, areas of concern, significant findings,
7 and recommendations.
8 A DEOCS rollup report and executive
9 summary is provided to the Navy Sexual Harassment
10 Prevention-Equal Opportunity Office by DEOMI. That
11 information is also provided in that report.
12 In the summer of 2012, CNO stood up an
13 executive subcommittee on examining the continuum of
14 harm to provide him with an independent assessment
15 of the relationships between our institutional
16 service environment, Navy culture, and our policies
17 regarding sexual harassment prevention. What his
18 intent was, he wanted to take a look to see if we
19 focus more on the left side of this continuum of
20 harm, the behaviors, would it have an impact on
21 reducing behaviors on the right side, which is
22 sexual assault.


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1 The panel briefed CNO on their findings
2 in June of 2013. A significant finding was that a
3 climate that permits incidents to the left side of
4 the continuum to occur increases the likelihood for
5 a climate for sexual assault to occur and commanders
6 are the front line of defense.
7 In March of 2013 we sent to the fleet
8 NAVADMIN 079.13. This was guidance on command
9 climate assessments. Now, this was provided because
10 the DEOCS went down. The DEOCS went down on 19
11 September of 2012 and came back up on 1 March 2013.
12 So this NAVADMIN provided guidance to the fleet
13 letting them know what to do, for those commands,
14 what to do to catch up to take the climate
15 assessment -- to conduct their climate assessment
16 before the end of the fiscal year. Once again,
17 we reemphasized the requirements of the command
18 climate assessment for the commander.
19 6 May 2013, SECDEF memo came out on
20 sexual assault prevention and response to enhance
21 commander accountability. When that happened, our
22 office coordinated with Dr. McDonald and his team,


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1 because one of the action items was to get ISIC's
2 visibility on the DEOCS. Dr. McDonald and his team
3 worked collaboratively with us and put in place a
4 process that has now been implemented throughout
5 DOD. When you request the DEOCS, the commander has
6 to put the ISIC's information on there, so the ISIC
7 then receives an email notifying him or her that the
8 subordinate commander's requested that DEOCS. When
9 they complete the DEOCS or they're completing it and
10 requesting their report, the ISIC is then notified
11 and receives the actual survey report.
12 MS. FROST: What's "ISIC"? I'm sorry.
13 MR. BRADSHAW: Immediate superior in
14 command.
15 On 18 July 2013, NAVADMIN 181/13 was
16 released. It's the implementation of this
17 requirement. The requirement was for 120 days. Our
18 boss decided we're going to keep it at 90 days, 90
19 days upon assumption of command and annually
20 thereafter.
21 We also added the requirement for a face
22 to face debrief of the command climate assessment


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1 with the ISIC using the DEOCS, to include the
2 executive summary and a plan of action and
3 milestones for corrective actions. So the ISIC
4 doesn't just get the report and leave it up to the
5 ISIC to figure out. ISIC has to meet with the
6 subordinate commander face to face. This is
7 leveraged as a mentoring session. So when that
8 subordinate command -- when the ISIC gets it, the
9 equal opportunity adviser goes through it.
10 Let's just say that the ISIC identifies
11 there's numerous comments on there that my command
12 does nothing with sexual assault, and the
13 subordinate commander doesn't address that. The
14 ISIC will ask that question during this mentoring
15 session. So it is not going to escape visibility of
16 the ISIC.
17 On 28 August of 2013, we released
18 NAVADMIN 216/13. This was Navy performance
19 evaluation changes. This was significant. We are
20 now using the evaluation -- a system that's always
21 been in place. We have certain blocks within our
22 performance evaluations for both officers and


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1 enlisted. I heard somebody ask about what the
2 senior NCO, what's their role in this. They're
3 getting evaluated on it.
4 What significant contributions are you --
5 and this is for every sailor -- making towards
6 command climate, improving command climate? We are
7 under the belief that it is every sailor's
8 responsibility to create a climate of inclusion, not
9 just the CO's, not just the senior enlisted leader;
10 it's every sailor's responsibility. So now we're
11 evaluating them on that.
12 That is all I have. Finally, I heard the
13 question -- this year in our annual survey we had
14 227,000 of our sailors who responded to the DEOCS.
15 Do you have any further questions for me?
16 CHAIRWOMAN JONES: I'm just confused.
17 Are they mandatory? Are they still voluntary?
18 MR. BRADSHAW: Good question, ma'am.
19 It's voluntary for the respondent. So if a sailor
20 doesn't want to respond to the DEOCS, they do not
21 have to. It's voluntary.
22 MS. FROST: But giving the survey is


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1 mandated?
2 MR. BRADSHAW: It is. And the process we
3 use is when the survey is released the commander
4 announces it and informs the sailors: This is very
5 important to me; I need you to take it. Then if
6 week one goes by and they notice that maybe only
7 five percent of the command has taken that survey --
8 and they have that visibility -- the skipper will
9 sent out an email or call an all-hands call and say:
10 Look, we're way behind. Or maybe it's to his or her
11 department heads, saying: We've only got five
12 percent participation.
13 But what we don't do is we don't say
14 liberty is canceled until you complete this, because
15 once we do that we're not going to get an accurate
16 response.
17 CHAIRWOMAN JONES: Where is this 97
18 percent coming from, though?
19 MR. BRADSHAW: From the number of
20 commands.
21 CHAIRWOMAN JONES: Commands, okay.
22 MR. BRADSHAW: Yes.


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1 CHAIRWOMAN JONES: There you go.
2 MR. BRADSHAW: Yes, ma'am.
3 CHAIRWOMAN JONES: Thank you.
4 MS. HOLTZMAN: Have you tabulated any of
5 the results of having the commander -- what do you
6 call it, the ISIC's?
7 MR. BRADSHAW: Yes.
8 MS. HOLTZMAN: Right. What's the
9 consequence been of this new policy? Do you have
10 any results tabulated, any information about that?
11 Do you have any analysis?
12 MR. BRADSHAW: If you recall, ma'am, this
13 just started.
14 MS. HOLTZMAN: I understand that. That's
15 why I said, do you have any info on that?
16 MR. BRADSHAW: We don't have any yet.
17 MS. HOLTZMAN: How are you tracking this?
18 MR. BRADSHAW: What's now in place --
19 before we were just tracking the responses of the
20 DEOCS. So once you completed it that was a check in
21 the block. That check in the block doesn't occur
22 now until the ISIC has had the face to face debrief


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1 with the subordinate commander. So that's the
2 completion.
3 MS. HOLTZMAN: Okay. Maybe this is not
4 your assignment, but how would you track what impact
5 this change has had on climate in the units?
6 MR. BRADSHAW: Well --
7 MS. HOLTZMAN: Is anybody tracking that
8 and how would you do that? Or maybe that's a
9 question for you, Dr. McDonald. I don't know.
10 Maybe you'll regret staying.
11 DR. McDONALD: That's a difficult -- that
12 will be a difficult thing to track, but a very good
13 question. It would be difficult to actually link
14 those two things together, especially, as General
15 Ham mentioned, because it's a new world with a new
16 survey. But over time we will be tracking the
17 metrics from this point forward.
18 CHAIRWOMAN JONES: Do you have any
19 anecdotal evidence that when these surveys are going
20 up the chain of command that there are reactions
21 from the superior commanders? I don't want to call
22 it discipline, but just anecdotally? Maybe any of


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1 the services?
2 DR. McDONALD: Maybe some of the services
3 could say.
4 MR. BRADSHAW: I think that's a concern,
5 that it's going to be used as a report card.
6 CHAIRWOMAN JONES: Right.
7 MR. BRADSHAW: That's the concern. So
8 that's why our leadership has emphasized to use it
9 as a mentoring tool, because 90 days upon assumption
10 of command, that's giving you a baseline of what
11 you're taking over. But that annual -- so you're
12 having this face to face debrief with your ISIC when
13 you're first taking over. One year from now -- if
14 you recall, we're just about to start this process.
15 If the results have decreased -- I think that's when
16 we're going to find out what the results are.
17 CHAIRWOMAN JONES: Of course, the new
18 commander isn't responsible for the old climate.
19 MR. BRADSHAW: That's correct.
20 CHAIRWOMAN JONES: Colonel Emerson, did
21 you have something you wanted to add?
22 COLONEL EMERSON: Ma'am, are you looking


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1 at a report card?
2 CHAIRWOMAN JONES: No. I'm looking at --
3 COLONEL EMERSON: Or actually like doing
4 something about what's in there?
5 CHAIRWOMAN JONES: Yes, doing something
6 about what's in there.
7 COLONEL EMERSON: I happened to be part
8 of a survey in which, as an equal opportunity
9 professional, where the results in the short answer
10 question they raised the concern, or actually
11 allegations of sexual harassment or sexual assault.
12 What we do and advise the Army personnel if they
13 call me, well, can I just give my whole DEOCS report
14 to that investigating officer, absolutely not; just
15 that portion that raises the concern, and then it's
16 the investigating officer or the commander's
17 inquiry's responsibility to go out and seek the rest
18 of the story. And then the subject or subjects are
19 afforded due process. In my case -- not me, but the
20 person was actually dismissed from their leadership
21 role.
22 MS. FROST: I have a hypothetical. Once


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1 you've been tracking metrics for some time -- and I
2 think the question about standards or benchmarks is
3 really key here -- when the services conduct, I
4 don't know what you would call them, but promotion
5 boards, wouldn't this kind of data -- if you see a
6 commander that consistently, where they go, their
7 commands have consistently shown average or below
8 average results, is there any discussion at what
9 point this data would be considered in promotion
10 boards?
11 COLONEL HAM: Your next session is with
12 the personnel folks, who are going to address --
13 MS. FROST: Okay.
14 COLONEL HAM: -- how this now has to be
15 incorporated into personnel evaluations.
16 GENERAL HAM: Is there -- for any of the
17 services, have you found a correlation between the
18 percentage of a unit responding to the DEOCS and
19 whether that is generally positive or generally
20 negative in the nature of the responses?
21 CHAIRWOMAN JONES: Go ahead.
22 COLONEL EMERSON: In my experience, it's


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1 whether or not the leader actually asks, and
2 whatever method works in that organization, because
3 some of them are geographically dispersed. But if
4 the commander, the leader, asks for the information,
5 that has a higher response rate than, say, you just
6 throw out the survey and you walk it to the adviser
7 and the administrator: Hey, don't forget the
8 survey. The leader actually asking for input
9 improves it.
10 MR. BRADSHAW: One of the most important
11 steps in the process is for the commander to debrief
12 the command on the results. So if you've taken the
13 survey in a previous year and you've put significant
14 information into your comments and nothing was ever
15 debriefed, the next time you're required to take the
16 survey chances are you're not going to participate,
17 because what's the point?
18 And just like Lieutenant Colonel Emerson
19 mentioned, I think it is commander-dependent. I
20 think the analogy we always use is like "Undercover
21 Boss." I don't know if you've ever seen that TV
22 show, but sometimes policies that leaders put in


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1 place adversely impact those who are at a lower
2 level.
3 When they get the results back from the
4 command climate assessment, it's a big tool now for
5 the CO to go up in front and say: Many of you
6 stated these things; well, we looked into it and
7 this is what we found and this is what we're going
8 to do about it. That's why the executive summary
9 and the plan of action and milestones is so
10 important to debrief your command.
11 MS. HOLTZMAN: That raises an important
12 point. I just wanted to ask you, Colonel Emerson,
13 about that. In the case that you mentioned where
14 the DEOCS report actually led to the dismissal of
15 the commander, were the people in that unit informed
16 that that the survey itself is what led to that
17 result?
18 COLONEL EMERSON: There were actually
19 multiple things, but the survey comment provided
20 more clarity, and then subsequent sworn statements
21 from a whole host of folks within the organization
22 provided even more clarity into the situation, and


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1 historical references in that organization.
2 So were they informed that specifically
3 the survey was the actual starting point? Actually,
4 you could peel back the onion and say that a
5 conversation that the next higher level leader had
6 with someone who was departing her organization
7 might actually have been the impetus, and then that
8 was just a "holy cow" moment, ma'am.
9 COLONEL HAM: What level leader was it?
10 COLONEL EMERSON: What level? It was a
11 colonel, ma'am.
12 COLONEL HAM: Who was relieved? The
13 colonel was relieved?
14 COLONEL EMERSON: Yes.
15 MS. HOLTZMAN: So what did the survey
16 have to do with that?
17 COLONEL EMERSON: A person who had been a
18 victim had mentioned specifics about things that had
19 happened that they'd never mentioned before, and
20 that was the part in the survey that raised specific
21 eyebrows.
22 MS. HOLTZMAN: But at the same time, or


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1 maybe before, other events had happened?
2 COLONEL EMERSON: Ten days prior somebody
3 had said some curious comment in an outbrief before
4 they departed.
5 MS. HOLTZMAN: Thank you.
6 CHAIRWOMAN JONES: Thanks.
7 Can we hear from the Marine Corps? That
8 would be Colonel Johnson and -- is that Master
9 Sergeant Poole?
10 SERGEANT POOLE: Master Gunnery Sergeant.
11 CHAIRWOMAN JONES: Master Gunnery
12 Sergeant. I'm always afraid to figure out what
13 these mean. I was going to start with "Gunnery,"
14 but then I start maybe it isn't.
15 Okay, Colonel.
16 COLONEL JOHNSON: Ladies and gentlemen of
17 the panel, thank you very much for the opportunity
18 to appear before. I brought my expert on all things
19 surveys, Master Gunnery Sergeant Lester Poole. He
20 is the senior equal opportunity adviser for the
21 Marine Corps. He and I work in tandem at the
22 Diversity and Equal Opportunity Office, where I am


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1 the branch head for the United States Marine Corps.
2 We listened with great interest to the
3 conversation earlier, so I thank you for letting me
4 sit there in the cheap seats. Great interest
5 because when I first came aboard to this position in
6 2011 one of our frustrations that we voiced to the
7 folks, our partners at DOD and the other services,
8 was that there is no accountability associated with
9 the command climate survey. The commander assesses
10 what the other individual left him or her after 90
11 days -- we make him do it in 90 days -- and he can
12 throw it in the desk drawer and plod on for the next
13 two to three years with no change to the climate.
14 So when I saw this NDAA '13 legislation
15 stating that -- hey, did someone have our office
16 bugged? Did Jimmy, did someone actually listen to
17 the Marine Corps and bump that up?
18 (Laughter.)
19 MR. LOVE: We always listen.
20 COLONEL JOHNSON: I don't really care how
21 it happened. I just -- if I could do backflips at
22 my age, I would have been doing back flips in my


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1 office, because I'm a dad. I've got a daughter
2 who's 13, so is on the cusp of discovering boys. So
3 I have a passion for fairness. So what I probably
4 lack on professional acumen, not being school-
5 trained in this, I have a passion for it.
6 I have a passion for my Marine Corps, and
7 some of the things that have happened we're not
8 pleased about. That's why our Commandant has
9 instituted the Reawakening campaign, to get back to
10 basics, because we see a lot of things that connect
11 to sexual assault as gateway behaviors, just like a
12 gateway drug. It may seem, ah, not so important.
13 it may seem administrative. But almost like a
14 counterinsurgency, if you have a permissive
15 environment for those things to happen, then there
16 are individuals who will take advantage and they'll
17 raise it to the next level, to go beyond admin to
18 where it becomes a crime.
19 Again, I'm pleased to be part of this. I
20 hope we're able to contribute positively to the
21 discussion. What I can't answer for you, I will
22 gladly take questions for the record and I'll get


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1 back to my other experts back at Quantico and get
2 you answers as soon as possible. Hopefully we can
3 get to the bottom of all your questions, provide you
4 some solid answers, and give you a peak inside the
5 Marine Corps.
6 Again, I think that the legislation has
7 given teeth to our performance evaluation process.
8 There is a block in the Marine Corps fitness
9 reports. I think one of my colleagues, Colonel
10 Robin Gallant, is going to discuss that in detail in
11 the 1300-1330 session.
12 But that block is called "Developing
13 Support" and for years you kind of get to that block
14 as you're marking the fitness report for a
15 subordinate, and it's kind of squishy. There's
16 nothing solid that I can really put in here. But
17 with this new legislation -- the wording in the
18 block is basically: How well does the individual
19 maintain a good climate? How well does the
20 individual mentor regardless of race, regardless of
21 gender, regardless of ethnicity? I'm paraphrasing
22 here, so I'm sure you'll be able to see that


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1 document when Robin gets in here.
2 But that legislation gave that teeth. As
3 General Ham and General Altenburg, you know, the
4 fitness report, the performance evaluation, that is
5 the stick. Everyone wants a good one, and if you're
6 doing things that don't get you a good one, you're
7 shown the exit. That's exactly what this new
8 legislation I think will help us do with toxic
9 leaders.
10 I think there was an earlier question
11 about what about NCO's, how are they impacted by
12 this, is there any ramification for I guess a toxic
13 NCO. In the little prep session that we had before
14 we came here, it was discussed that, yes, there was
15 a senior enlisted person who was basically removed
16 from a position of responsibility based on what was
17 in the command climate survey. So I think it's too
18 early to say, yes, we've got tons of data that DEOMI
19 can sift through for us, but to me that's an
20 indicator that, yes, the second echelon of looking
21 at what goes on in climate can and will have an
22 impact.


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1 So without any further ado, I'll close
2 out here, unless the Master Guns has anything, and
3 I'll take any questions you might have.
4 MS. FROST: May I ask a question?
5 CHAIRWOMAN JONES: Yes.
6 COLONEL HAM: General Ham, you might be
7 an appropriate person to ask this, too. Generally,
8 if you get a command climate survey report that
9 indicates there are some issues or indicates there
10 are serious issues, do you notice other things going
11 on in that command? You called it "peel back the
12 onion."
13 COLONEL EMERSON: Yes, ma'am.
14 COLONEL HAM: Generally, if there's a
15 rotten command on an installation, it's generally
16 not a secret. And I don't mean just the commander.
17 I mean there's all kinds of problems in that unit.
18 Is that just an impression or is that an empirically
19 validated fact?
20 COLONEL JOHNSON: Speaking with our SAPR
21 point of contact for the Marine Corps, he's an
22 aviator and he talks about, well, yes, SAPR's just


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1 the warning light. The survey is just the indicator
2 on your dashboard. Then when you take it in to the
3 mechanic and he pops the hood, oh my God, you've got
4 binge drinking going on, underage drinking. You've
5 got other disciplinary actions going on there.
6 So that's why we're choosing to focus on
7 the holistic approach and when we get at these
8 gateway behaviors we can deny them the corrosive
9 environment that will allow sexual assault.
10 COLONEL HAM: But I don't even mean just
11 sexual assault, sexual harassment. I mean if
12 there's a bad command climate, toxic leader,
13 something we've heard a lot about in the last few
14 years before the sexual assaults and harassment rise
15 in visibility, we heard a lot about that. But it
16 was never news to the unit. You know what I'm
17 saying?
18 COLONEL EMERSON: Yes, ma'am. I would
19 submit to you --
20 COLONEL JOHNSON: Take a look at the --
21 COLONEL EMERSON: I'm sorry.
22 COLONEL JOHNSON: Go ahead.


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1 COLONEL EMERSON: -- that that's not true
2 in every unit. For instance, I'll offer the library
3 at the military academy. It's all civilians. The
4 first commander or leader in the organization isn't
5 actually a military person; it's the dean of the
6 academic board. They didn't really have a voice and
7 they're a wonderful group of mostly introverts. And
8 it wasn't until folks actually talked to them and
9 they received lots of coordinating after the survey
10 type activities, and I think we grew them as a
11 member of the full academy team as a part of that
12 outcome from doing the survey and other things,
13 because the dean asked for them to provide feedback.
14 But that's not the only organization, but
15 oftentimes organizations that are comprised mostly
16 of civilians that haven't ever been surveyed like
17 this before will have that same kind of a lack of --
18 well, where do I go? What's my feedback tool or
19 mechanism? I get a new military boss every two
20 years.
21 So at least what I have seen, it provides
22 wonderful feedback; that many people just take for


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1 granted that they work their shift, whatever that
2 might be, and they go home, so they got to be happy.
3 And I've seen surveys that say as a whole we're
4 really happy, which is really weird.
5 COLONEL HAM: I guess what I'm saying is
6 that there's no soldiers -- I can only speak for the
7 Army. There's no shortage of -- there's no
8 reticence to complain, right? It's a soldier's
9 constitutional right to complain. And I'm asking if
10 that's just an impression or if that's empirically
11 validated. You're going to have anonymous IG
12 complaints, you're going to have anonymous command
13 hotline complaints. There's so many different ways
14 for even a lower level enlisted person to say
15 there's something rotten in my command, isn't there?
16 Or is that just my impression as an officer?
17 SERGEANT POOLE: There is, ma'am. If I
18 may, the concept here that a lot of the other
19 services have already shared is that that one
20 indicator of the survey allows that commander, as
21 well as the EO practitioners, to go in with that
22 commander to help do a development action plan, put


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1 together an assessment team, to do the follow-on, to
2 find out and validate, are these valid concerns?
3 They may be isolated incidents. It could
4 have been one individual had an axe to grind and
5 said, hey, you know, I don't like this style of
6 leadership, this individual. Well then, that's
7 where that team goes in and assesses and does the
8 focus groups. Let's get the junior enlisted
9 together and talk about what are some of the other
10 concerns. We don't have to identify this particular
11 issue, but what are your concerns? And that may
12 open up the door for other issues that may be
13 relevant with that command.
14 Not only do we do that with the junior
15 enlisted, we will do that also with the senior
16 enlisted, the junior officers, the senior officers,
17 and allow them an avenue to talk about the things
18 that they may not have felt comfortable talking
19 about in the survey, or they may not have felt
20 comfortable talking about it within the command
21 leadership.
22 Oftentimes we've found, and I've found


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1 particularly, in doing those surveys and trying to
2 validate the concerns identified in the survey
3 itself, that once we actually talk to those, let's
4 find out, is there anything to substantiate that as
5 a concern, there may not be. So then you go back to
6 the commander and say: This is a holistic view of
7 your command. Now let's work together to develop an
8 action plan to address what those concerns actually
9 point to.
10 The comments are really valuable. The
11 survey data itself could be going in different
12 directions, but those comments weigh heavy with
13 those commanders. Once they read all those comments
14 they say: Hey, someone may have actually identified
15 individuals where this was something that is toxic.
16 That's crucial.
17 So we look at the whole concept of it to
18 evaluate a command. Then once that's based off the
19 new requirement, that is also going to be briefed to
20 the next level commander and it's that level
21 commander's responsibility to take whatever action
22 they deem appropriate, hold those commanders


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1 accountable, but also to ensure that they are
2 establishing the good order and discipline that's
3 required within their commands. And it starts with
4 those commanders pushing out initially: Hey, I need
5 your honest feedback. We're going to go through
6 that whole process to ensure accountability, good
7 order and discipline, and then we move forward from
8 there.
9 I think that whole concept is important,
10 not just the survey itself, because oftentimes many
11 may not take it. It's survey fatigue: I've just
12 taken a survey, I've just taken a survey. Okay,
13 well, those that did, we're going to go back, and if
14 you didn't take it maybe you will take that
15 opportunity to come and talk to us as far as a focus
16 group so we can get at the root of some of those
17 concerns at that point.
18 GENERAL HAM: Master Guns, if I may, the
19 Navy-Marine Corps team is a pretty special
20 relationship, I think. But with specific regard to
21 the DEOCS, within the fleet and within the fleet
22 Marine forces, where Marine units are often


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1 disaggregated from their normal parent headquarters,
2 how does that factor in in the role of the ISIC?
3 Does a group commander who is a naval
4 officer but overseeing Marines, does he or she see
5 the DEOCS for the Marines that are deployed within
6 that group?
7 SERGEANT POOLE: They do. Actually, sir,
8 you have Marines that are tasked to naval
9 installations, but they fall under that commander.
10 That commander, whatever service, joint service,
11 they are responsible for capturing that. So they
12 will -- those individuals who are part of that
13 command will be part of the survey, because it
14 doesn't matter what service you belong to; it
15 matters what your commander's role is, what
16 commander you're under.
17 We've got Marines on ships or we've got
18 corpsmen that are attached to --
19 GENERAL HAM: I'm not focusing
20 specifically on the individuals or small units, like
21 corpsmen that are embedded within the Marines, but a
22 MEU that is deployed. Their normal parent Marine


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1 headquarters doesn't deploy with them. They deploy
2 with a Navy group.
3 SERGEANT POOLE: It's possible. Yes,
4 sir, it's possible that commander -- because again
5 the term "commander," as we've mentioned before, the
6 term "commander" could apply at every level. So if
7 it's the company commander, they have an opportunity
8 to participate in the survey and then that
9 information is rolled up. That ship commander could
10 also do a rollup report of all those subordinate
11 commands, a maximum of 16, a minimum of 3. They
12 have an opportunity to participate in it, and then
13 that commander could take action based off of all of
14 those commanders' information. So it's possible.
15 COLONEL JOHNSON: Sir, in the case of the
16 MEU, the Marine expeditionary unit, the command is a
17 fairly significant Marine Corps command, usually a
18 precursor to a general officer. I would submit that
19 that colonel commanding the Marine expeditionary
20 unit is conducting his own unit survey.
21 GENERAL HAM: I think what I'm thinking
22 about is, because the interrelationship is so tight,


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1 the command policies of the Navy commander and the
2 command policies of the Marine commander so affect
3 one another that somehow you've got to figure out
4 how you examine that.
5 SERGEANT POOLE: In most cases they
6 mirror each other. As we review each other, all the
7 services, we talk often about how our policies work
8 together, especially when we have that same instance
9 where we may have some that may be affected by their
10 policies vice our policy. So we're getting closer
11 together, which is another reason why the 90-day
12 requirement, although it's the 120 days that is the
13 NDAA requirement, the 90-day requirement is for the
14 commanders to conduct the survey is shared by the
15 Navy as well.
16 CHAIRWOMAN JONES: Thank you -- oh, I'm
17 sorry, John. Did you have a question?
18 GENERAL ALTENBURG: I think your comments
19 also reinforce the fact that leadership
20 identification and figuring out these issues is much
21 more than science. There's this whole art end of it
22 that you just described. You can't just rely on a


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1 survey.
2 Colonel Ham pointed out the toxic leader
3 example, which everybody is aware of now. But there
4 are all kinds of other leader examples that are not
5 good. There's a leader who's just punching a ticket
6 as a battalion commander or some other job like that
7 because he or she knows that's important to success
8 later and to getting promoted, but they don't like
9 command, they don't want to be a commander, and they
10 don't lead. So there's a benign leadership that
11 allows all kinds of bad things to happen.
12 So it's not just the toxic leaders that's
13 a problem. What you're talking about is how you
14 drill down and get into those nuanced aspects of
15 leadership that go way beyond what you can find in
16 that survey. Like you said, the survey is kind of a
17 can-opener.
18 CHAIRWOMAN JONES: Now we'll hear from
19 Mr. Salazar for the Air Force.
20 MR. SALAZAR: Thank you, ladies and
21 gentlemen, for the opportunity to showcase the
22 Department of the Air Force equal opportunity


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1 program. As introduced, I'm Cyrus Salazar. In this
2 capacity I oversee the five programs in Air Force
3 equal opportunity, which are: the military equal
4 opportunity program, the civilian equal employment
5 opportunity program, human relations education and
6 training, and lastly our organizational climate
7 assessment program.
8 Unique to this discussion this morning is
9 that the Department of the Air Force has
10 historically been the only entity that has had a
11 different organizational climate assessment, which
12 is the unit climate assessment. As mentioned
13 earlier by Dr. McDonald, 1 January is the transition
14 date for the Department of the Air Force to
15 transition from the UCA to the DEOCS. We have spent
16 the past nine months prepping for this, and for
17 three reasons:
18 Number one, when we talk about DOD
19 corporately we need to have an organizational
20 assessment that is conducive to all the services.
21 Air Force, having our own process, did not allow us
22 to showcase or share data among the services. We


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1 are now able to join that perspective where we can
2 have the same data that can be compared across the
3 services.
4 Secondly, we were tied contractually to
5 the unit climate assessment.
6 Lastly, we are able to have cost savings
7 if we separate from the UCA to the DEOCS.
8 In the military equal opportunity and the
9 civilian program, we merged in 2007 to enjoy the
10 synergies of both the MEO and EEO portion. We have
11 both military and civilian personnel who conduct our
12 organizational climate assessments. We are over 300
13 strong, representing a majority-enlisted cadre.
14 However, we do have 11 officers on our team. We
15 also have GS-7's all the way up through GS-15's in
16 our career field.
17 That makes us unique in that we have
18 established our own Air Force specialty code,
19 similar to an Army MOS. So our personnel come into
20 this career field transitioning out of another field
21 as an E-5 and they can retire as an E-9 in this
22 career field. As well as our civilians, they can


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1 come in at a lower grade and hopefully retire at a
2 higher grade in this career field.
3 This is a unique time for us because
4 we've been preparing for this transition and I'd
5 like to showcase what we've been doing. We have
6 circulated this information with our major command
7 equal opportunity strategic advisers to reach out to
8 their respective leadership and the constituents in
9 their chain of command. In that we conducted focus
10 groups about this transition to identify how this
11 going to affect the personnel at each installation.
12 The question was posed earlier, is there
13 any anecdotal data that we can share or glean from
14 these focus groups? What we have learned is some
15 commanders were not sharing the results of the
16 climate surveys with their personnel. We understood
17 the results of the NDAA as being a win-win for
18 everyone. Now commanders are accountable and must
19 have that information showcased to the next higher
20 in their chain of command, and secondarily that
21 organizational climate data will be showcased before
22 the personnel at the installation level. So a win-


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1 win for everyone there.
2 We did take a robust approach in
3 conducting these focus groups and that was the
4 number one issue that came out.
5 We also have the capability to conduct
6 the organizational climate assessments in the AOR,
7 so we have had many UCA's in Iraq under OEF and OIF,
8 as well as in Afghanistan we have the capability to
9 do that.
10 We also see the portion that Dr. McDonald
11 talked about. You get the actual results that go
12 forward, but we find the most telling portion of the
13 climate assessments is the comments section itself.
14 That's where our personnel spend a significant
15 amount of time going through that comments section
16 to identify what are those trends, what are the
17 areas that are of concern to us, is there anything
18 that we missed when going through the results.
19 We used to redact that information with
20 titles and names. However, going forward we want to
21 provide the commanders a robust and a comprehensive
22 analysis of their program, of their organization.


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1 So no longer will there be information redacted.
2 It's going to be a verbatim holistic approach for
3 these commanders to review and understand what's
4 happening in their program.
5 I did an analysis of the data that was
6 requested from 2007 to 2013, and each year we
7 provide an overview, an annual report, of our
8 climate assessment data. We have that for the unit
9 climate assessment and, as Dr. McDonald and Mr. Love
10 mentioned, 1 January will be the break date for us,
11 the transition date. We'll be starting anew.
12 However, we are maintaining the capability to have
13 reachback data from our climate assessments, because
14 we typically get Congressional inquiries or any type
15 of other investigative inquiries about what's
16 happening in various chains of command.
17 Further analysis shows us that we've had
18 a historical 40 percent response rate for our
19 surveys. If I could just showcase the data here, in
20 '07 we had a total of nearly 300,000 assigned
21 surveys and responses back were 119, so that's a 40
22 percent response rate. Looking at 2013, we had 214


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1 assigned and those surveyed was 106, so we're at a
2 50 percent response rate.
3 Would we like that to increase? Most
4 definitely. As was mentioned by my colleagues, when
5 we have a POC who is assigned by the commander they
6 receive a weekly update of how the percentage is
7 increasing for each of their personnel in that
8 organizational climate assessment.
9 It is a voluntary process. We encourage
10 our folks to participate and showcase the benefits
11 of having the opportunity to provide verbatim input
12 to your chain of command about issues, positive or
13 negative, that are happening within the
14 organization.
15 If there is any questions I can
16 entertain, I'd be glad to showcase further things
17 that we're dealing with in the Department of the Air
18 Force.
19 MS. FROST: I have a question.
20 CHAIRWOMAN JONES: Yes?
21 MS. FROST: That's a pretty significant
22 decrease overall, though, 300,000 down to 214,000


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1 responses. That's my first question. And I don't
2 understand what you meant in that in the comments
3 section information is not going to be redacted,
4 including names --
5 MR. SALAZAR: Right.
6 MS. FROST: -- specific dates, incidents.
7 MR. SALAZAR: Exactly.
8 MS. FROST: Who exactly -- it's clear
9 that it's shared with the commander above. But you
10 said at the installation level? I didn't quite
11 understand what you meant by that.
12 MR. SALAZAR: Sure, let me clarify. A
13 commander will request a unit climate assessment or
14 a DEOCS and they are the receiving authority of
15 everything that's within that report. We used to
16 redact the names and the titles of any information
17 in the comments section of a climate assessment.
18 Going forward, we are not redacting that because the
19 chain of command needs to understand. If there's a
20 problem with X, Y, or Z, we don't need to redact
21 that; they need to look at that and ascertain if
22 this is something they need to address. So that


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1 will no longer be redacted. It's a verbatim
2 approach.
3 MS. FROST: What do you mean, it's shared
4 at the installation level?
5 MR. SALAZAR: Okay. It'll be shared
6 with, it's either a wing commander, a group
7 commander, or a squadron commander. Their next
8 higher in the chain of command will have that. And
9 what we are encouraging our commanders to do is when
10 they have a commander's call or when they have an
11 after-action outbrief to their organization, so that
12 the airmen in their chain of command will understand
13 the results of the climate survey.
14 So no longer do we want to see commanders
15 just putting that organizational climate assessment
16 in the desk and it remains there. We want that to
17 be briefed to the members of their organization at
18 each installation.
19 MS. FROST: But the overall assessment is
20 what -- the results are shared, not the unredacted
21 data?
22 MR. SALAZAR: Exactly.


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1 MS. FROST: Okay.
2 MR. SALAZAR: Exactly, the overall,
3 exactly.
4 MS. FROST: And then the drop from
5 300,000 to 214; do you have any -- because the
6 overall -- you actually have fewer people
7 responding, even though the percentage has gone up.
8 MR. SALAZAR: Exactly. Historically, the
9 way that Air Force had designed our policy was we
10 would have a two-year rotation of climate
11 assessments. So in 2007 and then we'd have another
12 one in 2009. These numbers are going to change
13 drastically when we transition just to meet the
14 needs or the intent of the FY '13 NDAA, in that
15 we're going to have the 120 requirement and we have
16 the yearly. So we're going to see this spike.
17 Part of the concern that all of us have
18 had is we do not want to see through survey
19 saturation the numbers dwindle even lower, because
20 we understand that it's going to double our
21 requirement, so we'll be having these once a year.
22 But going back to the comment, ma'am, why


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1 we've had a decrease, I think I've provided for the
2 tasker the actual verbatim data for each of these
3 annual reports that showcase the up and down trends
4 that we've had. It depends on the cycle that we've
5 had every two years. That's when the climate
6 assessments were due.
7 CHAIRWOMAN JONES: Colonel?
8 COLONEL TURNER: Because the Air Force is
9 different, I have the first part of this for you and
10 then the second part for everyone. How does the
11 unit climate assessment capture, if at all, the
12 highly transitory populations such as those in the
13 training environment? So then how will that
14 training environment, particularly those in training
15 status, be captured in this new process?
16 MR. SALAZAR: The only personnel within
17 Air Force who are not part of the unit climate
18 assessment are the cadets at the Academy or
19 personnel who are at any form of PME.
20 MS. HOLTZMAN: What's PME?
21 MR. SALAZAR: Professional military
22 education. So if they're at Maxwell Air Force Base


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1 or another DOD school participating in their
2 development, they will not be included in any form
3 of climate assessment at that location.
4 COLONEL TURNER: So do you survey those
5 in basic military training?
6 MR. SALAZAR: No, ma'am, not BMT nor at
7 the academies.
8 COLONEL TURNER: Not in training.
9 MR. SALAZAR: Exactly.
10 COLONEL TURNER: Do you survey the tech
11 training students?
12 MR. SALAZAR: No, we do not.
13 COLONEL TURNER: Those in the basic level
14 skills or the first level specialty skills are not
15 surveyed?
16 MR. SALAZAR: Exactly.
17 COLONEL TURNER: How about the new
18 process? Will it capture any of those?
19 COLONEL EMERSON: Ma'am, there's nothing
20 that precludes us from surveying brand new soldiers
21 to the Army. The things that are in the survey that
22 they may not understand because of the language


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1 used, organizational leadership vice chain of
2 command maybe, they would provide whatever response
3 they would provide. But there's nothing that would
4 preclude someone in the Army from having them
5 surveyed, other than the fact that, you know, I get
6 a group of -- unless they're there for a long period
7 of time, I get a group that's here for a few months
8 and then I get a new fresh group of brand-new
9 soldiers to respond.
10 The military academy, for instance, does
11 not use the DEOCS for the cadets, mostly because
12 there isn't an option for cadets in the dropdown box
13 for rank. However, the Defense Manpower Data Center
14 does survey the cadets on an every other year basis.
15 CHAIRWOMAN JONES: Yes?
16 MS. HOLTZMAN: Can I just follow up on
17 that? Weren't there some major scandals of sexual
18 assault at training facilities?
19 COLONEL EMERSON: Yes, ma'am.
20 MS. HOLTZMAN: How do we get that?
21 COLONEL EMERSON: Ma'am, I'm not
22 responsible for --


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1 MS. HOLTZMAN: No, no, no, no. How do we
2 get the information about that if we're not
3 surveying the training people, people in training?
4 COLONEL EMERSON: Right.
5 MS. HOLTZMAN: And there have also been
6 problems at the academies. How are we getting that
7 information if they're not being surveyed? This is
8 a wonderful survey that you have, I believe from
9 what I've heard. But if there are sensitive
10 populations that are not being surveyed, what do we
11 do about that?
12 MR. LOVE: Some of the surveys -- well,
13 some of those units may not get the DEOCS, which is
14 primarily for operational units, but they are
15 surveyed. The Defense Manpower Data Center surveys
16 the service academies. I cannot tell you that they
17 survey basic trainees at installations, but basic
18 trainees do have the opportunity again to file and
19 identify complaints.
20 The survey is great and it's a starting
21 point, but there are other ways that commanders can
22 look at and assess what's happening.


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1 MS. HOLTZMAN: It just seems to me,
2 though, that a primary objective here ought to be,
3 in terms of command climate, because there's command
4 climate in regard to training, that it ought to be
5 universal, just universal, so that we can get these
6 problems. Yes, we have other kinds of surveys and
7 so forth, but you spent a lot of time developing
8 yours and maybe it should be universal and you
9 should think about that.
10 I don't know if you have any feelings
11 about that, Mr. McDonald. We'll put you on the hot
12 seat.
13 DR. McDONALD: As Mr. Love mentioned,
14 DMDC and SAPRO do, at least I think on an every two
15 year cycle, do go to the academies and do their own
16 survey. Administering a survey in an educational
17 environment, it may need to have some modifications
18 to it, but it's certainly something that could be
19 considered, I believe.
20 MS. HOLTZMAN: I just wanted to throw out
21 one other point, which is I really hope that with
22 this new change of requiring commanders to report to


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1 their higher commanders about the results of these
2 surveys, that we are tracking the impact of that in
3 some way. I mean, I can't figure that out. I'm not
4 a psychologist, I'm not a statistician. But it's
5 critical, it seems to me, from the get-go to begin
6 to develop metrics for that.
7 DR. McDONALD: I agree, and I think that,
8 as we kind of talked about a little bit, I think
9 that initial survey and then what the delta or the
10 change is the year thereafter may be the key for us
11 to start to look at the shift.
12 MS. HOLTZMAN: Right, that may be the
13 key. But you ought to be thinking about what it is
14 now so that you can put it into effect as soon as
15 possible.
16 DR. McDONALD: Absolutely.
17 MS. HOLTZMAN: I don't mean to make that
18 -- I would hope that you'd be thinking about that
19 now so you could put it into effect.
20 COLONEL EMERSON: Ma'am, can I interrupt
21 for the academies?
22 MS. HOLTZMAN: Yes, sir.


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1 COLONEL EMERSON: The United States
2 Military Academy.
3 MS. HOLTZMAN: Sure, I'd appreciate that.
4 That would be great.
5 COLONEL EMERSON: All of the academies do
6 receive a report that actually contains all of our
7 academies' data. But there is so much data that I
8 have never conducted an analysis of how ours is
9 compared to anybody else's. But I have actually
10 presented to the leadership of the United States
11 Military Academy the trend data.
12 The even years, if I'm not mistaken, is
13 when we do survey, and in the odd-numbered years we
14 conduct focus groups. DMDC gets a roster of all the
15 four, the United States citizens, and then they tell
16 us which cadets we're going to have show up for
17 their initial briefing to complete the survey.
18 After they do the initial briefing, the cadets that
19 wish to respond, which we had an 87 percent response
20 rate of those identified the last time we did the
21 survey, stay.
22 They also do focus groups and they


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1 identify what year groups and how many of each
2 gender. This was the first year that they actually
3 conducted focus groups of the instructing staff and
4 the coaching staff, those folks that were authorized
5 to actually participate. Of course, contractors
6 cannot. So they got a better, well-rounded view, I
7 think, of the academies this year.
8 The survey has so much information in it
9 and the cadets do actually write a whole host of
10 comments. Cadets in my experience have not
11 specifically said this specific event happened to me
12 and this person was the perpetrator or these people
13 were the perpetrators in the surveys that I've
14 reviewed. I've reviewed three of them. However,
15 they did provide information such that this person
16 did something to a friend of mine and I can
17 corroborate that with other information that other
18 people have provided. So it told me that somebody
19 being moved from one location, a civilian actually,
20 being moved from one location to another facility
21 was not seen in the corps of cadets' view, nor the
22 tactical officer leadership team, as a benefit to


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1 the person who had been victimized in this
2 particular way.
3 So there is a tremendous amount of
4 information. I have shown the trend of how what I
5 call the cadet perception of who would do something
6 about something, whether it be sexual harassment or
7 sexual assault, how it went down for many of the
8 populations that are actually asked about, because
9 they do the senior leaders and they say cadets in
10 leadership positions, cadets not in leadership
11 positions, in order to motivate different portions
12 of the academy, to include the instructional staff
13 and the academic folks to do something and say,
14 look, this belongs to everybody.
15 But it's not just the survey response.
16 It's the other things that we do and have done, and
17 then having the cadets come back and tell us, what
18 do you need and how can we help and their good
19 ideas. They've been phenomenal.
20 GENERAL HAM: I've got just a question
21 about basic training and other military education.
22 So I understand that those who are undergoing the


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1 training are not surveyed, but are the cadre? Are
2 the cadre of the basic training units, are the cadre
3 at the staff colleges and war colleges? They do
4 participate in the survey, is that a correct
5 assumption?
6 SERGEANT POOLE: Yes. For the Marine
7 Corps, our Training and Education Command has that
8 role and responsibility to, one, do the command
9 climate survey. That is a requirement. But they
10 also have an EO practitioner that will go out and
11 help facilitate those extra nuances to get down to
12 some of those concerns.
13 So yes, they will be required to take the
14 survey, and then they go out -- and we've had some
15 instances where issues were identified and the
16 commander said: Okay, I sent a team, I sent a team
17 out to that location to really assess what's going
18 on and bring that back. So we definitely have that
19 in our Training Command.
20 CHAIRWOMAN JONES: Mr. Ellison, the most
21 patient at all, for the Coast Guard.
22 MR. ELLISON: Good afternoon. My name is


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1 Jim Ellison. Obviously, we have a lot of
2 similarities with our partners, but we also come
3 under DHS, so we have some distinct differences.
4 My role today, I'm a regional director
5 for the Coast Guard Civil Rights Directorate. Along
6 with our colleagues, we administer our MEO process
7 as well as our EEO process for all of our 48,000
8 some employees throughout the Coast Guard. As the
9 Air Force mentioned, as Mr. Salazar mentioned, we
10 are very similar in the fact that our military EOA's
11 and our civilian employees, our EEO specialists,
12 process military EEO complaints as well as the EEO
13 complaints and vice versa. It works very well for
14 us.
15 Something that's unique to the Coast
16 Guard, I think, is the fact that all of our civil
17 rights service providers are outside of any command.
18 We all work directly for headquarters and our
19 Director, Ms. Dickerson, she's an SES. She works
20 directly for the Commandant. I think that keeps a
21 lot of integrity in our MEO system. If somebody has
22 any harassment issues, it comes into our process.


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1 It has no command oversight -- not so much
2 oversight, but influence, let's say.
3 I will say that the sexual harassment and
4 sexual assault are distinctly different in the Coast
5 Guard. Sexual assault does not get processed
6 through our office. Somebody can come into our
7 office and if sexual assault or allegations of
8 sexual assault come in, it will be stopped; we
9 report it to the Coast Guard Investigative Services
10 as sexual assault.
11 Our members are advised through their
12 training, through our civil rights awareness
13 training, that this is what will happen, that sexual
14 assault is different and apart. We also provide
15 them with points of contact at those training
16 sessions.
17 If they come in to file a sexual
18 harassment complaint and it has allegations of
19 sexual assault, in their rights and responsibilities
20 they are also notified that we will notify the
21 sexual assault folks. So we're trying to keep that
22 communication open that, even though we don't


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1 process the sexual assault, we will get you to the
2 folks that need to.
3 I'm also the chair of what we call our
4 DEOCS Council. We have -- our units are very small.
5 All of our commanders -- commanding officer and
6 officer in charge. Our officer in charge is our
7 enlisted in charge of many search and rescue
8 stations, aids to navigation teams throughout the
9 Coast Guard. The commanding officer is obviously in
10 some of the larger units and cutters.
11 Our role is to advise them on how to use
12 the DEOCS tool. There is no supervisory
13 notification policy as of now. Because we fall
14 under DHS, that hasn't been implemented as of this
15 date.
16 Our DEOCS Council that we use, where each
17 commander may not have an EOA or a civil rights
18 service provider, we want to make sure that our
19 service providers are well aware on how to interpret
20 and assist those commanders in using this tool to
21 improve the climate at their unit. It's constantly
22 reviewing the policy. We try to meet on a quarterly


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1 basis to see are there any issues.
2 Some of the issues that initially came
3 about. We were having commands -- because our
4 organizations have units with say 16 people and it
5 takes 16 respondents to get a report, we had to
6 actually raise our bar a little bit so that the
7 commanding officer or officer in charge wasn't
8 included in their own survey to meet that
9 requirement.
10 We train up all of our civil rights
11 service providers on how to provide all of those
12 background services. I won't go into all of the
13 survey process, but we understand that that tool is
14 just a tool. It's only an indicator, and we try to
15 advise all of our commanders that this is just a
16 step in the process. The smaller some of our
17 commands get, those numbers tend to -- they can go
18 all over the place.
19 We need to go in, like the Master Gunnery
20 Sergeant said, to go in and do those focus groups to
21 get to the root of the problem. Is this a problem,
22 or is it just a perception? Because we very much


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1 know -- and our council has talked about this in
2 depth -- that those are only perceptions. They may
3 be referring to something that happened -- yes, the
4 survey says tell us within the past 12 months. It
5 may have happened several years ago. It may have
6 just happened and already been addressed. That
7 survey doesn't flush that stuff out. Where we can
8 go in and find that stuff are focus groups,
9 interviews, and reviewing those records to try to
10 find out that information.
11 We think that the follow-up actions are
12 first and foremost the meat of an organizational
13 assessment. We always tell our commanders, even if
14 there's no problems, look for something that you can
15 fix immediately, one or two things, even if they're
16 simple things. We call it the low-hanging fruit,
17 for lack of a better term, because of we want to get
18 folks to actually participate, because it is
19 voluntary, that they see some results from that,
20 even if the results are great. So we want to keep
21 that focus going as much as we can.
22 Again, there's no reporting process up


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1 the chain of command for our DEOCS at this time. I
2 will say, though, that we have a policy, a
3 procedure, which we call the anti-harassment and
4 hate incident procedure, that we've had in effect
5 since 2010, and we're seeing great success from
6 that.
7 Again, the Civil Rights Service
8 Directorate is outside of all commands and at any
9 time anyone at any command can call a civil rights
10 service provider and bring forward allegations of
11 harassment. This is not the MEO process and not the
12 EEO process. Many times people just want things to
13 stop, and we think that it's important to catch
14 these things at that first part of the continuum,
15 that one joke, that one comment, before it moves on,
16 and to get that and have those commanders address
17 it.
18 Now, it is a command program, but it has
19 civil rights oversight. If somebody brings up an
20 allegation of harassment within 30 days the
21 commander has to conduct an investigation, determine
22 if it's substantiated as prohibited harassment or


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1 not. And we're not talking about just sexual
2 harassment. It is included, but we're talking about
3 harassment based on several areas -- most of the
4 protected classes, race, color, national origin,
5 religion, down to political affiliation.
6 If there's any substantiation to any of
7 those, the commander has to take some action. We
8 leave it in the commander's hand. It's the
9 commander's responsibility to take the appropriate
10 action. But they know those folks better than we
11 do, but they have to take some sort of action.
12 Within that 30 days they have to provide
13 a report to us of the results and outcomes of that
14 investigation and any actions that were taken if it
15 was in fact substantiated. Over the past two years
16 we've had I think it was 14 substantiated in the
17 sexual harassment arena and those were from O-6
18 level down to the E-3 level as well as civilians.
19 Some commanders lost their commands because of that,
20 but we think it's an outstanding process to catch
21 those things before they escalate into illegal
22 sexual harassment or the crime of sexual assault.


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1 Let's see. As far as who's required to
2 take the DEOCS, it's all of our officer in charges,
3 like I said before, and commanding officers
4 throughout the Coast Guard have to do it annually,
5 within 180 days of taking command, and then annually
6 thereafter.
7 If I can answer any questions that you
8 may have. I know we're a little different, but if I
9 can try to answer any of those I will.
10 CHAIRWOMAN JONES: Is there any further
11 questions?
12 (No response.)
13 CHAIRWOMAN JONES: I just have one
14 general question, which is is there any effort to
15 figure out more with respect to sexual assaults on
16 males, looking at that statistic, that phenomenon?
17 I think somebody mentioned hazing. Maybe not.
18 MR. LOVE: You know the questions on the
19 surveys better than I do.
20 DR. McDONALD: The questions on the
21 survey do not ask whether an individual has been
22 sexual assaulted or not. That's more what DMDC and


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1 SAPR does in a separate survey.
2 CHAIRWOMAN JONES: Right, with the
3 unwanted sexual --
4 DR. McDONALD: This is command climate,
5 but we can break it up males versus females to get
6 the differences in perception.
7 CHAIRWOMAN JONES: You can, did you say?
8 DR. McDONALD: Yes, ma'am.
9 CHAIRWOMAN JONES: Thank you.
10 Well, thank you all very, very much. We
11 appreciate it. Again, sorry that we delayed you.
12 (Whereupon, at 12:57 p.m., the meeting
13 was recessed, to reconvene at 1:19 p.m. the same
14 day.)
15
16 AFTERNOON SESSION
17 (1:19 p.m.)
18 CHAIRWOMAN JONES: We move now to our
19 panel on Command/Commander accountability and
20 performance evaluation. I'm going out of order in
21 asking General Grosso from the Air Force to begin.
22 GENERAL GROSSO: Yes, ma'am. Thank you.


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1 I appreciate your indulgence there.
2 In late October our Acting Secretary and
3 our Chief of Staff approved policies implementing
4 direction that we got from Congressional direction
5 and obviously from the Secretary of Defense. That
6 policy and the associated administrative pieces of
7 that will be implemented no later than 1 January.
8 So we are somewhat in our infancy.
9 I would be happy to give you the forms,
10 because basically every form in the Air Force, every
11 feedback form and every evaluation form, will be
12 changed to include an explicit direction that you
13 must consider command climate. That will be for
14 every airman in the Air Force. So whether you're an
15 E-1 or you're a GS-10 or a four-star general, there
16 will be guidance, and the form will facilitate a
17 discussion, starting with feedback and setting the
18 expectation that every airman is responsible for
19 creating a healthy climate, and in particular
20 there's specific guidance in particular to sexual
21 assault and the prevention programs of the DOD and
22 the Air Force.


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1 But it's much broader than that, because,
2 as you know, climate is broader than sexual
3 harassment or sexual assault.
4 CHAIRWOMAN JONES: Can I stop you there.
5 You have to excuse me. Tell me again, what is this
6 form?
7 GENERAL GROSSO: When we look at how we
8 evaluate airmen, the first thing we do is we have a
9 feedback form. We tell airmen --
10 CHAIRWOMAN JONES: Feedback form, okay.
11 GENERAL GROSSO: -- what we expect of
12 them. And that should happen in the first 30 days
13 of starting to work for somebody, it should happen
14 at the 6-month point, and then it should happen at
15 the end of the reporting period.
16 We for the most part have annual cycles.
17 So we wanted to start with every airman setting the
18 expectation that you are expected to create a
19 healthy climate for your unit.
20 CHAIRWOMAN JONES: Now, these are
21 preexisting or is this your new format?
22 GENERAL GROSSO: The forms are


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1 preexisting, but it did not have an explicit
2 verbiage to discuss organizational climate.
3 CHAIRWOMAN JONES: Got you.
4 GENERAL GROSSO: So that's going to be
5 added, and I'd be happy to get you copies of those
6 forms so you can see.
7 CHAIRWOMAN JONES: We'd appreciate that.
8 GENERAL GROSSO: Sort of the before and
9 after.
10 But we thought the feedback piece was
11 actually more important, because we need to start
12 making sure that every airman understands what is
13 expected of them.
14 Then for noncommissioned officers and
15 officers, in the policy there's an even greater
16 expectation articulated in the policy. So young
17 airmen just coming in, we expect their behavior to
18 create a positive climate, and it's described.
19 First of all, we defined "organizational climate"
20 and then we told them what we expect of them. So
21 now there should be no misunderstanding about what
22 is or is not.


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1 Because it's in the feedback form, the
2 feedback form mirrors the form we use to evaluate
3 someone's performance a year later. So those two
4 pieces are now -- they've always been symbiotic and
5 now what we've added is explicit language about
6 organizational climate.
7 For noncommissioned officers, who are our
8 sort of first leadership echelon in the enlisted
9 corps, and for every officer, we've added additional
10 expectations. Not only are you expected to behave a
11 certain way, you are expected to lead and take
12 action should you see something that's
13 inappropriate.
14 Then finally, on the commander's side
15 it's even more explicit language because commanders
16 have explicit responsibility and authority for their
17 command climate. So there's additional policy there
18 outlining what that expectation is and then a
19 rater's responsibility to make an assessment of how
20 well every airman is doing, what we expect of young
21 airmen, what we expect of officers and NCO's, and
22 then what we explicitly expect of commanders.


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1 CHAIRWOMAN JONES: Are these required or
2 voluntary?
3 GENERAL GROSSO: When you say -- is what
4 required?
5 CHAIRWOMAN JONES: When you give these
6 out, must they be filled out and returned, starting
7 with the first feedback?
8 GENERAL GROSSO: The feedback is
9 required, and that is between a supervisor and their
10 subordinate. They are required documents. The
11 annual performance report is also a required
12 document and it will be required to make an
13 assessment of how well they are doing on meeting our
14 expectations for creating a healthy climate.
15 But to comment on the climate is not
16 mandatory.
17 MS. HOLTZMAN: Within that, so you don't
18 have to comment on the climate.
19 GENERAL GROSSO: Right. So when you do
20 an annual performance report, a rater must assess
21 it. My boss would have to say: Gina, you're doing
22 -- I've looked at perhaps your unit climate


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1 assessment. I know you spent a lot of time this
2 morning talking about that. I've walked around your
3 unit. I've gotten your feedback. I've talked to
4 members. I've seen the quality of the work that
5 you've done.
6 They must assess it. They can put a
7 comment that we think you're doing great or, if
8 you're really failing at that, there's explicit
9 procedures on how to document that. A failure to
10 meet standards for any airman creates a process, an
11 administrative process to let an airman know,
12 because that will become a formal part of their
13 military record.
14 I understand you wanted to follow on with
15 how does this impact the promotion process.
16 CHAIRWOMAN JONES: Right.
17 GENERAL GROSSO: Well, in particular, if
18 you're failing and if your rater thinks you are
19 failing at that, again at any level, that becomes
20 what we call a referral report, which means whenever
21 in a formal document we say you do not meet
22 standards there's a process. I would give the


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1 report to the airman and say: Hey, you do not meet
2 standards; this is where you don't meet standards.
3 The airman has a chance to give you
4 feedback, which goes in their permanent record.
5 That stays in their permanent record until they
6 leave the service, whether they choose to separate,
7 they retire, or if some other adverse action,
8 depending on how egregious, they did not meet the
9 expectations.
10 So that's how those behaviors, good or
11 bad, would work their way into a promotion process.
12 Again, that would be true for enlisted airmen or
13 officer airmen.
14 GENERAL HAM: But the evaluation report
15 does not mandate a specific comment with regard to
16 climate?
17 GENERAL GROSSO: It doesn't. But there
18 is explicit words now. Before we had a leadership
19 block and it didn't say that you need to assess
20 organizational climate as part of your leadership
21 skills. So now that is explicit on there, with a
22 definition of what organizational climate is.


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1 GENERAL HAM: On the feedback for or on
2 the evaluation?
3 GENERAL GROSSO: On both.
4 GENERAL HAM: On both.
5 GENERAL GROSSO: On both. So that's why
6 we updated every feedback form. I say every because
7 depending on your rank -- there's forms specific to
8 rank. So every single form, we put that in both the
9 feedback form and in the evaluation form. I can get
10 you copies of that so you can see the before and the
11 after, and then the written policy that we wrote
12 that goes along with that, to really start trying to
13 capture that.
14 CHAIRWOMAN JONES: John.
15 GENERAL ALTENBURG: Just to be clear, in
16 my dated experience the evaluation forms from all
17 the services include places for narrative
18 description and box checks for different categories.
19 I'm inferring that the Air Force has added box
20 checks for these specific categories that didn't
21 exist before.
22 GENERAL GROSSO: We don't have -- I have


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1 copies of the forms. I just didn't bring you clean
2 copies. We don't have -- on the enlisted side we
3 have boxes, but for the Air Force we have boxes and
4 narratives for every evaluation. On the officer
5 side, it's one big box: Did you meet it or did you
6 not meet it?
7 GENERAL ALTENBURG: Right.
8 GENERAL GROSSO: There's six lines of
9 narrative. If anywhere on those six lines of
10 narrative you did not meet the standards, there's a
11 box on the back. I think if you looked at our --
12 just from having done that, the Air Force's
13 performance reports are much leaner, I'll say, than
14 the other services. We have just evolved to a very
15 lean performance report.
16 But it has both narrative and boxes. But
17 we would expect something -- especially if you don't
18 meet standards, you would see that in the narrative.
19 It wouldn't just be a box check.
20 GENERAL ALTENBURG: I understand that,
21 and I think that the box checks 30 years ago in our
22 service for "supports equal opportunity" had an


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1 effect on our service even though it was just a box
2 check. You had to be pretty bad to get a no, but if
3 you got a no you were done, you were finished.
4 GENERAL GROSSO: That would be true.
5 GENERAL ALTENBURG: So that modified
6 behavior and that's what you're talking about.
7 GENERAL GROSSO: Exactly, exactly.
8 COLONEL HAM: For Judge Jones and
9 Representative Holtzman and Joye, I don't know how
10 much familiarity you have, but what the General's
11 talking about in these annual evaluations, the
12 services call them different things. The Army calls
13 them an OER for officer evaluation report. You live
14 and die by these things. I mean, not literally.
15 Your promotion -- this is what they look at to
16 determine whether you're going to be promoted or
17 not.
18 If there is really anything bad on them,
19 especially for an officer, you're done. You're
20 pretty much done, would you agree, General? You
21 can't have negative stuff on an officer evaluation
22 report, especially in a drawdown.


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1 MS. FROST: But if specific language is
2 not required -- and I'm somewhat familiar with the
3 Army OER, but I don't know how much it's changed in
4 the last ten years. But if you're doing -- I just
5 want to make sure I understand. You have one box
6 that you check? I guess I probably need to look at
7 it.
8 COLONEL HAM: A visual would help, ma'am.
9 GENERAL GROSSO: Ma'am, I would say it's
10 actually not about the box. It's about what a rater
11 is required to evaluate.
12 MS. FROST: But you just said they're not
13 required to put any language in there specifically
14 on command climate.
15 GENERAL GROSSO: I would separate the
16 two. We had a long discussion with the Chief of
17 Staff on whether we should make comments mandatory
18 or not. Because our evaluations are very lean, we
19 only have six lines in particular for an officer,
20 and on the enlisted I think the total is 10 or 12,
21 we didn't want just to put a throw-away line. We
22 didn't want every rater to put a line in there, "met


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1 the standards," because in the past there was a
2 perception that that just becomes a throw-away line,
3 because 99 percent of the force for the most part
4 adheres to these.
5 So they decided very deliberately that
6 you have to consider it. So it's very black and
7 white in the policy, I must consider somebody that I
8 rate, how are they doing fostering a healthy command
9 climate. I have the option as the rater to put "Did
10 a great job" or "Fine person to emulate" or, more
11 importantly, "Fail," they are not meeting
12 expectations, and then it becomes a referral report.
13 But you're not going to see on the Air
14 Force form a line for every single officer or
15 enlisted. That was a deliberate decision, I think
16 well thought out, by the Chief of Staff. Different
17 people had different opinions on that.
18 MS. HOLTZMAN: So, General, there's no
19 way of knowing in fact whether the rater, the person
20 doing the rating, has taken into account the command
21 climate, even though they are supposed to, he or she
22 is supposed to have done that?


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1 GENERAL GROSSO: That's probably fair.
2 But I think there's a lot of things you expect the
3 rater to take into account, so I don't think -- I
4 don't think there's any reason to believe they won't
5 follow the guidance.
6 MS. HOLTZMAN: But if they've never done
7 it before, just to follow through on that, and not
8 assuming that people will lie or not do their job,
9 but sometimes that does happen, but if they've never
10 done it before, if command climate has never been
11 part of the evaluation before, how do you ensure
12 that people are changing their patterns of
13 evaluation when it's not right in front of them?
14 GENERAL GROSSO: Well, that's why we
15 changed the words on the form. But I think that's a
16 fair -- I understand your concern. It's going to be
17 absolutely an educational process.
18 GENERAL ALTENBURG: I respectfully
19 disagree that the rater won't take it into
20 consideration. You put it on the form and if the
21 rater checks the block, whatever block he checks,
22 that means he's evaluated or she's evaluated on


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1 that.
2 GENERAL GROSSO: Right.
3 MS. HOLTZMAN: Can you just point us to
4 where, what you're talking about?
5 GENERAL GROSSO: There's a couple of
6 different forms there.
7 MS. HOLTZMAN: I've never seen them.
8 GENERAL GROSSO: This is the feedback
9 form (indicating). So this form the officer would
10 get within three months, within a month, within 30
11 days. You see the red text. That's what was added.
12 So when we talk about my expectations for
13 your leadership, I must tell you my expectations for
14 creating a healthy command climate.
15 Then this (indicating) is the annual
16 performance report, and what I evaluate your
17 leadership, did you meet it, did you not meet it, I
18 must also consider how well I think you did that
19 year in your organizational climate. But you'll see
20 there's not a lot of room for words here. That's
21 just, we've evolved to that.
22 If I am determined to have failed at


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1 that, you will fill out this form and you'll see
2 "did not meet standards in organization" or
3 whatever, if there's another standard.
4 MS. HOLTZMAN: Right.
5 GENERAL GROSSO: And there is an
6 education process, absolutely, that will go along
7 with that. I think it goes along with rolling out
8 the new --
9 MS. HOLTZMAN: One further devil's
10 advocate question. Suppose the person being
11 evaluated has done extraordinarily well in the
12 various categories there, but has done a really
13 crummy job on command environment. You could still
14 get meets expectations, couldn't you?
15 GENERAL GROSSO: You could. But every
16 rater is a subjective evaluation of the individual.
17 MS. HOLTZMAN: Right, but you're doing a
18 totality. But there's no way then for the person --
19 if you're trying to evaluate how well commanders are
20 doing on command environment, there's no way for you
21 to pull that out and say, gee, everybody's meeting
22 expectations, or only 2 percent of the people are


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1 meeting expectations or how well they're performing,
2 so to pull that out of that. That's my observation
3 from just quickly looking at it.
4 GENERAL GROSSO: You're right. It is a
5 lean form, so any one reason for not meeting the
6 standard. But they're pretty much black and white.
7 So you're right. It's a new process. We do have
8 education that we have to do on the process. It
9 dovetails very nicely with the change of the
10 requirement for the final assessment, so now,
11 especially for commanders, within 120 days they will
12 get that assessment. They will be required to brief
13 their rater and they will be required to brief their
14 unit.
15 So I think all those together will set an
16 expectation.
17 CHAIRWOMAN JONES: Now, this form is
18 going to be used in conjunction with the climate
19 survey results? Is that how the person giving the
20 feedback is going to say --
21 GENERAL GROSSO: Being a rater myself,
22 that's certainly one piece of information I'd use,


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1 but it certainly wouldn't be the only one.
2 CHAIRWOMAN JONES: Well, that's what I'm
3 confused about. How does this rater, if this was
4 for lieutenant to colonel --
5 GENERAL GROSSO: Yes, ma'am.
6 CHAIRWOMAN JONES: -- how does this rater
7 now about command climate? What does that rater
8 look at other than the survey, which is pretty new?
9 GENERAL GROSSO: Right. Well, in the Air
10 Force in essence commanders work for commanders. So
11 in particular for commanders, commanders come and
12 visit your unit and they will see how you're doing.
13 It's usually fairly obvious when a unit has such a
14 poor climate they can't function well as a team,
15 they're not cohesive, they can't accomplish the
16 mission. Or you will see other indicators,
17 inappropriate pictures, things to indicate we
18 haven't changed the culture.
19 In fact, we've also -- not really in my
20 lane, but we have also added in our inspection
21 system an explicit, we call it a special interest
22 item. When an inspector comes in to inspect, they


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1 will inspect to see how we -- what is their
2 evaluation of the climate, have we appropriately
3 adopted the things the Air Force expects, is there
4 any of those things, inappropriate pictures, are you
5 hearing inappropriate comments, are they not
6 properly dealt with? So it's the system as a whole.
7 CHAIRWOMAN JONES: And those reports will
8 go to the commander up the chain?
9 GENERAL GROSSO: Yes, ma'am. The
10 inspector general reports also up the chain of
11 command. And they are used to evaluate the grade-
12 above commander as well.
13 CHAIRWOMAN JONES: Thanks.
14 Colonel.
15 COLONEL TURNER: Thank you, ma'am.
16 There are certain, but limited, instances
17 where derogatory information is mandatory for
18 reporting in a performance report. Would you
19 describe those, please, ma'am?
20 GENERAL GROSSO: The instruction is long,
21 and you're exactly right, there is probably 10 or 12
22 things in the AFI that would require mandatory


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1 comments. But I just can't -- I can't give them to
2 you --
3 COLONEL TURNER: court-martial,
4 convictions.
5 GENERAL GROSSO: Right.
6 COLONEL TURNER: That's pretty much it.
7 GENERAL GROSSO: I can certainly take
8 that for the record. I just don't know that off the
9 top of my head. But you're right.
10 There's a lot of things required by a
11 rater already, so it's not like this is -- this is
12 adding more to a fairly detailed set of instructions
13 on how to rate people already. In fact, we already
14 rate leadership. We tried to make this explicit.
15 CHAIRWOMAN JONES: More specific.
16 GENERAL GROSSO: Yes, ma'am. Yes, ma'am.
17 And fundamentally define what is it I expect you --
18 what is an organizational climate, at least try to
19 define that, so when the rater has to assess it he
20 or she knows what they're assessing.
21 CHAIRWOMAN JONES: Anything else?
22 (No response.)


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1 CHAIRWOMAN JONES: All right. Thank you,
2 General.
3 General Bromberg.
4 GENERAL BROMBERG: Good afternoon.
5 CHAIRWOMAN JONES: Good afternoon.
6 GENERAL BROMBERG: Thanks for letting us
7 come here today. It's a great opportunity.
8 I'd like to address this topic in about
9 three fundamental ways. First of all, this is about
10 accountability of the commanders at all levels
11 within the Army. It's also about an education and
12 training piece that we have to have for lieutenants
13 and sergeants as they mature through the service,
14 and also it's about changing the culture.
15 So we have three elements that tie into
16 this area. The first thing is the command climate
17 survey. I want to talk about the policy that we
18 have in place now. We had a policy in place
19 earlier. We've modified that.
20 The policy that was in place earlier was
21 that after the first 30 days in the active component
22 and after a longer period of time in the National


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1 Guard and the Reserves every company-level
2 commander, captains level, was required to do a
3 command climate survey. They did this survey using
4 the Department of Defense DEOCS survey. Then those
5 results they kept internally. We didn't do much
6 else with them.
7 So we've changed that policy now. So at
8 the company level, 30 days after you take command at
9 captain, and it's after 120 days in Army National
10 Guard and Reserve components, you have to do a
11 survey. We have rules for how many people have to
12 be in your population. If it's less than 30 people
13 you can come together with a larger unit.
14 Then what we've changed is after you've
15 done that then you review the results and then you
16 go to your boss and you have to lay out your action
17 plan to correct any problems found in the command
18 climate survey. Then you do another survey at 180
19 days and another one annually thereafter.
20 So that now involves the rater, with the
21 junior officer particularly, to help them establish
22 -- this goes to accountability and education and


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1 training -- how to go ahead and fix those challenges
2 in that unit.
3 Then additionally what we added is at the
4 O-5 level, lieutenant colonel level, or the colonel
5 level up to the general officer level, you will also
6 to command climate surveys now after 60 days of
7 taking command. That population group is smaller
8 because obviously you wouldn't want to resurvey the
9 same units that the captain just did, so you look at
10 your internal staffs and special organizations. And
11 then you have to brief your boss.
12 So a brigade level commander, so a
13 colonel, after he does their survey, will have to go
14 to their two-star general, a division commander
15 normally or a senior commander, and he'll have to
16 brief what their action plan is for things found in
17 that survey.
18 That's a big change for us because now
19 you've involved leadership looking down at the
20 survey particularly, in addition to, as General
21 Grosso mentioned, in addition to those things you
22 get from walking around. So now you have a survey


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1 plus you have your walking around and your
2 engagement opportunities.
3 You can take that survey data.
4 Obviously, then, if somebody's not following their
5 corrective action plan that will lead to OER
6 comments later on, and it also can lead into
7 dismissal from that position or relief for cause or
8 something like that, because the standard in the
9 Army's regulations for relief for cause is losing
10 trust and confidence in the subordinate's ability to
11 perform their job.
12 It's a pretty broad standard. It doesn't
13 say I have to be guilty of doing something. It
14 doesn't have to say I did A or did B. It's just
15 that, I don't have the trust and confidence in you
16 that you can do the job any more, so you're
17 relieved. And relief for cause is definitely a
18 career-ending event. There could be other charges
19 that go with that based upon the incident.
20 So that's just the first piece of this
21 command climate survey. The second piece is
22 something that we started to get at toxic


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1 leadership, is a 360-degree survey for battalion and
2 brigade commanders. We've been using them, but in a
3 very, I'll say, very educational fashion or a looser
4 fashion. Before you go to a pre-command course
5 before you take battalion or brigade command, you do
6 a 360 survey. But you pick who does the survey.
7 What we changed in the rules now is you
8 don't get to pick everybody who fills out your
9 survey. Your boss picks certain amounts of those
10 people. So I might pick somebody that I have to
11 work with on a daily basis, but who might give
12 different impression of what your leadership style
13 is like.
14 The additional thing we added -- before
15 that 360-degree survey just went back to you so you
16 could do self-correction. Now that 360 will get
17 briefed to your boss in a coach-mentor type
18 relationship. We haven't decided if we're going to
19 use it in board proceedings. That's a decision
20 further down the road.
21 Because of our size, we'll only do
22 battalion and brigade commanders. Eventually we'd


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1 like to do much greater, but the Army is about 1.1
2 million. It's a pretty big organization. So we're
3 trying to scope this at the battalion and brigade
4 commander level, because that's where the rubber
5 meets the road as far as the leadership piece goes.
6 So we think 360's will help us again
7 educate, allow people to train. Then you also have
8 another data point if you're a commander because now
9 you know about the 360, about the individual's
10 leadership style, you know about their climate in
11 their unit, plus you have all the other indicators
12 of good order and discipline and so forth.
13 Then the last piece, to kind of wrap
14 everything together, is the changes in the OER. We
15 have made some specific changes. We are in the
16 midst of change the OER. This couldn't come at a
17 harder time for that. That form is approved. It
18 takes us quite a while to produce it.
19 What we've done is, using our existing
20 OER that's still in effect today, the Secretary of
21 the Army directed that we have very specific
22 criteria for looking at not just sexual assault, but


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1 it's tied to dignity and respect in the climate of
2 the organization.
3 The first piece is a support form. A
4 support form is a counseling tool used between a
5 subordinate and their senior about establishing
6 their objectives of what you want to accomplish over
7 the rating period. It is now required in that
8 support form that you have to discuss the command
9 climate, equal opportunity, and support to sexual
10 assault and harassment. That's not an option. You
11 have to decide specific objectives.
12 Everybody does a support form in the
13 Army, not just commanders. So even if I'm just a
14 section leader in a headquarters or an office, I
15 only have one soldier working for me, I'm
16 responsible for that environment for that one
17 soldier. So I have to talk about my goals and
18 objectives. That's the first piece we've done.
19 Then the second piece we've done is we
20 said now we're going to evaluate you on that during
21 your OER period. We actually gave -- I think you
22 might have a copy, but if not we'll leave it. The


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1 Secretary said, specifically there will be an
2 assessment which should identify as appropriate any
3 significant actions or contributions the rated
4 officer or NCO has made toward promoting the
5 professional and personal development of his or her
6 subordinates, ensuring the fair, respectful
7 treatment of assigned personnel, and establishing a
8 workplace and overall command climate that fosters
9 dignity and respect for all members of the group.
10 So that is a required assessment that a
11 rater has to make for an individual.
12 Then the second piece, coming to the OER,
13 is if you had a case of sexual assault or sexual
14 harassment in your organization at the lower levels,
15 how well did you handle that? Did you properly
16 investigate it? Did you properly get the victim
17 care? Did you set all the right tone within your
18 organization?
19 We're expecting to see comments on that -
20 - and these are substantiated complaints -- on how
21 well that leader has then reinforced those
22 standards. It goes back to the earlier comment that


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1 was made about when we had the block check for equal
2 opportunity.
3 Now, right now, since we're using an old
4 form, rather than change that form when the new OER
5 comes out, we said the block check we're going to
6 use is our current block check that talks about
7 supports equal opportunity. So we're using that
8 block for both sexual assault, sexual harassment,
9 and for equal opportunity. So if you don't properly
10 investigate or you don't support the Army's programs
11 in equal opportunity or creating positive climate
12 for sexual assault or sexual harassment, then it's a
13 no block in the front of the form.
14 In our future form, we change the form
15 that's in process so it's under character. Under
16 character we have several attributes and one of
17 those attributes is "promotes a climate" or "has a
18 climate of dignity, promotes dignity and respect,
19 supports equal opportunity and supports the tenets
20 of sexual assault and sexual harassment." So we're
21 going to put those in together within that
22 environment.


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1 The third piece to the OER is that that
2 individual has a substantiated incident on
3 themselves for sexual assault or sexual harassment,
4 such as if you failed to turn over a report to the
5 Criminal Investigation Command -- that's a violation
6 of our regulations -- that's a required comment in
7 there now.
8 We think these three things together,
9 along with the other programs as well, we think the
10 command climate requirements, we think the 360
11 evaluation, and then wrapping it together with an
12 OER, is a pretty holistic look at how we're going to
13 get after, not just the accountability, but it's
14 also there's got to be an education and training
15 component of this if you're going to change the
16 culture over time.
17 I would just go back to personal
18 experience. Even 20 years after we integrated the
19 Army, we still had challenges in the seventies. But
20 we had to change cultural change and we had to train
21 people, like myself who was a company-grade officer,
22 in the mid to late seventies. You had to establish


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1 cultural change over time so we ourselves could see
2 our way forward.
3 We had a lot of discussion about getting
4 at this with not just the colonels, but getting
5 after it with the lieutenants for the long-term
6 enduring change, because I will tell you right now
7 that you hardly ever see a block check on equal
8 opportunity. Not that there aren't issues, but
9 we're over much of that. And we have to do the same
10 thing here with sexual assault and sexual
11 harassment.
12 Now, back to your earlier comments about
13 the board process or questions about the board
14 processes. Within the board, it doesn't take much
15 within the writing. We have block checks, but even
16 in the blocks that you have to write in -- we'll
17 provide you all the forms -- the writing has to be
18 very clear and succinct so the board gets the
19 message.
20 What we tend to see in our promotion
21 board writing is "Failure to support" is a very
22 clear signal. You don't need to write a lot if


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1 someone has failed to do something. It's very clear
2 in the board process. And this OER will do that for
3 us. Both the new one and the old one will take that
4 into account.
5 But I'd also go back to, you have to look
6 at these things together if you want to change the
7 institution and make it an enduring change over
8 time. So that's why we want to do all three things
9 together.
10 So, subject to your questions.
11 CHAIRWOMAN JONES: Thank you. Thanks,
12 General.
13 Captain Deal. There you are.
14 CAPTAIN DEAL: Good afternoon, ma'am.
15 Ladies and gentlemen, I'm grateful for the
16 opportunity to appear before you today to discuss
17 the role of the commander in preventing sexual
18 assault and supporting the victims, as well as
19 ensuring every resource we have in our Navy family
20 is brought to bear in prevention and support.
21 The role of the commander is vital in
22 setting the climate, the tone, and the expectations


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1 of dignity and respect and teamwork that will reduce
2 sexual assault with the goal of eliminating it
3 altogether, as well as continuing earning the vital
4 trust by our actions and our motives that any
5 assault or harassment or any unequal treatment will
6 not be tolerated in our institution.
7 As introduction, I know I'm the most
8 junior officer here on the panel. I recently
9 checked into the Navy's 21st Century Sailor Office.
10 I work for Rear Admiral Sean Buck in Arlington,
11 Virginia. The 21st Century Sailor Office provides
12 our sailors and families with the support network,
13 programs, resources, training, and skills needed to
14 achieve the full promise of service to a cause
15 greater than self and to actually allow them to
16 thrive, through five different policy branches:
17 Total Sailor Fitness, Suicide Prevention, Sexual
18 Assault Prevention and Response, Sexual Harassment
19 Prevention and Equal Opportunity, and the Office of
20 Hazing Prevention.
21 Our office promotes resiliency in all
22 service members and Navy families, as well as


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1 collaboration and synergy across a spectrum of
2 wellness that maximizes total fitness.
3 For my personal background, I've been a
4 commanding officer three times. I just left what we
5 call major command or wing command on Whidbey
6 Island, Washington, on 30 October. So I've been
7 here a couple weeks. Twice in combat conditions in
8 Iraq and Afghanistan, respectively. All three units
9 I commanded had women and men serving together
10 without limit to their functions or tasks.
11 As commanding officer of Patrol Squadron
12 47, my squadron was sent for seven months to
13 Ali Air Base, Talil, Iraq, as part of the
14 intelligence, surveillance, and reconnaissance surge
15 in 2007 to provide full-motion video support to
16 coalition troops on the ground throughout the
17 country.
18 As commander of Provincial Reconstruction
19 Team-Khost, Khost Province in Afghanistan, my
20 command was made up of active duty Army, Navy, Air
21 Force, Massachusetts National Guard, and Afghan
22 nationals, as well as reservists. Our mission in


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1 that counterinsurgency was to build trust, again
2 essential trust, between the people of Khost and the
3 government of the Islamic Republic of Afghanistan.
4 We did this by aiding, mentoring, and
5 assisting the government against the insurgency,
6 helping Afghan leadership improve legitimacy by,
7 among other roles, that it could provide vital
8 services to the people, such as security, justice,
9 education, water, sanitation, electricity, while
10 working to advance the rights of women and aid
11 reconciliation with those who had previously fought
12 against the government.
13 My third command, which I just left, was
14 command of Patrol and Reconnaissance Wing 10,
15 Whidbey Island, Washington, where I commanded and
16 mentored five squadron commanders in various stages
17 of training and preparation for deployment.
18 The DEOMI survey, organizational climate
19 survey, is a tool for the commander and senior
20 enlisted adviser and the command assessment team to
21 use in identifying areas of strength as well as
22 concern within the command. Since July 30, 2013,


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1 this summer, every DEOCS is linked to the immediate
2 superior in command, which I was as a wing
3 commander. I would receive notification that the
4 survey was initiated and provided a link to the
5 survey once completed, allowing me or any commander
6 to review all aspects of the survey, including all
7 write-in comments.
8 The unit commander must conduct a survey,
9 which they did with me, by instruction within 90
10 days of taking command, and that commander must
11 debrief those results with me, and then I would in
12 turn report to the flag officer in charge of me, and
13 then later a plan of action and milestones which
14 addresses areas of concern and a time line towards
15 completion.
16 I review each of these DEOCS surveys in
17 its entirety, look for trends across the wing. I
18 use it as a mentorship tool as well as an
19 accountability tool. For example, if all trends
20 were moving upward and above Navy average, but there
21 may have been disparities between the views of the
22 junior enlisted and senior enlisted, with different


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1 perspectives on the subject of trust in the
2 organization, I would mentor those unit commanders
3 on methods to address that disparity, including
4 initiating smaller focus groups and other tools to
5 find out why those disparities existed.
6 Each time I took command I provided my
7 expectations of dignity and respect and fairness and
8 of our duty to faithfully represent the highest
9 ideals of American democracy as expressed by our
10 Founders. In the case of major command, I provided
11 a mission statement, a diversity statement, in a
12 very frank three-page letter to each of my
13 commanders on what they should expect from me and
14 what I expected from them as serving leaders.
15 A Navy sailor is required to go through a
16 command indoctrination within 30 days of checking on
17 board. I used this opportunity, and every Navy
18 commander does and senior enlisted leader, to
19 reinforce expectations of every sailor, which
20 includes behavior. I measured my commanders'
21 climates and creating a culture of inclusion and
22 trust through many lenses. The DEOCS survey was one


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1 of those lenses.
2 By flying with and maintaining aircraft
3 in the squadrons and spending time at the work
4 centers and getting to know them as people, by
5 opening avenues of communications, such as a blog
6 which is open to all hands, I provided the
7 opportunity to provide both anonymous and identified
8 comment on topics from sexual assault to suicide
9 prevention to integrated platform training
10 opportunities in the Pacific Northwest, but mostly
11 by establishing a mentor relationship with those
12 commanders, so that they regularly came to me with
13 issues surrounding their squadrons, so they trusted
14 me as well.
15 In this way I could provide candid
16 feedback to them to the utilization of all Navy
17 resources to provide support to their sailors and
18 their families, without injecting command influence
19 into any adjudication of legal matters within their
20 purview.
21 In evaluating these commanders,
22 especially with regard to command climate, I used


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1 the DEOCS as a tool, one tool among many other
2 observations I made as a wing commander. The DEOCS
3 is an outstanding survey instrument that allows
4 leaders to become aware of perceptions within the
5 command. It allows the voices of the silent to be
6 heard. The sailors understand that when they write
7 comments that their boss's boss is going to be
8 reading these surveys, which I and every other ISIC
9 or major commander did.
10 For example, in a command I took over,
11 from surveys in the past it was apparent there was
12 perceptions of unfair treatment from years prior and
13 these carried forward even to this year, new
14 leadership notwithstanding, something that I would
15 have to deal with as a major commander. It is one
16 tool in supporting our commander's authority,
17 responsibility, and accountability in the
18 stewardship of the young women and men who raise
19 their right hands to serve.
20 These indicators of command climate are
21 not merely measured through surveys, but through the
22 command's ability to execute its warfighting


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1 mission, its engaged leadership as measured by the
2 growth and advancement of the sailors and family
3 members who voluntarily serve, and the ambassadorial
4 aspect of their service at home and abroad as
5 representatives of the highest ideals upon which
6 this nation is founded.
7 Our commanders have a critical role in
8 setting this climate within their units, which
9 inculcates trust, dignity, and respect, as well as a
10 culture of fitness, achievement, and inclusiveness.
11 In my view it is my responsibility as an officer
12 accountable for them to provide every expectation,
13 resource, and mentorship to ensure they do just
14 that. They complete a course in Navy regulations,
15 Department of Defense, and Department of the Navy
16 instruction. I believe they enhance commander
17 accountability of the DEOCS that goes to the ISIC
18 allows another opportunity for mentorship. It's
19 another positive step in establishing good order and
20 discipline, unit cohesion, mission readiness, and
21 helping our Navy attain the highest level of
22 operational readiness.


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1 I would also add that in our Navy
2 evaluation system we have long had blocks for equal
3 opportunity, command climate, and military
4 character. Our Chief of Naval Operations on August
5 28 of this year ensured that to -- I'll quote --
6 "achieve high marks in these blocks of
7 organizational climate and equal opportunity command
8 traits, sailors must demonstrate how they have
9 cultivated or maintained a positive command
10 climate." So it's not merely a negative; it's also
11 a positive.
12 As competitive as these records are in
13 order to achieve command, the highest standard to
14 which we serve, we have to ensure that we're doing
15 something positive to ensure command climate, that
16 they're acting towards that.
17 So these blocks are used to show how each
18 sailor -- this is E-1 to O-7 -- how each sailor
19 reinforces a climate where sexual harassment, sexual
20 assault, hazing, discrimination of any kind, and any
21 other inappropriate conduct are not tolerated.
22 I look forward subject to your questions.


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1 That's my opening statement. Thank you.
2 CHAIRWOMAN JONES: Thank you very much,
3 Captain.
4 Any particular questions for Captain
5 Deal?
6 (No response.)
7 CHAIRWOMAN JONES: Thanks. Then I'm
8 going to move to Colonel Gallant, Marine Corps.
9 COLONEL GALLANT: Thank you, board
10 members. I really appreciate it. I think this is a
11 really good opportunity to bring out something that
12 needs to be talked about. So I just wanted to start
13 with that.
14 To let you know where I'm coming from,
15 I've held two commands that I was selected for. In
16 my lieutenant colonel command, I was commanding
17 officer of the Financial Management School at Camp
18 Johnson, North Carolina; and I recently assumed my
19 current command, the headquarters services battalion
20 at Marine Corps Base Quantico, on 26 July 2013.
21 This battalion is the largest battalion in the
22 Marine Corps. We call it "The Beast" and there's a


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1 reason for that. My close cadres are my executive
2 officer, who is a lieutenant colonel, and my
3 sergeant major, who serves as my enlisted eyes and
4 ears.
5 I've got five company commanders who
6 serve under me and they have their XO's and their
7 first sergeants that support them. There is
8 approximately 3400 Marines in my command and in
9 addition to that I've also got about approximately
10 1800 civilians. Although the civilians don't fall
11 under me from a command perspective, they do provide
12 me feedback on command climate surveys and through
13 other venues.
14 From a commander's perspective, I
15 consider sexual assault one of a number of issues
16 that degrade the health of the command. These other
17 issues are domestic violence, sexual harassment,
18 alcohol-related incidents, and discrimination.
19 I find this survey serves as one of a
20 number of useful tools I have at my disposal that
21 allow me to assess the health of my command,
22 determine where I have challenges, what those


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1 challenges are, and why they are they are current.
2 These surveys are augmented by daily interaction,
3 and I think that was brought out by both Captain
4 Deal and Lieutenant General Bromberg. I think
5 that's probably the most important thing I do and
6 the most critical thing that my company commanders
7 do for me, is to get out there and be the eyes and
8 ears, because without that communication you're just
9 not going to know.
10 You can do -- surveys are important, but
11 that interaction, that personal interaction, is
12 absolutely critical. And the Marines want you out
13 there.
14 These surveys are augmented you daily
15 interaction I have with my Marines in my command as
16 well as interaction that my subordinate leaders
17 have. The initial surveys are executed within the
18 first 30 to 90 days of command and help me baseline
19 my command climate. So I've just done my first set
20 of command climate surveys and that's what I'm
21 baselining around now.
22 From this baseline, I work with my


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1 command team to build an action plan that I have to
2 brief to my senior commander, and I'm in the process
3 of finishing up building that and I'll be briefing
4 that very soon.
5 My command team and I work towards
6 different problems identified from the survey. For
7 example, one of the biggest problems I had that was
8 identified in the command climate was not getting
9 the word, either not getting the word late, or
10 getting the erroneous word, which can be,
11 particularly for junior Marines, is a major issue.
12 This has contributed -- and when you don't get the
13 word or if you get the word wrong, it starts
14 building up a little bit of lack of trust.
15 My team and I were able to execute -- and
16 this is because of my personnel background -- a
17 quick win by creating a newsletter and leveraging
18 our personnel system to ensure everyone in the
19 command received the newsletter. It sounds like a
20 small thing, but this has been a big hit. A lot of
21 people have really taken onto that newsletter. It
22 started out at 12 pages. It's now up to 17.


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1 Once I baseline my command and develop my
2 action plan, my next step is going to be in
3 executing that plan. I'm in the process of
4 executing even though we're finalizing what we're
5 going to do to brief the commander. It's already in
6 the process of executing, just like you saw with the
7 newsletter that we did.
8 I get my whole command team together.
9 The junior leaders have to be on board with this
10 because they're going to be the key to this. I'm
11 not just talking about my junior company commanders;
12 I'm talking about the NCO's.
13 General Amos just put out a thing called
14 the Reawakening and I think it's probably one of the
15 most critical pieces of gear that we have right now,
16 and that's getting those junior NCO's involved in
17 the leadership, because it's really them that are
18 knowing what's going on.
19 In the execution phase, the number one
20 task is daily interaction. My subordinates' primary
21 job is to get out and meet with the Marines in the
22 workplace, in the barracks, chow halls, and various


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1 events. This is the best way to keep your pulse on
2 the command climate. We do this through quarterly -
3 - some of the formal ways that we do it is through
4 quarterly troop information briefs, holding monthly
5 TME's for enlisted, NCO's, staff NCO's, because we
6 kind of group them a little together, grouping them
7 in separate TME's, and officers, and we do this
8 monthly; coordinating family readiness events -- a
9 huge plus for building command climate. If you've
10 got the spouses on your side, it's a win-win for
11 you. Promotions, going to promotions, going to
12 awards, being there for the Marines, and a number of
13 other venues.
14 Throughout execution, I'm developing my
15 subordinates to keep their focus on their Marines,
16 setting the example and showing all Marines in the
17 command we're fully aware that sexual assault or any
18 other behavior that demeans others will not be
19 tolerated, as is expressly stated in my equal
20 opportunity statement.
21 Accountability is key. I'm held
22 accountable by my boss and my subordinates are held


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1 accountable by me through a number of means. We've
2 got follow-on surveys, because once that initial
3 survey goes out that's kind of my assessment, and
4 there are follow-on surveys that provide feedback.
5 We've got fitness reports that grade us.
6 Our fitness report -- I think the board's received a
7 copy of it. You're going to see, for mission
8 accomplishment you're going to see two blocks. For
9 individual character you're going to see three
10 blocks. I'm going to skip the most important one
11 and I'll tell you why in a minute. Intellect
12 and wisdom has three blocks and how I evaluate my
13 subordinates is one block.
14 The most important block is leadership,
15 and I think in a nutshell this is everything that
16 you're looking for in command climate. It's how do
17 I or how do my subordinates if I'm ranking my
18 subordinates lead their subordinates, how am I
19 developing subordinates, how am I setting the
20 example or how are my subordinates? How are we
21 ensuring the wellbeing of our subordinates and how
22 are we in communicating? How are we communicating


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1 stuff, how are we getting things out to people?
2 I think key to this is -- every Marine's
3 goal is to get in the F and G block. If you get in
4 the F and Going block, you're at the top of the
5 pyramid. So that's what we always strive for, is
6 the F and G block.
7 We have the fitness reports, and those
8 fitness reports are used. That's how you kind of
9 weed out the ones that are falling short. Over the
10 course -- you start out with lieutenants like this.
11 You've got a whole bunch of lieutenants, and then
12 you've got captains and you've got majors and you've
13 got lieutenant colonels and then you've got
14 colonels. So that's our reading-out tool.
15 We can be relied on by our seniors or we
16 can be -- so we can be relieved by our seniors and
17 we can relieve our subordinates, too.
18 Finally, we have legal recourse at our
19 disposal if the situation calls for it. So if
20 someone does something very grievous, there's court-
21 martials and stuff like that.
22 Specific to sexual assaults, you have an


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1 eight-day brief. This is essentially a checklist
2 commanders use for unrestricted reports that ensures
3 we are providing victims with, A, world-class
4 victim's care, transparency throughout the chain of
5 command, and finally an initial assessment that we
6 can data mine to identify the most vulnerable age
7 groups, the incidents that are alcohol-related, the
8 ranks of the victims and the perpetrators, or
9 whether the perpetrator is even in the military, the
10 timing between the actual assault and when it was
11 reported, and a number of other data points.
12 Our eight-day SAPR report data identifies
13 that ten percent of Marines making unrestricted
14 reports tell us their assaults took place before
15 they joined and 15 percent of the assaults took
16 place over a year ago. Currently in my command,
17 since I've been there I've had four reports. All
18 four reports have been delayed reports. One of
19 them's from 2008. Maybe one or two of them have
20 been -- so from my perspective, right now I've had
21 all delayed reports. With the exception of one,
22 which was a civilian -- a Marine that had a rape


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1 that happened out in town, that she didn't even want
2 reported. That came out, and once it came out I had
3 to do an eight-day report on it. It was something
4 that happened out in the civilian community.
5 Both of these data points reinforce what
6 we hear from the Marines, the fact that the
7 environments are changing at the tactical level and
8 institutionally Marines have a lot more trust.
9 We're seeing that. I've got a chart that was given
10 to me. It's a little -- it says 65 percent
11 increase, but I think that's a little bit old. I
12 think we're now at 85 percent increase in reports
13 being provided.
14 So the environment's changing both at a
15 tactical level and an institutional level, and
16 Marines have trust and confidence in the CMC SAPR
17 campaign plan, and I've got a copy of that campaign
18 plan.
19 Involvements by commanders is absolutely
20 critical, particularly because of what we ask our
21 young men and women to do on the battlefield. All
22 the rank in the world will not draw a fire team


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1 forward unless it has confidence in its leaders.
2 Need trust -- Marines need to trust that their
3 leaders have their back. We garner this trust
4 through concerned, active leadership, which is why
5 we've got so many blocks on the fitness report.
6 Leadership is absolutely critical.
7 And giving them outlets. The outlets is
8 whether it's through a request mast -- a request
9 mast was how -- the request mast was not on the
10 person who got raped, but that was how the rape came
11 out. We found out about the rape because --
12 CHAIRWOMAN JONES: Excuse me. What's a
13 request mast?
14 COLONEL GALLANT: I'm sorry. Good
15 question. In the Marine Corps and the Navy --
16 actually we take it from our Navy brethren. In the
17 Marine Corps and the Navy, every Marine and sailor
18 has the ability to say: I don't like what's
19 happening in my unit and I don't want to talk to
20 you. They don't want to talk to the company
21 commander; they want to talk to me. Or they'll say:
22 Guess what, I don't want to talk to Colonel Gallant;


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1 I want to go to General Ayala. Gee, I don't want to
2 talk to General Ayala; I want to go to General Amos.
3 So they have a request mast process and
4 it can go as high up as to the Commandant of the
5 Marine Corps, and nobody can stop them. At every
6 level we have -- I believe it's every level, we have
7 a 24-hour period and if we don't get it up to that
8 next level we're in deep kimshee, and that's not
9 good.
10 (Laughter.)
11 COLONEL GALLANT: Then we have the IG and
12 we have anonymous tips.
13 We have a myriad of ways to help our --
14 I'm almost done. We have a myriad of ways to help
15 our Marines through the trauma of sexual assault and
16 other life-changing events. We have at our disposal
17 a full-time sexual assault -- I have at my disposal
18 a full-time civilian sexual assault response
19 coordinator that's supported by two full-time
20 civilian victim advocates. I have uniformed
21 victim's advocates. I have two of them that I
22 personally get to select, and I usually select them


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1 based on how their personalities are, how
2 approachable are they, because to me that's the most
3 important thing for someone that's going through
4 something such as sexual assault.
5 We've got a military family life
6 counselor that works right at my command. He's
7 someone that we contract. We've got chaplains.
8 I've got two chaplains in my command. We've got the
9 naval medical clinic and that's for the nursing side
10 of it and the medical side of it. We've got a
11 family advocacy program that I think is very robust,
12 that has a whole host of resources that they can
13 provide to you whether you're a sexual assault
14 victim, a domestic violence victim, or someone
15 that's got an alcohol problem.
16 All SAPR advocates are required to have
17 40 hours of training that have been approved by the
18 National Organization of Victim Advocates and pass a
19 local police background check. This includes my
20 uniformed victim advocates.
21 Through it all we need to manage
22 perceptions on a number of issues to establish good


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1 order and discipline within our commands. Again,
2 this can only be done through communication and
3 involved leadership.
4 Some cases take longer than others and
5 some cases have less evidence than others, and
6 that's something that needs to be articulated to
7 Marines, because sometimes Marines, when they don't
8 see things -- and I'm sure this is true for the
9 other services, too -- when they don't see things
10 happening fast enough, they think people are being
11 protected, and we need to always combat that. So
12 from a leadership perspective that's always got to
13 be combatted. That's why it's so important to keep
14 this within the military.
15 Through it all, we as commanders need to
16 remain engaged.
17 I'm going to stop here. I didn't want it
18 to go as long as it did. But unless you have any
19 other questions.
20 CHAIRWOMAN JONES: Thank you very much,
21 Colonel Gallant.
22 Did you have a question, Liz?


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1 MS. HOLTZMAN: I have a question. Are
2 you seeing -- in other words, do I take from your
3 testimony -- and I'm sorry. I may be confused about
4 this, but my impression from what you're saying is
5 that you're receiving more reports now, particularly
6 reports of things that happened in the past?
7 COLONEL GALLANT: Yes.
8 MS. HOLTZMAN: Do you attribute this to a
9 change in the climate in the Marines so that victims
10 feel more confident about coming forward? Or if
11 that's not the case, what do you attribute this to?
12 COLONEL GALLANT: I do. I attribute it
13 to -- we brought up trust, trust and confidence in
14 the leadership.
15 MS. HOLTZMAN: Of course I left you out
16 of the picture, too. Maybe it's because you're
17 there, but that could be a very important factor.
18 COLONEL GALLANT: This is Marine Corps-
19 wide. This isn't just my command. I've only had
20 four since I've been there. So this is Marine
21 Corps-wide.
22 I think both the Captain and Lieutenant


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1 General Bromberg, they brought up the point about
2 training and getting that word out. We have had an
3 enormous amount of training, to the point where the
4 Marines are saying: Enough training. But I don't
5 think we can ever let go on that. I think the
6 training is hugely important.
7 I think between the training and the
8 anti-SAPR report and the way we now have codified
9 it, it enables us to do more. Before we had the
10 SAPR report we really didn't know what our stats
11 were. So I think that that has all contributed to -
12 - and the fact that once you get something going --
13 and I think you brought it up, sir, where you said
14 back in the seventies when we were trying to
15 integrate, when we were trying to break down the
16 racial barriers -- I think that as you educate and
17 as you break it down and as you make it mandatory, I
18 think that that makes a difference, and it becomes a
19 key ingredient to leadership.
20 So if we take our eye off the scope --
21 you can't take your eye off the scope. I think
22 that's what this has done. I think the leadership,


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1 the training, the fact that it has become important
2 to all the service chiefs, has been a key ingredient
3 as to why people feel more confident.
4 We're telling our Marines and the Army's
5 telling his soldiers and they Air Force is telling
6 her airmen and he's telling his sailors: Tell us if
7 you've got problems. We're seeing increases in
8 domestic violence, reporting of domestic violence.
9 So I think it's because we're saying, hey, here we
10 are. And we've got the resources available through
11 the family advocacy program, too. So I think it's a
12 combination of things, the education, the eye on the
13 ball, the eight-day SAPR report, the surveys that we
14 have that people are doing. It's in your face.
15 It's always there.
16 MS. HOLTZMAN: So it's you feel an
17 increased confidence that if they come forward with
18 their problems those problems will be addressed in a
19 compassionate and professional manner?
20 COLONEL GALLANT: Yes.
21 MS. HOLTZMAN: Do you feel that that's
22 true? Do you have the same experience?


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1 GENERAL BROMBERG: Yes, ma'am. We've
2 definitely seen a rise in our reporting over last
3 year, and some of our older cases or people who have
4 come out, I think it's just indicative that people
5 have trust and confidence in the system now that
6 they're going to get -- the chain of command is
7 going to handle the situation and they're going to
8 get the care that they need. We have seen some
9 older reporting as well, some a year ago, some even
10 further back than that.
11 MS. HOLTZMAN: And you, Captain?
12 CAPTAIN DEAL: We've also done Navy-wide
13 training. We call it SAPR fleet, SAPR leader, where
14 every sailor in the Navy is brought to understand
15 what sexual assault actually is, so they understand.
16 We've done surveys after it's -- in fact, we've done
17 surveys to ensure that each sailor understands what
18 those reporting requirements are and what the
19 standards are.
20 So in that, now that the sailors
21 understand where their rights are and they have
22 trust in their command climate, now they can come


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1 forward and say, this happened to me. There might
2 be some latency involved in that. It could be a
3 experience a year or two before, but someone might
4 say: This happened to me and I wasn't sure what
5 that was.
6 In fact, the Department of the Navy has
7 funded an educational play acting troupe. They're
8 really a group of professional counselors called No
9 Zebras. I sat in the audience of one of those in
10 Whidbey Island, Washington, in August, and it was
11 such a realistic training that a SARC afterwards
12 told me there were three people who had triggers of
13 previous incidents in their lives that came up for
14 counseling because now they understood that the
15 trust and confidence was there and that someone
16 understood what they were going through at that
17 time.
18 CHAIRWOMAN JONES: John.
19 GENERAL ALTENBURG: Do you think that the
20 Secretary's withholding jurisdiction to the O-6
21 level and knocking it out from the O-3's has also
22 enhance confidence that it's going to get looked at,


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1 it can't get buried by somebody who knows the NCO or
2 knows the assailant?
3 CAPTAIN DEAL: Yes, sir, absolutely. I
4 had to deal with three of those myself as an ISIC or
5 an O-6. When it came to sexual assault, the initial
6 disposition authority, it takes the commander out --
7 there's a lot of emotions that go on in an O-5 in
8 that command. That's the most tactile, palpable
9 time that you're in command of sailors. So bringing
10 that to me I think did help quite a bit.
11 GENERAL BROMBERG: I think it makes a
12 difference also that, what we're seeing in many
13 areas is that sometimes you need a higher level
14 because some people are too close to the event.
15 Somebody else looking at the problem, not to say
16 that you're wrong or anything else, but that you may
17 be very, very close, especially with multiple
18 deployments --
19 MS. HOLTZMAN: I'm sorry? With what?
20 GENERAL BROMBERG: Especially with
21 multiple deployments. So I have deployed twice with
22 these group of NCO's. You get to know them at a


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1 different level. You have different relationships
2 than what you would have after 10, 12 years of war.
3 So raising it up a level gets someone from outside
4 to look, and I think that also goes to that trust
5 and confidence. You're not trying to gun for that
6 guy below you, but you're trying to give an honest
7 look for both the accused and the victim, and that's
8 very important.
9 We've seen it in other things, not just
10 sexual assault, in other types of things within the
11 military, about having a more mature person with a
12 little more experience, someone once removed from
13 the incident, give a good objective look.
14 MS. FROST: I have a question.
15 CHAIRWOMAN JONES: Yes.
16 MS. FROST: Unless I'm just
17 misunderstanding -- and this question is really for
18 General Bromberg -- it seems like the Army in its
19 OERs is taking a much more specific focus on the
20 whole issue of sexual assault and the commander's
21 response. Do you have any explanation why the Army
22 has taken such an approach?


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1 GENERAL BROMBERG: Yes, ma'am. I think
2 when we talked about it with the Secretary and the
3 Chief and the other senior leaders at the Army, it's
4 really about we know the commanders have a role, an
5 absolutely key and essential role, in discipline
6 across the force in setting command expectations.
7 He's got to have some measure of accountability and
8 the OER is a tool to do that.
9 Also, we know that, speaking on the
10 personnel side now, you can't have an OER form that
11 changes every year if you have an institution. You
12 have to have an OER that lasts. Our current OER has
13 been in existence for over 16 years. I don't know
14 what the other services are, but I bet you it's been
15 a long time. That's how we promote and that's how
16 you develop -- not develop, because the OER is not a
17 developmental tool. The OER is an assessment tool.
18 The support form is the developmental tool.
19 So you have to have a means to select
20 people for higher promotion continually for year
21 after year if you want to have a viable institution.
22 So we talked about it a lot, do we do a block check,


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1 do we not do a block check, right in the middle of
2 the OER. We said, no, we're going to make it very
3 specific. It's very clear to a commander, if you
4 know you're going to be evaluated on command
5 climate, that you will then pay attention to it.
6 That was the basic.
7 Then since we have a new OER and we're
8 looking at things a little differently in the new
9 OER, we did add in the explanation under character
10 and leadership, because it's a component of
11 character and leadership, we do have specific
12 language in there. We did away with all the typical
13 X-Y block checks in the new OER. it's all verbiage
14 focused on performance. But we do have that
15 language in there.
16 MS. HOLTZMAN: Can I see the form?
17 GENERAL BROMBERG: I don't have any with
18 me.
19 MS. HOLTZMAN: Do you mind providing
20 that?
21 GENERAL BROMBERG: I'll give you our old
22 and our new.


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1 CHAIRWOMAN JONES: That would be great.
2 COLONEL HAM: The Marines gave us a form.
3 The other services will provide one.
4 CHAIRWOMAN JONES: All right. Admiral
5 Neptun, Coast Guard.
6 ADMIRAL NEPTUN: Yes, ma'am. Thank you
7 and thank each of you for your service doing this.
8 I think it's great to have a conversation on this
9 important topic.
10 I represent a service that is much, much
11 smaller than my peers to the left and the right. We
12 have 41,000 active duty members, 8200 reservists,
13 8400 civilians, and a volunteer cadre of Coast Guard
14 auxiliarists that number 30,000. My comments are
15 really focusing on the active duty and reserve
16 population, but I also will include some things
17 regarding surveys that talk about our civilian
18 employees as well.
19 Our service secretary is the Secretary of
20 Homeland Security, so that's a little different than
21 my peers to the left and the right. I really want
22 to start my conversation with the Commandant of the


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1 Coast Guard, Admiral Bobb Papp, just going through
2 the stage-setter that he laid down three and a half
3 years ago when he took over as Commandant of the
4 Coast Guard, during the middle of the Deepwater
5 Horizon oil spill in the Gulf of Mexico, just to
6 give you a starting point.
7 He's had a career very focused on taking
8 care of people and that follows through in
9 everything that he's given to us in the last three
10 and a half years as our Commandant. His first week
11 in office, he rolled out a series of Shipmates
12 messages. "Shipmates" for him is a term of
13 endearment. We should all strive to be good
14 shipmates. That's a goal that I've seen
15 consistently from him as he has gone through the
16 service making unit visits and all-hands
17 presentations.
18 Just last week he mentioned, this past
19 year he's traveled around the Coast Guard to the
20 degree that we've been allowed and he's had all-
21 hands sessions with 32,000 members of our service.
22 So based on the numbers I started out with, that's


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1 over two-thirds of our population.
2 He's been very focused on taking care of
3 your people, taking care of your shipmates, being
4 good shipmates, and a particular focus on not
5 becoming a bystander and also sexual assault. So
6 the Shipmates messages that he's rolled out -- we're
7 up to number 26 now -- have been a conversation from
8 the top to talk about his expectations for his
9 entire workforce, that full spectrum that he talked
10 to.
11 For example, Shipmates 3, which was
12 rolled out day 3 on the job as Commandant: "I value
13 every member of the Coast Guard family. Each of us
14 is entitled to work in a respectful and professional
15 environment. After all, respecting your shipmates
16 is not only one of my core principles; it's part of
17 the Coast Guard's core values of honor, respect, and
18 devotion to duty."
19 As the conversation became more public
20 about sexual assaults in the military, in January of
21 2012 he came out with Shipmates Message No. 19,
22 where he really focused on sexual assault, hazing,


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1 harassment, discrimination, things that undermine
2 morale and degrade readiness. He basically laid it
3 out for all of us and said: "This will stop. It's
4 a violation of law, it's clearly not in our
5 policies, and it's nowhere near any of the service
6 standards that we all are expected to live up to.
7 And we will not tolerate any of that behavior in the
8 Coast Guard."
9 So from there all of his operational
10 commanders go down and have been tasked to carry
11 that message to the mess deck, which is how we
12 describe our all-hands sessions, where you gather
13 the tens, the twenties, the hundreds, and just have
14 a conversation about things like this.
15 He said: "Let me be clear. There are no
16 bystanders in the Coast Guard. Our duty is to
17 respect our shipmates and that demands that each of
18 us have the courage to take immediate action to
19 prevent or stop these incidents from happening,
20 whether at work or on liberty when away from our
21 jobs." And he mandated that each commanding officer
22 and officer in charge in the Coast Guard read that


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1 at a quarters setting.
2 We have commanding officers that are
3 officers just like all of us are. We also have
4 enlisted officers in charge in the Coast Guard.
5 Well over 100 of our smaller units have enlisted
6 officers in charge. Typically they're E-7's, a
7 chief petty officer, through E-9, a master petty
8 officer, equivalent to senior NCO's in the other
9 services.
10 They are the most likely person you would
11 see if you were assisted by the Coast Guard or were
12 going through a law enforcement boarding by the
13 Coast Guard. A unit that is run by an enlisted
14 officer in charge is probably who you're going to
15 meet out in a public setting. They're held to
16 the same standards that commanding officers are held
17 to and they're also compelled to watch out for their
18 people the same way that any commanding officer or
19 good supervisor is required to do.
20 So we rolled out a SAPR program in 2012
21 that provided much more specific information about
22 how commanding officers and officers in charge are


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1 required to take care of their people in the realm
2 of sexual assaults. It was a bit of a training
3 opportunity, a learning experience, where people had
4 to learn the difference between restricted reports
5 and unrestricted reports, and what does an officer
6 in charge or a commanding officer do when that
7 occurs.
8 What came from that, using best practices
9 from the other services, was a checklist of
10 requirements, so that the commanding officer or
11 officer in charge has a checklist of things to do.
12 We took the investigation of sexual assault reports
13 out of the hands of commanding officers and put that
14 into the hands of the Coast Guard Investigative
15 Service, the CGIS. Each of our services has an
16 equivalent to be able to do that. They are the
17 experts. They've got special training thanks to a
18 program that the Army has hosted, where they go for
19 several weeks and really fine-hone their
20 investigative techniques so that they can become
21 effective sexual assault investigators.
22 We also have SARC's, our sexual assault


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1 response coordinators, like the other services do.
2 They are specially trained program coordinators
3 scattered across the Coast Guard. They too have
4 been given special training and they have licensing
5 requirements that we should have full compliance
6 with early next year.
7 We also have a host of volunteer victim
8 advocates that help commanding officers and officers
9 in charge be responsive, receptive, to reports from
10 members of our service, just like the other ones do.
11 I want to talk briefly about the surveys
12 that we use. DEOCS has been spoken about quite a
13 bit and you had a session with all the services this
14 morning talking about DEOCS. We use that as well.
15 Our requirement is that a new commanding officer or
16 officer in charge when they come into a new
17 position, during the first six months will produce a
18 DEOCS survey for his or her entire command. That's
19 revisited annually thereafter and those officers in
20 charge and commanding officers are encouraged to
21 send that information up to their supervisor.
22 In my last assignment, when I was a


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1 district commander in New England, I asked my sector
2 commanders, the next echelon down, to roll those up
3 to me so we could have a frank conversation about
4 how things were going. I never saw any problems
5 being able to do that.
6 That's how we deal with the fast-return
7 DEOCS information in our service. But we do more.
8 Triannually we take part in the health-related
9 behavior survey. It's a DOD tool. We'll be doing
10 that again next year. In 2011, the last time it was
11 done, we were the only service that took on the
12 module that talked about sexual behavior and sexual
13 preference. There was a module of discussion,
14 that's still being evaluated, so that we can
15 understand what that is all about for our crew
16 members.
17 The federal employee viewpoint survey is
18 a tool that's used for the civilian employees in the
19 Coast Guard and that's a cadre of about 8400 people.
20 The employee viewpoint survey tends to roll up to
21 organizational level for its inputs. You don't have
22 a unit-level response to it, so it really provides a


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1 macro view of the senses of the enlisted -- excuse
2 me -- the civilian workforce of the Coast Guard and
3 what they feel about how well they're being taken
4 care of, how well they're being treated, their
5 opportunities to move up and do things, to get
6 training, to get education.
7 Coast Guard had 57 percent response.
8 We've historically had a really good outcome, very
9 high within the Department of Homeland Security and
10 very high across the government writ large, where
11 people report phenomenal satisfaction with their
12 place in the Coast Guard.
13 DMDC also does a workplace gender
14 relations survey. We've taken part in that in the
15 past. We have another one coming up early next
16 year. That's managed by Defense Management Data
17 Center -- Defense Manpower Management Data Center,
18 excuse me. It's going to be very focused on some
19 SAPR questions. As a service we've been able to
20 inject some particular points so we can start the
21 inquiry more focused down on SAPR-type questions.
22 Another one that is unique to I think the


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1 services here is an organizational assessment
2 survey. We've been doing that since 1998. It
3 really got its best form in 2002 when it became an
4 online tool. It's conducted biennially. It's held
5 most of its structure since 2002. This next cycle,
6 which will begin probably in January or February,
7 we're inserting six questions that focus on sexual
8 harassment and sexual assault, so we can really
9 fine-tune the responses across our workforce.
10 We get 50 to 60 percent of all of the
11 Coast Guard population that takes part in that
12 survey. So it's very helpful. It will drill down
13 to the unit level. It's set up so that anything
14 that discriminates down to a pool of five people or
15 smaller, it doesn't provide clarity in terms of
16 gender or race or anything like that. And it's not
17 administered to cadres of people that are less than
18 16, so it can maintain its anonymity.
19 It's very helpful because we have a
20 decade of useful information to monitor and to trend
21 across time in the workforce.
22 The Coast Guard's done very well in


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1 leadership, diversity, teamwork communication, and
2 work environment criteria, which is informative to
3 us that we're doing some good things, but we can
4 never rest on our laurels and just accept that as
5 good enough. It allows us to focus on doing those
6 things even better, and I think it's a very helpful
7 tool.
8 That's one of those things where as a
9 commanding officer they're given that data, and you
10 can get a macro view of the service. You can also
11 get some comparison views from other agencies, like
12 DFAS is an example of a big DOD entity that uses it.
13 Parts of Health and Human Services, parts of the
14 Social Security Administration use it. So you can
15 get a government view as well and set your component
16 up for: How are we doing across government writ
17 large?
18 So it's very, very helpful for us. Our
19 commanding officers at all levels really focus on
20 the information that comes out of those surveys, so
21 that they can act on it strategically, but also act
22 on things tactically if that's indicated.


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1 In 2011 we stood up a SAPR task force and
2 pulled in participants from junior members in all
3 these different workforce areas right on up to the
4 most senior members, just to get a sense of what are
5 the important things. Things were bucketed into
6 four categories of focus area that rolled into our
7 SAPR program strategic plan.
8 One of them is climate, where we really
9 need to focus on workplace climate. Prevention, the
10 very important aspect of getting better at reducing
11 sexual assaults. The response, so that we can do it
12 smarter, better, without burdening victims any more
13 than is necessary, so that they can build
14 confidence, remove stigma, and try to drive down to
15 zero in the years ahead. And then accountability is
16 the fourth goal.
17 My peers have been talking about their
18 evaluations. We have evaluations as well. Our
19 enlisted members have an enlisted employee review.
20 it focuses on 28 competencies that cover a host of
21 things dealing with performance, leadership, taking
22 care of people, and just how they do their jobs. It


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1 varies as you go from junior enlisted member through
2 journeyman up to the masters of their craft.
3 We're right in the process now of
4 changing the form, starting with the most senior
5 members, working our way down. I took a note under
6 required comments about sexual assault and I think
7 I'll have a conversation with the chief petty
8 officer of the Coast Guard about that aspect,
9 because I think, as in EEO and other things, that's
10 been a very helpful tool to compel compliance and
11 keep part of the conversation within the service.
12 On the officer side, we have officer
13 evaluation reports, OER's, like other service
14 members do. We have a range of one through seven in
15 a variety of categories, but I think what's uniquely
16 different about our evaluations is that there's a
17 lot of room to write about the specifics of
18 performance. Those are things that are description
19 of duties, your technical competencies, your
20 professionalism, taking care of your people, your
21 potential for positions of greater responsibility,
22 and then comparison with your peers across the Coast


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1 Guard.
2 For enlisted members, we do semi-annual
3 evaluations up through E-6. For the senior enlisted
4 members, E-7 through E-9, they have an annual
5 evaluation and, just like my peer services, there
6 can be events that cause a special evaluation -- a
7 nonjudicial punishment, getting a DUI, doing a
8 court-martial. Things like that compel an
9 evaluation as well.
10 On the officer side, OER's. Junior
11 members have a semi-annual cycle. Once they get
12 through their time as an O-3, as a lieutenant, those
13 become annual. There are other instances that
14 require special OER's as well, that cause things to
15 stand out.
16 I don't know if you're going to be asking
17 me questions about promotion boards and panels and
18 things like that, but it's very, very competitive in
19 the officer arena, especially in a time of
20 downsizing, where you really can't have too many
21 scars on a record and those do stand out in the
22 officer evaluation reports. I've been on a variety


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1 of those panels and boards as a midgrade and senior
2 officer, and as those percentages tighten up even
3 further we're sending some incredibly talented
4 people home. But clearly, anybody that has a
5 blemish where they showed irresponsibility, lack of
6 respect, are going to be abundantly clear because
7 the commanding officers have a lot of space to write
8 about their observations and comparisons with others
9 in that particular arena.
10 Some of the things that we've done since
11 the SAPR campaign rolled out. We've had increased
12 training for our Coast Guard Investigative Service
13 investigators, our special victim advocate
14 attorneys, and then also the SAPR counselors, the
15 SARC's, so that they can improve their understanding
16 of what they do.
17 Victim advocates. We had almost a
18 thousand volunteer to do that volunteer function in
19 the Coast Guard. Our need is about 550 or so, so we
20 have more than enough. They're not all necessarily
21 in the right places. They've been trained, they've
22 been vetted for background checks and so forth. So


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1 that we're managing victim advocates exactly like
2 the other services do as well.
3 That will all roll into the metrics that
4 DSAD offers, so that the SARC's can load sexual
5 assault info, training requirements, things like
6 that. The Army is being loaded into DSAD right now.
7 The Coast Guard will be next, early next year, I
8 hope, so that we can do comparisons of data across
9 all of the services and then make judgments
10 appropriately in terms of how we're doing.
11 I think it's interesting to talk about
12 just the timing for all these different surveys that
13 have been coincidental possibly, but a lot of their
14 frequency is coming into view as this is really a
15 good time to be looking at health-related behaviors,
16 to not just poll the military workforce, but to make
17 sure that we have our eyes on our civilian
18 workforce.
19 And then also the organizational
20 assessment survey, which is our best of tools, that
21 has a longer view. That's a 120-question survey, so
22 we have a lot of background, over a decade, that is


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1 helpful for commanding officers, and our ability to
2 tweak that every two years, a little bit more for
3 the focus items, will help keep it relevant in the
4 decades and years ahead.
5 I think I'll stop there and see if you
6 have any questions or comments you have for me.
7 CHAIRWOMAN JONES: Yes?
8 MS. FROST: You mentioned your, I think
9 you called it, a special victim advocate attorneys.
10 ADMIRAL NEPTUN: Yes, ma'am.
11 MS. FROST: So you have that program in
12 place?
13 ADMIRAL NEPTUN: We do.
14 MS. FROST: How long?
15 ADMIRAL NEPTUN: It started in July of
16 this year. Again, we leveraged the great training
17 opportunity that the Army provides. We have a small
18 cadre of special victim advocate attorneys. We hope
19 to build more in the years ahead. We had some
20 Congressional legislation that put six additional
21 SARC's into the mix and some number of special
22 victim advocate attorneys, so that we can build that


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1 out and make it more responsive.
2 We're geographically dispersed. We're
3 not in garrison like most -- many DOD facilities.
4 So we're scattered across the country and overseas
5 as well. But we have 13 bases in the Coast Guard
6 that are key to all of the mission support things
7 that go with deployed units and people that are
8 working in the country, taking care of ships and
9 crews and so forth.
10 So we will use those 13 bases, the key
11 locations, to provide a place to work from for our
12 SARC's. The special victim advocates may be
13 scattered around to some of those, but they will be
14 centrally in Washington, D.C., so they can be
15 responsive as need be. But we would have geographic
16 dispersal so that we can be very responsive.
17 Our CGIS investigators are also scattered
18 across the country and overseas, so that they too
19 can be responsive. Then the victim advocates are
20 from Guam to Puerto Rico and all of the places in
21 between.
22 CHAIRWOMAN JONES: Liz?


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1 MS. HOLTZMAN: Admiral, I didn't hear any
2 specific question on sexual assault in terms of the
3 evaluation of commanders for promotional purposes or
4 other purposes. Do you have a form that will do
5 that? Or how are you going to deal with that issue?
6 ADMIRAL NEPTUN: Well, the evaluations,
7 whether they're enlisted or officer, have a lot of
8 room right now, ma'am.
9 MS. HOLTZMAN: I understand that, but
10 that's going to be voluntary. Writing comments is
11 voluntary. How do you make this a systematic part
12 of the evaluation. The handling of sexual assaults
13 and the command climate with respect to sexual
14 assaults, how does that become a systematic part of
15 the evaluation of a commander's performance?
16 Because I think that that's going to have a major
17 impact on how seriously the commanders take this,
18 addressing the problem.
19 ADMIRAL NEPTUN: Yes, ma'am.
20 MS. HOLTZMAN: And so it won't be just a
21 flash in the pan. There's a lot of publicity about
22 it this year. Maybe next year there will be no


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1 publicity about it. Maybe there will be a different
2 subject. So how do we ensure that this is a matter
3 that gets systematic specific attention?
4 ADMIRAL NEPTUN: We don't have systemic
5 language that deals specifically with that in the
6 enlisted evaluations or the officer evaluations or
7 the civilian evaluations, for that matter. There is
8 an opportunity with the enlisted evaluations for me
9 to have a conversation about the explicit discussion
10 of those, and I think we could probably get there
11 without too much trouble.
12 As General Bromberg said, our OER's
13 change some over time. Our last big change was
14 about eight years ago. But they tend to look about
15 the same over time. One of the take-aways for me in
16 this discussion today was, do we really need to be
17 explicit about sexual assault, rather than allowing
18 that to roll into the comments, which is -- that
19 falls in the mentoring, taking care of your people
20 arena. It's not direct.
21 So I will take that back and have a
22 conversation with my peers and my boss to see if


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1 that's something that is worthwhile, to avoid the
2 flash in the pan, as you describe. We're in this
3 for the long haul and our goal is to get down to
4 zero for sexual assaults in the Coast Guard. I
5 think we can get very, very close to that. It's
6 going to take a lot of command focus, and it starts
7 at the top, works its way down.
8 We had a sexual assault seminar at
9 Andrews Air Force Base about a month ago. We pulled
10 in 150 people to talk about the topic of sexual
11 assault and how we're doing as a service. Part of
12 that was bystander training, to give people the
13 tools to be responsive to, what do I do when I'm out
14 in a foreign port and things aren't going well
15 because of alcohol? What tools do I have to avoid
16 becoming a bystander?
17 That's driven top-down. That was also
18 provided bottom-up, as: You need to give us
19 something that helps us deal through that
20 uncomfortable situation of the people that aren't
21 necessarily thinking clearly and need some help to
22 separate out.


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1 So in that discussion, the junior members
2 that were part of that came and said: You know,
3 it's all about building trust at the command level.
4 We have a small number of restricted sexual assault
5 reports. I'd like that to be zero, because I think
6 there's a component of trust of command at that
7 level.
8 If we get to the point where we put
9 explicit language in an OER and an EER that
10 specifically talks about sexual assault, I think
11 that may have an opportunity to build some
12 confidence that this is being taken care of very
13 aggressively and up front. So I absolutely get your
14 point of view on that.
15 But we have -- for boards and panels,
16 we've got great guidelines that are put out by our
17 Commandant, that really is all about taking care of
18 your people. There is really a zero tolerance for
19 any sexual misconduct, whether that's sexual
20 harassment right on up through low or higher levels
21 of sexual assault. Those people are removed from
22 our services as quickly as a board or panel will


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1 allow that to occur.
2 So it's discussed in the OER's, it can be
3 discussed in the EER's, and I think we'll work on
4 that.
5 MS. HOLTZMAN: Well, I guess my question
6 about that, though, is that if it's not an explicit
7 metric, if it's not an explicit issue, then how do
8 you assure the public and how do you track what's
9 happening? Because it's a little bit like -- I
10 think the new bill is going to change this, but you
11 can take into account a person's character and
12 performance in the military in terms of deciding
13 whether or not to bring criminal charges, okay. So
14 if someone's not being prosecuted you don't know
15 whether it's because no crime was committed or
16 because they thought this was really a good guy or
17 gal.
18 If we want to change culture in the
19 military, there are some people who might think,
20 well, this person has a great record of heroism and
21 bravery in combat and all the rest and does fabulous
22 work in the military, but there's a sexual assault


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1 here or there's a tolerance of it, and how do we
2 deal with it?
3 Unless we know that people are actually
4 grappling with that, we don't know. How does the
5 public get assured, how do people that are enlisted
6 in the military get assured, how does the top brass
7 in the military get assured, that this is really
8 being focused on?
9 When it's part of the general subject of
10 leadership, how does one know?
11 ADMIRAL NEPTUN: Okay.
12 MS. HOLTZMAN: It's just a question I
13 have. I'm not somebody who's ever been involved
14 with these kinds of forms and I don't know how
15 they're done in the military. But it's a question
16 I'm raising and it's occurred from the testimony of
17 the others here.
18 I don't see that same issue with regard
19 to the Marines. Maybe I didn't read it properly.
20 But I don't see where an issue of sexual assault is
21 explicitly mentioned in the Marine document, either.
22 ADMIRAL NEPTUN: Let's talk about the


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1 evaluations and then the public view. The
2 evaluations are reported up to chain of command, so
3 a supervisor consults with the member being
4 evaluated. That supervisor has a supervisor. There
5 are three layers of review in all of our commands,
6 whether it's an enlisted evaluation or an officer
7 evaluation, and it works its way up. That does
8 not become public information. That's loaded into
9 the records --
10 MS. HOLTZMAN: I don't mean that, in that
11 sense. I mean if you can't measure -- I'm not
12 asking for any individual information on a person,
13 no, no, no. I'm not talking about that. I'm just
14 talking about how the public can be assured. The
15 statistics that you're giving now about, for
16 example, more reports coming forward, particularly
17 about older complaints, you can draw some inferences
18 from that. That helps to assure the public that
19 people in the military have more confidence. You're
20 not saying you're giving the names of the people who
21 are coming forward.
22 So excuse me for not being explicit about


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1 that or unclear about that.
2 ADMIRAL NEPTUN: The public reporting
3 piece -- that's part of the reason we're going into
4 DSAD, because we've managed by other databases and
5 spreadsheets to inform through the Joint Chief of
6 Staff when they go to the Hill for a hearing to talk
7 through how the services are doing.
8 We're rolling into DSAD next year and
9 that will become a public touch point for how the
10 services are doing, because that information comes
11 out on the Hill, those are the numbers that are
12 reported, and those are the things that can be read
13 in the Washington Post and other places where they
14 do a deeper dive beyond just the headlines in the
15 hearing. That information is going to be part of
16 what DSAD can provide to all of us.
17 I think it's also important that commanding
18 officers have a frank conversation with their
19 people. We've had over a year of public discourse
20 within our service. I mentioned our Commandant
21 going around, and he's talked about sexual assault
22 and no bystanders with 32,000 people over the last


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1 year. When I was a field commander I was doing the
2 same thing.
3 None of that is flash in the pan. That's
4 been consistently the messaging over the last three
5 and a half years, and it even goes farther back than
6 that when you look at the organizational assessment
7 survey and how that information is brought out in an
8 all-hands setting to have conversations about how we
9 can do things better.
10 Commanding officers are tasked to take
11 care of their people and to take care of them well.
12 That's where I think the surveys are helpful, and
13 then the individual counseling that goes with the
14 evaluations accompanies that as well on an
15 individual basis.
16 COLONEL TURNER: May I?
17 CHAIRWOMAN JONES: Yes, Colonel.
18 COLONEL TURNER: General Bromberg, what
19 is the definition of "substantiated" or "retaliated"
20 in your 27 September '13 officer assessment document
21 that requires mandatory reporting if it's
22 substantiated or of it's retaliated? What are those


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1 definitions in the determination?
2 GENERAL BROMBERG: The determination of
3 "substantiated," it's not just based on credible
4 evidence. It's based on there's been an allegation
5 and now there's enough evidence there where it's a
6 substantiated incident as a result of an
7 investigation or some other means that says, yes,
8 this really did happen and that person or that
9 subject did definitely commit that act, or there's
10 enough evidence there that would lead to some kind
11 of administrative action.
12 COLONEL TURNER: Yes, sir. I'm sorry, I
13 didn't articulate well. I'm trying to figure out
14 who makes that substantiated determination? Are you
15 relying on the MCIO or the CID?
16 GENERAL BROMBERG: It's going to be a
17 combination of -- well, it's the commander's
18 responsibility, but this will be the CID in
19 combination with the SJA with the commander, just
20 like we do it today. It's not so much the -- it's
21 not -- once the incident's been substantiated at the
22 unit or against the individual. It's not so much


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1 trying to find the substantiation, but after that
2 fact has been substantiated. Does that make sense?
3 COLONEL TURNER: It does, sir. So my
4 question then is, that process can take a long time,
5 and the commander or whoever is being rated may be
6 PCS'ed, moved to a new assignment.
7 GENERAL BROMBERG: It would be flagged.
8 What we do is -- the assumption would be here that
9 if there's an allegation, that at that point there's
10 an investigation going on. What we do, we call it a
11 flag, which means that prevents any favorable
12 personnel action. He shouldn't be promoted, he
13 shouldn't be allowed to move or anything else.
14 Then once that case is adjudicated,
15 whether it's substantiated or not substantiated,
16 then that action will take place. So we hold OER's
17 and we don't process an OER in the Army while you're
18 under investigation, particularly if you're rating
19 other people.
20 COLONEL TURNER: So if you're a unit-
21 level commander and you have somebody in your unit
22 who has a substantiated incident, who is pending


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1 investigation -- we don't know if it's substantiated
2 yet -- that unit commander won't move until we find
3 out the disposition?
4 GENERAL BROMBERG: Let's just say I'm a
5 commander and there's an allegation against me, and
6 so now there's an investigation going on. The chain
7 of command normally under most circumstances -- I
8 say normally -- will suspend that commander. The
9 junior will become the acting commander, and you
10 wait until the investigation is concluded.
11 If there were to be a PCS for some
12 particular reason -- there might be in a sexual
13 assault case because you have expedited transfer of
14 the victim; you can also transfer the accused --
15 then that whole process will move with them. But
16 they wouldn't get an OER at that point. The OER
17 won't be given until you're done with the
18 investigation, because if you're substantiated
19 there's probably going to be some kind of activity
20 going on, either a letter of reprimand or a court-
21 martial or Article 15, which would result in some
22 other action. That was the intent.


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1 COLONEL TURNER: Yes, sir, and I hear
2 that for the unit commander who's involved in his
3 own misconduct. But I also see in your policy that
4 they're to be evaluated -- they must note the
5 incident and explain if they have a subordinate in
6 their unit.
7 GENERAL BROMBERG: Right.
8 COLONEL TURNER: So how do you link that
9 ongoing investigation into a subordinate when a
10 commander PCS's?
11 CHAIRWOMAN JONES: What's a PCS?
12 GENERAL BROMBERG: Permanent change of
13 station, a move from one place to the next place.
14 CHAIRWOMAN JONES: Thank you.
15 GENERAL BROMBERG: The intent is that, so
16 if I have an investigation going on in my
17 organization and you're my boss and now I'm up for
18 reassignment to go somewhere, you'd assess me up to
19 that point on how well I've handled that
20 investigation, if I've done all the right things, if
21 I've given the -- one of the things I saw in the
22 survey results is -- and I've talked to many victims


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1 -- no one tells me what's going on.
2 Well, we have within our regulations that
3 every 30 days the victim gets an update, and that's
4 a commander responsibility. It's not the
5 investigating officer's responsibility, not the
6 lawyer's responsibility. The commander's supposed
7 to tell that person.
8 So if I haven't done that and there's
9 evidence of that, then I would evaluate the fact
10 that you haven't supported the program. And I could
11 do that even on a reassignment.
12 GENERAL HAM: If I may, Colonel. I think
13 the point is that if there's an ongoing
14 investigation of a sexual assault in my unit and
15 it's time for me to be reassigned, the allegation
16 has not been substantiated or not substantiated,
17 with the regulation or the policy as it stands now
18 there is no mandated comment for me as I depart.
19 The successor in command will inherit that and he or
20 she will have a mandatory comment once the case is
21 substantiated or not.
22 COLONEL TURNER: But can you ever catch


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1 back up with the individual who left in the
2 beginning of it while it's still under
3 investigation? They may have been there three-
4 quarters of the time.
5 GENERAL BROMBERG: I think because it's a
6 new policy, I would say as we work through it I
7 think there will be an assessment, because the
8 visibility is so high now. Some of these, as you
9 know, will go on. They'll span fiscal years. I
10 think you'll look at that officer, how he handles
11 the multitude of responsibilities.
12 We felt it was important enough that we
13 just didn't look at the officer's behavior, but how
14 was he supporting the rest of the program.
15 CHAIRWOMAN JONES: Thank you very much.
16 We appreciate your coming. It's been very helpful.
17 To the extent we don't have your forms, I know
18 you're going to provide them. Thank you for that.
19 (Recess from 2:57 p.m. to 3:14 p.m.)
20 SUBCOMMITTEE DISCUSSION AND PLANNING
21 CHAIRWOMAN JONES: Go ahead, Shannon.
22 MS. GREEN: She did send us a clean copy


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1 of the bill --
2 CHAIRWOMAN JONES: I can't hear you.
3 Sorry.
4 MS. GREEN: We have a clean copy of the
5 bill. I'll hand that out. They sent us some
6 questions. I'm not real sure why, why they sent us
7 the questions. But they're critiques of the bill
8 and they asked that we provide them to -- that I
9 provide them to the panel. So I'll give those to
10 you.
11 MS. FROST: Who are the questions from?
12 Excuse me?
13 Senator Gillibrand's office.
14 COLONEL HAM: They appear to be questions
15 of the same type of technical issues that you've
16 heard discussed. The Senator's office also sent us
17 a copy of a short floor speech --
18 CHAIRWOMAN JONES: Are there answers to
19 those questions?
20 MS. GREEN: HAM: I believe there are
21 answers addressed in the floor speech that Senator
22 Gillibrand is going to give later today, and they


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1 provided us a copy of that. So I'm going to pass
2 those out right now.
3 COLONEL HAM: Which basically addresses
4 the technical fixes in the amendments that take care
5 of some of the technical problems that you heard
6 discussed.
7 CHAIRWOMAN JONES: That would be very
8 helpful.
9 MS. GREEN: And I did see earlier Senator
10 Gillibrand did an opening discussion of her latest
11 proposal, and then Senator McCaskill responded to
12 it, and then Senator Gillibrand earlier addressed
13 some of the technical issues that she raised. So it
14 might be worthwhile to look at some of that, if you
15 still have questions.
16 Basically, folks that are co-sponsoring
17 Senator Gillibrand's bill as well as folks opposing
18 it are just explaining their rationale for their
19 support. It's really interesting.
20 MS. HOLTZMAN: So what is actually going
21 on right now with the Senate?
22 MS. GREEN: Senator McCain was speaking


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1 when I came in here.
2 MS. HOLTZMAN: But is there going to be a
3 vote at some point?
4 MS. GREEN: As far as I understand,
5 they've limited debate on sexual assault issues to
6 six hours. I don't know if they're going to take a
7 vote after that or if they will continue the debate
8 on tomorrow.
9 CHAIRWOMAN JONES: Yes, John?
10 GENERAL ALTENBURG: I'd like to just -- I
11 haven't read it all, but I'll just go to the second
12 page of this thing that the Senator's office sent
13 over in the middle: "Let me give you an example."
14 CHAIRWOMAN JONES: Speedy reader.
15 GENERAL ALTENBURG: All I did is I read
16 four paragraphs. I'm not as far as you are yet.
17 But on the second page: "Let me give you
18 an example. Some have argued that plea bargaining
19 will not work under our system. That is not true.
20 The amendment transfers the commander's
21 responsibility for convening authority to the
22 offices of the chiefs of staff of each service.


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1 Therefore the offices will now have the authority to
2 oversee pretrial agreements."
3 GENERAL HAM: But that's not who's
4 convening authority for these crimes.
5 GENERAL ALTENBURG: Well, but that's
6 absurd on its face, that they think the solution
7 legislatively is, hey, it's going to be at the chief
8 of staff level. There are 74 convening authorities
9 in the Army. All at once Odierno's office is going
10 to oversee plea agreements for 74 convening
11 authorities or divisions or corps or whatever there
12 are out there?
13 I mean, that's what we got from Professor
14 Fidell this morning, was: Well, we can take care of
15 that, we can take care of that.
16 You were spot on. When you're writing
17 legislation you don't want to write loopholes into
18 it. You have to be precise and specific. I think
19 you were pointing that out to him. We've got
20 the example on the same subject matter already with
21 the 2006 statute, which within two years was held
22 unconstitutional.


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1 COLONEL HAM: I would assume then that
2 responsibility to oversee expert witnesses and
3 requests for investigative assistance and things
4 like that would also be handled by the convening
5 authority within the chiefs of staff office, because
6 those are currently part of the duties of the
7 convening authority under the system, for the
8 covered offenses.
9 GENERAL ALTENBURG: I think one of the
10 big problems with her bill is that they're focused
11 on changing everything and pulling the commander out
12 and they have not thought through the permutations
13 of that. This is a system that's extremely
14 delicately balanced to protect the accused, to be
15 efficient for the command, and all kinds of other
16 things. And when you push in one place, as we did
17 in 2006 with the amendment to 120, which satisfied
18 all the victim advocates groups, but which ended up
19 letting people go free because they got a case
20 busted or two because of unconstitutionality, you
21 have to think through all of that.
22 I'm just concerned. That's why the only


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1 thing I really talked to Fidell about when I talked
2 to him was: You said substantial time and we
3 haven't had another hearing, and all at once they're
4 racing to change. They're not even letting this
5 committee do its job. This was set up by last
6 year's legislation. It's supposed to take 18
7 months. The Secretary cut it back to 12 months.
8 And they're racing off.
9 You heard these people here just in the
10 previous hour talking about the effect of just the
11 one thing of pulling it up to the O-6 level, that
12 that's encouraged victims to come forward because
13 they have some confidence it's not going to get
14 swept away by an O-3 who's close to an E-7 alleged
15 perpetrator.
16 So if that change, which is only a year
17 old, and the victim advocates and the special victim
18 prosecutors and the moving the victim and the moving
19 the perpetrator now -- that's five changes in the
20 last five years. And this panel's not being allowed
21 to figure out yet what's the effect of that. Have
22 we really started to get a handle on sexual assault


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1 in the military? Maybe we're already turning the
2 corner on it, and they're going to all at once come
3 in here and change the whole system.
4 That's my concern, is that they're doing
5 it so quickly, without even evaluating how well are
6 we doing.
7 MS. HOLTZMAN: Can I?
8 CHAIRWOMAN JONES: Yes, go ahead, Liz.
9 MS. HOLTZMAN: You know, one always has
10 higher hopes for the Congress, for the Senate. But
11 they do things in their own way. The lord's methods
12 are inexplicable, too.
13 But the question is what's left for us.
14 There's no way we're going to slow down this train.
15 It's going to go. Either the bill is going to pass
16 the Senate or it's not going to pass the Senate. If
17 it passes the Senate, then it's got big hurdles in
18 the House. So I think there's a lot of work for us
19 still to do.
20 I would just say, looking at this
21 quickly, really quickly, I don't think I'm satisfied
22 at all by the answers here. For example, we're also


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1 asked -- she's trying to explain technical issues in
2 the bill: "We're also asked about crimes that
3 happen simultaneously. What happens if, during a
4 sexual assault, crimes are also committed that fall
5 under the old system. In order to clarify any
6 confusion about this question, the amendment will
7 say that all known crimes will be charged under the
8 new system."
9 Well, let's just take a look at the word
10 "known." Known by whom and known when? Known at
11 the time of the arrest? Known at the time of the
12 court-martial? Known at the time of when? This is
13 not -- "all known crimes"? Somebody could argue
14 that known crimes within that category is what's
15 meant by this.
16 This doesn't clarify very much in my
17 mind, and it raises other questions, too. I think
18 that -- and she pooh-poohs the whole issue of plea
19 bargains. I think that there are serious questions
20 about that.
21 There may be other questions raised by
22 this language. We haven't even had a chance to look


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1 at it.
2 CHAIRWOMAN JONES: Yes, we really need to
3 look at the amendment.
4 MS. HOLTZMAN: Right, we need to look at
5 the amendment. I would just suggest, Madam Chair,
6 that we look at the amendment, we ask the military
7 service JAG's to look at this. And we might want to
8 circulate it to some other people aside from the
9 military. There may be other law professors, some
10 of whom may not be in Chile at this moment, who
11 could look at it and also give us some thoughts
12 about the subject.
13 But I think that that would be a very
14 constructive approach that we could take, because if
15 this does pass then we will need to be able to
16 inform the House about these issues in this bill --
17 the conference, because there will be a conference
18 committee.
19 And by the way, if this language is in
20 the Senate bill, it's not in the House bill, so
21 under the rules of the House and Senate they have
22 opportunity to change the language, to accept the


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1 Senate amendment or to reject the Senate amendment
2 entirely or to modify the Senate amendment.
3 So I think that we can make an important
4 contribution. That's assuming it passes. I mean,
5 we could wait.
6 Do you know when the vote's going to take
7 place?
8 MS. GREEN: Probably after Thanksgiving.
9 Oh, the vote on this amendment?
10 MS. HOLTZMAN: Yes.
11 MS. GREEN: Later today or tomorrow, I
12 would expect.
13 MS. HOLTZMAN: Oh. Well, then we could
14 just wait to see. If it doesn't pass at all, then I
15 don't know that we have to do anything. That's
16 another question. That's up to you, Madam Chair.
17 I'm agnostic on that.
18 CHAIRWOMAN JONES: The only thing I have
19 to say is if it doesn't pass at all it may still be
20 worth finishing our inquiry with respect to the most
21 recent iteration of the bill, only because I would
22 expect that it may come back again in the next


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1 legislative cycle.
2 MS. HOLTZMAN: Correct.
3 CHAIRWOMAN JONES: And we're supposed to
4 be weighing in on proposed legislation.
5 MS. GREEN: Actually, Senator Boxer
6 actually said on the floor today -- she's one of the
7 co-sponsors -- that absolutely it'll be an issue
8 next year. She referenced the increasing support,
9 so I think there's no doubt that will be an issue
10 next year.
11 CHAIRWOMAN JONES: Honestly, this new
12 version may narrow the issues. We'll all have a
13 chance now to see what the version is. I don't
14 think I've had an adequate -- I certainly know I
15 haven't had an adequate look. And I'll be reading
16 the Senator's other -- this was just sent to us?
17 MS. GREEN: Less than five minutes ago.
18 CHAIRWOMAN JONES: Okay, fine. So we can
19 all read that as well. I think it's most important
20 to look at the bill and see what we think it says.
21 GENERAL HAM: What we have here, is this
22 the most -- is this as amended that's pending?


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1 MS. GREEN: Yes, sir.
2 GENERAL HAM: That's what this is, okay.
3 MS. HOLTZMAN: The one that has "ARM-13-
4 N55" at the top.
5 MS. GREEN: Exactly.
6 GENERAL HAM: Okay.
7 CHAIRWOMAN JONES: And, Colonel, you're
8 going to get our request over to I think it was the
9 judge advocates for each of the services who wrote
10 the October 28th letter? That would be great.
11 And I agree, we could circulate it more
12 widely and ask for questions or critique.
13 MS. HOLTZMAN: Particularly if it passes
14 the Senate.
15 CHAIRWOMAN JONES: Well, definitely, yes.
16 COLONEL HAM: I can tell you one thing it
17 does is it changes how it handles Article 22. If
18 you recall, Article 22 is the statutory provision
19 that has who is the general court-martial convening
20 authority. If you recall from General Peedy's
21 discussion, the original version of the amendment
22 that you looked at just deletes a whole category of


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1 commanders. The new amendment does not do that.
2 Instead it adds the new chief of staff convening
3 authority. That is a major distinction between the
4 original version you were looking at and this
5 version.
6 CHAIRWOMAN JONES: Well, depending on
7 timing, we may want another presentation from
8 General Peedy. His chart was the best thing that
9 ever happened as far as I was concerned.
10 GENERAL HAM: Based on the modifications.
11 CHAIRWOMAN JONES: In terms of figuring
12 out what the legislation was actually proposing,
13 because it is structural. There's a lot of change
14 of structure here.
15 MS. HOLTZMAN: One question I would have
16 also is can the chief of staff delegate back to the
17 local commander? I mean, there's no way the chief
18 of staff is going to be able to handle all of this
19 stuff. They have to be able to delegate it to
20 somebody. Who's going to handle it?
21 COLONEL HAM: Well, because it only adds
22 to Article 22 instead of deleting from Article 22 --


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1 MS. HOLTZMAN: So the commander's still
2 going to have power, convening authority, over all
3 these crimes?
4 GENERAL ALTENBURG: I think the Secretary
5 is the one.
6 COLONEL HAM: It allows the Secretary to
7 designate additional convening authorities.
8 MS. HOLTZMAN: Okay, so there you go.
9 You can go right back to where we are
10 now.information
11 COLONEL HAM: That provision was --
12 GENERAL HAM: For excluded offenses.
13 COLONEL HAM: That provision --
14 MS. HOLTZMAN: For excluded offenses.
15 COLONEL HAM: That provision was deleted
16 under the prior version.
17 MS. HOLTZMAN: Oh, I see. So that's how
18 they solved it for the excluded offenses.
19 GENERAL HAM: You couldn't do it for the
20 new offenses, the serious offenses, for lack of a
21 better term. You can't take those back to the
22 existing convening authority.


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1 MS. HOLTZMAN: I see. I'm sorry, I
2 didn't understand that.
3 COLONEL HAM: So it leaves -- for people
4 that held positions like General Ham as division
5 commander, under this new version they have general
6 court-martial convening authority still for the
7 excluded offenses.
8 MS. HOLTZMAN: Plus, plus the chief of
9 staff, the office of the chief of staff.
10 MS. HOLTZMAN: But why couldn't the
11 office of the chief of staff delegate to the
12 commanders even for the excluded -- I mean, for the
13 included, for the serious offenses? Why not?
14 GENERAL HAM: Well, I think because in
15 the draft we saw this morning it said it withheld
16 that completely to the new --
17 MS. HOLTZMAN: Yes. But if you've given
18 delegation authority to the chief of staff, what's
19 to stop the chief of staff from delegating to
20 whomever he or she wants?
21 GENERAL ALTENBURG: I think the answer is
22 they've created a new convening authority and it's


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1 going to be a JAG O-6. So he's got to delegate it
2 to JAG O-6's, I think, because the whole thrust of
3 this is that JAG officers will have the authority
4 over the common law crimes.
5 MS. HOLTZMAN: I don't know. I just ask.
6 I don't know.
7 COLONEL HAM: Well, the plain language is
8 that each chief of staff "shall establish an office
9 to convene special and general court-martials for
10 the included offenses."
11 MS. HOLTZMAN: "The included"?
12 CHAIRWOMAN JONES: Right.
13 COLONEL HAM: For what we're calling the
14 included offenses.
15 What is left in the amended version is
16 Articles 133 and 134 are still left. They're
17 excluded offenses, as they were under the original
18 version.
19 GENERAL ALTENBURG: Yes, they don't
20 really address the hybrid that Ms. Holtzman raised.
21 They don't really go after that at all.
22 COLONEL HAM: There are still questions


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1 of a number of serious offenses, including those
2 with sexual components, like child pornography, all
3 the imported offenses under the 18 U.S.C.
4 GENERAL HAM: Judge Jones, do we have in
5 mind a time line for ultimately opining on whether
6 the commander should come out or not as a committee?
7 CHAIRWOMAN JONES: We were hoping to
8 further that effort today, but with the new
9 amendment and not really getting to look at the bill
10 that we should be talking about until now, our time
11 line has slowed down a little bit. Let's create
12 one, I agree.
13 Colonel Ham, it would be helpful to have
14 a comment from the judge advocates. I would suggest
15 that we -- I don't know that I can ask everybody to
16 come to D.C. again. We could certainly have those
17 of us who could come set a date, and we could have
18 everyone else phone in, once we've had the
19 opportunity to review the bill, look at the
20 Senator's comments, which she sent us, and if we can
21 get something from the judge advocate generals of
22 each of the services promptly that would be


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1 terrific.
2 Does everybody have -- well, we don't
3 know when we'll get those comments, although I don't
4 think it should take too long. Do you, Colonel?
5 All right.
6 I don't have my calendar. Today's the
7 20th.
8 Why don't we do this. I don't have mine
9 and I see other people looking for theirs. Why
10 don't we just -- let me ask each of you to send in
11 your availability. Next week is Thanksgiving, so I
12 don't how much availability there would be, except
13 possibly for a phone conference, one of those days.
14 Why don't we see what happens tonight
15 with the bill. And in the mean time, Colonel Ham
16 will send out tomorrow or the next day, which is all
17 we have left in this week, questions about
18 availability either for next week or the week after
19 Thanksgiving. So why don't we just leave it at
20 that. We'll probably know a lot more by the end of
21 the night.
22 MS. HOLTZMAN: Will we send out to the


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1 JAG's?
2 CHAIRWOMAN JONES: Yes, I think the
3 Colonel is going to get in touch with the JAG's
4 immediately.
5 I don't know that there's much more we
6 can do with that because of the changes. I know I
7 would need more time to read it again and figure
8 out.
9 MS. HOLTZMAN: So Senator Boxer said
10 we're going to be back?
11 MS. GREEN: She made it pretty clear that
12 this is something that's been going on for years.
13 MS. HOLTZMAN: So it sounds like --
14 MS. GREEN: And that this year a lot of
15 progress has been made, and whether it passes or not
16 the support has increased.
17 MS. HOLTZMAN: So it sounds like they're
18 expecting to lose.
19 MS. GREEN: I don't know.
20 GENERAL HAM: Well, I think, Judge Jones,
21 as you said, I think even if it passes in the
22 Senate, it's a pretty tough slog in the House.


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1 MS. HOLTZMAN: Right.
2 GENERAL ALTENBURG: That's why I think
3 the role of this committee is important.
4 CHAIRWOMAN JONES: So win, lose, or next
5 year, we have a role on this and it's only a
6 question of how quickly we have to address the
7 latest version of the bill. I think we're in a
8 pretty good position, just from hearing the comments
9 and doing the work that we've already done on this,
10 to do that. But let's wait and see what happens
11 tonight.
12 Colonel, you can let us know when we can
13 expect any submissions from the judge advocate
14 generals on the issue$?
15 COLONEL HAM: Were you ready to comment
16 on the prior version of the bill based on what you
17 heard, or would you rather not do that at this time?
18 CHAIRWOMAN JONES: I don't think that
19 there's much point to it. I think anybody who read
20 the transcript could probably easily figure out what
21 our issues were with the bill. At the moment it
22 sounds like there has been an effort in the new


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1 legislation to fix some of it. I'm not sure whether
2 it's fixed or not. So I don't know how profitable a
3 conversation on it would be right now.
4 COLONEL HAM: So you're left with there
5 were two issues, as I understood it. One is the
6 philosophical question, which you addressed in part
7 with regard to our allies, and then there were the
8 technical questions, in other words if was agreed to
9 remove the commander would this bill or the prior
10 bill be the way to do it.
11 CHAIRWOMAN JONES: Yes. Our whole effort
12 in this session and the previous one was to actually
13 move to the bill and to see whether -- whether you
14 could figure out what structure it set up, whether
15 some of the issues that we discussed today were ones
16 that were serious enough that it couldn't just be
17 put in a box of, oh we can fix that.
18 So I think that, yes, it was about the
19 feasibility of the bill. It was whether there were
20 -- we haven't discussed whether or not, the notion
21 of not providing resources or thinking that you need
22 not provide resources is correct or sensible. So we


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1 still have those to be concerned about.
2 Obviously, we're supposed to look at
3 proposed legislation, so that's what we've been
4 doing because of the immediacy of having some input
5 on this piece of legislation.
6 Maybe I didn't understand your question,
7 Colonel. I think that this is a separate issue from
8 what we reported out on with respect to the very
9 narrow issue of whether there was any evidence to be
10 taken from the experiences of our foreign allies
11 with respect to increases in reporting by sexual
12 assault victims. We've made that finding.
13 I had hoped that we might be able to make
14 some findings with respect to the feasibility of
15 this proposal, but I don't think we can at the
16 moment.
17 Yes, John.
18 GENERAL ALTENBURG: There's one other way
19 of looking at this in terms of the different
20 decisions that we might make or opinions that we
21 might form. That is, as a subcommittee of the
22 Response Systems Panel -- we know why that was set


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1 up. Sexual assault is a problem in the military.
2 Is taking the commander out going to make that
3 better or worse or it's not going to make any
4 difference at all, so we should do whatever the vote
5 is?
6 I mean, will it in fact make it better?
7 Some of us are probably prepared to say one way or
8 the other whether we think pulling the commander out
9 is a good idea. And we probably need more. But
10 there's been an awful lot of evidence in this room
11 and not much of it supporting the idea of pulling
12 the commander out of the convening authority.
13 CHAIRWOMAN JONES: Well, we began to
14 discuss that before we had our last public hearing,
15 when we brought in more evidence from victim
16 advocates and victims. We now have that testimony.
17 And you're right, there is a third question here,
18 obviously, at least one more question. But the
19 ultimate one is whether or not we think that
20 removing the commander as suggested in this
21 legislation is actually going to have an impact for
22 the good in terms of the treatment of sexual


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1 assaults in the military.
2 I think that's obviously a discussion
3 that we have to have. And I'd like to ask now, what
4 additional evidence would members of the
5 subcommittee like to hear? And I also will be
6 asking the panel that. In fact, I think, Kyle, we
7 submitted an inquiry to the rest of the panel with
8 respect to additional issues on this.
9 COLONEL GREEN: Actually, ma'am, that was
10 to the subcommittee members, just on specific
11 issues.
12 CHAIRWOMAN JONES: I thought you also
13 sent it to the rest of the panel.
14 COLONEL GREEN: No, ma'am.
15 CHAIRWOMAN JONES: That's fine.
16 COLONEL GREEN: It was just to the
17 subcommittee so far, just to get additional topics
18 relevant to the role of the commander. But that was
19 more focused on topics outside the question about
20 disposition authority. I think it's a different
21 question in terms of what evidence we need to take.
22 GENERAL HAM: One question I think needs


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1 to be re-addressed, given the change in the proposed
2 amendment with retaining the current convening
3 authorities, is what changes -- what does that
4 change in terms of resources? I think DOD gave us a
5 report that said if the previous amendment were
6 implemented $118 million a year and X number of
7 people. I think we ought to ask them, now with this
8 change, do those figures -- does resourcing change?
9 MS. HOLTZMAN: You asked about -- I have
10 two points I want to make. One is you asked about
11 what additional information we need to make a
12 decision about the role of the commander. I think
13 if you look at the evidence we've received, we've
14 heard from victims, we've heard from the commanders
15 who are commanding now. We've heard from the
16 Senator.
17 We haven't heard from the other category
18 that Senator Gillibrand cites in support of her
19 legislation, of former commanders who think that
20 this is a really good, important change. It might
21 be useful to hear from some former commanders on
22 both sides of the issue, both those that she


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1 suggests and some that we can find.
2 I'd also think that there are a number of
3 other subjects, really important subjects, such as
4 the one that came up today about the extent to which
5 evaluation of how sexual assault is handled by
6 commanders in terms of command climate, how that's
7 being addressed. It's very important to focus on.
8 It may be -- from what I've heard today,
9 my preliminary take -- I don't know enough about
10 this, but my preliminary take is what the Army was
11 doing seemed to be on the right track, and that if
12 we didn't isolate this issue and track this issue
13 that it could easily be swept under the rug, the
14 issue of how commanders handle command climate with
15 regard to sexual assault.
16 So I hope we can make a recommendation on
17 that, and it's possible if, for example, the House
18 doesn't take up this bill until April or later, that
19 a recommendation along these lines will actually
20 find its way -- well, I don't know if it needs
21 legislation, so I take that back. But I think it
22 could make a difference in their developing the


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1 evaluation forms.
2 MS. FROST: I think this goes back to
3 what Professor Fidell said this morning when he said
4 that the ultimate goal is not increased reporting or
5 prosecutions, but a fair and balanced -- I don't
6 want to misquote him, but public confidence in the
7 military justice system. I think ensuring -- one
8 way of getting that public confidence is by
9 specifically rating commanders on that factor.
10 I'm not convinced that that in and of
11 itself is necessarily better than what some of the
12 other services are doing. But in terms of public
13 confidence I think it would go a long way.
14 CHAIRWOMAN JONES: I agree that, to get
15 back to the question of whether or not we think
16 taking the commander out of the role that he
17 currently plays is or is not something that we would
18 support. We definitely do need to hear from former
19 commanders. I think that is a category. There are
20 three or four of them that have spoken out. They're
21 named, I believe, in Senator Gillibrand's --
22 GENERAL ALTENBURG: Kennedy and Sutton


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1 are two of them.
2 CHAIRWOMAN JONES: Right. And we ought
3 to try to contact them and see if they would come in
4 and speak with us, and look for other former
5 commanders who might take a different opinion. I
6 think that would be -- I agree with Ms. Holtzman
7 that that would be worthwhile in terms of that
8 question.
9 I also, I think it might be the subject
10 of a recommendation when we're talking about in our
11 report about accountability to take a look at these
12 promotion forms and see whether or not we wouldn't
13 recommend more specificity with respect to sexual
14 assault. I don't know which way I come out on that,
15 but I'd like to see the forms and think about it,
16 and it could be a possible recommendation.
17 MS. HOLTZMAN: Maybe we should hear,
18 maybe we should hear some more evidence on how -- I
19 mean, from people who are involved in personnel
20 decisions and so forth, about whether you do need
21 that, what difference it would make. Personally, I
22 agree in terms of public confidence saying that


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1 that's there goes a long way. But is it really
2 necessary? Can it be covered in other ways, and so
3 forth? I'm agnostic because I don't know enough
4 about that. But if you could figure out how to
5 educate me, I'm willing to learn.
6 GENERAL HAM: I wouldn't want to spend --
7 different topic. I wouldn't want to spend a whole
8 lot of time on it, but we've heard some anecdotal
9 information that reporting is increasing. If the
10 services or DOD can come back with some concrete
11 numbers to say -- we're now a couple months beyond
12 the end of FY '13. Do they have FY '13 numbers?
13 And if they could demonstrate there's a change or no
14 change up or down, whatever that may be. And as we
15 just heard, I felt it was an interesting comment,
16 are the reports -- what's the timeliness of the
17 reporting of this? Are these new incidents or are
18 they old incidents, both of which can be positively
19 viewed, but in different ways.
20 But a little more clarity on what's
21 happening with reporting with the measures that have
22 already been implemented.


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1 COLONEL HAM: Yes, sir. General Patton
2 addressed that at the very first session of the
3 public meeting on the 7th and 8th of November. So
4 we have all the materials from the services and from
5 DOD-wide on the percentage increase and the numbers.
6 So we have that information.
7 CHAIRWOMAN JONES: The only other comment
8 I have, and it springs from listening to Professor
9 Fidell this morning, I really don't believe that the
10 House and the Senate are voting, those who choose to
11 vote for this bill, are voting for it because they
12 wish to bring about a landmark change in the Uniform
13 Code of Military Justice and have it evolve.
14 There's been no debate about that.
15 There's been no specifics about that sort of a
16 vision. This is about whether this is an effective
17 response to sexual assault. At least that's the way
18 I look at it. So I think we just have to keep on --
19 I don't think any of us aren't thinking about it
20 that way, but I think we do have to keep our eye on
21 the ball with respect to that.
22 I think another one or two subcommittee


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1 members have said this before. We need to make sure
2 that we've looked for any and all possible evidence
3 with respect to whether or not taking the commander
4 out will have a positive impact on this, on the
5 treatment of sexual assaults in the military. I
6 think the next line of inquiry is the former
7 commanders, and I think we should all be thinking
8 about any and everywhere else that we should be
9 looking for additional evidence with respect to
10 that.
11 COLONEL HAM: And how do you use the
12 evidence that you heard, the full panel heard, on
13 the increased reporting that took place with the
14 commander still in the system and before the special
15 victim counsel program took effect in all the
16 services except one? The question was raised,
17 reporting has increased, but we don't know the
18 number of -- the 26,000 number, we don't know what
19 that is and we won't have another survey on that
20 until 2014.
21 CHAIRWOMAN JONES: I think that
22 information is helpful and shows that many of the


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1 programs show promise. But it doesn't excuse us
2 from looking for any and all information we can find
3 or evidence that we can find in support of, if there
4 is any, removing the commander as a solution.
5 MS. FROST: I have two thoughts, very
6 small. The first is UCI. One of the things we've
7 heard several times is the bill will reduce unlawful
8 command influence. So I don't think -- maybe I've
9 missed it, but I haven't heard anybody explain
10 unlawful command influence and how that process
11 works and who it extends to. In other words, it
12 extends to others than just convening authorities.
13 So it might be useful to get like a background paper
14 or something from the services, the military
15 services.
16 The second thing is we've also heard a
17 lot about how there's a conflict of interest and
18 that the convening authorities, usually they say
19 commanders, know the victim or the accused. I
20 wonder if it's possible to ask the services to ask
21 their convening authorities, for all the cases
22 you've referred or failed to refer in the last year,


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1 how many of you have personally worked with and on a
2 close basis known the accused or the alleged victim?
3 CHAIRWOMAN JONES: I've said this before.
4 I think it's important to talk about that issue and
5 find the facts on it, for the simple reason that I
6 do believe most people think that removing the
7 commander means removing your commander in your unit
8 or your company, as opposed to who the actual
9 officer is now in charge of referring charges. I
10 agree.
11 MS. HOLTZMAN: Plus I think, if I may add
12 to that point, that might be a recommendation that's
13 made in any case by this panel, which is that if the
14 convening authority, under whatever system you have,
15 knows either the accused or the victim or anybody
16 associated with the prosecution or the defense, they
17 need to recuse themselves. They can't be the
18 convening authority.
19 I don't know that you have these ethical
20 rules, but that might be something also to consider
21 here as a way of removing that kind of influence.
22 COLONEL HAM: There's already a legal


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1 requirement. There's already a legal requirement
2 that if the convening authority has a personal
3 interest in the outcome of the case --
4 MS. HOLTZMAN: That's not the same thing.
5 MS. FROST: But there could be an
6 expansion.
7 MS. HOLTZMAN: Right.
8 CHAIRWOMAN JONES: Well, we should look
9 at that rule -- I didn't know it existed, either --
10 and see if we want to recommend that it be expanded.
11 GENERAL ALTENBURG: We ought to be able
12 to assess has this ever been an issue on appeal?
13 COLONEL HAM: There's case law on that.
14 I forget the name of it off the top of my head.
15 GENERAL ALTENBURG: In the broader
16 definition as just posed, are there any cases of
17 that nature on appeal, where it was alleged the
18 convening authority knew the accused and should not
19 have referred?
20 COLONEL HAM: In the case I'm familiar
21 with, the name of which I can't recall, it was the
22 special court-martial convening authority knew the


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1 victim. I believe it was a sexual assault case.
2 MS. HOLTZMAN: And what happened?
3 COLONEL HAM: As I recall, the conviction
4 was overturned because he took some action in the
5 case. I'd have to refresh my recollection, but I
6 think he had a personal relationship with the victim
7 and acted to appoint the 32 officer. So he wasn't
8 the actual person who referred the case to trial, as
9 I recall the facts. But this is going back.
10 GENERAL ALTENBURG: But the case got
11 busted anyway?
12 COLONEL HAM: I'm sorry, sir?
13 GENERAL ALTENBURG: The case got busted
14 anyway?
15 COLONEL HAM: I believe it did. My
16 recollection is it did. I think this was Nix. It
17 might be Nix. I'd have to look.
18 GENERAL ALTENBURG: I just point out,
19 there's already a process that accounts for that,
20 that's all. We're raising an issue that's not
21 really an issue, because if there's case law on it
22 then convening authorities don't do that.


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1 Frequently where somebody knows somebody,
2 we just bump it up a level. If a battalion
3 commander wants to put somebody in pretrial
4 confinement or doesn't, you don't try to talk him
5 into putting them into pretrial confinement. You go
6 to his boss and you say: Hey, brigade commander,
7 the battalion commander doesn't want to put this guy
8 in pretrial confinement for murder; I think you
9 should. And you caution him: Don't tell the
10 battalion commander to do it; you sign the convening
11 order.
12 The system is rich with all kinds of
13 history and case law, because it has its own Supreme
14 Court going back to 1950, and there's all kinds of
15 ways to solve these issues that exist already. We
16 raise them because we think it's novel and we find
17 out that it really isn't; there's a mechanism for
18 doing all that.
19 But what will change that and make that
20 difficult is pulling the commander out and putting a
21 lawyer in. And then it's going to be, is there such
22 a thing as unlawful convening authority influence


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1 when it's not a commander, but it's a lawyer. I
2 mean, there are going to be all kinds of new issues
3 based on changing this.
4 COLONEL HAM: I used to teach unlawful
5 command influence at the JAG school and of course
6 followed it as the chief of the defense appellate
7 division. The last two unlawful command influence
8 cases that have gone to our highest court and
9 resulted in reversal of the case and dismissal with
10 prejudice were staff judge advocates unlawfully
11 attempting to recuse military judges by their
12 actions.
13 One was last year. The name of the case
14 is Salyer. And one was a couple years ago. The
15 name of the case is Lewis. So they were not actions
16 of commanders, because what the law says is that
17 anyone who acts with a, quote, "mantle of command
18 authority," that is a commander, his highest ranking
19 enlisted person, or staff judge advocate, or trial
20 counsel, can do it, who acts to try to influence
21 witnesses, judges, members, or subordinate
22 commanders. The one we keep hearing about is


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1 subordinate commanders. That's actually probably
2 the least common, at least in the case law -- is
3 committing unlawful command influence.
4 MS. FRIED: I think the RFI's asked about
5 conflicts of interest and how they're addressed.
6 That information might fit in some way.
7 CHAIRWOMAN JONES: I didn't hear the
8 beginning of that, Maria.
9 MS. FRIED: The RFI's that the service s
10 had to respond to asked about conflicts of interest.
11 CHAIRWOMAN JONES: You know, to your
12 point, John, I agree that we don't have to look for
13 issues where there aren't any, and I'm sure things
14 are probably working quite well in many areas. But
15 in an atmosphere right now where the issue is can we
16 trust the commanders and the public at large seems
17 to believe that it's your own commander who's got
18 all the power, an issue like the O-6, the convening
19 authority right now, not having to recuse him or
20 herself if they know either the accused or the
21 victim might bring some clarity if it's not already
22 clear in the rules.


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1 I think it's worth looking at, I guess is
2 all I'm saying.
3 COLONEL HAM: Ma'am, some other issues we
4 identified that you might perhaps want to address.
5 Kyle has a list.
6 COLONEL GREEN: Just to run down upcoming
7 meetings or things that we have going on. We have a
8 site visit at Fort Hood, followed by the two-day
9 panel meeting in Austin, and then the site visit to
10 San Antonio and Lackland. The site visits are
11 intended to focus and provide an opportunity to be
12 operational unit level discussions with convening
13 authorities, subordinate commanders, senior enlisted
14 leadership, and evaluate some of these things both
15 at, at Fort Hood, at the operational installation,
16 and then at Lackland, in the training environment.
17 So hopefully some of the answers to the
18 questions you've had will come from those. The
19 members who participate in those can provide trip
20 reports and information back that the subcommittee
21 can use in its discussions and deliberations.
22 COLONEL HAM: And we know there will be


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1 two issues addressed directly relevant to this
2 conversation. There are more than one general
3 court-martial convening authorities at Fort Hood. I
4 was told by the point of contact and so I asked that
5 you hear from that general court-martial convening
6 authority, who actually did recuse himself from a
7 case because he knew -- the accused was his son's
8 soccer coach or something like that. So he
9 transferred it to another general court-martial
10 convening authority. So that's a specific instance
11 of what you were talking about. Hopefully you're
12 going to be able to hear that at Fort Hood from that
13 individual.
14 COLONEL TURNER: That's RCM 306.
15 CHAIRWOMAN JONES: Pardon me?
16 COLONEL TURNER: Rule for Court-martial
17 306 and the discussion deal with that issue.
18 CHAIRWOMAN JONES: And they talk about
19 whether you know the person?
20 COLONEL TURNER: Substantial involvement
21 or a variation.
22 CHAIRWOMAN JONES: It may be clear


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1 enough, then, right in the rules. I'll have to take
2 a look, that's all.
3 COLONEL GREEN: The meeting that we have
4 scheduled for 8 January, we'll bring in members of
5 the training command and the JAG schools to talk
6 about legal training for commanders and strategic
7 training, leadership training and strategic
8 training, leading through crises, leading through
9 change.
10 So that's currently what we have set for
11 8 January. That may be a target to ask the -- it
12 may be too late in terms of those former commanders
13 who may need to put something else on the schedule.
14 CHAIRWOMAN JONES: I think we should talk
15 with the former commanders as soon as we can get
16 them together.
17 COLONEL GREEN: Okay.
18 CHAIRWOMAN JONES: We shouldn't wait for
19 anything, frankly.
20 COLONEL GREEN: Okay.
21 MS. HOLTZMAN: What are the two days of
22 hearings in Texas?


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1 COLONEL GREEN: 11 and 12.
2 MS. HOLTZMAN: No, but what are we going
3 to be focused on?
4 COLONEL GREEN: Comparative Systems.
5 MS. HOLTZMAN: Oh, that's Comparative
6 Systems, so that's not us.
7 CHAIRWOMAN JONES: That's not us.
8 COLONEL GREEN: Correct.
9 MS. HOLTZMAN: Okay.
10 COLONEL HAM: But the site visits, ma'am,
11 if you're able to go on --
12 MS. HOLTZMAN: Oh, I didn't understand.
13 COLONEL HAM: The three different
14 subcommittees will have an agenda of their own. So
15 the site visits will focus for you.
16 MS. HOLTZMAN: Okay, I'm sorry. I
17 misunderstood.
18 COLONEL GREEN: Some of the other topics
19 that were brought up were: reviewing collateral
20 misconduct and how commanders address collateral
21 misconduct and the scope of the sexual assault
22 allegations; investigative resources, what resources


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1 commanders have to address these and how they work
2 with the investigating agencies; alcohol involvement
3 and social environment and how commanders influence
4 and control alcohol and the maintenance of an
5 effective social environment; and then commander
6 responsibility both to the accused and to the
7 victims.
8 We've taken testimony already in that to
9 some degree, but more of a systemic approach in
10 terms of what the commander's obligations are to
11 both of those.
12 So those are the topics so far that I've
13 received from the subcommittee.
14 GENERAL HAM: It might be interesting,
15 again, as we ask the judge advocates general
16 specifically in their response to the new amendment,
17 proposed amendment, to ask them to address any
18 defense issues with the amendment as it's proposed.
19 CHAIRWOMAN JONES: I think some of those
20 issues may also be being looked at by one or both of
21 the other subcommittees, like collateral misconduct,
22 from a different vantage point perhaps. But we


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1 should coordinate that. I should. I'm just saying
2 that on the record. With your help, Kyle.
3 COLONEL GREEN: Yes, ma'am.
4 COLONEL HAM: I think the final one we
5 discussed was whether there are alternatives other
6 than commander in, commander out, like increasing
7 the authority of the judge in different stages of
8 the process.
9 CHAIRWOMAN JONES: Did you say increasing
10 the authority of?
11 COLONEL HAM: In other words, instead of
12 looking at the question simply as should the
13 commander be in, should the commander be out, is
14 there another part of the system you can balance.
15 CHAIRWOMAN JONES: I think it was
16 Professor Hanson who suggested that he might have
17 some ideas about how you select the panel, for
18 instance, the courts-martial panel. We could
19 certainly take up that issue as well.
20 COLONEL GREEN: You've received some of
21 the other professors who provided ethical guidelines
22 recommendations. There are a number of things short


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1 of an all or nothing system that have been
2 suggestions and that materials have been provided to
3 the panel that would broaden that or provide some
4 basis on which to make some analysis.
5 CHAIRWOMAN JONES: So have we worked long
6 enough and hard enough today?
7 GENERAL ALTENBURG: I think so.
8 CHAIRWOMAN JONES: We have a number of
9 issues now that we've put out that we know we have
10 to accomplish in our examination before we come up
11 with a final report certainly. In the mean time,
12 we'll continue to focus on the latest amendments,
13 the new bill, if you will, or the amended bill from
14 Senator Gillibrand.
15 And I will try to get -- I think we still
16 need to get further evidence with respect to the
17 ultimate question here in terms of whether taking
18 the commander out would be a useful response to
19 sexual assaults. So we're going to get as many
20 former commanders as we can. We have -- we know a
21 number of them that are in support of removing the
22 commander and you'll endeavor to find some former


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1 commanders, Colonel Ham and any other panel member
2 or subcommittee member who may know of any, and give
3 you that information.
4 Before the end of the week, you'll be
5 asked what your availability is, and we'll just
6 figure out whether it's going to be next week by
7 phone -- I don't know that anybody wants to travel
8 Thanksgiving Week -- or the first week in December.
9 GENERAL HAM: So we will be meeting at
10 2:00 o'clock on Thursday.
11 (Laughter.)
12 CHAIRWOMAN JONES: There you go.
13 All right. You can order us, can't you,
14 General? We have two Generals here who could order
15 us to be here.
16 Thanks, everybody. I think we made some
17 progress here.
18 MS. FRIED: The meeting is adjourned.
19 (Whereupon, at 3:58 p.m., the meeting was
20 adjourned.)
21
22


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