

RESPONSE SYSTEMS TO ADULT
SEXUAL ASSAULT CRIMES PANEL

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MEETING OF THE
ROLE OF THE COMMANDER SUBCOMMITTEE

Wednesday, November 20, 2013

875 N. Randolph Street, Suite 150
Arlington, Virginia 22203

The meeting was convened at 9:12 a.m.,
HON. JUDGE BARBARA JONES, Chair, presiding.

SUBCOMMITTEE MEMBERS PRESENT:

HON. BARBARA JONES, Chair, presiding
HON. ELIZABETH HOLTZMAN
GENERAL (R) CARTER HAM
VICE ADMIRAL (R) JAMES HOUCK (by telephone)
MAJOR GENERAL (R) JOHN ALTENBURG
COLONEL LISA TURNER

JOYE FROST

PRESENTERS:

PROFESSOR EUGENE FIDELL, YALE LAW SCHOOL

MR. JAMES LOVE, DOD OFFICE OF DIVERSITY MANAGEMENT AND
EQUAL OPPORTUNITY

DR. DAN MCDONALD, DEFENSE EQUAL OPPORTUNITY MANAGEMENT
INSTITUTE

LIEUTENANT COLONEL KAY EMERSON, ARMY OFFICE OF
DIVERSITY & LEADERSHIP

MR. GEORGE BRADSHAW, 21ST CENTURY SAILOR OFFICE

COLONEL T. V. JOHNSON, MARINE CORPS DIVERSITY AND EQUAL
OPPORTUNITY OFFICE

MASTER GUNNERY SERGEANT LESTER POOLE, MARINE CORPS
DIVERSITY AND EQUAL OPPORTUNITY OFFICE

MR. CYRUS SALAZAR, AIR FORCE EQUAL OPPORTUNITY PROGRAM

MR. JAMES ELLISON, COAST GUARD CIVIL RIGHTS DIRECTORATE

BRIGADIER GENERAL GINA GROSSO, USAF, DIRECTOR OF FORCE
MANAGEMENT POLICY

LIEUTENANT GENERAL HOWARD BROMBERG, USA, DEPUTY CHIEF
OF STAFF FOR PERSONNEL

CAPTAIN STEVE DEAL, USN, DEPUTY DIRECTOR, 21ST CENTURY
SAILOR OFFICE

COLONEL ROBIN GALLANT, USMC, COMMANDING OFFICER,
HEADQUARTERS & SERVICES BATTALION

REAR ADMIRAL DANIEL NEPTUN, USCG, ASSISTANT COMMANDANT
FOR HUMAN RESOURCES

STAFF:

COLONEL PATRICIA HAM, Director

LIEUTENANT COLONEL KYLE GREEN, Supervising Attorney

SHANNON GREEN, Legislative Analyst

ALSO PRESENT:

MARIA FRIED, Designated Federal Official

P R O C E E D I N G S

(9:12 a.m.)

CHAIRWOMAN JONES: All right, Maria. Go ahead.

MS. FRIED: The meeting is open. Thank you.

PROPOSED MJIA AMENDMENT TO FY14 NDAA

[Professor Eugene Fidell participates in the following conversation by telephone. The connection is not perfect and sometimes his words are dropped.]

CHAIRWOMAN JONES: Good morning, Professor Fidell. This is Barbara Jones. Thanks for --

PROFESSOR FIDELL: Good morning, Judge.

CHAIRWOMAN JONES: Thanks for being willing to talk to us from Chile. I'm impressed.

A quick question. We just received amendments to Senator Gillibrand's bill. Do you have those?

PROFESSOR FIDELL: I think I do. I got an email of what I was told was being introduced, I think yesterday. So I think I have in front of me what you have, although really it's your call as to what you want

to discuss. You may feel that you need some time to study those before having a conversation about them. But it's your call.

CHAIRWOMAN JONES: All right. Did you want to start with a presentation or just take questions?

PROFESSOR FIDELL: I'm most anxious to take questions. I'll just say this. I was quite flattered that Senator Gillibrand, whom I have never met, thought that I should be involved in this discussion. I will say that I've consulted with her staff as this process has unfolded. I will also say I have no pride of authorship and I have tried to maintain my own independent stance on these matters.

But if I can be of help, I'm happy to be of help. I'm actually very gratified as a private citizen to be part of the conversation.

There's only one other thing I would say that occurred to me specifically. I have seen a letter, a "Dear Colleague" letter that a number of Senators have circulated, headed by Senator McCaskill and Senator Ayotte and I think Senator Levin, that (dropped words?)

without elaboration to constitutional issues.

And apparently there were attachments, one or more attachments to that letter. I haven't seen the attachments, so I'm somewhat at a disadvantage. But I will make this observation. If I were to look in the annals of federal law generally, I would be hard pressed to find an area where Congress is entitled to and has traditionally received greater deference from the courts than the military area. The cases are legion on this.

I don't know of any provision in the measure that Senator Gillibrand has sponsored that comes close to being a (dropped words?) plausible constitutional issue. That was the only preliminary comment that occurred to me.

CHAIRWOMAN JONES: I don't know if anyone else on the subcommittee has seen that letter. So I don't think we've been provided with it. But thank you for those comments.

All right. Then I think we should try to open this up for questions. I think one of the areas

of concern, if I can just start off here, was the notion that one office, not the disposition, but the convening authority, would designate the defense lawyers, the prosecutors, the judges, and the members of the courts-martial panel. I don't know whether that's been clarified in the amendments or not, but can you speak to that?

PROFESSOR FIDELL: Yes. It's clear that over time the military justice system has tried to get those other functionaries, those players in the system, in an independent mode. Judges, for example, are as a practical matter designated by the chief judge of the trial judiciary of each service. Each service has its own trial judiciary.

I'm told that prosecutors are typically designated by the command or someone working for the command. For example, in the Marine Corps I think it's the commander of what they call the LSSS. There are acronyms for everything, as I'm sure you're all deeply aware by now. But the Legal Services Support Section I think is what the Marine Corps uses. I think they

basically work for the commander or work for somebody who works for the commander.

The defense shops in the services have evolved in a way that is substantially independent. Once upon a time it wasn't that way. The commander would simply pick a lawyer in the staff judge advocate shop and that person would be the defense counsel. Somebody else would be the trial counsel.

So I think the systems have moved towards independent arrangements. I don't see any reason why through the Manual for Courts-Martial a person with very broad power with similar assurance couldn't be provided.

In fact, let me add, by the way. I'm not a legislative maven, so things like technical amendments, which just as a practicing lawyer (dropped words?) regularly throughout my career. Some things may lend themselves to that. I can't speak for Senator Gillibrand particularly as to that.

But I don't see this as an insuperable obstacle by any means. I can't imagine there would be

(dropped words?) development so that you'd wind up with a system that produced, ironically produced, less independent decisionmaking than we currently have. So I'm not -- I'm not horrified by that. That seems to me to be workable one way or the other.

CHAIRWOMAN JONES: So it doesn't -- if the bill now appears to have one office performing all those functions, the convening authority, you just think we can fix that?

PROFESSOR FIDELL: Yes, right. But the heart of the matter is this convening authority is a non-line convening authority. It's not a commander. So those issues that have been so much of concern would simply be -- they would be nonexistent, because the real concern before was that it in theory could be a tool of the commander. The commander would own all those resources. And as I understand it, the new arrangement would be out of the chain of command.

I see no difficulty in developing arrangements, whether in the Manual for Courts-Martial or otherwise, that would make sure that nobody could

impugn the independence either of the judges -- the judges wouldn't put up with it, obviously; and the defense counsel wouldn't put up with it.

And as far as the independence of the prosecutors, that's the whole point of the exercise.

CHAIRWOMAN JONES: Ms. Holtzman.

MS. HOLTZMAN: Professor Fidell, thank you very much for your time.

Let me just narrow the question to get a precise answer from you. If under the present bill the same authority, whether it's a commander or a functionary, has the power to appoint the judges, the defense counsel, and the prosecutor -- let's take a hypothetical -- is that constitutional? Does that pass due process in your view?

PROFESSOR FIDELL: Yes, yes. Good morning, ma'am.

Yes. If I were on the Supreme Court, which I'm not and I'm never going to be, thank goodness, would I --

MS. HOLTZMAN: No, I didn't ask you from the

point of view of being on the court --

PROFESSOR FIDELL: -- would I have had some difficulty with the old system, the old old system? Sure, I would have. But the Supreme Court has blessed the system and is highly deferential to Congress's judgment on these matters. So I actually don't think there are any votes that would find that problematic, given the current construction, the current array of justices. I just don't see it happening.

MS. HOLTZMAN: So your view, you're giving me an answer --

PROFESSOR FIDELL: I was going to say --

MS. HOLTZMAN: May I just ask the question, please? My question really was what your view is, not you sitting as a Supreme Court -- not your view of how the Supreme Court would rule. We don't know how the Supreme Court would rule. That's not my question.

My question is you as a professor of military law and an expert on this issue; what is your personal view of the due process implications of having the same office, officer, appoint now -- not talking about

history; talking about now -- what is your view about the due process implications of having the same office, officer, appoint the prosecutor, the defense counsel, and the judges?

Not whether they would stand for it or not. We don't know what people can stand for or not stand for in the military. Just that simple question: What's your view of that?

PROFESSOR FIDELL: I think arrangements should be made, whether by regulation or technical amendment, to make sure that the independence of decisionmaking by the judges and by the defense counsel is assured.

MS. HOLTZMAN: Are you saying that it should be assured because you think it's a good thing or do you think it's constitutionally required as a due process matter?

(Pause.)

PROFESSOR FIDELL: I'm pausing because your question is a serious one and you'll have to bear with me.

(Pause.)

PROFESSOR FIDELL: My own view is that an arrangement that gave the prosecutor the power to select the judge or to select the defense counsel would be a due process violation.

MS. HOLTZMAN: Thank you, sir. I appreciate that clarification, and I appreciate that you took the time to consider it.

Thank you.

CHAIRWOMAN JONES: General Ham.

GENERAL HAM: Professor, Carter Ham. Thanks again for making time available.

I guess one of the fundamental questions here -- folks who are supportive of the proposed bill say that, while commanders no longer have the convening authority responsibility, they still have the responsibility for maintenance of good order and discipline in their units. Some who oppose the bill say that's responsibility without authority and undermines the commander's ability to maintain good order and discipline.

I'd be interested in your perspectives on those two viewpoints.

PROFESSOR FIDELL: Right. Was that the end of the question?

GENERAL HAM: Yes.

PROFESSOR FIDELL: Thank you and good morning. We haven't met, I don't believe, but it's a privilege to talk to you.

I have not been persuaded and I am not persuaded that a commander in order to be effective has to have the power, the specific power to decide which cases, serious criminal cases, should be prosecuted. The prosecution function is something that should be independent of the command.

I think that the experience of other countries is very telling in this regard. I don't think there has been a dearth of the military effectiveness of the countries that have moved in the direction that obviously we're talking about here as a result of the reallocation of the disposition function.

I think that there are certain functions that

can and should be performed independently. For example, we have, as you know -- you're an Army general, General, is that correct?

GENERAL HAM: I used to be.

PROFESSOR FIDELL: Used to be.

GENERAL HAM: I'm one of those -- I'm a guy who used to be somebody.

MS. HOLTZMAN: Emily Dickinson said "I'm a nobody."

(Laughter.)

PROFESSOR FIDELL: We're all just faces in the crowd.

I think that the Army, for example, uses a (dropped words?) investigation function. The MCIO's, the military criminal investigative organizations, tend to be (dropped words?). Indeed, some of the discussion that I've seen about these subjects has emphasized the independence of the investigative function.

But it's the investigative function -- if the independence of the investigative function is as

critical as it's made out to be, why not the ability to decide which cases go into, which serious cases, go into courts-martial?

I think the contention that the sky would fall if we did what the mother country and all these other modern democratic states have done is unfounded. I understand the point, but it's a point that is one that doesn't -- it simply doesn't move me.

I'm aware of the fact that many (dropped words?) officers hold a different view. I respect their view, but at the end of the day I would say that I believe that decisions as to who gets prosecuted for serious criminal conduct -- that those decisions ought to be made by attorneys.

I don't know. I will also say this. I have been keeping a -- I don't have it accessible because I'm in Chile and communications are not great here. But I've been keeping a chart of the different rationales that have been offered in favor of the current command-centric concept. I'm up to number 38, I think, and they are different ways that turn out to be different

ways of saying the same thing.

So I have to say I'm not persuaded on this. I believe that a commander who believes that there is serious criminal conduct in his or her command is doing his or her duty by ensuring that the facts of such a case are brought to the attention of an independent prosecution or office with the power to take things into court.

And I don't think anybody would say that a commander who did that was somehow remiss or that a commander who did that would be -- that it would somehow be unfair to evaluate that commander as escaping justice for himself or herself because he or she was unable to actually pull the trigger and send the case into the courtroom.

But come back, come back at me. What -- is there some other dimension of this that I have missed? I don't think so, and I've listened very attentively to the justifications for the current system, and I just think events and the way we do the law and frankly the sophistication of the Uniform Code of Military Justice,

with all the protections we've built in; this is actually not a radical change.

It could change the sort of logical step and the progress that the country has made since, let's say, 1920 -- that's nearly 100 years ago -- when the Article 32 investigation was invented. So we now have judges. We want to keep judges independent. We have lawyers doing a whole lot of things that they didn't do before.

I think this is something that is, frankly, overdue. I think we were unwilling as a country to do it in 1950 because we didn't know how the rest of the code was really going to work. But now we've had another, we've had 50-plus years of experience, and our values have continued to evolve. We're not frozen in 1775 any more than we're frozen in 1950. Values have changed in the country and also around the world.

This is an artifact, to be frank, and I think it's time we lose the artifact and just have a modern criminal justice system for those parts of military behavior that rise above the level of minor disciplinary offenses.

GENERAL HAM: Thanks very much for that. I suppose we could probably come up with the 38 arguments that you've heard without too much difficulty. And I suspect you're right, that they're all relatively similar.

But one that underpins that, that again those, I think that the service chiefs and others have voiced, is a perception at least that if this bill passes and is implemented in law one of the messages to the troops is: The nation does not trust your commander. I again would welcome your thoughts about that particular argument that is sometimes proffered.

PROFESSOR FIDELL: That's one of them, General.

GENERAL HAM: Yes, sure.

PROFESSOR FIDELL: That's somewhere on the list.

GENERAL HAM: Yes, that's one of the 38.

PROFESSOR FIDELL: I'm not persuaded by that. Yes, that's one that's been brought up, and it's an elusive notion, but yes, I understand the point. But

if the Congress of the United States, which has responsibility under Article I, Section 8, Clause 14, to make rules for the government and regulation of the land and naval forces, decides that it's time to get a 21st century disposition system in place, Congress is supreme in this area.

And I don't think it's a putdown of senior officers. I don't think it erodes their authority. I don't think it erodes their standing. I think we look to general officers and flag officers for leadership and skill and talent and insight and intelligence, style, and we want to get all of those things.

I don't think the fact that -- let me put it this way. I don't think there is actually any daylight in terms of the impact among the troops in the piperacks on the ships out in the field between a general officer who can say "Jones, I am sending you to a general court-martial" on the one hand and a general officer who says -- excuse me, I didn't mean to pick on you, Judge Jones.

CHAIRWOMAN JONES: No, no. I forgive you.

PROFESSOR FIDELL: I'm sure it's not the first time.

-- and on the other hand, a general officer who says: "Smith, I'm sending you to the chief prosecutor with a recommendation that you get a general court-martial."

In my view, by the way, I think senior officers -- I'm just speaking for myself here -- I think senior officers who have a view on how a particular case should be disposed of ought to communicate that view and put it in writing. And by the way, I'd make that available to the defense, just to make sure there's nothing irregular going on, transparency and all that.

But you know, I think that there is essentially no difference from the standpoint of the perspective of the E-1's, and the E-2's and the E-3's of the world between a general officer who can say "I'm signing the referral now" as opposed to the general officer who says "Hold on a second; I'm going to sign off on this memo sending the file to the chief trial counsel" or whoever, whatever it's called.

I just don't -- I don't -- people will notice that. People will know that, that it's the general taking this step. I think if the system is fair it'll be okay.

By the way, again in some number of cases people are acquitted. It's true. Well, if the power to refer a case, the disposition power, is in the hands of a general officer and it's an acquittal, what do the people in the trenches think about that general officer?

In other words, it may be a blessing in disguise from the standpoint of the general officer corps and the flag officers, so that people can't turn around and say: Look, the general sends that case to a general court-martial and there's an acquittal. Is that good for the general's standing among the troops? I don't think so.

COLONEL HAM: Gene, this is Colonel Ham. I beg to differ with you --

PROFESSOR FIDELL: And if the general says, well --

COLONEL HAM: I think that enhances the

standing --

PROFESSOR FIDELL: -- if the general says, all I've done is, justice was done, there has to be a trial, well, you know --

CHAIRWOMAN JONES: Colonel Ham.

COLONEL HAM: Gene, this is Colonel Ham. Good morning.

PROFESSOR FIDELL: Good morning.

COLONEL HAM: I beg to differ with you. I think an acquittal engenders faith in the system, that the system is fair, and that increases and maintains good order and discipline. If every case sent to court-martial resulted in a conviction --

PROFESSOR FIDELL: Would you say that again? Say that again? You broke up a little bit.

CHAIRWOMAN JONES: He's not hearing you.

COLONEL HAM: Okay. Gene, it's Colonel Ham. I think that acquittals engender faith in the system and engender the belief that the system is fair, rather than the opposite, rather than that a general sent a bogus case to trial. Don't you? I mean, if

every case went to conviction what faith would the --

PROFESSOR FIDELL: I'm missing the gist of your question. It's a little choppy. If you'd come close to the microphone or whatever it is, maybe that would be better.

COLONEL HAM: Yes, I'm sorry. Can you hear me now?

PROFESSOR FIDELL: Yes.

COLONEL HAM: It's Colonel Ham and thank you for talking to the panel.

As a current serving officer, I disagree with you that an acquittal undermines faith in the general's authority. I think it's exactly the opposite, that it engenders trust and faith in the system.

PROFESSOR FIDELL: Right. That's the point, trust and faith in the system. And what General Ham drove at in the last question was whether commanders -- whether people will see the commander as -- I forget how he put. I apologize, General; maybe you can restate your own point.

But the point is it's not supposed to be --

the administration of justice should not be personalized, not the decision to charge. And if there are acquittals -- and there are going to be acquittals -- it seems to me that that is best done by an office whose function is to decide what cases should go to trial, rather than a commander who has a million other things -- this is not unimportant, obviously -- but who has other things to do, where this draws on a particular skill set which one picks up in law school for three years.

CHAIRWOMAN JONES: Are there other questions?

MS. FROST: I have a question.

CHAIRWOMAN JONES: Yes, Ms. Frost.

MS. FROST: Good morning.

PROFESSOR FIDELL: Good morning.

MS. FROST: Good morning. And I realize that you didn't develop the legislation, but can you explain what you think the philosophy is behind the bifurcation of disposition? Certain offenses -- you

said previously that decisions on serious criminal charges should not be made by the commander, but by the prosecutor. Looking at --

PROFESSOR FIDELL: Yes. I mean --

MS. FROST: Pardon?

PROFESSOR FIDELL: Right. There's a dividing line that (dropped words?). There are certainly offenses that go to military discipline. If you had four people who were asked about this subject, you'd get four different boundaries, boundary lines.

So I think this is simply an effort to identify in ways that are broadly acceptable, to separate out those offenses that are truly of a criminal character, that are (dropped words?) to society as the types of things that are prosecuted in local courts and federal courts, as opposed to those things that are by their nature and also by their maximum punishment to be more in the nature of disciplinary matters.

It's in the eye of the beholder. As you say, you or I could draw the line differently and include some offenses, exclude other offenses. Congress -- that's

within Congress's power. (dropped words?) distinguished in a variety of ways between kinds of conduct that is handled by summary proceedings -- we happen to call it non-judicial punishment, or office hours or Article 15 mast -- and those things that are more serious and that tend to get handled through something that looks like a trial.

As I say, (dropped words?) a dividing line right now. The dividing line in Article 15 of the UCMJ is minor offenses. But in fact "minor offenses," that turns out to be a highly discretionary judgment made by commanders. I can think of cases that were handled under Article 15 that surprised me, that I thought should have been handled at a higher level of formality, and also situations where conduct is handled in a court-martial that you would have thought would likely be handled in a more summary fashion that maybe didn't leave permanent scars on a person's record.

There's no -- in other words, there is no clear solution to this. Countries around the world deal with -- attempt to distinguish between those kinds

of conduct that are more in the nature of criminal conduct -- sometimes they're called common law crimes -- and (dropped words?) boundary lines that separate these, either by the duration of the punishment, the duration of the punishment or the nature of the crime itself.

So it's not an entirely tidy decision that has to be made.

MS. FROST: Professor, can you explain to us what the bill intends the division to be here?

PROFESSOR FIDELL: Let's see if I have -- I think it's a combination. I'm looking at Section 552. If you look at 552, it has basically two concepts. One is offenses for which the authorized maximum punishment is more than a year; and then there's a metric to identify offenses that are excluded, and that is found in -- I'm looking -- yes, there's some reference to the articles, the sections called punitive articles, that currently list offenses. I think it's something like 33 offenses.

Yes, it's Articles 83 through 117 of the

UCMJ. Those are the excluded offenses and those are the instances which include things like AWOL, unauthorized absence, desertion, disobedience (dropped words?) somewhat more serious offenses. So those would be -- those would remain within the purview of normal convening authorities, as I read this proposal.

MS. FROST: I'm sorry, Professor. There are offenses that would remain with the commander that are extremely serious, and I don't quite understand how that's supposed to work. Are you saying they can just fix that? I know you mentioned a couple, but there are other offenses -- kidnapping, negligent homicide. There are all sorts of other quite serious offenses that would under the current format of this bill remain with the commander, but the commander doesn't have convening authority -- or disposition authority, rather, to say that they should be -- there should be a general court-martial.

PROFESSOR FIDELL: The answer is serious offenses, wherever they are found, that do not, let's say, directly implicate discipline -- everything

implicates discipline on a certain level; we all know that. But that what I'll call core discipline issues, classic military issues, for serious offenses they are to be handled outside the chain of command convening authority.

CHAIRWOMAN JONES: Colonel Turner.

COLONEL TURNER: Professor Fidell, thank you so much for joining us today, particularly from such a distance.

I want to make sure I really understand your outcome. For example, Senator Gillibrand recently testified to the RSP to the effect that we don't know if removing commanders will actually increase reporting, but that's one of the desired goals, to increase reporting.

Some people have talked about increasing prosecution rates. Some have talked about increasing conviction rates. But what I hear you saying is instead that your desired recommendation end state is a, quote unquote, "modern criminal justice system."

From reading some of your previous writings,

what I understand that to be is a civilianized system. So correct me if I'm wrong, but I understand that you don't believe that this bill goes far enough because it doesn't remove military members from the trial-judiciary-prosecution process; is that correct?

(Pause.)

CHAIRWOMAN JONES: Professor, are you still there?

(No response.)

CHAIRWOMAN JONES: Professor Fidell?

(Phone rings.)

PROFESSOR FIDELL: Hi.

CHAIRWOMAN JONES: Sorry.

PROFESSOR FIDELL: The phone call cut -- the phone call cut out just as somebody was about to ask me a question about something Senator Gillibrand said when she met with the RSP. So that's where the phone line dropped.

CHAIRWOMAN JONES: That was Colonel Turner. She'll put her question again, Professor.

PROFESSOR FIDELL: Okay. Thanks a lot.

COLONEL TURNER: I think we're fixing something technically right now.

PROFESSOR FIDELL: Okay. Assuming that we do this at all, let me also say, as I did at the beginning, that I appreciate once again the RSP affording me a chance to visit with you by phone. I'm usually not this hard to reach.

COLONEL TURNER: Professor, this is Lisa Turner, Colonel Lisa Turner. I appreciate you joining us, from such a distance particularly.

I just want to make sure I understand the desired outcome and understand your perspective. So I'm going to try and articulate that, and if you'll correct me, please, if I'm incorrect.

PROFESSOR FIDELL: Yes, of course.

COLONEL TURNER: Recently Senator Gillibrand testified to the Response Systems Panel words to the effect that: We don't know for sure[?] that removing commanders from convening authorities in these particular cases will increase reporting, but that's the desired end state.

I've also heard others talk about the desired end state to this change as increasing prosecution rates, and some have said it's increasing conviction rates. But what I think I heard you saying is that your desired end state is a, quote, "modern criminal justice system." Having read some of your previous writings, I understand that to be that you believe this bill does not go far enough in that it still retains military personnel in the process. Your desired end state instead or recommendation in this evolutionary process is to have a civilianized system. Is that correct?

PROFESSOR FIDELL: It's not correct.

COLONEL TURNER: So do you believe this bill

--

PROFESSOR FIDELL: I would be interested in knowing what you're citing for that proposition, and you can communicate that to me separately. But I will be happy to summarize what my view is.

COLONEL TURNER: In terms of what -- how do we know we've succeeded in something? What's the way that we look at this change and say, yes, it was

effective, or no, it was not? And then what do you think is the next logical step, if any? Thank you.

PROFESSOR FIDELL: Right, right. I have not been -- I'm speaking here for myself in response to this question. I have not been invested in the current issue, aside from in general the proposition that sexual assault is a terrible thing and we should do whatever we can to punish it and deter it.

However, I believe that the highest good here goes beyond -- the goal goes beyond the suppression and deterrence of sexual assault within the armed forces and in fact is a structural goal. The structural goal is to foster public confidence in the administration of justice regardless of the offense.

Therefore my own take -- and this is not intended to be harsh. I am, for example, somewhat skeptical of some of the numbers that have been bandied about. Intuitively they strike me as high, but who knows? I really -- I'm not a numbers person. I don't know if you all are. But it is what it is.

If this or any other legislation, because

there are competing proposals on the Hill, drives up the number of cases that go to trial, that will be okay. If it drives up the number of convictions obtained, that'll be okay.

I think there's a proposal that requires a dishonorable discharge. Isn't that in the Senate bill at the moment?

MS. FROST: Yes.

PROFESSOR FIDELL: That's a ridiculous proposal. I mean, seriously, to have a mandatory dishonorable discharge for a sexual assault when you don't have it for murder? Things like that drive me crazy.

But if the proposals, whatever gets enacted, has no discernible impact on the number of convictions or cases that go to trial or the number -- or if at the end of the day there are fewer cases that are reported, that go to trial, that lead to convictions, that lead to harsh sentences, that's not the question from where I sit.

The question is do we have a system for this

and other kinds of offenses that fosters public confidence in the administration of justice? I have to tell you, I don't think that's measurable. That's why it's impressive to me that other countries that share our value systems have quite routinely and increasingly moved in the direction of taking the charging power out of the hands of commanders and putting it in the hands of trained prosecutors who are independent of the chain of command.

So to me it is not -- I hope I'm connecting with your question. It is not a question of driving up the reports, cases referred, or convictions, or much less sentences. Instead it's a question of fostering the highest possible level of public confidence, including public confidence within the armed services, in the administration of justice.

That's where I am. That's the seat that I occupy in this conversation. Other people have different priorities. That's my priority. Now, what other things or the end state in my dreams? I don't know that I've got a total end state. Personally, if I were

a member of Congress I would say that cases, charges that do not have some service connection -- you know, the person who robs a bank downtown -- that should be tried downtown, not in the military. That's my own view and I think Congress ought to do that. I think I've expressed that before.

I do favor changing Article 32, trimming it way back to a mere probable cause hearing, which would actually tend to encourage victims of sexual assault to come forward because they would know that they weren't going to be subjected to the third degree twice. So I think that's a very important priority. I'm glad that something is being done along those lines.

In terms of the post-trial, the other functions of the convening authority, I would have a jury commissioner -- they call it a court-martial administrator or administration office -- the way the U.K. and Canada have. That would be the person who would pick the juries, instead of -- or detail the juries, instead of having a constant temptation towards unlawful command influence in the selection of juries.

I would get commanders out of the business entirely of negotiating pretrial agreements and I'd let the pretrial agreement be negotiated by the chief trial counsel, the chief prosecutor.

I would have military judges available who could rule on resource questions, such as I need an expert witness or I need another investigator or I need to have my client shrunk before trial. That's not a big deal, but it's something that ought to be done.

I'd also get rid of the limitations on Supreme Court jurisdiction of the court-martial. Something like 90 percent of courts-martial are never subject to review by the U.S. Supreme Court, even permissive. You can't even appeal to the Supreme Court. You can't even submit a certiorari petition. They'll throw it out.

I think there's no excuse for the fact that military judges don't have a statutory term of office. This is preposterous. I also think it's ridiculous that two services, the Army and the Coast Guard, have terms of office by regulation -- they're modest terms,

they're just three-year terms -- and the others have none. How can you have a criminal case presided over by a judge who serves at will?

So the long and short is there are certainly things that need to be done and frankly I think the UCMJ would benefit from a top to bottom review. I've thought about that and I hope at some point to be able to give more thought to that.

But in the mean time, we ought to do what we can do, and I think reducing the powers of commanders with respect to the charging decision and also with respect to the post-trial (dropped words?), which are unnecessary and unwise. I think we ought to do those things.

We can debate and the members of the Senate and the House Armed Services Committees can debate about the details. I don't mean to call them minutiae. They're important details. But there's a conversation to be had there. I'm not a member of the House or Senate. They'll figure that out.

And it may be, it may be, that there's some

tinkering that's going to have to go on as this legislation moves forward, and I would hope that as the Department of Defense and the services come to view this -- and if I can, this is probably the thing that I feel most strongly about in this conversation -- come to view this exercise as an opportunity, because that's what I think it is, and I think one of the great misfortunes as that, instead of figuring out constructive ways to make the transition to a professional charging system, instead there's been a million questions raised, a million obstacles, a million different versions of the same justification for George III's military justice system, instead of saying: You know, history for whatever reason -- and it's because of the sexual assault issues -- history has presented us with an opportunity here; let's seize the opportunity, let's put our thinking caps on, let's influence things in an intelligent, constructive way, instead of just throwing up roadblocks.

It's not too late for that. I have many friends in the Pentagon that I have the highest regards

for their intelligence, their patriotism, obviously courage, and I'd like to see those skills -- and their leadership -- those skills marshalled in a way that turns this, instead of -- that turns this from a sort of warring parties on the battlefield into a collaborative effort to try to move forward and to move our system forward into the 21st century.

We're not there. So that's a long, long answer to your question, but that's where I'm coming from.

MS. FROST: I have a follow-up question. This is Joye Frost again.

I'm the Director of the Office for Victims of Crime at the Department of Justice. I've actually worked with sexual assault -- on sexual assault issues and with sexual assault victims for over 17 years. I've worked on the issue of child sexual abuse since the seventies.

When you state that ultimately you think the goal should be to foster public confidence in the military justice system --

PROFESSOR FIDELL: Yes.

MS. FROST: -- and then you say, but that's not measurable, I have to say, as someone who has advocated on behalf of victims for decades, I think I certainly support a fair and balanced justice system, whether it's in the civilian or military sector, but I can assure you that if reporting and prosecution rates go down public confidence in the military justice system will be measurable, and I think, even more importantly, the chilling effect that it would have on victims.

In the civilian sector, it's interesting. I don't think there's any more difficult issue that the criminal justice system deals with than the issue of rape, sexual assault, and child sexual abuse. We don't have stellar reporting rates and we certainly don't have dramatically great prosecution and conviction rates. So few of these cases are ever prosecuted.

I will say, that is my big concern.

PROFESSOR FIDELL: Yes. Well, I take your point and I value your thoughts on this. I think it's a more elusive issue. I think the country should feel

that it has a state-of-the-art military justice system that satisfies very high standards. The federal district courts are the jewel in the crown of our democracy and I think that to foster the kind of confidence that we need I would look to having lawyers make those difficult decisions.

I must say, by the way, in my own view the people who ought to have these responsibilities ought to be people of considerable substance. I think the measure calls for an O-6, Army colonel, Navy captain, to have this kind of responsibility. In my own mind -- and he'll kill me for saying this, but in my own mind I'm thinking of somebody like Brigadier General Mark Martins, who's leading the charge on the military commissions.

Even though I'm critical of the military commissions, I respect his work. He's done yeoman service and better in terms of presenting the public face of the commissions. I think that that's the kind of distinction that the government should look for when these positions are assigned. It should be people with

really sterling credentials --

CHAIRWOMAN JONES: Professor.

PROFESSOR FIDELL: -- who will help foster public confidence.

CHAIRWOMAN JONES: Professor Fidell.

PROFESSOR FIDELL: Yes?

CHAIRWOMAN JONES: We're running a little behind. I don't want to cut you off. Let me just ask if there are some additional questions from any of the other panel members.

Also, essentially we were hoping that you would be able to talk to us about some of the provisions of the exact legislation. I'm always happy to hear your thoughts about the military justice system in general, but let me just find out if there are any additional questions that relate to the legislation. Senator Gillibrand asked us to hear from you so that we could ask this particular type of question.

Anyone?

MS. HOLTZMAN: Thank you, Madam Chair.

Thank you again, Professor Fidell. I don't

know if you have received a copy of a letter dated October 28, 2013, to Carl Levin from -- I think these are staff judge advocates and judge advocates of the five military branches. Are you familiar with that letter?

PROFESSOR FIDELL: No.

MS. HOLTZMAN: Well, I would -- I'm sorry you're not because the letter raises, not issues about philosophy -- we could debate those; maybe we will and will not persuade each other -- but the letter raises very serious questions about the substance -- not the substance -- the functioning of the legislation and its consequences, not necessarily in terms of public confidence, but how the bill would actually function.

So I'm going to try to raise these with you. I would appreciate if the staff or maybe Mrs. Gillibrand could send you a copy of the letter. But I'll quote a little bit from it. At the bottom of page 1 the letter -- the paragraph deals with the fact that there are two sets of offenses which are dealt with in different ways under the legislation. And it says:

"The legislative proposal fails to establish a process for disposition of cases in which the two systems intersect, i.e., in cases involving multiple offenses that fall into both systems. Such cases arise quite frequently in our practice. On its face, the legislative proposal would result in parallel prosecutions for such cases, doubling the prosecution's caseload.

"The alternative is for one system to take the case in its entirety, which could give rise to jurisdictional problems, given the proposed legislation's explicit provision, and would further erode a commander's authority over good order and discipline. In fact, the legislative proposal actually removes almost every military commander's authority to convene general courts-martial for members of their command, even for military-specific offenses. So for example, the division commander" --

So what is your response to the concern of how to handle cases in which -- I think our staff may have prepared some questions along this line -- where

you have, for example, a rape and a kidnapping?
Kidnapping is not within the offense --

PROFESSOR FIDELL: Yes, I --

MS. HOLTZMAN: Let me finish my question,
sir, please.

PROFESSOR FIDELL: Sure.

MS. HOLTZMAN: Kidnapping is not within the
offense -- kidnapping remains with the commander and
rape does not. How does that get resolved under the
legislation?

PROFESSOR FIDELL: I believe that there are
changes that have been generated, which I don't have in
front of me, which I haven't seen, but I've heard about,
that would address the problem of what I would call a
hybrid -- I think that's what you're describing -- a
hybrid case that had --

MS. HOLTZMAN: Let me --

PROFESSOR FIDELL: I believe that is being
attended to, and the only thing I can do is refer you
to Hill staff on that because I don't have language.

MS. HOLTZMAN: But let me ask a preliminary

question.

PROFESSOR FIDELL: I had heard --

MS. HOLTZMAN: Do you agree that there is a problem?

PROFESSOR FIDELL: Yes, sure. You have cases that are going to be -- that are going to straddle the dividing line and there has to be a rule that would resolve which side of the line such a mixed case would fall on.

MS. HOLTZMAN: Okay, great.

PROFESSOR FIDELL: And I believe this is being attended to. You have me at a disadvantage because I'm not privy to the details of either the letter you're reading from or the fix that I understand has been generated in that connection.

MS. HOLTZMAN: Well, okay.

PROFESSOR FIDELL: So if I can, that's what I have to say.

MS. HOLTZMAN: I appreciate your statement that you believe, however, that a fix is required.

PROFESSOR FIDELL: Yes, they'll have to

figure out something to do on that, sure. It's probably something that could be handled by a Manual change, but they can work out something on the Hill.

MS. HOLTZMAN: Excuse me? Probably? Have you studied the legislation to give us a deliberative answer on that point? Can it be resolved by changing the Manual or will you need legislation? Can you address that?

PROFESSOR FIDELL: Without seeing what the current state of play is -- I have to reiterate, I'm here in Santiago, Chile. I've been out of the country for ten days now. So there are a lot of things that have gone on that I'm not privy to and I'm doing the best I can under these circumstances.

MS. HOLTZMAN: I appreciate that. I'm not asking you about the nature of --

PROFESSOR FIDELL: You're asking me something. I'm an attorney. I like to be a little careful with what I say. Obviously, you all are trying to do what Congress has asked you to do, but there are limits to what I can do responsibly without having a hard

copy in front of me and without knowing the precise state of play in terms of the legislative process.

MS. HOLTZMAN: But I'm not asking you about the nature -- I appreciate your answer and I respect that very much. No one wants to speculate. I'm not asking you about the nature of the fix. I'm asking you about the legislation in front of -- well, I don't know if you have it in front of you. But I'm asking you about Senator Gillibrand's legislation.

Under that legislation, would you need -- could you solve the problem we've identified of hybrid charges by a change in the Courts-Martial Manual, or would you need legislation?

PROFESSOR FIDELL: I think you could probably do it by the Manual. That's the best I can do from where I am right now.

MS. HOLTZMAN: So probably --

PROFESSOR FIDELL: There's very broad power under Article 36 and they've done things that were at times quite dramatic, and I think that could be handled through a Manual change. But --

MS. HOLTZMAN: But you're not sure?

PROFESSOR FIDELL: That's the best I can do. Right, I don't have the Manual in front of me. Seriously, this is not fair.

MS. HOLTZMAN: Well, but we were -- it's not fair. I understand these are tough questions, but what we're trying to do is understand what the implications of this legislation are. And if they create the problem that we've just discussed, we need to know how to solve that problem and whether it can be solved in the way you suggest, which could be the case, or whether it requires legislation. That's what we were looking to you to educate us about.

Let me just go to a couple of other areas that were pointed out in this letter, which have to do with the refusal --

PROFESSOR FIDELL: This is a letter I haven't seen. You know, to be honest, to ask me questions about a letter I haven't seen is not -- I'm feeling a little frustrated.

MS. HOLTZMAN: But the letter you haven't

seen goes to issues in the legislation, that's all. It just goes to issues in the legislation that are created by the legislation, such as what we've discussed already. Now, maybe Senator Gillibrand didn't advise you of what we were interested in talking to you about or how she expected you to respond to these issues. I don't know about that.

But I'm just concerned about -- I'm not concerned about the philosophical question, should we remove the commander's role or not. That's another issue. I'm just saying, if this legislation seeks to do that, what are the other things that will have to be addressed as a result of the legislative changes and what are the problems the legislation may cause? That's just the ambit of my inquiry here.

PROFESSOR FIDELL: Right, I understand that.

MS. HOLTZMAN: So it's very technical. I know the staff had some other questions in this area.

CHAIRWOMAN JONES: Well, one that interests me relates to issues with plea bargaining. I believe

in the bill the decision of the original authority that decides what the charges will be is binding. So then it goes to the convening authority and it's totally unclear -- at least I couldn't figure it out -- what happens to plea bargaining in a situation like this.

That's in the bill. Can you comment on that?

PROFESSOR FIDELL: Which provision? I'm looking at an amendment. I don't have an amendment number, but it's an amendment that I believe is Mrs. Gillibrand's amendment. If you can point me to what you're referring to. Where are you in the bill, or the amendment?

You know, there's nothing in the statute now about pretrial agreements. It's simply not addressed at all in the statute.

CHAIRWOMAN JONES: But the bill addresses them, in the sense that it -- and I'm sorry, I don't have the section. I'm still looking for it. The bill addresses it when it says that whatever the disposition authority, or whatever you want to call that group of O-6's who decide what the charges are, whatever they

decide is binding.

So I'm just curious as to whether anybody's thought about what that does to plea bargaining.

PROFESSOR FIDELL: Well, if what you're looking at is the provision that appears --

CHAIRWOMAN JONES: I'm sorry. It's 4 --

PROFESSOR FIDELL: That's page 6? Is this on page 6, lines 10, 11, and so forth?

CHAIRWOMAN JONES: I'm looking at something else, but hold on and I'll find it.

(Pause.)

CHAIRWOMAN JONES: We're all looking at -- I must be looking at something different.

Well, perhaps you could tell me, Professor, has the language now been removed, that whatever charges are decided by the original disposition authority are no longer binding?

PROFESSOR FIDELL: I have to refer you to staff on that. I'm sorry, I'm laboring as best I can under difficult communications conditions here.

CHAIRWOMAN JONES: Okay. Well, let me just

read what I was referring to. It seems to say: "The determination to try such charges by court-martial under subparagraph (a) and by type of court-martial under subparagraph (b) shall be binding on any applicable convening authority for a trial by court-martial on such charges."

I don't know whether that's been amended or not, but do you know what the intent of the legislation is with respect to plea bargaining?

PROFESSOR FIDELL: I think the -- well, I think the intent is that pretrial agreements would be made with the officer referred to in subparagraph (a).

CHAIRWOMAN JONES: So they would make the plea bargain? The original authority that --

PROFESSOR FIDELL: Yes.

CHAIRWOMAN JONES: -- would decide what the charge was --

PROFESSOR FIDELL: They'd do the pretrial agreement.

CHAIRWOMAN JONES: -- and send it out for court-martial would make the decision as to what the

plea bargain was?

PROFESSOR FIDELL: Sure.

CHAIRWOMAN JONES: You believe that's the intent of the legislation?

PROFESSOR FIDELL: Yes. That's my understanding, yes.

CHAIRWOMAN JONES: Okay.

PROFESSOR FIDELL: Incidentally, just looking at paragraph C right above what we've been talking about here, "The determination under subparagraph (a) to try charges shall include a determination to try all known offenses." I'm looking at that and thinking that might be relevant to the question that you or someone else raised a few minutes ago about what I called hybrid offenses. It looks like it to me.

CHAIRWOMAN JONES: Well, I don't know if that helps or hurts the analysis, because if they start deciding, making decisions about all known offenses, I don't know what that does for the difference between included and excluded offenses. I don't know if they

have jurisdiction.

But in any event, thank you for that comment.

PROFESSOR FIDELL: Sure.

CHAIRWOMAN JONES: Any other questions?

MS. HOLTZMAN: Just one other question about the nonjudicial punishment. Since non-judicial punishment can be appealed, in a summary court-martial -- I may get this wrong. Colonel Ham, can you help me?

COLONEL HAM: Turned down, declined.

MS. HOLTZMAN: The summary court-martial or the non-judicial punishment can be -- which the commander still has the right to impose -- can be rejected by the accused and a court-martial could be sought. If the court-martial -- if the accused is then acquitted at the court-martial, then there would be no opportunity to impose a non-judicial punishment. How does that work?

PROFESSOR FIDELL: Yes, that's true.

MS. HOLTZMAN: Oh, so it's true? You see the system as working that way. So in essence --

PROFESSOR FIDELL: If a person turns down

NJP or a summary court and a court-martial ensues and there's an acquittal, that's the end of the line. That's the way it is. That's the way it is now.

MS. HOLTZMAN: Am I misstating the question?

CHAIRWOMAN JONES: I think the problem is that when the disposition authority determines that there will be no general court-martial and then the -- pardon me? -- and then it goes to the commander, and then the person, the soldier, is entitled to say, no, sorry, I want a court-martial, I think that was the situation that Ms. Holtzman was referring to.

I don't know what the intention of the bill is when that happens. You've already had the disposition or the charging authority say court-martial's not warranted, and then it goes back to the commander and they try to impose non-judicial punishment, but the soldier says: Sorry, I want my court-martial. I think that's the situation.

Do you know what the intent -- do you know what the intent of the legislation was in that regard?

PROFESSOR FIDELL: I'm aware that a question

was raised about this, but I'm not sure it's that scenario or the scenario where an individual turns down non-judicial punishment and the matter is then referred to what I'll call the new convening authority for court-martial, and the general court-martial, the new convening authority, so to speak, says: Well, I'm not taking this to trial.

MS. HOLTZMAN: Right, that's correct. Then what happens?

PROFESSOR FIDELL: I don't know what happens, but that ought to be covered. It's an easy fix. I don't know quite what language. But sure, I'd cover that.

CHAIRWOMAN JONES: All right, any other comments, questions? General Altenburg?

PROFESSOR FIDELL: By the way, let me just note this. You're talking about the so-called new convening authority. It would only have jurisdiction over quite significant offenses, which probably ought not to be referred to a summary court-martial or non-judicial punishment in any event. So there's

something wrong with the hypothetical, I think, from that perspective.

But if there is a problem there, I don't see a problem with fixing it. But I'm not sure there is a problem.

GENERAL ALTENBURG: Well, except for hybrid offenses?

PROFESSOR FIDELL: Except -- yes, that's true, except, as I said before, I think there's something in the language in subparagraph (c) -- in the print I have, it's page 6, lines 3 through 7 -- that says all known offenses would be governed. So that looks to me like if anything goes over it all goes over.

The military justice system has always been predicated on the notion that all known charges would be tried in a single proceeding at the lowest possible level. So the notion of everything being wrapped together at once is deeply rooted into the military justice system, has been forever.

GENERAL ALTENBURG: Professor Fidell, this is John Altenburg. How are you today?

PROFESSOR FIDELL: John, how are you?

GENERAL ALTENBURG: Good. As an aside, the role of the commander as the convening authority is pretty deeply rooted also. I just wanted to say that in passing.

You know, Article 60, the Senator's bill pulls it away from convening authorities to disapprove sentences.

PROFESSOR FIDELL: Yes.

GENERAL ALTENBURG: I think that's where the pretrial agreement issue arises, because that's the mechanical way that we implement pretrial agreements now, is the convening authority disapproves those appropriate portions pursuant to the pretrial agreement. And this legislation doesn't seem to provide for a mechanism to accomplish that under the new system. Do you see that?

PROFESSOR FIDELL: Right. It would be done by the -- yes, it would be done by -- as I understand it, it would be done under the new system in the courtroom by the military judge and the prosecutor.

The prosecutor would announce what the arrangements were and the judge would then reduce the sentence, as the convening authority currently does. It would simply move forward in the process something that currently gets done thereafter.

GENERAL ALTENBURG: That probably requires an amendment to --

PROFESSOR FIDELL: As you know, as you know, pretrial agreements themselves are not provided for in the statute at the moment. The process has grown up, evolved, over the last few decades. I don't see that as a significant issue.

GENERAL ALTENBURG: You don't think it takes a statutory fix?

PROFESSOR FIDELL: No, aside from repealing Article 60, no.

GENERAL ALTENBURG: You're familiar with the 7 June letter or document signed by the law professors?

PROFESSOR FIDELL: Yes.

GENERAL ALTENBURG: You're one of the

signatories?

PROFESSOR FIDELL: Absolutely.

GENERAL ALTENBURG: Paragraph 2 says that: "Congress should take the time needed to make a careful study of these issues. It should not use study as a substitute for action. Further hearings are needed and promptly."

This letter was signed after the 4 June hearing. There have been no other hearings. The Congress last year appointed this Response Panel to take 18 months to review all these issues and analyze them. And yet people are pushing changes to the UCMJ without waiting for the Systems Response Panel to do its job pursuant to last year's legislation.

When you think about all that in the context of the Morgan Commission, the Doolittle Commission, the Vanderbilt study, all in the wake of World War II before the UCMJ amendments, all the commissions and studies and hearings that were held in '67 and '68 before the '68 amendments, and all the hearings that you and I attended and were a participant in in '82 and '83 before the '83

amendments, do you think that November of 2013 is the time for major revisions to the UCMJ?

PROFESSOR FIDELL: Well, I don't know that Congress is actually going to function on this this month, by the way. I don't have -- I can't read the tea leaves, particularly from a great distance. I don't know when the Senate is planning to vote. I think the Senate is going to be in business on this subject for a great long time and the House is going to be in business some time in the next calendar year.

So do I think that's a reason for the Senate not to make a basic decision which way it wants to go on this at this point? No, I think the Senate is probably in the position where it could make the basic decision on where it wants to go. Do I think the legislative process will end tonight? No. I think the legislative process is going to go on for months, during which time I think the RSP will have an opportunity to gather its thoughts in sessions like this, and in the fullness of time, not far from now, render a report.

GENERAL ALTENBURG: Do you think that before

there were major --

PROFESSOR FIDELL: Hold on. Hold on one second. My concern is that if the opportunity is not seized in basically this time frame -- and I don't mean today or tomorrow, but basically this time frame -- that it will be years before some fundamental systemic issues that I believe Congress ought to be addressing can be addressed.

I don't know about you, but I'm 68. I'd like to see this done in my lifetime, and I think Congress on a number of issues is overdue to attend to this. My big concern is that calls for a study can be abused, and I think that calls for study can mask inaction. So there's a tension between the need for study and the needs of the political climate and the needs of the political system.

We all want Congress to do the wise thing, to do it in the fullness of time, to do it when it's had an opportunity to gather its thoughts. Certainly our elected leaders have been functioning on this at a level of intensity that I cannot remember, aside perhaps from

the Affordable Care Act, in recent years.

So what's the right time, John? I don't know. But do I think it should be done this afternoon? No. Do I think we should wait a year? No. And I don't know what the schedule is for enactment of the current iteration of the National Defense Act, completing the process. Will they still be at it in May or June? I don't know. But that's what I assume. What about you?

GENERAL ALTENBURG: Thanks very much.

CHAIRWOMAN JONES: All right. Anything else?

(No response.)

CHAIRWOMAN JONES: Thank you, Professor Fidell. You've given us a great deal of your time and we very much appreciate it.

PROFESSOR FIDELL: I'm sorry if I have frustrated you on a number of points. I have done the best I can. Senator Gillibrand is the person with the vote on this and people who have been far more closely involved in the give and take can I'm sure shed light on some of the issues where I may have frustrated you.

I'm frustrated, too, but I feel that I've done the best I can in the circumstances.

Thank you so much for letting me chat with you.

CHAIRWOMAN JONES: I understand. Thank you.

Jim, are you still here?

ADMIRAL HOUCK: I am.

CHAIRWOMAN JONES: And you heard all of that?

ADMIRAL HOUCK: I heard it all.

CHAIRWOMAN JONES: Just checking.

MS. FROST: Can I ask a question? The subcommittee comparing the civil and military justice systems, are they looking at rates of reporting and rates of prosecution and convictions?

CHAIRWOMAN JONES: They are, and it's actually required as tasks within the statute. They're doing it. I don't think we have results yet, but they're doing it.

COLONEL TURNER: If I could make a point,

too, ma'am.

CHAIRWOMAN JONES: I'm sorry, Colonel. I can't hear you.

COLONEL TURNER: I'm sorry. If I could just real quickly make a point. He mentioned somebody who robs a bank downtown should have this independent military convening authority process. Again, the civilian prosecutors already have primary jurisdiction. They can always do, already do that. And they don't give us the jurisdiction unless they have confidence that we'll take care of it. Thank you.

CHAIRWOMAN JONES: Well, I guess my reaction to this interview is that Professor Fidell has a lot of ideas for how to change pretty much the entire military justice system. But I don't think if you -- well, we're the Response Systems to Adult Sexual Assault Crimes Panel and I think that most of the legislators that are involved in both sides of this bill in terms of Senator Gillibrand's bill don't[?] think that they're changing the entire military justice system. I think what everyone has been motivated by was the report in May of

this year about sexual assault crimes in the military.

So part of the problem I find with Professor Fidell's statements is that they go way beyond whether the proposed changes are actually going to have an efficacious effect with respect to responding to sexual assaults, and to that extent they're really an overhaul of the entire military justice system as he would propose that it be made.

So an awful lot of his responses were really not relevant to the question of whether or not this bill internally is consistent or will need a lot of fixes, but were also not responsive to whether or not its intended purpose, which is to help to prevent and deal better with sexual assaults in the military is going to be realized from it. That's my general reaction.

MS. FROST: Yes, his comment about holding up federal district courts as a model. Most sexual assaults are not prosecuted in federal district courts. The places where they are are in Indian country and there are some serious problems there.

CHAIRWOMAN JONES: They certainly aren't

prosecuted in most federal courts. I mean, I sat for 17 years and never saw a single sexual assault case.

Jim?

ADMIRAL HOUCK: I guess I agree with everything that's been said. I'm troubled by the overstatement that accompanies many of these things. I guess it's the province of academics, because I now am one, but comments that we have a George III military justice system and that a system of -- that the judiciary that we have, that it's a preposterous system. I understand there's some hyperbole in that, but I find those comments troubling.

MS. HOLTZMAN: If I might just add something, I thought he was going to be prepared to discuss the substance of the legislation and he wasn't. His statements that this probably would solve the problem or look at this section of the statute, maybe it's covered under that, I thought were highly unsatisfactory.

Also his statement that Congress can handle the principle. Congress doesn't act on principles

except when it votes for a resolution. When it votes, Congress acts through legislation. So the legislation is going to have concrete consequences and we need to know what they are. I'm disappointed that we were not given someone to help analyze the legislation when we asked for it.

That's my point.

GENERAL ALTENBURG: Following up on what Jim said about judge tenure, just for the heck of it, because it really should affect, I think, our view of what we just heard overall, he talked about how terrible this is, how he can't perceive why we wouldn't have tenure. That issue, that specific issue, has been to the Supreme Court and our system of picking judges and the fact that its regulatory in two of the services and not at all in the other services has been upheld by the Supreme Court of the United States, which is consistent with his other comment about their deference to the military justice system.

But it's not like that issue hasn't been considered, and he's still beating that drum ten years

after the Supreme Court considered it and upheld it.

CHAIRWOMAN JONES: Well, I would also add, I didn't even ask a question about whether anyone had considered whether considerable extra resources would have to be brought to bear in order to create this new structure, because I don't think Professor Fidell, justifiably I suppose, would have known the answer to that. So that remains unanswered. And I just didn't see any purpose in asking him because I don't think he knows.

GENERAL ALTENBURG: Well, also consistent with your concern that there's this interplay that's not appropriate between solving the sexual assault issue on the one hand and people taking advantage of that to open a door and try to change the whole system, is the concern that -- I forgot what I was going to say. CRS. I'll come back to it.

COLONEL TURNER: Ma'am.

CHAIRWOMAN JONES: Yes, Colonel?

COLONEL TURNER: If you want more information on how trial judges, defense counsel, and

prosecutors are assigned, I'd recommend we consider asking for the right testimony on that, because it was not nuanced in the way it was presented by Professor Fidell.

GENERAL ALTENBURG: I've gotten my moment back.

CHAIRWOMAN JONES: Yes, go ahead.

GENERAL ALTENBURG: I would have wanted to ask him, since he's been involved with military justice since '69, how many times in those years has he seen a staff judge advocate recommend trial and the convening authority says no trial. Because that's pertinent to this issue that they're talking about this is going to solve sexual assault.

I would tell you, if he was familiar with some in the seventies and eighties, I don't think there have been any in the last ten years in any of the services where a staff judge advocate said this case needs to go to trial -- this is your professional, your prosecutor -- and a convening authority, the avowed "untrained" non-lawyer, has said no, it's not going to go to trial.

That doesn't happen, and yet that's what they purport to solve.

CHAIRWOMAN JONES: Well, I was just going to say, I think we're going to -- not just in view of Professor Fidell's presentation, but also because we got amendments this morning, I think we should go back to Senator Gillibrand and ask our questions again after we've had a chance to look at the amendments and ask her for a presentation.

I think our original request was for either some analysis that she might wish to send over or a staffer who could come over and answer our questions. So I just think that's something that we should do.

GENERAL HAM: We might, Judge, also consider asking The Judge Advocates General if they would consider revising their October 28th letter based on the modifications to the bill.

CHAIRWOMAN JONES: Yes, that's a great idea. I think we would certainly have to give them that opportunity as well.

MS. HOLTZMAN: But I also think that when we

send something to Senator Gillibrand that we alert her to the fact that Mr. Fidell, Professor Fidell, said that there was a due process problem with the statute and how does she intend -- assuming that that's not been corrected, how should we deal with it.

CHAIRWOMAN JONES: I think that's right.

Anything further?

(No response.)

CHAIRWOMAN JONES: All right. Shall we take a five-minute break at this point?

(Recess from 11:40 a.m. to 11:51 a.m.)

CHAIRWOMAN JONES: Let's resume our subcommittee session now. I want to welcome Mr. James Love, Mr. Love who is Acting Director of Military Equal Opportunity and DEOMI Liaison, and Mr. -- rather, Dr. Dan McDonald, who's here from DEOMI, Defense Equal Opportunity Management Institute.

Gentlemen, I'm going to apologize quickly for the delay and let you get started. Mr. Love.

ORGANIZATIONAL CLIMATE SURVEYS (DEOCS)

MR. LOVE: Thank you. First of all, I'd

like to thank you for the opportunity to come and provide information to you and to this group. Hopefully, we can answer all the questions that you have and provide information that will help in your deliberations later in this whole process.

As mentioned, I'm Jimmy Love. I serve as the Acting Director for Military Equal Opportunity in the Office of Diversity Management and Equal Opportunity. We are a policy office on the staff of the Secretary of Defense. So our primary role is to recommend policy decisions, to oversee policy as it plays out in the services, for the military equal opportunity program in my specific instance.

What I'll also point out is that under the military equal opportunity program sexual harassment falls under that purview. I mention that because there's a tendency sometimes for people to combine sexual assault and sexual harassment and think that it's all handled as part of one program. That distinction is made primarily because, as you know, sexual harassment is an administrative matter and sexual

assault is a crime.

Mr. Clarence Johnson, who's my Director, who was here --

COLONEL GREEN: He had to depart.

MR. LOVE: Mr. Johnson exercises the oversight of the Defense Equal Opportunity Management Institute, which falls under the auspices of our office on the Secretary of Defense staff.

My plan this morning is to give you a very quick overview of DEOMI, the command climate process, and then turn it over to Dr. McDonald, who is our head researcher at DEOMI, who really works with the nuts and bolts of the Defense Equal Opportunity Climate Survey and the command climate program.

So let's get started. I'm not sure how familiar you are with DEOMI. It got its start about 42 years ago. It grew out of racial disturbances, civil disturbances, that were happening within the military and even some instances of race riots that had shut down our ability to function as a military service.

As a result of that, General Lucius Theus and

several other appointees became part of the commission to look at what to do about race relations in the military. This was around the 1960-70 time frame and, as you know, during that time the United States was having its share of racial turbulence across the board.

DEOMI, as we call it today, got its start as the Defense Race Relations Institute and it became the location in the Department of Defense for sending service members and civilians at that time to become facilitators and conduct what was called mandatory human relations or race relations training. That program lasted for a few years, quite honestly, and at every installation we had mandatory training, mandatory participation in this human relations, race relations program.

The mission of DEOMI today is to provide equity training, training in equal opportunity, training in human relations, training in diversity, in order to influence and enhance mission accomplishment within an organization. So that's their primary goal today.

In 1979 we changed the name of the institute from the Defense Race Relations Institute to the Defense Equal Opportunity Management Institute as part of that evolutionary process to deal more with other aspects of equal opportunity and treatment in race relations, in order to deal with organizational management, in order to deal with relationships between individuals and commanders and resolve personal problems.

Out of that evolution grew what we called at that time, which was in the nineties, the Military Equal Opportunity Climate Survey. That effort was initiated by researchers at DEOMI, very bright, intelligent folks who were looking for ways that we could help commanders get a sense of what was happening within their organizations, what's the climate of the organizations.

In the sixties and the seventies we called those sessions "rap sessions," where we'd either walk around through units to find out what the pulse is. But we had no scientific way of really getting at that kind of information until we developed this instrument called the Military Equal Opportunity Climate Survey.

It was not mandatory. It was a tool that was offered to commanders for their use, to give them a sense of what was happening. It also was a starting point. It was not to be, designed to be the beginning and the end to tell you this is what my organization looks like from a race, ethnic perception standpoint. It was one of several other data points involved in an organizational climate assessment.

Today we call that instrument the Defense Equal Opportunity Climate Survey. Dr. McDonald will talk to you shortly about some of the details involved with that instrument, but it was Dr. McDonald and his team that brought this evolution of the Military Equal Opportunity Climate Survey forward, so that today this instrument deals with a wider variety of human relations kinds of issues. In the latest version we even get into dealing with issues of sexual assault, sexual harassment, bullying, hazing, all of those kinds of issues that are wrapped up within organizations.

In July of this year, Secretary Wright, our Under Secretary, in support of guidance that came from

the Secretary of Defense and from the National Defense Authorization Act, issued policy to move the DEOCS to another level. What do I mean by another level? The DEOCS, just like the MEOCS, was initially an instrument that was offered to commanders for their use, but the recent guidance from the Secretary of Defense and also from the National Defense Authorization Act changed that guidance in hopes of looking more at how we can hold commanders accountable for that climate within their organization.

There were three main points that were part of the Secretary's guidance. First of all was to ensure climate assessments are conducted within 120 days after assumption of command. The second point was to ensure assessments provided an opportunity for service members to respond about how well their commanders addressed issues like sexual harassment and sexual assault. Then the third point was that the analysis from annual surveys should be provided to the commander above you in the chain of command within 30 days.

So now we've taken a document or an

instrument or a tool, however you choose to look at it, and elevated it to the status of providing information, not just for the commander, but also for the commander's commander, to ensure that we're addressing the myriad of issues that are included in that survey.

So at this point what I'd like to do is turn the remainder of our presentation time over to Dr. Dan McDonald to talk specifically about the instrument known as the Defense Equal Opportunity Climate Survey, and also address any questions that you may have concerning that instrument.

CHAIRWOMAN JONES: Thank you.

COLONEL HAM: Just for the members, in your folder at tabs 5 and 6 you have two different versions of the climate survey, version 3.3.5 and 4.0.

MS. FROST: I do have a couple of questions. When you say "commander," at what level? I mean, for the Army, for example, are you talking all the way down to the platoon level?

DR. McDONALD: Company commanders, yes. It's at all levels right now. So it varies depending.

Once assumption of command is made, within the 90, some services 90, some 120 days, the commander is required to do a command climate assessment.

MS. FROST: So any command position whatsoever?

DR. McDONALD: Yes, ma'am.

MR. LOVE: We've had individuals requesting the survey from various levels of command, from the most junior levels of command all the way to the, for example, the Chairman of the Joint Chiefs of Staff has requested a DEOCS. And they've been doing that now for a couple of years at least they've gone through that process.

MS. FROST: But this is not mandatory?

MR. LOVE: What's not mandatory is the use of this particular instrument.

MS. FROST: Okay.

CHAIRWOMAN JONES: Doctor, do you want to take it from there?

DR. McDONALD: Good morning, everyone. I want to thank the committee for the time and allowing me to share some of the work that's been done here at

DEOMI and with the Office of Diversity Management and Equal Opportunity and with the services. Today I will talk a little bit about the DEOCS. As Mr. Love mentioned, it is a command climate assessment. It is to assess the perceptions of individuals within the organization with respect to various human relations issues.

When I came on board in about 2005, it had just been instated as an online version to basically provide by demand for commanders to be able to provide part of their assessment of their command's organizational climate. When I say part, I mean that the rule of thumb is for most of the services that this is just a portion of a complete climate assessment. They also conduct focus groups and interviews. They're to look at records and other things to get a more holistic look at an organization when they actually do an assessment. So the DEOCS is part of that tool.

When I came on board, we were doing about 10 to 15 of these a week. Right now the volume is about 250 commanders a week are requesting this instrument,

to the tune of about 50,000 soldiers, sailors taking or being administered the DEOCS, with about a 53 percent return rate on it.

Mr. Love also mentioned that DEOCS was initially more of a volunteer type of instrument. There were other -- the services had their own instruments as well of various versions. The Army had theirs, the Navy, and so on. But what has happened -- and I think it's because we've worked closely with the services -- is that this has evolved as the tool of choice, and that's where we are today.

Beginning about January 1st, all of the services are using the DEOCS as their command climate survey instrument to assess perceptions within the organization.

As I mentioned, it is a tool for unit commanders, but it has evolved. It has evolved from a by-choice to more, with the NDAA and these other movements with respect to sexual assault, more into the realm of accountability. So it changes the complexion of the instrument.

We continue to try to evolve this instrument to meet those needs, one of which being now rollup data is being asked for at higher levels. We work very closely with the SAPRO office, DOD, to do that, very closely in terms of the types of questions to be asked and how we can provide that information to them on a monthly basis and to the services on a quarterly basis, so that they can keep their finger on the pulse with respect to various issues concerning things such as the knowledge, the basic knowledge level of individuals within the command about avenues for reporting, the barriers to reporting, what kind of leadership support is there for SAPR. So that's one of the instruments. So now it has evolved into much more.

I look forward to your questions on the matter and I open it up.

CHAIRWOMAN JONES: Could I just ask you, when SAPR came in they told us about their survey and it was administered by computer. I assume yours is as well?

DR. McDONALD: Yes, ma'am, by computer and

also, because some service members don't have access, full access to computers at various times, we provide a paper and pencil version. There will be SAPR questions on a paper and pencil version for version 4.0, which is the new one.

CHAIRWOMAN JONES: I think you said you have a 53 percent response rate?

DR. McDONALD: Yes.

CHAIRWOMAN JONES: Which is much higher than the SAPR response rate. Do you know what the cause of that is, or what do you attribute that to?

DR. McDONALD: They use the methodology, randomized stratified sampling technique. So they go out, they look at the different demographic groups and they do a shotgun to those demographic groups to provide some level of response. They tend to get a much lower response rate than a commander who provides to their unit, the full unit: We're going to do a command climate assessment so we can improve things. So they tend to get a -- I think there's a little more motivation and direct motivation as a result of that, would be my

assumption. So we do get a nice response rate.

As it's now becoming more of an accountability tool, I'm anxious to see how those response rates may change, may actually -- I anticipate perhaps even an elevation from 53 percent.

MS. FROST: But the mechanics of this at the unit level. You say a commander encourages members to fill out this survey. If it's paper and pencil, which has me concerned, where does the paper and pencil survey -- who does that go to?

DR. McDONALD: The paper and pencil survey is sent back to DEOMI to process.

MS. FROST: By whom?

DR. McDONALD: By their administrator, their appointed administrator. The DEOCS process is such that an administrator will request online or over the phone a survey, and typically they will actually put the information in online. They're appointed by their commander, and then they provide the commander's information.

From there they will indicate whether it's

paper and pencil or if it's online. We have specialized bubble Scantron sheets that we then, if it's online, send to the command. From there the administrator is guided through the process of administering the survey instrument to the command.

Then it's sent back to us for processing and the results, and it's compiled into an automated, generated report.

GENERAL HAM: At what levels are you able to aggregate responses and over what periods of time?

DR. McDONALD: We can aggregate responses to the level of the DOD. We have done snapshots, six-month snapshots. We can do quarterly aggregations and whatever is asked for. There are some challenges, methodological challenges, with what we do, which we're working on at the present time, which includes ensuring that the sample is representative.

The power of what we have is we're sampling half the force, which is a much greater number than these randomized surveys that are out there. So the power of it suggests that it's very valid. But we're going

through some additional precautions in order to ensure that. That's some of the things we're working on as this evolves.

Yes, ma'am?

MS. HOLTZMAN: I just took a real quick look at the DEOCS 3.3.5.

DR. McDONALD: Yes, ma'am.

MS. HOLTZMAN: And I see that there are some questions, for example, about gender that are not included. Maybe you could tell me whether this form has been changed, upgraded, or not?

DR. McDONALD: Will you[?] ask the question again? I'm sorry, I didn't understand.

MS. HOLTZMAN: Has this form been changed, updated?

DR. McDONALD: Is that the survey instrument itself?

MS. HOLTZMAN: I don't know. 3.3.5.

DR. McDONALD: It is being -- it will be updated in January. We'll have a version 4.0.

COLONEL HAM: 4.0 is your next tab.

CHAIRWOMAN JONES: We already have 4.0.

MS. HOLTZMAN: For example, I hope you're going to include some questions that you don't seem to -- you have: "A demeaning comment was made about a certain religious group," but you don't have demeaning comments made about women, for example. That's not covered here.

DR. McDONALD: Well, we have sexual harassment, four questions on sexual harassment and discrimination.

MS. HOLTZMAN: Where?

DR. McDONALD: In the survey. I'll have to find it.

MS. HOLTZMAN: Right, "Sexist jokes are frequently heard," "Sexually suggestive remarks were made." But you don't have -- the next issue is "A well-qualified person was denied a job because the supervisor didn't like their religious beliefs." You don't have that question with regard to gender.

DR. McDONALD: And that's why we moved in version 4.0 to be more inclusive of those types of

things.

MS. HOLTZMAN: Okay. I'm glad to hear that.

DR. McDONALD: And that's one of the things that, this is an evolving survey.

MS. HOLTZMAN: Okay, thank you.

MS. FROST: Just to understand, because looking at the memo from the Secretary of the Air Force, and they're stating that across the Air Force the use of your form or your survey will be mandatory beginning January 1, 2014.

DR. McDONALD: That's what I believe.

MS. FROST: And what about the other services? Is the Air Force the only?

DR. McDONALD: No. The other services have their own individual policies that they'll be able to speak to when they come up. But they have their own individual policies that also mandate the DEOCS. The Army, it's a preferred tool at this time. I don't believe it's mandated. But by just the essence of it being used, our numbers are really high for all of them.

CHAIRWOMAN JONES: Just to say, in part 7

even of 3.3.5 has some questions: "My leadership promotes a climate that is free of sexual assault," and you can choose one out of five from strongly agree to strongly disagree. "My leadership would respond appropriately in the event a sexual assault was reported"; the same array of choices. And it goes on.

When did you start using this? I missed that. Sorry.

DR. McDONALD: These SAPR questions came about March of 2012. We worked closely with the SAPRO office to develop these in the first phase of instantiating this in 3.3.5, with the notion that we would enhance it during 4.0.

CHAIRWOMAN JONES: So you've been using 3.3.5?

DR. McDONALD: Yes, ma'am.

CHAIRWOMAN JONES: Since when?

DR. McDONALD: 3.3.5 without the SAPRO items has been around for a few years. In 2012 we included -- we added the SAPRO items to 3.3.5.

CHAIRWOMAN JONES: Okay. And do we have any

statistics from that?

DR. McDONALD: At what level? In terms of usage?

CHAIRWOMAN JONES: You told me there are 50,000 survey results?

DR. McDONALD: Yes, ma'am. Last year we administered 1.8 million surveys across the force. We're on pace this year to do nearly 3 million surveys administered and just with the 53 percent return rate looking at 1.5 million data points.

GENERAL HAM: Do you have FY '13 data accumulated already?

DR. McDONALD: Yes, sir. You mean data from the surveys?

GENERAL HAM: Yes.

DR. McDONALD: Yes. We provide rollups, rollup reports to the services.

MS. HOLTZMAN: What's a rollup report?

DR. McDONALD: A rollup would be all of their data from a period of time, and we would roll it up and aggregate it, so to give them a big picture of the force.

GENERAL HAM: Mr. Love, I'm old enough to remember rap sessions. While the intent may have been that they were not mandatory, they were mandatory when we did that.

In the change of policy from being responses provided only to the commander, to the commander of that unit, so the commander would have a glimpse of the conditions that he or she has inherited or developed, depending on when the survey was administered, to now it's mandated you will do it and your boss is going to see it, have you seen any noticeable difference, A, in responses or, B, in the support that commanders have previously shown in implementing the instrument?

MR. LOVE: I'm going to start out with the response. From my own level, at the OSD level, we have noticed increased interest, primarily from senior leaders about the survey, the survey results, information about the surveys, questions about the kinds of questions that are on the survey.

So the interest has heightened. I don't know that -- and I'll let Dr. McDonald talk to this --

I don't know that we have physically seen a change in the increase of the number of surveys. The primary reason that we went to -- initially when we started out with the MEOCS and then the DEOCS, the idea was that we would encourage commanders to use this instrument more if they didn't think it was part of their report card, so to speak.

But Dr. McDonald could tell you what the usage looks like today.

DR. McDONALD: Yes. What I see is a definite increase, about a 70 percent increase in usage across the board as a result of NDAA in terms of demand. Also I see an increase in the level at which the climate surveys are being requested. About ten general officers or so a week are requesting the survey. So that I see kind of an elevation in terms of the level at which the surveys are being requested.

When the survey is requested, they can request up to 16 breakout reports from their lower levels. So there seems to be an elevation there. We get more customer service requests because now that

information is being shared with their boss, what do I do and how do I make sure that I'm communicating this well?

In my opinion it's putting more emphasis on our equal opportunity advisers, who are the agents of this survey instrument and the holders of this information, if you will, to interpret and then to provide the information to the commanding officer. It's putting more emphasis on them in terms of how having to understand sexual assault prevention and other things and how to work with the SARC's and work with other folks in their organization so that they can come together and provide a comprehensive solution for the commander.

Some of this is happening, but I see some of this also evolving as this has emerged into more of an accountability tool.

I hope that answered your question.

GENERAL HAM: Yes.

Who determines the locally developed questions? Is it the requesting commander?

DR. McDONALD: Yes, sir.

GENERAL HAM: So a senior commander does not have an authority to say, a battalion commander in the Army as an example, does not have the authority to say: When you conduct a DEOCS of my subordinate units, you will ask these questions.

DR. McDONALD: If[?] the senior commander becomes the requester and they have 16 breakouts, then they do that. For example, we're working with the Chairman of the Joint Chiefs right now. The Chairman -- each directorate has their own individual set of locally developed questions that they ask as a result of that. So it can be engineered that way in order to do that.

And we'll work with the customers on the locally developed questions. We have examples on our web site that they can choose from. But also if there are some individual issues outside of the realm of what we provide, we work with them to craft questions that have good face validity at least, so that they can ask appropriate questions and get some meaningful

information.

GENERAL ALTENBURG: What happened to your number of requests for the surveys between 2006 and 2009, when the operational tempo was so high?

DR. McDONALD: I think the -- well, I won't attribute it to the OPTEMPO, but I think I'll attribute it to the quality of the survey instrument in that the requests went -- more than a tenfold increase in demand as a result.

GENERAL ALTENBURG: You were getting more requests for your troops to take these surveys when the operational tempo was even higher?

DR. McDONALD: Yes, but I'm not sure if I could link that to that.

GENERAL ALTENBURG: My instinct would be that it would lower it because they didn't have time to focus on stuff like that, they were so busy getting ready to go to war. I think it's remarkable. It's a compliment to the process that they were requested that much.

GENERAL HAM: But my recollection is,

though, it wasn't mandated at DOD level. Some services did put -- did establish periodic reporting requirements, survey requirements.

DR. McDONALD: Yes, sir. Yes, sir.

CHAIRWOMAN JONES: Yes, Liz?

MS. HOLTZMAN: I want to make sure I understand this. How many -- so this is you compile the information on this. Is it generally available to the public, to the Secretary of Defense? To what? To whom is it provided?

DR. McDONALD: Well, for the SAPR-related questions we would provide the information monthly to the SAPRO office. On a quarterly basis, to each of the service SAPRO offices, we provide rollups to them. To really the agents within the services, the EO headquarters, the EO offices, we provide GEOCS rollups on a periodic basis to those folks so that they can keep their finger on the pulse, tell what's going on with respect to equal opportunity and organizational effectiveness.

MS. HOLTZMAN: What happens when -- let's

say you have question 82, "To what extent is your chain of command, for example, promoting unit climate based on mutual respect and trust and refrain from sexist comments and behavior?" Suppose those are answered in the negative. What happens?

DR. McDONALD: The services each handle that separately and that's probably something that they'll be able to answer.

MS. HOLTZMAN: So there's no standard format or standard protocol for responding to situations in which a unit says that, there's a terrible climate in my unit? The commander can just say: Well, so what? I'm not going to do anything about it.

DR. McDONALD: I think formerly, yes, in a former life. But now that they're having to share the results with their boss, the accountability level is going to go up on those types of flags.

MS. HOLTZMAN: Well, but is anybody -- okay. But you have no way of calculating -- well, first of all, there's no protocol requiring any commander to address any of these issues that are identified in this survey?

MR. LOVE: Let me jump in just a second. In the Military Equal Opportunity Program, DOD 1350.1, which is the guidance from the DOD level, we state in there that service secretaries shall hold commanders accountable for their command climate within their organizations.

Now, the technique of doing that varies to some degree. Some services look at remarks and evaluation reports. Others services have other ways of dealing with that accountability piece. What we're finding out -- that instrument, that directive, was published in 1995. What we're finding out is that we did not have in fact a performance measurement to tell us who was doing what to whom, partly because the results were -- belonged to the commander only.

For example, if -- and this was before the policy changed. If you requested a climate survey and we administered the climate survey to you, you have the results, you were not required by policy to take that up to anybody. So you could hoard it and keep it. Or if you're proactive you can say: Hey, boss, I've got

something I want to show you and talk with you about. So that opportunity was there, and we were not tracking it.

MS. HOLTZMAN: But now are you?

MR. LOVE: Well, we don't have the mechanism yet to track the individual actions, and that's what the services can talk to.

MS. HOLTZMAN: Okay.

MR. LOVE: But we do have, obviously, the results and the rollup report. We don't maintain the individual unit reports, I think, no longer than a certain period of time. But we do roll the data and information up. Now, the services may retain that information and have ready access to it, but we don't at DOD.

MS. HOLTZMAN: So you don't really have any statistical way or any other way of knowing what the response has been by the services, within the services, to the information gained in this report? Or do you? I'm sorry, I just don't know.

DR. McDONALD: I think you're correct, at

this point we don't know. We don't have any --

MR. LOVE: At this point.

DR. McDONALD: -- specific information about how --

MS. HOLTZMAN: "At this point." Are you thinking you have a new job ahead of you, right?

(Laughter.)

DR. McDONALD: One of the other aspects of the DEOCS is that we provide that assessment, but now we're migrating to a notion of assessment, linking them to follow-up on solutions. So on our web site, for example, we can provide specialized training materials, information, policies, resources that are particular to each of the factors that are provided on DEOCS 4.0.

So from a diagnostic standpoint, if we identify some areas below average, we'll say, what we're going to do is provide recommendations. First, first and foremost: Hey, this isn't the end of the assessment; you've got focus groups, interviews, look at other records. You need a holistic look at the organization to do a complete command climate

assessment.

Next, here's a training video, here's some other information, here's some resources that are particular to your diagnosis, so that they can quickly have something at their fingertips and the commander can quickly address the issue.

What we'll be able to do in the future is to look at how those things are being downloaded at least.

MS. HOLTZMAN: When is that future?

DR. McDONALD: Well, the first version is coming out in January for this new concept. But it's spiral development. We're still working with the services on getting more solutions, best practices from the services, and other types of things.

MS. HOLTZMAN: So that was going to be my next question.

I'm sorry. May I?

CHAIRWOMAN JONES: Yes, go ahead.

MS. HOLTZMAN: So who develops the standards for what's acceptable? I mean, let's just take this: "Refrain from sexist comments and behaviors." I don't

know how you grade this, if it's one to five or one to ten. But is a two -- at what point do you think that action is warranted?

Are you suggesting the standards? Do you have to have ten complaints or one complaint? What are your standards for action and determining if there's a problem?

DR. McDONALD: The method that we're using right now is we're leaving some of the interpretation up to the services. However, what we're doing is taking the normal distribution of a given service. And any score that a commander receives on a particular factor will be graded as either below average, average, or above average.

MS. HOLTZMAN: That's in comparison with others?

DR. McDONALD: In comparison with the rest of the service, yes.

MS. HOLTZMAN: But doesn't that raise the question that if you have rampant, let's say, demeaning treatment of women, you're not going to catch that

because everybody does it?

DR. McDONALD: Everybody's average, correct. So the notion is that we are always trying to move into the next rung, above average.

MS. HOLTZMAN: And how do we do that?

DR. McDONALD: By policies such as --

MS. HOLTZMAN: Oh, you mean above average? Okay, I got it.

DR. McDONALD: Yes. And then the notion that you have to share it with your boss. And if you're only average now, then you're striving for excellence.

MS. HOLTZMAN: Thank you for explaining this to me.

MS. FROST: May I ask a question? How does this pertain to senior NCO's?

DR. McDONALD: In terms of?

MS. FROST: I think they play a critical role in creating command climate.

DR. McDONALD: Yes, and many of our EOA's are senior NCO's. They're part of the command just like the rest. So when we go through a survey -- are you talking

about like an NCO IC or something, someone in charge of

--

MS. FROST: Senior NCO's in leadership.

DR. McDONALD: They're included in the survey. They may be the administrator for a commander.

MS. FROST: They could be the administrator for the commander, and what if it's the senior NCO that is perpetrating some of the sexual harassment?

MR. LOVE: We're not designed at our level to identify that. Much of that is going to have to come from the commanding officer in the organization, to realize what's happening in his or her organization.

MS. FROST: Well, then why does he need a survey, he or she, if they realize? I just have some concerns about --

MR. LOVE: The survey is really the starting point, the starting point to open the door, to highlight issues. The other part of the assessment includes, as Dr. McDonald mentioned, a review of the records, a review of your complaints, paper records, review focus groups. So the process itself is not complete with just

the survey administration.

MS. FROST: Do you know if the services systematically use these, the survey results, in OER's?

GENERAL HAM: Performance reports.

DR. McDONALD: They will talk about that. I think there is consideration there.

COLONEL HAM: But when your survey asks about my leadership, the leadership of the unit is not just the commander alone.

MS. FROST: That's my question. In one question you talk about organization and leadership, in the other one you talk about chain of command. Do you define either of those, and if so does it include -- technically, we know chain of command is one thing, but perceptually it often includes those mid-level and senior NCO's. Do you define those terms anywhere?

DR. McDONALD: Probably not to the level that -- we keep it somewhat broad for the command climate assessment.

GENERAL HAM: Are 3.3.5 and 4.0 sufficiently compatible that you'll be able to continue trend

analysis, or will the world start anew on 1 January?

DR. McDONALD: The world's going to start anew pretty much.

GENERAL ALTENBURG: I can tell you as a former E-4 that when I had that place in life everybody between E-7 and E-8 or E-6 and E-8, that was the command. I can remember going up to deliver something and coming back and telling my buddies: I saw a major today.

(Laughter.)

GENERAL ALTENBURG: Seeing a major, because all we had were lieutenants and sergeants where I was. So really I think that's probably pretty important for survey purposes, is to, if nothing else, just define it a little bit better, because I think we found that sometimes when people say the command did this or the command didn't take action, they're talking about a buck sergeant or a staff sergeant in the Army, because that's the command to them. They don't know who these other people are.

I'll bet you 200 people out of 600 in the battalion don't know, sometimes don't know the name of

their battalion commander.

MR. LOVE: Which is a good point and kind of reinforces the idea that perhaps a focus group is needed to get at clarity in some of the responses that come up from the survey.

COLONEL HAM: So the soldiers' idea of leadership, to a private might be his squad leader or his platoon sergeant. And the focus group would get at --

DR. McDONALD: It would be more diagnostic at that point, yes, to get to the nitty-gritty.

To answer again the question about the senior NCO, our EOA's, our NCO's, are oftentimes not within the chain of command. So the EOA's are agents and advocates for this instrument, so often they aren't the right-hand person of the commanding officer, let's say. So it's sort of a somewhat removed process. Sometimes they are, sometimes they aren't.

Also, the command themselves have other EO representatives. For example, in the Navy they're called CMEO's, in the Army EOL's, which is a collateral

duty, so that they answer to the EOA in terms of those types of things.

CHAIRWOMAN JONES: The more I hear about this, the more I think that more specificity in the survey would help a great deal, because when you're trying to figure out not just what the problem is, but where it is, that would be tremendously helpful.

DR. McDONALD: There's another level to this as well that we haven't discussed. We have the organizational averages across all of these factors, for example, but we also provide comparisons. We can compare men versus women in their responses. We'll compare minorities and majorities and other types of groups.

What we often find is a fault line in perception between groups, which allows us then to kind of start to diagnose where the perception differences are. That's another aspect of the survey instrument that provides more knowledge about what's going on.

MS. FROST: When SAPRO administers their survey, how do they reach out to service members?

DR. McDONALD: The gender relations survey instrument?

MS. FROST: Yes.

DR. McDONALD: They work through DMDC and they reach out through a process where they have records of all service members and the demographics, and they adjust specifically to specific demographics, specific numbers, and to specific units, and a stratified randomized sampling technique, and then they hope for a response.

MS. FROST: But I mean, literally, physically, logically, mechanically, how do they reach out to that service member?

DR. McDONALD: You'll have to have them. I can't.

MR. LOVE: I think most of it is electronically. I think you may have a Defense Manpower Data Center representative that's going to speak to you.

MS. FROST: Okay.

MR. LOVE: Their survey instrument is a

Congressionally mandated instrument, started around the 1995 time frame, both for sexual harassment and equal opportunity, and then in later years sexual assault and other areas.

COLONEL HAM: DMDC has appeared before one of the other subcommittees. They were here with Colonel Messler. DMDC sat next to Colonel Messler in the subcommittee. That was DMDC, Defense Manpower Data Center.

And you get an email. I have one today. They're constantly surveying. You get an email telling you: I want you to fill out this survey. And it continues to ping you until you fill it out.

CHAIRWOMAN JONES: Anything further? Colonel?

COLONEL TURNER: I apologize. This is not about the survey, but it is related to your opening remarks, Mr. Love. I'll tell you why I'm asking the question and then I'll ask you the question.

Part of our charter is to look at the appropriateness of -- what is the appropriate role of

the commander in DOD's greater effort to reduce sexual assault. You talked about race relations. My understanding of race relations from the sixties and the seventies is it's dramatically better race relations and the crimes associated therewith is dramatically better today.

What, if any, significance did the commander have in that cultural and climate change?

MR. LOVE: That's a great question and I'd like to talk for a long time on it. Let me give you the short version based on really just my personal experience. I attended the Defense Equal Opportunity Management Institute when it was the Defense Race Relations Institute, so I went through that program, 16 weeks of training then, maybe 12 weeks of training today.

I worked as a race relations or a human relations instructor at Little Rock Air Force Base for at least two years before doing something a little bit differently. One of the things that I've noticed in my 25-year career is that that training period, even though

a lot of people hated it, they still talked about it in circles, in large groups, about the impact that the training had on their way about doing business.

The focus was on behavior, not attitudes, and it was -- we were criticized significantly for the training being sensitivity training. If it was done correctly, it really wasn't sensitivity training, but it did get people to open up, to share, in an audience that involved your most senior officers and your most junior people on the installation.

I think that contributed in large part to the increased involvement of these young leaders at the time, as they grew up through the system, becoming a little bit more sensitive and proactive in dealing with race relation issues.

We have not done that on the same scale when we talk about sexual assaults. We did some of it. Some of that training involved sexual harassment. But it laid the foundation for the policies that kind of followed in the later years. People had to understand why we were doing what we were doing and all that kind

of stuff.

That's very unscientific. That's just my personal experience from that time frame.

CHAIRWOMAN JONES: Thank you both, gentlemen, very much.

We're now going to hear about[?] the administration and reporting of the command climate surveys.

COLONEL GREEN: Yes, ma'am. We have the service reps.

CHAIRWOMAN JONES: Okay, great.

COLONEL GREEN: Mr. Love, Dr. McDonald, if you want to stay, if you think that's appropriate, that's fine while we have the service reps. Or you're welcome to --

MR. LOVE: We'll stay.

GENERAL HAM: Rap session.

(Laughter.)

(Pause.)

CHAIRWOMAN JONES: Again, let me apologize that we're running so late today. Thanks for being so

patient. I'd like to begin with Colonel Emerson, Army, Office of Diversity and Leadership.

COLONEL EMERSON: Good morning.

CHAIRWOMAN JONES: Good morning.

COLONEL EMERSON: I serve as the Equal Opportunity Policy Branch Chief in the Army Resiliency Directorate, Army G-1. This is my third equal opportunity assignment. Previously I served at the United States Military Academy as a diversity officer, responsible for both the equal opportunity program and the sexual harassment -- excuse me, sexual harassment/SALT response and prevention program.

Before my assignment to West Point, I was actually at DEOMI as the chief of senior leader training. I completed the equal opportunity adviser course in September 2007.

In my current role, I advise -- I'm responsible for advising and revising portions of the Army command policy, Army Regulation 600-20, pertaining to the equal opportunity program, as well as treatment of persons, which is formally known as hazing, and

command climate assessments, to include surveys.

I have been a respondent on command climate surveys, meaning I have actually filled them out. As an equal opportunity practitioner, I have helped interpret the results for our leaders who requested the survey. I have supported post-survey follow-up activities as well, such as focus groups and individual interviews, and been on action teams.

In accordance with current Army command policy, commanders, company commanders or their equivalents, are required to conduct command climate surveys at the following times: within 30 days of command, 120 days for Army Reserve and Army National Guard commanders; again at 6 months; and annually thereafter. Surveys will be conducted with other assessment activities.

Above the company level, right now it is voluntary for other leaders and commanders. As Secretary of the Army directive is currently under legal review which will mandate it at other levels all the way up to the ACON, ASEC, and direct reporting unit levels.

I'd like to explain the process actually in the Army, how we execute a DEOCS. The equal opportunity adviser should be actually monitoring changes of command dates so that they are the ones that are responsible for monitoring that timeline for the commander. They set up a meeting with the commander to establish the survey window in accordance with the unit's training schedule and to figure out which ten questions, locally developed, and the short answer, five questions max, that they would like answered by the unit members.

The equal opportunity adviser then goes into the DEOCS.net website to request the survey. The results in the Army are accessible to that equal opportunity adviser and that commander. Up until January 31 of this year, those were the only people that actually looked at it and it was up to the commander in the Army to say, yes, boss, or boss's boss or somebody else, here's what my survey said.

Since the 31st of July, the actual capability to request the survey mandates the supervisor's email

address and so he or she receives an automatic link to the survey results at the same time the company commander or the upper level leader requests it, and the EOA.

The commander communicates, or should communicate, with his or her members. It's not just presto, here's an email in your box, fill out the survey. The leader should be actually notifying his or her unit that, I would like your honest feedback. And they should tell that unit what kind of format you're going to be requested to provide that, whether it's a Scantron form or the online functionality.

DEOMI has a phenomenal briefing that does a very good job of explaining how one might actually self-identify, but otherwise that the survey results actually protect the anonymity of the respondents. So we encourage folks to use that as well.

The commander should state how the results will be incorporated into the feedback back to the unit at some subsequent date and that any allegations, say, of criminal behavior may result in actual

investigation, and I've been a part of something like that as well.

The survey instruments are then shared with the unit and subsequently typically the window of opportunity to fill out the survey is open. Once the window is closed, DEOMI compiles the results, they merge the results of the Scantrons and the online functionality, and they conduct analysis of the results, draw conclusions, and prepare recommendations for the commander.

They post that report to the website and the commander receives an email that says "Notification of survey result" and it has a password, a link to the survey results, and they go in and they can download it themselves, the commander.

The equal opportunity adviser is also taught how to download the results and conduct his or her own analysis of the data with the thought of looking at it from the unit's mission, their OPTEMPO, and the current operational environment, so that if DEOMI missed the boat because they are not Army, it's okay, because

that's what we're here for. It's a team effort and maybe they know something we don't know and we might know something they don't.

The equal opportunity adviser then meets with the commander to discuss those results and provide their analysis and review DEOMI's conclusions. Together or the commander on their own develops their action plan that comes out of that to address any identified weaknesses or, while this information is confusing in the survey results, some people said this, but the actual handwritten, or that are subsequently typed for us if it's online, results may be confusing, so we can conduct focus groups or conduct individual interviews of any unit members that would provide clarification.

Commanders are required to conduct a briefing to their command, their next level leader, on their action plans and the results of their surveys. They're encouraged to also inform their unit, such that you're not just filling out a survey and it goes into the ethernet, but they actually get feedback on the

results of the survey, and also identify unit members or volunteers that would like to work on action teams for any subsequent follow-up to the survey to improve -- or seek out confusing things or core policies that are established, say, on an installation.

With respect to the Army's FY '13 rollup of surveys, the Army had a 56 percent response rate compared to the number of surveys, so the denominator of surveys. So that's considered phenomenal. Are there any people that don't respond to the survey? Yes. Compared to the population, the demographic of the Army -- and I know it's an apples to oranges comparison because you don't just get one survey every year. Sometimes you might get two, and if you PCS you might get surveyed three times. Just because you get surveyed doesn't mean you fill it out, because some people get tired of filling out surveys.

In general, the enlisted population actually responds to the survey in the same frequency to their same population. DEOMI breaks it down E-1 to E-6 and E-7 to E-9, and we have the same percentage rate

responses for those two populations. So the lower enlisted do not respond higher than the senior level.

Officers have a lower response rate compared to their demographic, as well as civilians do, which makes sense to me because the officers are the ones requesting the survey and they don't respond to their own survey. And although we have moved to the DEOCS, away from the Military Equal Opportunity Command Climate Survey, the MEOCS to DEOCS, the civilians aren't actually seen as respondents to the survey as a whole. But they do. A significant population percentage actually responds. It's not a representative sample. It's much more.

So we believe that the survey results provide a valuable tool and they do, or could, inform commanders of potential actions that they could take to improve their command climate.

I'm here to answer your questions if I can be of help.

CHAIRWOMAN JONES: Any specific questions?

(No response.)

CHAIRWOMAN JONES: All right, thank you very much.

Mr. Bradshaw, 21st Century Sailor Office.

MR. BRADSHAW: Sounds great.

(Laughter.)

MR. BRADSHAW: The Navy's 21st Century Sailor Office was actually stood up in June by the Secretary of the Navy as the 21st Century Sailor Program. So each of the tenets are represented within the 21st Century Sailor Office. We represent inclusion. Our office originally fell under the Diversity Office and when the 21st Century Sailor Office opened or was stood up we transferred from Diversity over to the 21st Century Sailor Office.

I'm going to use a little different approach. I want to give you kind of a timeline approach to how the Navy has worked with the command climate assessment. If you have a copy of our instrument, the Navy EO policy, you'll see that the latest policy was drafted on 25 July 2007. This process that I'm going to talk to you about has been in existence since 2007.

Within the policy it states: "The immediate superior in command, or ISIC, shall ensure subordinate commanders assess their command climate within 90 days of assuming command and annual follow-up assessment during their command's tenure, monitor the command climate of subordinate commands."

And then it says for commanders, commanding officers, and officers in charge. So I heard the question earlier, at what level. If you have the title of commander, commanding officer, or officer in charge, you are required to complete the command climate assessment process.

These folks who are titled commanders assess their command climate within 90 days of assuming command and annual follow-up assessments during their command tenure, and the purpose of the climate assessment is to determine the health and mission readiness of the unit.

This process shall be accomplished by utilizing the triangulation method. Now, we don't just use the DEOCS alone. The DEOCS is the survey instrument that allows the commander to identify perceptions.

Every command has what's called a command assessment team. The command assessment team is led by the executive officer. The executive officer on the command assessment team has a representation of the command. So we have junior enlisted, senior enlisted, junior officers, senior officers, civilians, who are represented on the command assessment team, to review the results of the DEOCS.

Once they get the results of the DEOCS, they conduct records and reports. So for example, if the command has 20 percent African Americans and they notice that only 5 percent of the respondents from the DEOCS are African American, they want to find out -- it's kind of a barrier analysis -- why are African Americans not taking the survey. So that may be a focus group question.

So records and reports, focus groups, observations. And observations by the command assessment team, they're done year long. It's not just during the period when the survey is being conducted.

So the DEOCS alone -- I just want to emphasize

that -- for the Navy does not constitute the command climate assessment. It is the mandatory portion for every command to use. They have to use the survey instrument. This was put in place in 2007.

Once again, the results of the DEOCS, they're perceptions. So we want to validate the perceptions from the respondents utilizing the triangulation method. On a quarterly basis, we track DEOCS completion by echelon two command, and we report the status to the Chief of Navy Personnel. What CNP has done is, if he notices that one of the echelon two commanders' percentage rates are low during the quarterly tracking, he will personally call them to find out what's --

GENERAL HAM: What's an echelon two?

MR. BRADSHAW: Echelon two, they oversee Fleet Forces Command, COMPAC Fleet. They oversee all of the --

GENERAL HAM: Three and four-star commands.

MR. BRADSHAW: That's correct. That's correct, yes, sir, three and four-star commands, major

commands.

MS. HOLTZMAN: Excuse me. When you say the percentage report, what are you talking about?

MR. BRADSHAW: DEOCS completion. So we track unit DEOCS completion. If you recall, 90 days upon assumption of command and annually thereafter, so we're tracking that. And if CNP identifies that, he sees that a percentage is low from one of the Ech-2 commanders, he picks up the phone or emails him and says: Hey, what's going on? And there could be a valid reason. Maybe it's due to a high OPTEMPO. However, they still have to complete it. And it may be because they're waiting for the third quarter to complete those surveys.

The Navy's made significant progress since 2009, when we had 56 percent of the Navy's commands who had completed the DEOCS. We just wrapped up this year and we had 97 percent of DEOCS completion. The 97 percent is not accurate. I think it could be higher. But due to the recent incident with NAVSEA, they were unable to provide us with their end of the year report

-- the shooting that occurred at NAVSEA. They don't have their -- they did not have their information, so we had to go off of the third quarter information. So we feel as though that percentage is probably even higher than 97 percent. But 97 percent from 56 percent in 2009 is a significant improvement.

On an annual basis, the Navy Sexual Harassment Prevention-Equal Opportunity Office -- that's the office that I oversee -- provides a Navy climate assessment report that goes to the Vice Chief of Naval Operations via Chief of Navy Personnel. The report includes an executive summary of fleet input, an assessment from the Navy Sexual Harassment Prevention Office that identifies areas of strength, areas of concern, significant findings, and recommendations.

A DEOCS rollup report and executive summary is provided to the Navy Sexual Harassment Prevention-Equal Opportunity Office by DEOMI. That information is also provided in that report.

In the summer of 2012, CNO stood up an executive subcommittee on examining the continuum of

harm to provide him with an independent assessment of the relationships between our institutional service environment, Navy culture, and our policies regarding sexual harassment prevention. What his intent was, he wanted to take a look to see if we focus more on the left side of this continuum of harm, the behaviors, would it have an impact on reducing behaviors on the right side, which is sexual assault.

The panel briefed CNO on their findings in June of 2013. A significant finding was that a climate that permits incidents to the left side of the continuum to occur increases the likelihood for a climate for sexual assault to occur and commanders are the front line of defense.

In March of 2013 we sent to the fleet NAVADMIN 079.13. This was guidance on command climate assessments. Now, this was provided because the DEOCS went down. The DEOCS went down on 19 September of 2012 and came back up on 1 March 2013. So this NAVADMIN provided guidance to the fleet letting them know what to do, for those commands, what to do to catch up to take

the climate assessment -- to conduct their climate assessment before the end of the fiscal year.

Once again, we reemphasized the requirements of the command climate assessment for the commander.

6 May 2013, SECDEF memo came out on sexual assault prevention and response to enhance commander accountability. When that happened, our office coordinated with Dr. McDonald and his team, because one of the action items was to get ISICs' visibility on the DEOCS. Dr. McDonald and his team worked collaboratively with us and put in place a process that has now been implemented throughout DOD. When you request the DEOCS, the commander has to put the ISIC's information on there, so the ISIC then receives an email notifying him or her that the subordinate commanders requested that DEOCS. When they complete the DEOCS or they're completing it and requesting their report, the ISIC is then notified and receives the actual survey report.

MS. FROST: What's "ISIC"? I'm sorry.

MR. BRADSHAW: Immediate superior in

command.

On 18 July 2013, NAVADMIN 181/13 was released. It's the implementation of this requirement. The requirement was for 120 days. Our boss decided we're going to keep it at 90 days, 90 days upon assumption of command and annually thereafter.

We also added the requirement for a face-to-face debrief of the command climate assessment with the ISIC using the DEOCS, to include the executive summary and a plan of action and milestones for corrective actions. So the ISIC doesn't just get the report and leave it up to the ISIC to figure out. ISIC has to meet with the subordinate commander face to face. This is leveraged as a mentoring session. So when that subordinate command -- when the ISIC gets it, the equal opportunity adviser goes through it.

Let's just say that the ISIC identifies there's numerous comments on there that my command does nothing with sexual assault, and the subordinate commander doesn't address that. The ISIC will ask that question during this mentoring session. So it is not

going to escape visibility of the ISIC.

On 28 August of 2013, we released NAVADMIN 216/13. This was Navy performance evaluation changes. This was significant. We are now using the evaluation -- a system that's always been in place. We have certain blocks within our performance evaluations for both officers and enlisted. I heard somebody ask about what the senior NCO, what's their role in this. They're getting evaluated on it.

What significant contributions are you -- and this is for every sailor -- making towards command climate, improving command climate? We are under the belief that it is every sailor's responsibility to create a climate of inclusion, not just the CO's, not just the senior enlisted leader; it's every sailor's responsibility. So now we're evaluating them on that.

That is all I have. Finally, I heard the question -- this year in our annual survey we had 227,000 of our sailors who responded to the DEOCS.

Do you have any further questions for me?

CHAIRWOMAN JONES: I'm just confused. Are

they mandatory? Are they still voluntary?

MR. BRADSHAW: Good question, ma'am. It's voluntary for the respondent. So if a sailor doesn't want to respond to the DEOCS, they do not have to. It's voluntary.

MS. FROST: But giving the survey is mandated?

MR. BRADSHAW: It is. And the process we use is when the survey is released the commander announces it and informs the sailors: This is very important to me; I need you to take it. Then if week one goes by and they notice that maybe only five percent of the command has taken that survey -- and they have that visibility -- the skipper will send out an email or call an all-hands call and say: Look, we're way behind. Or maybe it's to his or her department heads, saying: We've only got five percent participation.

But what we don't do is we don't say liberty is canceled until you complete this, because once we do that we're not going to get an accurate response.

CHAIRWOMAN JONES: Where is this 97 percent

coming from, though?

MR. BRADSHAW: From the number of commands.

CHAIRWOMAN JONES: Commands, okay.

MR. BRADSHAW: Yes.

CHAIRWOMAN JONES: There you go.

MR. BRADSHAW: Yes, ma'am.

CHAIRWOMAN JONES: Thank you.

MS. HOLTZMAN: Have you tabulated any of the results of having the commander -- what do you call it, the ISIC's?

MR. BRADSHAW: Yes.

MS. HOLTZMAN: Right. What's the consequence been of this new policy? Do you have any results tabulated, any information about that? Do you have any analysis?

MR. BRADSHAW: If you recall, ma'am, this just started.

MS. HOLTZMAN: I understand that. That's why I said, do you have any info on that?

MR. BRADSHAW: We don't have any yet.

MS. HOLTZMAN: How are you tracking this?

MR. BRADSHAW: What's now in place -- before we were just tracking the responses of the DEOCS. So once you completed it that was a check in the block. That check in the block doesn't occur now until the ISIC has had the face-to-face debrief with the subordinate commander. So that's the completion.

MS. HOLTZMAN: Okay. Maybe this is not your assignment, but how would you track what impact this change has had on climate in the units?

MR. BRADSHAW: Well --

MS. HOLTZMAN: Is anybody tracking that and how would you do that? Or maybe that's a question for you, Dr. McDonald. I don't know. Maybe you'll regret staying.

DR. McDONALD: That's a difficult -- that will be a difficult thing to track, but a very good question. It would be difficult to actually link those two things together, especially, as General Ham mentioned, because it's a new world with a new survey. But over time we will be tracking the metrics from this point forward.

CHAIRWOMAN JONES: Do you have any anecdotal evidence that when these surveys are going up the chain of command that there are reactions from the superior commanders? I don't want to call it discipline, but just anecdotally? Maybe any of the services?

DR. McDONALD: Maybe some of the services could say.

MR. BRADSHAW: I think that's a concern, that it's going to be used as a report card.

CHAIRWOMAN JONES: Right.

MR. BRADSHAW: That's the concern. So that's why our leadership has emphasized to use it as a mentoring tool, because 90 days upon assumption of command, that's giving you a baseline of what you're taking over. But that annual -- so you're having this face-to-face debrief with your ISIC when you're first taking over. One year from now -- if you recall, we're just about to start this process. If the results have decreased -- I think that's when we're going to find out what the results are.

CHAIRWOMAN JONES: Of course, the new

commander isn't responsible for the old climate.

MR. BRADSHAW: That's correct.

CHAIRWOMAN JONES: Colonel Emerson, did you have something you wanted to add?

COLONEL EMERSON: Ma'am, are you looking at a report card?

CHAIRWOMAN JONES: No. I'm looking at --

COLONEL EMERSON: Or actually like doing something about what's in there?

CHAIRWOMAN JONES: Yes, doing something about what's in there.

COLONEL EMERSON: I happened to be part of a survey in which, as an equal opportunity professional, where the results in the short answer question they raised the concern, or actually allegations of sexual harassment or sexual assault. What we do and advise the Army personnel if they call me, well, can I just give my whole DEOCS report to that investigating officer, absolutely not; just that portion that raises the concern, and then it's the investigating officer or the commander's inquiry's responsibility to go out and seek

the rest of the story. And then the subject or subjects are afforded due process. In my case -- not me, but the person was actually dismissed from their leadership role.

MS. FROST: I have a hypothetical. Once you've been tracking metrics for some time -- and I think the question about standards or benchmarks is really key here -- when the services conduct, I don't know what you would call them, but promotion boards, wouldn't this kind of data -- if you see a commander that consistently, where they go, their commands have consistently shown average or below average results, is there any discussion at what point this data would be considered in promotion boards?

COLONEL HAM: Your next session is with the personnel folks, who are going to address --

MS. FROST: Okay.

COLONEL HAM: -- how this now has to be incorporated into personnel evaluations.

GENERAL HAM: Is there -- for any of the services, have you found a correlation between the

percentage of a unit responding to the DEOCS and whether that is generally positive or generally negative in the nature of the responses?

CHAIRWOMAN JONES: Go ahead.

COLONEL EMERSON: In my experience, it's whether or not the leader actually asks, and whatever method works in that organization, because some of them are geographically dispersed. But if the commander, the leader, asks for the information, that has a higher response rate than, say, you just throw out the survey and you walk it to the adviser and the administrator: Hey, don't forget the survey. The leader actually asking for input improves it.

MR. BRADSHAW: One of the most important steps in the process is for the commander to debrief the command on the results. So if you've taken the survey in a previous year and you've put significant information into your comments and nothing was ever debriefed, the next time you're required to take the survey chances are you're not going to participate, because what's the point?

And just like Lieutenant Colonel Emerson mentioned, I think it is commander-dependent. I think the analogy we always use is like "Undercover Boss." I don't know if you've ever seen that TV show, but sometimes policies that leaders put in place adversely impact those who are at a lower level.

When they get the results back from the command climate assessment, it's a big tool now for the CO to go up in front and say: Many of you stated these things; well, we looked into it and this is what we found and this is what we're going to do about it. That's why the executive summary and the plan of action and milestones is so important to debrief your command.

MS. HOLTZMAN: That raises an important point. I just wanted to ask you, Colonel Emerson, about that. In the case that you mentioned where the DEOCS report actually led to the dismissal of the commander, were the people in that unit informed that that the survey itself is what led to that result?

COLONEL EMERSON: There were actually multiple things, but the survey comment provided more

clarity, and then subsequent sworn statements from a whole host of folks within the organization provided even more clarity into the situation, and historical references in that organization.

So were they informed that specifically the survey was the actual starting point? Actually, you could peel back the onion and say that a conversation that the next higher level leader had with someone who was departing her organization might actually have been the impetus, and then that was just a "holy cow" moment, ma'am.

COLONEL HAM: What level leader was it?

COLONEL EMERSON: What level? It was a colonel, ma'am.

COLONEL HAM: Who was relieved? The colonel was relieved?

COLONEL EMERSON: Yes.

MS. HOLTZMAN: So what did the survey have to do with that?

COLONEL EMERSON: A person who had been a victim had mentioned specifics about things that had

happened that they'd never mentioned before, and that was the part in the survey that raised specific eyebrows.

MS. HOLTZMAN: But at the same time, or maybe before, other events had happened?

COLONEL EMERSON: Ten days prior somebody had said some curious comment in an outbrief before they departed.

MS. HOLTZMAN: Thank you.

CHAIRWOMAN JONES: Thanks.

Can we hear from the Marine Corps? That would be Colonel Johnson and -- is that Master Sergeant Poole?

SERGEANT POOLE: Master Gunnery Sergeant.

CHAIRWOMAN JONES: Master Gunnery Sergeant. I'm always afraid to figure out what these mean. I was going to start with "Gunnery," but then I think[?] maybe it isn't.

Okay, Colonel.

COLONEL JOHNSON: Ladies and gentlemen of the panel, thank you very much for the opportunity to

appear before you[?]. I brought my expert on all things surveys, Master Gunnery Sergeant Lester Poole. He is the senior equal opportunity adviser for the Marine Corps. He and I work in tandem at the Diversity and Equal Opportunity Office, where I am the branch head for the United States Marine Corps.

We listened with great interest to the conversation earlier, so I thank you for letting me sit there in the cheap seats. Great interest because when I first came aboard to this position in 2011 one of our frustrations that we voiced to the folks, our partners at DOD and the other services, was that there is no accountability associated with the command climate survey. The commander assesses what the other individual left him or her after 90 days -- we make him do it in 90 days -- and he can throw it in the desk drawer and plod on for the next two to three years with no change to the climate.

So when I saw this NDAA '13 legislation stating that -- hey, did someone have our office bugged? Did Jimmy, did someone actually listen to the Marine

Corps and bump that up?

(Laughter.)

MR. LOVE: We always listen.

COLONEL JOHNSON: I don't really care how it happened. I just -- if I could do backflips at my age, I would have been doing backflips in my office, because I'm a dad. I've got a daughter who's 13, so is on the cusp of discovering boys. So I have a passion for fairness. So what I probably lack on professional acumen, not being school-trained in this, I have a passion for it.

I have a passion for my Marine Corps, and some of the things that have happened we're not pleased about. That's why our Commandant has instituted the Reawakening campaign, to get back to basics, because we see a lot of things that connect to sexual assault as gateway behaviors, just like a gateway drug. It may seem, ah, not so important. It may seem administrative. But almost like a counterinsurgency, if you have a permissive environment for those things to happen, then there are individuals who will take

advantage and they'll raise it to the next level, to go beyond admin to where it becomes a crime.

Again, I'm pleased to be part of this. I hope we're able to contribute positively to the discussion. What I can't answer for you, I will gladly take questions for the record and I'll get back to my other experts back at Quantico and get you answers as soon as possible. Hopefully we can get to the bottom of all your questions, provide you some solid answers, and give you a peak inside the Marine Corps.

Again, I think that the legislation has given teeth to our performance evaluation process. There is a block in the Marine Corps fitness reports. I think one of my colleagues, Colonel Robin Gallant, is going to discuss that in detail in the 1300-1330 session.

But that block is called "Developing Support" and for years you kind of get to that block as you're marking the fitness report for a subordinate, and it's kind of squishy. There's nothing solid that I can really put in here. But with this new legislation -- the wording in the block is basically: How well does

the individual maintain a good climate? How well does the individual mentor regardless of race, regardless of gender, regardless of ethnicity? I'm paraphrasing here, so I'm sure you'll be able to see that document when Robin gets in here.

But that legislation gave that teeth. As General Ham and General Altenburg, you know, the fitness report, the performance evaluation, that is the stick. Everyone wants a good one, and if you're doing things that don't get you a good one, you're shown the exit. That's exactly what this new legislation I think will help us do with toxic leaders.

I think there was an earlier question about what about NCO's, how are they impacted by this, is there any ramification for I guess a toxic NCO. In the little prep session that we had before we came here, it was discussed that, yes, there was a senior enlisted person who was basically removed from a position of responsibility based on what was in the command climate survey. So I think it's too early to say, yes, we've got tons of data that DEOMI can sift through for us, but

to me that's an indicator that, yes, the second echelon of looking at what goes on in climate can and will have an impact.

So without any further ado, I'll close out here, unless the Master Guns has anything, and I'll take any questions you might have.

MS. FROST: May I ask a question?

CHAIRWOMAN JONES: Yes.

COLONEL HAM: General Ham, you might be an appropriate person to ask this, too. Generally, if you get a command climate survey report that indicates there are some issues or indicates there are serious issues, do you notice other things going on in that command? You called it "peel back the onion."

COLONEL EMERSON: Yes, ma'am.

COLONEL HAM: Generally, if there's a rotten command on an installation, it's generally not a secret. And I don't mean just the commander. I mean there's all kinds of problems in that unit. Is that just an impression or is that an empirically validated fact?

COLONEL JOHNSON: Speaking with our SAPR

point of contact for the Marine Corps, he's an aviator and he talks about, well, yes, SAPR's just the warning light. The survey is just the indicator on your dashboard. Then when you take it in to the mechanic and he pops the hood, oh my God, you've got binge drinking going on, underage drinking. You've got other disciplinary actions going on there.

So that's why we're choosing to focus on the holistic approach and when we get at these gateway behaviors we can deny them the corrosive environment that will allow sexual assault.

COLONEL HAM: But I don't even mean just sexual assault, sexual harassment. I mean if there's a bad command climate, toxic leader, something we've heard a lot about in the last few years before the sexual assaults and harassment rise in visibility, we heard a lot about that. But it was never news to the unit. You know what I'm saying?

COLONEL EMERSON: Yes, ma'am. I would submit to you --

COLONEL JOHNSON: Take a look at the --

COLONEL EMERSON: I'm sorry.

COLONEL JOHNSON: Go ahead.

COLONEL EMERSON: -- that that's not true in every unit. For instance, I'll offer the library at the military academy. It's all civilians. The first commander or leader in the organization isn't actually a military person; it's the dean of the academic board. They didn't really have a voice and they're a wonderful group of mostly introverts. And it wasn't until folks actually talked to them and they received lots of coordinating after the survey type activities, and I think we grew them as a member of the full academy team as a part of that outcome from doing the survey and other things, because the dean asked for them to provide feedback.

But that's not the only organization, but oftentimes organizations that are comprised mostly of civilians that haven't ever been surveyed like this before will have that same kind of a lack of -- well, where do I go? What's my feedback tool or mechanism? I get a new military boss every two years.

So at least what I have seen, it provides wonderful feedback; that many people just take for granted that they work their shift, whatever that might be, and they go home, so they got to be happy. And I've seen surveys that say as a whole we're really happy, which is really weird.

COLONEL HAM: I guess what I'm saying is that there's no soldiers -- I can only speak for the Army. There's no shortage of -- there's no reticence to complain, right? It's a soldier's constitutional right to complain. And I'm asking if that's just an impression or if that's empirically validated. You're going to have anonymous IG complaints, you're going to have anonymous command hotline complaints. There's so many different ways for even a lower level enlisted person to say there's something rotten in my command, isn't there? Or is that just my impression as an officer?

SERGEANT POOLE: There is, ma'am. If I may, the concept here that a lot of the other services have already shared is that that one indicator of the survey

allows that commander, as well as the EO practitioners, to go in with that commander to help do a development action plan, put together an assessment team, to do the follow-on, to find out and validate, are these valid concerns?

They may be isolated incidents. It could have been one individual had an axe to grind and said, hey, you know, I don't like this style of leadership, this individual. Well then, that's where that team goes in and assesses and does the focus groups. Let's get the junior enlisted together and talk about what are some of the other concerns. We don't have to identify this particular issue, but what are your concerns? And that may open up the door for other issues that may be relevant with that command.

Not only do we do that with the junior enlisted, we will do that also with the senior enlisted, the junior officers, the senior officers, and allow them an avenue to talk about the things that they may not have felt comfortable talking about in the survey, or they may not have felt comfortable talking about it within

the command leadership.

Oftentimes we've found, and I've found particularly, in doing those surveys and trying to validate the concerns identified in the survey itself, that once we actually talk to those, let's find out, is there anything to substantiate that as a concern, there may not be. So then you go back to the commander and say: This is a holistic view of your command. Now let's work together to develop an action plan to address what those concerns actually point to.

The comments are really valuable. The survey data itself could be going in different directions, but those comments weigh heavy with those commanders. Once they read all those comments they say: Hey, someone may have actually identified individuals where this was something that is toxic. That's crucial.

So we look at the whole concept of it to evaluate a command. Then once that's based off the new requirement, that is also going to be briefed to the next level commander and it's that level commander's

responsibility to take whatever action they deem appropriate, hold those commanders accountable, but also to ensure that they are establishing the good order and discipline that's required within their commands. And it starts with those commanders pushing out initially: Hey, I need your honest feedback. We're going to go through that whole process to ensure accountability, good order and discipline, and then we move forward from there.

I think that whole concept is important, not just the survey itself, because oftentimes many may not take it. It's survey fatigue: I've just taken a survey, I've just taken a survey. Okay, well, those that did, we're going to go back, and if you didn't take it maybe you will take that opportunity to come and talk to us as far as a focus group so we can get at the root of some of those concerns at that point.

GENERAL HAM: Master Guns, if I may, the Navy-Marine Corps team is a pretty special relationship, I think. But with specific regard to the DEOCS, within the fleet and within the fleet Marine

forces, where Marine units are often disaggregated from their normal parent headquarters, how does that factor in in the role of the ISIC?

Does a group commander who is a Naval officer but overseeing Marines, does he or she see the DEOCS for the Marines that are deployed within that group?

SERGEANT POOLE: They do. Actually, sir, you have Marines that are tasked to Naval installations, but they fall under that commander. That commander, whatever service, joint service, they are responsible for capturing that. So they will -- those individuals who are part of that command will be part of the survey, because it doesn't matter what service you belong to; it matters what your commander's role is, what commander you're under.

We've got Marines on ships or we've got corpsmen that are attached to --

GENERAL HAM: I'm not focusing specifically on the individuals or small units, like corpsmen that are embedded within the Marines, but a MEU that is deployed. Their normal parent Marine headquarters

doesn't deploy with them. They deploy with a Navy group.

SERGEANT POOLE: It's possible. Yes, sir, it's possible that commander -- because again the term "commander," as we've mentioned before, the term "commander" could apply at every level. So if it's the company commander, they have an opportunity to participate in the survey and then that information is rolled up. That ship commander could also do a rollup report of all those subordinate commands, a maximum of 16, a minimum of 3. They have an opportunity to participate in it, and then that commander could take action based off of all of those commanders' information. So it's possible.

COLONEL JOHNSON: Sir, in the case of the MEU, the Marine Expeditionary Unit, the command is a fairly significant Marine Corps command, usually a precursor to a general officer. I would submit that that colonel commanding the Marine Expeditionary Unit is conducting his own unit survey.

GENERAL HAM: I think what I'm thinking

about is, because the interrelationship is so tight, the command policies of the Navy commander and the command policies of the Marine commander so affect one another that somehow you've got to figure out how you examine that.

SERGEANT POOLE: In most cases they mirror each other. As we review each other, all the services, we talk often about how our policies work together, especially when we have that same instance where we may have some that may be affected by their policies vice our policy. So we're getting closer together, which is another reason why the 90-day requirement, although it's the 120 days that is the NDAA requirement, the 90-day requirement is, for the commanders to conduct the survey, is shared by the Navy as well.

CHAIRWOMAN JONES: Thank you -- oh, I'm sorry, John. Did you have a question?

GENERAL ALTENBURG: I think your comments also reinforce the fact that leadership identification and figuring out these issues is much more than science. There's this whole art end of it that you just described.

You can't just rely on a survey.

Colonel Ham pointed out the toxic leader example, which everybody is aware of now. But there are all kinds of other leader examples that are not good. There's a leader who's just punching a ticket as a battalion commander or some other job like that because he or she knows that's important to success later and to getting promoted, but they don't like command, they don't want to be a commander, and they don't lead. So there's a benign leadership that allows all kinds of bad things to happen.

So it's not just the toxic leaders that's a problem. What you're talking about is how you drill down and get into those nuanced aspects of leadership that go way beyond what you can find in that survey. Like you said, the survey is kind of a can-opener.

CHAIRWOMAN JONES: Now we'll hear from Mr. Salazar for the Air Force.

MR. SALAZAR: Thank you, ladies and gentlemen, for the opportunity to showcase the Department of the Air Force equal opportunity program.

As introduced, I'm Cyrus Salazar. In this capacity I oversee the five programs in Air Force equal opportunity, which are: the military equal opportunity program, the civilian equal employment opportunity program, human relations education and training, and lastly our organizational climate assessment program.

Unique to this discussion this morning is that the Department of the Air Force has historically been the only entity that has had a different organizational climate assessment, which is the unit climate assessment. As mentioned earlier by Dr. McDonald, 1 January is the transition date for the Department of the Air Force to transition from the UCA to the DEOCS. We have spent the past nine months prepping for this, and for three reasons:

Number one, when we talk about DOD corporately we need to have an organizational assessment that is conducive to all the services. Air Force, having our own process, did not allow us to showcase or share data among the services. We are now

able to join that perspective where we can have the same data that can be compared across the services.

Secondly, we were tied contractually to the unit climate assessment.

Lastly, we are able to have cost savings if we separate from the UCA to the DEOCS.

In the military equal opportunity and the civilian program, we merged in 2007 to enjoy the synergies of both the MEO and EEO portion. We have both military and civilian personnel who conduct our organizational climate assessments. We are over 300 strong, representing a majority-enlisted cadre. However, we do have 11 officers on our team. We also have GS-7's all the way up through GS-15's in our career field.

That makes us unique in that we have established our own Air Force specialty code, similar to an Army MOS. So our personnel come into this career field transitioning out of another field as an E-5 and they can retire as an E-9 in this career field. As well as our civilians, they can come in at a lower grade and

hopefully retire at a higher grade in this career field.

This is a unique time for us because we've been preparing for this transition and I'd like to showcase what we've been doing. We have circulated this information with our major command equal opportunity strategic advisers to reach out to their respective leadership and the constituents in their chain of command. In that we conducted focus groups about this transition to identify how this is going to affect the personnel at each installation.

The question was posed earlier, is there any anecdotal data that we can share or glean from these focus groups? What we have learned is some commanders were not sharing the results of the climate surveys with their personnel. We understood the results of the NDAA as being a win-win for everyone. Now commanders are accountable and must have that information showcased to the next higher in their chain of command, and secondarily that organizational climate data will be showcased before the personnel at the installation level. So a win-win for everyone there.

We did take a robust approach in conducting these focus groups and that was the number one issue that came out.

We also have the capability to conduct the organizational climate assessments in the AOR, so we have had many UCA's in Iraq under OEF and OIF, as well as in Afghanistan we have the capability to do that.

We also see the portion that Dr. McDonald talked about. You get the actual results that go forward, but we find the most telling portion of the climate assessments is the comments section itself. That's where our personnel spend a significant amount of time going through that comments section to identify what are those trends, what are the areas that are of concern to us, is there anything that we missed when going through the results.

We used to redact that information with titles and names. However, going forward we want to provide the commanders a robust and a comprehensive analysis of their program, of their organization. So no longer will there be information redacted. It's

going to be a verbatim holistic approach for these commanders to review and understand what's happening in their program.

I did an analysis of the data that was requested from 2007 to 2013, and each year we provide an overview, an annual report, of our climate assessment data. We have that for the unit climate assessment and, as Dr. McDonald and Mr. Love mentioned, 1 January will be the break date for us, the transition date. We'll be starting anew. However, we are maintaining the capability to have reachback data from our climate assessments, because we typically get Congressional inquiries or any type of other investigative inquiries about what's happening in various chains of command.

Further analysis shows us that we've had a historical 40 percent response rate for our surveys. If I could just showcase the data here, in '07 we had a total of nearly 300,000 assigned surveys and responses back were 119, so that's a 40 percent response rate. Looking at 2013, we had 214 assigned and those surveyed was 106, so we're at a 50 percent response rate.

Would we like that to increase? Most definitely. As was mentioned by my colleagues, when we have a POC who is assigned by the commander they receive a weekly update of how the percentage is increasing for each of their personnel in that organizational climate assessment.

It is a voluntary process. We encourage our folks to participate and showcase the benefits of having the opportunity to provide verbatim input to your chain of command about issues, positive or negative, that are happening within the organization.

If there is any questions I can entertain, I'd be glad to showcase further things that we're dealing with in the Department of the Air Force.

MS. FROST: I have a question.

CHAIRWOMAN JONES: Yes?

MS. FROST: That's a pretty significant decrease overall, though, 300,000 down to 214,000 responses. That's my first question. And I don't understand what you meant in that in the comments section information is not going to be redacted,

including names --

MR. SALAZAR: Right.

MS. FROST: -- specific dates, incidents.

MR. SALAZAR: Exactly.

MS. FROST: Who exactly -- it's clear that it's shared with the commander above. But you said at the installation level? I didn't quite understand what you meant by that.

MR. SALAZAR: Sure, let me clarify. A commander will request a unit climate assessment or a DEOCS and they are the receiving authority of everything that's within that report. We used to redact the names and the titles of any information in the comments section of a climate assessment. Going forward, we are not redacting that because the chain of command needs to understand. If there's a problem with X, Y, or Z, we don't need to redact that; they need to look at that and ascertain if this is something they need to address. So that will no longer be redacted. It's a verbatim approach.

MS. FROST: What do you mean, it's shared at

the installation level?

MR. SALAZAR: Okay. It'll be shared with, it's either a wing commander, a group commander, or a squadron commander. Their next higher in the chain of command will have that. And what we are encouraging our commanders to do is when they have a commander's call or when they have an after-action outbrief to their organization, so that the airmen in their chain of command will understand the results of the climate survey.

So no longer do we want to see commanders just putting that organizational climate assessment in the desk and it remains there. We want that to be briefed to the members of their organization at each installation.

MS. FROST: But the overall assessment is what -- the results are shared, not the unredacted data?

MR. SALAZAR: Exactly.

MS. FROST: Okay.

MR. SALAZAR: Exactly, the overall, exactly.

MS. FROST: And then the drop from 300,000 to 214; do you have any -- because the overall -- you actually have fewer people responding, even though the percentage has gone up.

MR. SALAZAR: Exactly. Historically, the way that Air Force had designed our policy was we would have a two-year rotation of climate assessments. So in 2007 and then we'd have another one in 2009. These numbers are going to change drastically when we transition just to meet the needs or the intent of the FY '13 NDAA, in that we're going to have the 120 requirement and we have the yearly. So we're going to see this spike.

Part of the concern that all of us have had is we do not want to see through survey saturation the numbers dwindle even lower, because we understand that it's going to double our requirement, so we'll be having these once a year.

But going back to the comment, ma'am, why we've had a decrease, I think I've provided for the tasker the actual verbatim data for each of these annual

reports that showcase the up and down trends that we've had. It depends on the cycle that we've had every two years. That's when the climate assessments were due.

CHAIRWOMAN JONES: Colonel?

COLONEL TURNER: Because the Air Force is different, I have the first part of this for you and then the second part for everyone. How does the unit climate assessment capture, if at all, the highly transitory populations such as those in the training environment? So then how will that training environment, particularly those in training status, be captured in this new process?

MR. SALAZAR: The only personnel within Air Force who are not part of the unit climate assessment are the cadets at the Academy or personnel who are at any form of PME.

MS. HOLTZMAN: What's PME?

MR. SALAZAR: Professional military education. So if they're at Maxwell Air Force Base or another DOD school participating in their development, they will not be included in any form of climate

assessment at that location.

COLONEL TURNER: So do you survey those in basic military training?

MR. SALAZAR: No, ma'am, not BMT nor at the academies.

COLONEL TURNER: Not in training.

MR. SALAZAR: Exactly.

COLONEL TURNER: Do you survey the tech training students?

MR. SALAZAR: No, we do not.

COLONEL TURNER: Those in the basic level skills or the first level specialty skills are not surveyed?

MR. SALAZAR: Exactly.

COLONEL TURNER: How about the new process? Will it capture any of those?

COLONEL EMERSON: Ma'am, there's nothing that precludes us from surveying brand new soldiers to the Army. The things that are in the survey that they may not understand because of the language used, organizational leadership vice chain of command maybe,

they would provide whatever response they would provide. But there's nothing that would preclude someone in the Army from having them surveyed, other than the fact that, you know, I get a group of -- unless they're there for a long period of time, I get a group that's here for a few months and then I get a new fresh group of brand-new soldiers to respond.

The military academy, for instance, does not use the DEOCS for the cadets, mostly because there isn't an option for cadets in the dropdown box for rank. However, the Defense Manpower Data Center does survey the cadets on an every other year basis.

CHAIRWOMAN JONES: Yes?

MS. HOLTZMAN: Can I just follow up on that? Weren't there some major scandals of sexual assault at training facilities?

COLONEL EMERSON: Yes, ma'am.

MS. HOLTZMAN: How do we get that?

COLONEL EMERSON: Ma'am, I'm not responsible for --

MS. HOLTZMAN: No, no, no, no. How do we get

the information about that if we're not surveying the training people, people in training?

COLONEL EMERSON: Right.

MS. HOLTZMAN: And there have also been problems at the academies. How are we getting that information if they're not being surveyed? This is a wonderful survey that you have, I believe from what I've heard. But if there are sensitive populations that are not being surveyed, what do we do about that?

MR. LOVE: Some of the surveys -- well, some of those units may not get the DEOCS, which is primarily for operational units, but they are surveyed. The Defense Manpower Data Center surveys the service academies. I cannot tell you that they survey basic trainees at installations, but basic trainees do have the opportunity again to file and identify complaints.

The survey is great and it's a starting point, but there are other ways that commanders can look at and assess what's happening.

MS. HOLTZMAN: It just seems to me, though, that a primary objective here ought to be, in terms of

command climate, because there's command climate in regard to training, that it ought to be universal, just universal, so that we can get these problems. Yes, we have other kinds of surveys and so forth, but you spent a lot of time developing yours and maybe it should be universal and you should think about that.

I don't know if you have any feelings about that, Mr. McDonald. We'll put you on the hot seat.

DR. McDONALD: As Mr. Love mentioned, DMDC and SAPRO do, at least I think on an every two-year cycle, do go to the academies and do their own survey. Administering a survey in an educational environment, it may need to have some modifications to it, but it's certainly something that could be considered, I believe.

MS. HOLTZMAN: I just wanted to throw out one other point, which is I really hope that with this new change of requiring commanders to report to their higher commanders about the results of these surveys, that we are tracking the impact of that in some way. I mean, I can't figure that out. I'm not a psychologist, I'm

not a statistician. But it's critical, it seems to me, from the get-go to begin to develop metrics for that.

DR. McDONALD: I agree, and I think that, as we kind of talked about a little bit, I think that initial survey and then what the delta or the change is the year thereafter may be the key for us to start to look at the shift.

MS. HOLTZMAN: Right, that may be the key. But you ought to be thinking about what it is now so that you can put it into effect as soon as possible.

DR. McDONALD: Absolutely.

MS. HOLTZMAN: I don't mean to make that -- I would hope that you'd be thinking about that now so you could put it into effect.

COLONEL EMERSON: Ma'am, can I interrupt for the academies?

MS. HOLTZMAN: Yes, sir.

COLONEL EMERSON: The United States Military Academy.

MS. HOLTZMAN: Sure, I'd appreciate that. That would be great.

COLONEL EMERSON: All of the academies do receive a report that actually contains all of our academies' data. But there is so much data that I have never conducted an analysis of how ours is compared to anybody else's. But I have actually presented to the leadership of the United States Military Academy the trend data.

The even years, if I'm not mistaken, is when we do survey, and in the odd-numbered years we conduct focus groups. DMDC gets a roster of all the four, the United States citizens, and then they tell us which cadets we're going to have show up for their initial briefing to complete the survey. After they do the initial briefing, the cadets that wish to respond, which we had an 87-percent response rate of those identified the last time we did the survey, stay.

They also do focus groups and they identify what year groups and how many of each gender. This was the first year that they actually conducted focus groups of the instructing staff and the coaching staff, those folks that were authorized to actually participate. Of

course, contractors cannot. So they got a better, well-rounded view, I think, of the academies this year.

The survey has so much information in it and the cadets do actually write a whole host of comments. Cadets in my experience have not specifically said this specific event happened to me and this person was the perpetrator or these people were the perpetrators in the surveys that I've reviewed. I've reviewed three of them. However, they did provide information such that this person did something to a friend of mine and I can corroborate that with other information that other people have provided. So it told me that somebody being moved from one location, a civilian actually, being moved from one location to another facility was not seen in the corps of cadets' view, nor the tactical officer leadership team, as a benefit to the person who had been victimized in this particular way.

So there is a tremendous amount of information. I have shown the trend of how what I call the cadet perception of who would do something about something, whether it be sexual harassment or sexual

assault, how it went down for many of the populations that are actually asked about, because they do the senior leaders and they say cadets in leadership positions, cadets not in leadership positions, in order to motivate different portions of the academy, to include the instructional staff and the academic folks to do something and say, look, this belongs to everybody.

But it's not just the survey response. It's the other things that we do and have done, and then having the cadets come back and tell us, what do you need and how can we help and their good ideas. They've been phenomenal.

GENERAL HAM: I've got just a question about basic training and other military education. So I understand that those who are undergoing the training are not surveyed, but are the cadre? Are the cadre of the basic training units, are the cadre at the staff colleges and war colleges? They do participate in the survey, is that a correct assumption?

SERGEANT POOLE: Yes. For the Marine

Corps, our Training and Education Command has that role and responsibility to, one, do the command climate survey. That is a requirement. But they also have an EO practitioner that will go out and help facilitate those extra nuances to get down to some of those concerns.

So yes, they will be required to take the survey, and then they go out -- and we've had some instances where issues were identified and the commander said: Okay, I sent a team, I sent a team out to that location to really assess what's going on and bring that back. So we definitely have that in our Training Command.

CHAIRWOMAN JONES: Mr. Ellison, the most patient at all, for the Coast Guard.

MR. ELLISON: Good afternoon. My name is Jim Ellison. Obviously, we have a lot of similarities with our partners, but we also come under DHS, so we have some distinct differences.

My role today, I'm a regional director for the Coast Guard Civil Rights Directorate. Along with

our colleagues, we administer our MEO process as well as our EEO process for all of our 48,000-some employees throughout the Coast Guard. As the Air Force mentioned, as Mr. Salazar mentioned, we are very similar in the fact that our military EOA's and our civilian employees, our EEO specialists, process military EEO complaints as well as the EEO complaints and vice versa. It works very well for us.

Something that's unique to the Coast Guard, I think, is the fact that all of our civil rights service providers are outside of any command. We all work directly for headquarters and our Director, Ms. Dickerson, she's an SES. She works directly for the Commandant. I think that keeps a lot of integrity in our MEO system. If somebody has any harassment issues, it comes into our process. It has no command oversight -- not so much oversight, but influence, let's say.

I will say that the sexual harassment and sexual assault are distinctly different in the Coast Guard. Sexual assault does not get processed through our office. Somebody can come into our office and if

sexual assault or allegations of sexual assault come in, it will be stopped; we report it to the Coast Guard Investigative Services as sexual assault.

Our members are advised through their training, through our civil rights awareness training, that this is what will happen, that sexual assault is different and apart. We also provide them with points of contact at those training sessions.

If they come in to file a sexual harassment complaint and it has allegations of sexual assault, in their rights and responsibilities they are also notified that we will notify the sexual assault folks. So we're trying to keep that communication open that, even though we don't process the sexual assault, we will get you to the folks that need to.

I'm also the chair of what we call our DEOCS Council. We have -- our units are very small. All of our commanders -- commanding officer and officer in charge. Our officer in charge is our enlisted in charge of many search and rescue stations, aids to navigation teams throughout the Coast Guard. The commanding

officer is obviously in some of the larger units and cutters.

Our role is to advise them on how to use the DEOCS tool. There is no supervisory notification policy as of now. Because we fall under DHS, that hasn't been implemented as of this date.

Our DEOCS Council that we use, where each commander may not have an EOA or a civil rights service provider, we want to make sure that our service providers are well aware on how to interpret and assist those commanders in using this tool to improve the climate at their unit. It's constantly reviewing the policy. We try to meet on a quarterly basis to see are there any issues.

Some of the issues that initially came about. We were having commands -- because our organizations have units with, say, 16 people and it takes 16 respondents to get a report, we had to actually raise our bar a little bit so that the commanding officer or officer in charge wasn't included in their own survey to meet that requirement.

We train up all of our civil rights service providers on how to provide all of those background services. I won't go into all of the survey process, but we understand that that tool is just a tool. It's only an indicator, and we try to advise all of our commanders that this is just a step in the process. The smaller some of our commands get, those numbers tend to -- they can go all over the place.

We need to go in, like the Master Gunnery Sergeant said, to go in and do those focus groups to get to the root of the problem. Is this a problem, or is it just a perception? Because we very much know -- and our council has talked about this in depth -- that those are only perceptions. They may be referring to something that happened -- yes, the survey says tell us within the past 12 months. It may have happened several years ago. It may have just happened and already been addressed. That survey doesn't flush that stuff out. Where we can go in and find that stuff are focus groups, interviews, and reviewing those records to try to find out that information.

We think that the follow-up actions are first and foremost the meat of an organizational assessment. We always tell our commanders, even if there's no problems, look for something that you can fix immediately, one or two things, even if they're simple things. We call it the low-hanging fruit, for lack of a better term, because of we want to get folks to actually participate, because it is voluntary, that they see some results from that, even if the results are great. So we want to keep that focus going as much as we can.

Again, there's no reporting process up the chain of command for our DEOCS at this time. I will say, though, that we have a policy, a procedure, which we call the anti-harassment and hate incident procedure, that we've had in effect since 2010, and we're seeing great success from that.

Again, the Civil Rights Service Directorate is outside of all commands and at any time anyone at any command can call a civil rights service provider and bring forward allegations of harassment. This is not

the MEO process and not the EEO process. Many times people just want things to stop, and we think that it's important to catch these things at that first part of the continuum, that one joke, that one comment, before it moves on, and to get that and have those commanders address it.

Now, it is a command program, but it has civil rights oversight. If somebody brings up an allegation of harassment within 30 days the commander has to conduct an investigation, determine if it's substantiated as prohibited harassment or not. And we're not talking about just sexual harassment. It is included, but we're talking about harassment based on several areas -- most of the protected classes, race, color, national origin, religion, down to political affiliation.

If there's any substantiation to any of those, the commander has to take some action. We leave it in the commander's hand. It's the commander's responsibility to take the appropriate action. But they know those folks better than we do, but they have

to take some sort of action.

Within that 30 days they have to provide a report to us of the results and outcomes of that investigation and any actions that were taken if it was in fact substantiated. Over the past two years we've had, I think it was, 14 substantiated in the sexual harassment arena and those were from O-6 level down to the E-3 level as well as civilians. Some commanders lost their commands because of that, but we think it's an outstanding process to catch those things before they escalate into illegal sexual harassment or the crime of sexual assault.

Let's see. As far as who's required to take the DEOCS, it's all of our officer in charges, like I said before, and commanding officers throughout the Coast Guard have to do it annually, within 180 days of taking command, and then annually thereafter.

If I can answer any questions that you may have. I know we're a little different, but if I can try to answer any of those I will.

CHAIRWOMAN JONES: Is there any further

questions?

(No response.)

CHAIRWOMAN JONES: I just have one general question, which is is there any effort to figure out more with respect to sexual assaults on males, looking at that statistic, that phenomenon? I think somebody mentioned hazing. Maybe not.

MR. LOVE: You know the questions on the surveys better than I do.

DR. McDONALD: The questions on the survey do not ask whether an individual has been sexual assaulted or not. That's more what DMDC and SAPR does in a separate survey.

CHAIRWOMAN JONES: Right, with the unwanted sexual --

DR. McDONALD: This is command climate, but we can break it up males versus females to get the differences in perception.

CHAIRWOMAN JONES: You can, did you say?

DR. McDONALD: Yes, ma'am.

CHAIRWOMAN JONES: Thank you.

Well, thank you all very, very much. We appreciate it. Again, sorry that we delayed you.

(Whereupon, at 12:57 p.m., the meeting was recessed, to reconvene at 1:19 p.m. the same day.)

AFTERNOON SESSION

(1:19 p.m.)

CHAIRWOMAN JONES: We move now to our panel on command/commander accountability and performance evaluation. I'm going out of order in asking General Grosso from the Air Force to begin.

GENERAL GROSSO: Yes, ma'am. Thank you. I appreciate your indulgence there.

In late October our Acting Secretary and our Chief of Staff approved policies implementing direction that we got from Congressional direction and obviously from the Secretary of Defense. That policy and the associated administrative pieces of that will be implemented no later than 1 January. So we are somewhat in our infancy.

I would be happy to give you the forms, because basically every form in the Air Force, every feedback form and every evaluation form, will be changed to include an explicit direction that you must consider command climate. That will be for every airman in the Air Force. So whether you're an E-1 or you're a GS-10

or a four-star general, there will be guidance, and the form will facilitate a discussion, starting with feedback and setting the expectation that every airman is responsible for creating a healthy climate, and in particular there's specific guidance in particular to sexual assault and the prevention programs of the DOD and the Air Force.

But it's much broader than that, because, as you know, climate is broader than sexual harassment or sexual assault.

CHAIRWOMAN JONES: Can I stop you there. You have to excuse me. Tell me again, what is this form?

GENERAL GROSSO: When we look at how we evaluate airmen, the first thing we do is we have a feedback form. We tell airmen --

CHAIRWOMAN JONES: Feedback form, okay.

GENERAL GROSSO: -- what we expect of them. And that should happen in the first 30 days of starting to work for somebody, it should happen at the 6-month point, and then it should happen at the end of the reporting period.

We for the most part have annual cycles. So we wanted to start with every airman setting the expectation that you are expected to create a healthy climate for your unit.

CHAIRWOMAN JONES: Now, these are preexisting or is this your new format?

GENERAL GROSSO: The forms are preexisting, but it did not have an explicit verbiage to discuss organizational climate.

CHAIRWOMAN JONES: Got you.

GENERAL GROSSO: So that's going to be added, and I'd be happy to get you copies of those forms so you can see.

CHAIRWOMAN JONES: We'd appreciate that.

GENERAL GROSSO: Sort of the before and after.

But we thought the feedback piece was actually more important, because we need to start making sure that every airman understands what is expected of them.

Then for noncommissioned officers and

officers, in the policy there's an even greater expectation articulated in the policy. So young airmen just coming in, we expect their behavior to create a positive climate, and it's described. First of all, we defined "organizational climate" and then we told them what we expect of them. So now there should be no misunderstanding about what is or is not.

Because it's in the feedback form, the feedback form mirrors the form we use to evaluate someone's performance a year later. So those two pieces are now -- they've always been symbiotic and now what we've added is explicit language about organizational climate.

For noncommissioned officers, who are our sort of first leadership echelon in the enlisted corps, and for every officer, we've added additional expectations. Not only are you expected to behave a certain way, you are expected to lead and take action should you see something that's inappropriate.

Then finally, on the commander's side it's even more explicit language because commanders have

explicit responsibility and authority for their command climate. So there's additional policy there outlining what that expectation is and then a rater's responsibility to make an assessment of how well every airman is doing, what we expect of young airmen, what we expect of officers and NCO's, and then what we explicitly expect of commanders.

CHAIRWOMAN JONES: Are these required or voluntary?

GENERAL GROSSO: When you say -- is what required?

CHAIRWOMAN JONES: When you give these out, must they be filled out and returned, starting with the first feedback?

GENERAL GROSSO: The feedback is required, and that is between a supervisor and their subordinate. They are required documents. The annual performance report is also a required document and it will be required to make an assessment of how well they are doing on meeting our expectations for creating a healthy climate. But to comment on the climate is not

mandatory.

MS. HOLTZMAN: Within that, so you don't have to comment on the climate.

GENERAL GROSSO: Right. So when you do an annual performance report, a rater must assess it. My boss would have to say: Gina, you're doing -- I've looked at perhaps your unit climate assessment. I know you spent a lot of time this morning talking about that. I've walked around your unit. I've gotten your feedback. I've talked to members. I've seen the quality of the work that you've done.

They must assess it. They can put a comment that we think you're doing great or, if you're really failing at that, there's explicit procedures on how to document that. A failure to meet standards for any airman creates a process, an administrative process to let an airman know, because that will become a formal part of their military record.

I understand you wanted to follow on with how does this impact the promotion process.

CHAIRWOMAN JONES: Right.

GENERAL GROSSO: Well, in particular, if you're failing and if your rater thinks you are failing at that, again at any level, that becomes what we call a referral report, which means whenever in a formal document we say you do not meet standards there's a process. I would give the report to the airman and say: Hey, you do not meet standards; this is where you don't meet standards.

The airman has a chance to give you feedback, which goes in their permanent record. That stays in their permanent record until they leave the service, whether they choose to separate, they retire, or if some other adverse action, depending on how egregious, they did not meet the expectations.

So that's how those behaviors, good or bad, would work their way into a promotion process. Again, that would be true for enlisted airmen or officer airmen.

GENERAL HAM: But the evaluation report does not mandate a specific comment with regard to climate?

GENERAL GROSSO: It doesn't. But there is

explicit words now. Before we had a leadership block and it didn't say that you need to assess organizational climate as part of your leadership skills. So now that is explicit on there, with a definition of what organizational climate is.

GENERAL HAM: On the feedback form or on the evaluation?

GENERAL GROSSO: On both.

GENERAL HAM: On both.

GENERAL GROSSO: On both. So that's why we updated every feedback form. I say every because depending on your rank -- there's forms specific to rank. So every single form, we put that in both the feedback form and in the evaluation form. I can get you copies of that so you can see the before and the after, and then the written policy that we wrote that goes along with that, to really start trying to capture that.

CHAIRWOMAN JONES: John.

GENERAL ALTENBURG: Just to be clear, in my dated experience the evaluation forms from all the services include places for narrative description and

box checks for different categories. I'm inferring that the Air Force has added box checks for these specific categories that didn't exist before.

GENERAL GROSSO: We don't have -- I have copies of the forms. I just didn't bring you clean copies. We don't have -- on the enlisted side we have boxes, but for the Air Force we have boxes and narratives for every evaluation. On the officer side, it's one big box: Did you meet it or did you not meet it?

GENERAL ALTENBURG: Right.

GENERAL GROSSO: There's six lines of narrative. If anywhere on those six lines of narrative you did not meet the standards, there's a box on the back. I think if you looked at our -- just from having done that, the Air Force's performance reports are much leaner, I'll say, than the other services. We have just evolved to a very lean performance report.

But it has both narrative and boxes. But we would expect something -- especially if you don't meet standards, you would see that in the narrative. It wouldn't just be a box check.

GENERAL ALTENBURG: I understand that, and I think that the box checks 30 years ago in our service for "supports equal opportunity" had an effect on our service even though it was just a box check. You had to be pretty bad to get a no, but if you got a no you were done, you were finished.

GENERAL GROSSO: That would be true.

GENERAL ALTENBURG: So that modified behavior and that's what you're talking about.

GENERAL GROSSO: Exactly, exactly.

COLONEL HAM: For Judge Jones and Representative Holtzman and Joye, I don't know how much familiarity you have, but what the General's talking about in these annual evaluations, the services call them different things. The Army calls them an OER for officer evaluation report. You live and die by these things. I mean, not literally. Your promotion -- this is what they look at to determine whether you're going to be promoted or not.

If there is really anything bad on them, especially for an officer, you're done. You're pretty

much done, would you agree, General? You can't have negative stuff on an officer evaluation report, especially in a drawdown.

MS. FROST: But if specific language is not required -- and I'm somewhat familiar with the Army OER, but I don't know how much it's changed in the last ten years. But if you're doing -- I just want to make sure I understand. You have one box that you check? I guess I probably need to look at it.

COLONEL HAM: A visual would help, ma'am.

GENERAL GROSSO: Ma'am, I would say it's actually not about the box. It's about what a rater is required to evaluate.

MS. FROST: But you just said they're not required to put any language in there specifically on command climate.

GENERAL GROSSO: I would separate the two. We had a long discussion with the Chief of Staff on whether we should make comments mandatory or not. Because our evaluations are very lean, we only have six lines in particular for an officer, and on the enlisted

I think the total is 10 or 12, we didn't want just to put a throw-away line. We didn't want every rater to put a line in there, "met the standards," because in the past there was a perception that that just becomes a throw-away line, because 99 percent of the force for the most part adheres to these.

So they decided very deliberately that you have to consider it. So it's very black and white in the policy, I must consider somebody that I rate, how are they doing fostering a healthy command climate. I have the option as the rater to put "Did a great job" or "Fine person to emulate" or, more importantly, "Fail," they are not meeting expectations, and then it becomes a referral report.

But you're not going to see on the Air Force form a line for every single officer or enlisted. That was a deliberate decision, I think well thought out, by the Chief of Staff. Different people had different opinions on that.

MS. HOLTZMAN: So, General, there's no way of knowing in fact whether the rater, the person doing

the rating, has taken into account the command climate, even though they are supposed to, he or she is supposed to have done that?

GENERAL GROSSO: That's probably fair. But I think there's a lot of things you expect the rater to take into account, so I don't think -- I don't think there's any reason to believe they won't follow the guidance.

MS. HOLTZMAN: But if they've never done it before, just to follow through on that, and not assuming that people will lie or not do their job, but sometimes that does happen, but if they've never done it before, if command climate has never been part of the evaluation before, how do you ensure that people are changing their patterns of evaluation when it's not right in front of them?

GENERAL GROSSO: Well, that's why we changed the words on the form. But I think that's a fair -- I understand your concern. It's going to be absolutely an educational process.

GENERAL ALTENBURG: I respectfully disagree

that the rater won't take it into consideration. You put it on the form and if the rater checks the block, whatever block he checks, that means he's evaluated or she's evaluated on that.

GENERAL GROSSO: Right.

MS. HOLTZMAN: Can you just point us to where, what you're talking about?

GENERAL GROSSO: There's a couple of different forms there.

MS. HOLTZMAN: I've never seen them.

GENERAL GROSSO: This is the feedback form (indicating). So this form the officer would get within three months, within a month, within 30 days. You see the red text. That's what was added.

So when we talk about my expectations for your leadership, I must tell you my expectations for creating a healthy command climate.

Then this (indicating) is the annual performance report, and when[?] I evaluate your leadership, did you meet it, did you not meet it, I must also consider how well I think you did that year in your

organizational climate. But you'll see there's not a lot of room for words here. That's just, we've evolved to that.

If I am determined to have failed at that, you will fill out this form and you'll see "did not meet standards in organization" or whatever, if there's another standard.

MS. HOLTZMAN: Right.

GENERAL GROSSO: And there is an education process, absolutely, that will go along with that. I think it goes along with rolling out the new --

MS. HOLTZMAN: One further devil's advocate question. Suppose the person being evaluated has done extraordinarily well in the various categories there, but has done a really crummy job on command environment. You could still get "meets expectations," couldn't you?

GENERAL GROSSO: You could. But every rater is a subjective evaluation of the individual.

MS. HOLTZMAN: Right, but you're doing a totality. But there's no way then for the person -- if you're trying to evaluate how well commanders are doing

on command environment, there's no way for you to pull that out and say, gee, everybody's meeting expectations, or only 2 percent of the people are meeting expectations or how well they're performing, so to pull that out of that. That's my observation from just quickly looking at it.

GENERAL GROSSO: You're right. It is a lean form, so any one reason for not meeting the standard. But they're pretty much black and white. So you're right. It's a new process. We do have education that we have to do on the process. It dovetails very nicely with the change of the requirement for the final assessment, so now, especially for commanders, within 120 days they will get that assessment. They will be required to brief their rater and they will be required to brief their unit.

So I think all those together will set an expectation.

CHAIRWOMAN JONES: Now, this form is going to be used in conjunction with the climate survey results? Is that how the person giving the feedback is

going to say --

GENERAL GROSSO: Being a rater myself, that's certainly one piece of information I'd use, but it certainly wouldn't be the only one.

CHAIRWOMAN JONES: Well, that's what I'm confused about. How does this rater, if this was for lieutenant to colonel --

GENERAL GROSSO: Yes, ma'am.

CHAIRWOMAN JONES: -- how does this rater know[?] about command climate? What does that rater look at other than the survey, which is pretty new?

GENERAL GROSSO: Right. Well, in the Air Force in essence commanders work for commanders. So in particular for commanders, commanders come and visit your unit and they will see how you're doing. It's usually fairly obvious when a unit has such a poor climate they can't function well as a team, they're not cohesive, they can't accomplish the mission. Or you will see other indicators, inappropriate pictures, things to indicate we haven't changed the culture.

In fact, we've also -- not really in my lane,

but we have also added in our inspection system an explicit, we call it a special interest item. When an inspector comes in to inspect, they will inspect to see how we -- what is their evaluation of the climate, have we appropriately adopted the things the Air Force expects, is there any of those things, inappropriate pictures, are you hearing inappropriate comments, are they not properly dealt with? So it's the system as a whole.

CHAIRWOMAN JONES: And those reports will go to the commander up the chain?

GENERAL GROSSO: Yes, ma'am. The Inspector General reports also up the chain of command. And they are used to evaluate the grade-above commander as well.

CHAIRWOMAN JONES: Thanks.

Colonel.

COLONEL TURNER: Thank you, ma'am.

There are certain, but limited, instances where derogatory information is mandatory for reporting in a performance report. Would you describe those, please, ma'am?

GENERAL GROSSO: The instruction is long, and you're exactly right, there is probably 10 or 12 things in the AFI that would require mandatory comments. But I just can't -- I can't give them to you --

COLONEL TURNER: Court-martial, convictions.

GENERAL GROSSO: Right.

COLONEL TURNER: That's pretty much it.

GENERAL GROSSO: I can certainly take that for the record. I just don't know that off the top of my head. But you're right.

There's a lot of things required by a rater already, so it's not like this is -- this is adding more to a fairly detailed set of instructions on how to rate people already. In fact, we already rate leadership. We tried to make this explicit.

CHAIRWOMAN JONES: More specific.

GENERAL GROSSO: Yes, ma'am. Yes, ma'am. And fundamentally define what is it I expect you -- what is an organizational climate, at least try to define that, so when the rater has to assess it he or she knows

what they're assessing.

CHAIRWOMAN JONES: Anything else?

(No response.)

CHAIRWOMAN JONES: All right. Thank you, General.

General Bromberg.

GENERAL BROMBERG: Good afternoon.

CHAIRWOMAN JONES: Good afternoon.

GENERAL BROMBERG: Thanks for letting us come here today. It's a great opportunity.

I'd like to address this topic in about three fundamental ways. First of all, this is about accountability of the commanders at all levels within the Army. It's also about an education and training piece that we have to have for lieutenants and sergeants as they mature through the service, and also it's about changing the culture.

So we have three elements that tie into this area. The first thing is the command climate survey. I want to talk about the policy that we have in place now. We had a policy in place earlier. We've modified

that.

The policy that was in place earlier was that after the first 30 days in the active component and after a longer period of time in the National Guard and the Reserves every company-level commander, captains level, was required to do a command climate survey. They did this survey using the Department of Defense DEOCS survey. Then those results they kept internally. We didn't do much else with them.

So we've changed that policy now. So at the company level, 30 days after you take command at captain, and it's after 120 days in Army National Guard and Reserve components, you have to do a survey. We have rules for how many people have to be in your population. If it's less than 30 people you can come together with a larger unit.

Then what we've changed is after you've done that then you review the results and then you go to your boss and you have to lay out your action plan to correct any problems found in the command climate survey. Then you do another survey at 180 days and another one

annually thereafter.

So that now involves the rater, with the junior officer particularly, to help them establish -- this goes to accountability and education and training -- how to go ahead and fix those challenges in that unit.

Then additionally what we added is at the O-5 level, lieutenant colonel level, or the colonel level up to the general officer level, you will also do[?] command climate surveys now after 60 days of taking command. That population group is smaller because obviously you wouldn't want to resurvey the same units that the captain just did, so you look at your internal staffs and special organizations. And then you have to brief your boss.

So a brigade level commander, so a colonel, after he does their survey, will have to go to their two-star general, a division commander normally or a senior commander, and he'll have to brief what their action plan is for things found in that survey.

That's a big change for us because now you've involved leadership looking down at the survey

particularly, in addition to, as General Grosso mentioned, in addition to those things you get from walking around. So now you have a survey plus you have your walking around and your engagement opportunities.

You can take that survey data. Obviously, then, if somebody's not following their corrective action plan that will lead to OER comments later on, and it also can lead into dismissal from that position or relief for cause or something like that, because the standard in the Army's regulations for relief for cause is losing trust and confidence in the subordinate's ability to perform their job.

It's a pretty broad standard. It doesn't say I have to be guilty of doing something. It doesn't have to say I did A or did B. It's just that, I don't have the trust and confidence in you that you can do the job any more, so you're relieved. And relief for cause is definitely a career-ending event. There could be other charges that go with that based upon the incident.

So that's just the first piece of this command climate survey. The second piece is something

that we started to get at toxic leadership, is a 360-degree survey for battalion and brigade commanders. We've been using them, but in a very, I'll say, very educational fashion or a looser fashion. Before you go to a pre-command course before you take battalion or brigade command, you do a 360 survey. But you pick who does the survey.

What we changed in the rules now is you don't get to pick everybody who fills out your survey. Your boss picks certain amounts of those people. So I might pick somebody that I have to work with on a daily basis, but who might give different impression of what your leadership style is like.

The additional thing we added -- before that 360-degree survey just went back to you so you could do self-correction. Now that 360 will get briefed to your boss in a coach-mentor type relationship. We haven't decided if we're going to use it in board proceedings. That's a decision further down the road.

Because of our size, we'll only do battalion and brigade commanders. Eventually we'd like to do

much greater, but the Army is about 1.1 million. It's a pretty big organization. So we're trying to scope this at the battalion and brigade commander level, because that's where the rubber meets the road as far as the leadership piece goes.

So we think 360's will help us again educate, allow people to train. Then you also have another data point if you're a commander because now you know about the 360, about the individual's leadership style, you know about their climate in their unit, plus you have all the other indicators of good order and discipline and so forth.

Then the last piece, to kind of wrap everything together, is the changes in the OER. We have made some specific changes. We are in the midst of changing the OER. This couldn't come at a harder time for that. That form is approved. It takes us quite a while to produce it.

What we've done is, using our existing OER that's still in effect today, the Secretary of the Army directed that we have very specific criteria for looking

at not just sexual assault, but it's tied to dignity and respect in the climate of the organization.

The first piece is a support form. A support form is a counseling tool used between a subordinate and their senior about establishing their objectives of what you want to accomplish over the rating period. It is now required in that support form that you have to discuss the command climate, equal opportunity, and support to sexual assault and harassment. That's not an option. You have to decide specific objectives.

Everybody does a support form in the Army, not just commanders. So even if I'm just a section leader in a headquarters or an office, I only have one soldier working for me, I'm responsible for that environment for that one soldier. So I have to talk about my goals and objectives. That's the first piece we've done.

Then the second piece we've done is we said now we're going to evaluate you on that during your OER period. We actually gave -- I think you might have a copy, but if not we'll leave it. The Secretary said,

specifically there will be an assessment which should identify as appropriate any significant actions or contributions the rated officer or NCO has made toward promoting the professional and personal development of his or her subordinates, ensuring the fair, respectful treatment of assigned personnel, and establishing a workplace and overall command climate that fosters dignity and respect for all members of the group.

So that is a required assessment that a rater has to make for an individual.

Then the second piece, coming to the OER, is if you had a case of sexual assault or sexual harassment in your organization at the lower levels, how well did you handle that? Did you properly investigate it? Did you properly get the victim care? Did you set all the right tone within your organization?

We're expecting to see comments on that -- and these are substantiated complaints -- on how well that leader has then reinforced those standards. It goes back to the earlier comment that was made about when we had the block check for equal opportunity.

Now, right now, since we're using an old form, rather than change that form when the new OER comes out, we said the block check we're going to use is our current block check that talks about supports equal opportunity. So we're using that block for both sexual assault, sexual harassment, and for equal opportunity. So if you don't properly investigate or you don't support the Army's programs in equal opportunity or creating positive climate for sexual assault or sexual harassment, then it's a "no" block in the front of the form.

In our future form, we change the form that's in process so it's under character. Under character we have several attributes and one of those attributes is "promotes a climate" or "has a climate of dignity, promotes dignity and respect, supports equal opportunity and supports the tenets of sexual assault and sexual harassment." So we're going to put those in together within that environment.

The third piece to the OER is that that individual has a substantiated incident on themselves

for sexual assault or sexual harassment, such as if you failed to turn over a report to the Criminal Investigation Command -- that's a violation of our regulations -- that's a required comment in there now.

We think these three things together, along with the other programs as well, we think the command climate requirements, we think the 360 evaluation, and then wrapping it together with an OER, is a pretty holistic look at how we're going to get after, not just the accountability, but it's also there's got to be an education and training component of this if you're going to change the culture over time.

I would just go back to personal experience. Even 20 years after we integrated the Army, we still had challenges in the seventies. But we had to change cultural change and we had to train people, like myself who was a company-grade officer, in the mid- to late seventies. You had to establish cultural change over time so we ourselves could see our way forward.

We had a lot of discussion about getting at this with not just the colonels, but getting after it

with the lieutenants for the long-term enduring change, because I will tell you right now that you hardly ever see a block check on equal opportunity. Not that there aren't issues, but we're over much of that. And we have to do the same thing here with sexual assault and sexual harassment.

Now, back to your earlier comments about the board process or questions about the board processes. Within the board, it doesn't take much within the writing. We have block checks, but even in the blocks that you have to write in -- we'll provide you all the forms -- the writing has to be very clear and succinct so the board gets the message.

What we tend to see in our promotion board writing is "Failure to support" is a very clear signal. You don't need to write a lot if someone has failed to do something. It's very clear in the board process. And this OER will do that for us. Both the new one and the old one will take that into account.

But I'd also go back to, you have to look at these things together if you want to change the

institution and make it an enduring change over time.
So that's why we want to do all three things together.

So, subject to your questions.

CHAIRWOMAN JONES: Thank you. Thanks,
General.

Captain Deal. There you are.

CAPTAIN DEAL: Good afternoon, ma'am.
Ladies and gentlemen, I'm grateful for the opportunity
to appear before you today to discuss the role of the
commander in preventing sexual assault and supporting
the victims, as well as ensuring every resource we have
in our Navy family is brought to bear in prevention and
support.

The role of the commander is vital in setting
the climate, the tone, and the expectations of dignity
and respect and teamwork that will reduce sexual assault
with the goal of eliminating it altogether, as well as
continuing earning the vital trust by our actions and
our motives that any assault or harassment or any
unequal treatment will not be tolerated in our
institution.

As introduction, I know I'm the most junior officer here on the panel. I recently checked into the Navy's 21st Century Sailor Office. I work for Rear Admiral Sean Buck in Arlington, Virginia. The 21st Century Sailor Office provides our sailors and families with the support network, programs, resources, training, and skills needed to achieve the full promise of service to a cause greater than self and to actually allow them to thrive, through five different policy branches: Total Sailor Fitness, Suicide Prevention, Sexual Assault Prevention and Response, Sexual Harassment Prevention and Equal Opportunity, and the Office of Hazing Prevention.

Our office promotes resiliency in all service members and Navy families, as well as collaboration and synergy across a spectrum of wellness that maximizes total fitness.

For my personal background, I've been a commanding officer three times. I just left what we call major command or wing command on Whidbey Island, Washington, on 30 October. So I've been here a couple

weeks. Twice in combat conditions in Iraq and Afghanistan, respectively. All three units I commanded had women and men serving together without limit to their functions or tasks.

As commanding officer of Patrol Squadron 47, my squadron was sent for seven months to Ali Air Base, Talil, Iraq, as part of the intelligence, surveillance, and reconnaissance surge in 2007 to provide full-motion video support to coalition troops on the ground throughout the country.

As commander of Provincial Reconstruction Team-Khost, Khost Province in Afghanistan, my command was made up of active duty Army, Navy, Air Force, Massachusetts National Guard, and Afghan nationals, as well as reservists. Our mission in that counterinsurgency was to build trust, again essential trust, between the people of Khost and the government of the Islamic Republic of Afghanistan.

We did this by aiding, mentoring, and assisting the government against the insurgency, helping Afghan leadership improve legitimacy by, among

other roles, that it could provide vital services to the people, such as security, justice, education, water, sanitation, electricity, while working to advance the rights of women and aid reconciliation with those who had previously fought against the government.

My third command, which I just left, was command of Patrol and Reconnaissance Wing 10, Whidbey Island, Washington, where I commanded and mentored five squadron commanders in various stages of training and preparation for deployment.

The DEOMI survey, organizational climate survey, is a tool for the commander and senior enlisted adviser and the command assessment team to use in identifying areas of strength as well as concern within the command. Since July 30, 2013, this summer, every DEOCS is linked to the immediate superior in command, which I was as a wing commander. I would receive notification that the survey was initiated and provided a link to the survey once completed, allowing me or any commander to review all aspects of the survey, including all write-in comments.

The unit commander must conduct a survey, which they did with me, by instruction within 90 days of taking command, and that commander must debrief those results with me, and then I would in turn report to the flag officer in charge of me, and then later a plan of action and milestones which addresses areas of concern and a timeline towards completion.

I review each of these DEOCS surveys in its entirety, look for trends across the wing. I use it as a mentorship tool as well as an accountability tool. For example, if all trends were moving upward and above Navy average, but there may have been disparities between the views of the junior enlisted and senior enlisted, with different perspectives on the subject of trust in the organization, I would mentor those unit commanders on methods to address that disparity, including initiating smaller focus groups and other tools to find out why those disparities existed.

Each time I took command I provided my expectations of dignity and respect and fairness and of our duty to faithfully represent the highest ideals of

American democracy as expressed by our Founders. In the case of major command, I provided a mission statement, a diversity statement, in a very frank three-page letter to each of my commanders on what they should expect from me and what I expected from them as serving leaders.

A Navy sailor is required to go through a command indoctrination within 30 days of checking on board. I used this opportunity, and every Navy commander does and senior enlisted leader, to reinforce expectations of every sailor, which includes behavior. I measured my commanders' climates and creating a culture of inclusion and trust through many lenses. The DEOCS survey was one of those lenses.

By flying with and maintaining aircraft in the squadrons and spending time at the work centers and getting to know them as people, by opening avenues of communications, such as a blog which is open to all hands, I provided the opportunity to provide both anonymous and identified comment on topics from sexual assault to suicide prevention to integrated platform

training opportunities in the Pacific Northwest, but mostly by establishing a mentor relationship with those commanders, so that they regularly came to me with issues surrounding their squadrons, so they trusted me as well.

In this way I could provide candid feedback to them to the utilization of all Navy resources to provide support to their sailors and their families, without injecting command influence into any adjudication of legal matters within their purview.

In evaluating these commanders, especially with regard to command climate, I used the DEOCS as a tool, one tool among many other observations I made as a wing commander. The DEOCS is an outstanding survey instrument that allows leaders to become aware of perceptions within the command. It allows the voices of the silent to be heard. The sailors understand that when they write comments that their boss's boss is going to be reading these surveys, which I and every other ISIC or major commander did.

For example, in a command I took over, from

surveys in the past it was apparent there was perceptions of unfair treatment from years prior and these carried forward even to this year, new leadership notwithstanding, something that I would have to deal with as a major commander. It is one tool in supporting our commander's authority, responsibility, and accountability in the stewardship of the young women and men who raise their right hands to serve.

These indicators of command climate are not merely measured through surveys, but through the command's ability to execute its warfighting mission, its engaged leadership as measured by the growth and advancement of the sailors and family members who voluntarily serve, and the ambassadorial aspect of their service at home and abroad as representatives of the highest ideals upon which this nation is founded.

Our commanders have a critical role in setting this climate within their units, which inculcates trust, dignity, and respect, as well as a culture of fitness, achievement, and inclusiveness. In my view it is my responsibility as an officer

accountable for them to provide every expectation, resource, and mentorship to ensure they do just that. They complete a course in Navy regulations, Department of Defense, and Department of the Navy instruction. I believe they enhance commander accountability of the DEOCS that goes to the ISIC allows another opportunity for mentorship. It's another positive step in establishing good order and discipline, unit cohesion, mission readiness, and helping our Navy attain the highest level of operational readiness.

I would also add that in our Navy evaluation system we have long had blocks for equal opportunity, command climate, and military character. Our Chief of Naval Operations on August 28 of this year ensured that to -- I'll quote -- "achieve high marks in these blocks of organizational climate and equal opportunity command traits, sailors must demonstrate how they have cultivated or maintained a positive command climate." So it's not merely a negative; it's also a positive.

As competitive as these records are in order to achieve command, the highest standard to which we

serve, we have to ensure that we're doing something positive to ensure command climate, that they're acting towards that.

So these blocks are used to show how each sailor -- this is E-1 to O-7 -- how each sailor reinforces a climate where sexual harassment, sexual assault, hazing, discrimination of any kind, and any other inappropriate conduct are not tolerated.

I look forward subject to your questions. That's my opening statement. Thank you.

CHAIRWOMAN JONES: Thank you very much, Captain.

Any particular questions for Captain Deal?

(No response.)

CHAIRWOMAN JONES: Thanks. Then I'm going to move to Colonel Gallant, Marine Corps.

COLONEL GALLANT: Thank you, board members. I really appreciate it. I think this is a really good opportunity to bring out something that needs to be talked about. So I just wanted to start with that.

To let you know where I'm coming from, I've

held two commands that I was selected for. In my lieutenant colonel command, I was commanding officer of the Financial Management School at Camp Johnson, North Carolina; and I recently assumed my current command, the headquarters services battalion at Marine Corps Base Quantico, on 26 July 2013. This battalion is the largest battalion in the Marine Corps. We call it "The Beast" and there's a reason for that. My close cadres are my executive officer, who is a lieutenant colonel, and my sergeant major, who serves as my enlisted eyes and ears.

I've got five company commanders who serve under me and they have their XO's and their first sergeants that support them. There is approximately 3400 Marines in my command and in addition to that I've also got about approximately 1800 civilians. Although the civilians don't fall under me from a command perspective, they do provide me feedback on command climate surveys and through other venues.

From a commander's perspective, I consider sexual assault one of a number of issues that degrade

the health of the command. These other issues are domestic violence, sexual harassment, alcohol-related incidents, and discrimination.

I find this survey serves as one of a number of useful tools I have at my disposal that allow me to assess the health of my command, determine where I have challenges, what those challenges are, and why they are[?] current. These surveys are augmented by daily interaction, and I think that was brought out by both Captain Deal and Lieutenant General Bromberg. I think that's probably the most important thing I do and the most critical thing that my company commanders do for me, is to get out there and be the eyes and ears, because without that communication you're just not going to know.

You can do -- surveys are important, but that interaction, that personal interaction, is absolutely critical. And the Marines want you out there.

These surveys are augmented by[?] daily interaction I have with my Marines in my command as well as interaction that my subordinate leaders have. The

initial surveys are executed within the first 30 to 90 days of command and help me baseline my command climate. So I've just done my first set of command climate surveys and that's what I'm baselining around now.

From this baseline, I work with my command team to build an action plan that I have to brief to my senior commander, and I'm in the process of finishing up building that and I'll be briefing that very soon.

My command team and I work towards different problems identified from the survey. For example, one of the biggest problems I had that was identified in the command climate was not getting the word, either [?] getting the word late, or getting the erroneous word, which can be, particularly for junior Marines, is a major issue. This has contributed -- and when you don't get the word or if you get the word wrong, it starts building up a little bit of lack of trust.

My team and I were able to execute -- and this is because of my personnel background -- a quick win by creating a newsletter and leveraging our personnel system to ensure everyone in the command received the

newsletter. It sounds like a small thing, but this has been a big hit. A lot of people have really taken onto that newsletter. It started out at 12 pages. It's now up to 17.

Once I baseline my command and develop my action plan, my next step is going to be in executing that plan. I'm in the process of executing even though we're finalizing what we're going to do to brief the commander. It's already in the process of executing, just like you saw with the newsletter that we did.

I get my whole command team together. The junior leaders have to be on board with this because they're going to be the key to this. I'm not just talking about my junior company commanders; I'm talking about the NCO's.

General Amos just put out a thing called the Reawakening and I think it's probably one of the most critical pieces of gear that we have right now, and that's getting those junior NCO's involved in the leadership, because it's really them that are knowing what's going on.

In the execution phase, the number one task is daily interaction. My subordinates' primary job is to get out and meet with the Marines in the workplace, in the barracks, chow halls, and various events. This is the best way to keep your pulse on the command climate. We do this through quarterly -- some of the formal ways that we do it is through quarterly troop information briefs, holding monthly TME's for enlisted, NCO's, staff NCO's, because we kind of group them a little together, grouping them in separate TME's, and officers, and we do this monthly; coordinating family readiness events -- a huge plus for building command climate. If you've got the spouses on your side, it's a win-win for you. Promotions, going to promotions, going to awards, being there for the Marines, and a number of other venues.

Throughout execution, I'm developing my subordinates to keep their focus on their Marines, setting the example and showing all Marines in the command we're fully aware that sexual assault or any other behavior that demeans others will not be

tolerated, as is expressly stated in my equal opportunity statement.

Accountability is key. I'm held accountable by my boss and my subordinates are held accountable by me through a number of means. We've got follow-on surveys, because once that initial survey goes out that's kind of my assessment, and there are follow-on surveys that provide feedback.

We've got fitness reports that grade us. Our fitness report -- I think the board's received a copy of it. You're going to see, for mission accomplishment you're going to see two blocks. For individual character you're going to see three blocks. I'm going to skip the most important one and I'll tell you why in a minute. Intellect and wisdom has three blocks and how I evaluate my subordinates is one block.

The most important block is leadership, and I think in a nutshell this is everything that you're looking for in command climate. It's how do I or how do my subordinates if I'm ranking my subordinates lead

their subordinates, how am I developing subordinates, how am I setting the example or how are my subordinates? How are we ensuring the wellbeing of our subordinates and how are we in communicating? How are we communicating stuff, how are we getting things out to people?

I think key to this is -- every Marine's goal is to get in the F and G block. If you get in the F and G block, you're at the top of the pyramid. So that's what we always strive for, is the F and G block.

We have the fitness reports, and those fitness reports are used. That's how you kind of weed out the ones that are falling short. Over the course -- you start out with lieutenants like this. You've got a whole bunch of lieutenants, and then you've got captains and you've got majors and you've got lieutenant colonels and then you've got colonels. So that's our reading-out tool.

We can be relied on by our seniors or we can be -- so we can be relieved by our seniors and we can relieve our subordinates, too.

Finally, we have legal recourse at our disposal if the situation calls for it. So if someone does something very grievous, there's court-martials and stuff like that.

Specific to sexual assaults, you have an eight-day brief. This is essentially a checklist commanders use for unrestricted reports that ensures we are providing victims with, A, world-class victim's care, transparency throughout the chain of command, and finally an initial assessment that we can data mine to identify the most vulnerable age groups, the incidents that are alcohol-related, the ranks of the victims and the perpetrators, or whether the perpetrator is even in the military, the timing between the actual assault and when it was reported, and a number of other data points.

Our eight-day SAPR report data identifies that ten percent of Marines making unrestricted reports tell us their assaults took place before they joined and 15 percent of the assaults took place over a year ago. Currently in my command, since I've been there I've had four reports. All four reports have been delayed

reports. One of them's from 2008. Maybe one or two of them have been -- so from my perspective, right now I've had all delayed reports. With the exception of one, which was a civilian -- a Marine that had a rape that happened out in town, that she didn't even want reported. That came out, and once it came out I had to do an eight-day report on it. It was something that happened out in the civilian community.

Both of these data points reinforce what we hear from the Marines, the fact that the environments are changing at the tactical level and institutionally Marines have a lot more trust. We're seeing that. I've got a chart that was given to me. It's a little -- it says 65 percent increase, but I think that's a little bit old. I think we're now at 85 percent increase in reports being provided.

So the environment's changing both at a tactical level and an institutional level, and Marines have trust and confidence in the CMC SAPR campaign plan, and I've got a copy of that campaign plan.

Involvements by commanders is absolutely

critical, particularly because of what we ask our young men and women to do on the battlefield. All the rank in the world will not draw a fire team forward unless it has confidence in its leaders. Need trust -- Marines need to trust that their leaders have their back. We garner this trust through concerned, active leadership, which is why we've got so many blocks on the fitness report. Leadership is absolutely critical.

And giving them outlets. The outlets is whether it's through a request mast -- a request mast was how -- the request mast was not on the person who got raped, but that was how the rape came out. We found out about the rape because --

CHAIRWOMAN JONES: Excuse me. What's a request mast?

COLONEL GALLANT: I'm sorry. Good question. In the Marine Corps and the Navy -- actually we take it from our Navy brethren. In the Marine Corps and the Navy, every Marine and sailor has the ability to say: I don't like what's happening in my unit and I don't want to talk to you. They don't want to talk

to the company commander; they want to talk to me. Or they'll say: Guess what, I don't want to talk to Colonel Gallant; I want to go to General Ayala. Gee, I don't want to talk to General Ayala; I want to go to General Amos.

So they have a request mast process and it can go as high up as to the Commandant of the Marine Corps, and nobody can stop them. At every level we have -- I believe it's every level, we have a 24-hour period and if we don't get it up to that next level we're in deep kimchi, and that's not good.

(Laughter.)

COLONEL GALLANT: Then we have the IG and we have anonymous tips.

We have a myriad of ways to help our -- I'm almost done. We have a myriad of ways to help our Marines through the trauma of sexual assault and other life-changing events. We have at our disposal a full-time sexual assault -- I have at my disposal a full-time civilian sexual assault response coordinator that's supported by two full-time civilian victim

advocates. I have uniformed victim's advocates. I have two of them that I personally get to select, and I usually select them based on how their personalities are, how approachable are they, because to me that's the most important thing for someone that's going through something such as sexual assault.

We've got a military family life counselor that works right at my command. He's someone that we contract. We've got chaplains. I've got two chaplains in my command. We've got the naval medical clinic and that's for the nursing side of it and the medical side of it. We've got a family advocacy program that I think is very robust, that has a whole host of resources that they can provide to you whether you're a sexual assault victim, a domestic violence victim, or someone that's got an alcohol problem.

All SAPR advocates are required to have 40 hours of training that have been approved by the National Organization of Victim Advocates and pass a local police background check. This includes my uniformed victim advocates.

Through it all we need to manage perceptions on a number of issues to establish good order and discipline within our commands. Again, this can only be done through communication and involved leadership.

Some cases take longer than others and some cases have less evidence than others, and that's something that needs to be articulated to Marines, because sometimes Marines, when they don't see things -- and I'm sure this is true for the other services, too -- when they don't see things happening fast enough, they think people are being protected, and we need to always combat that. So from a leadership perspective that's always got to be combatted. That's why it's so important to keep this within the military.

Through it all, we as commanders need to remain engaged.

I'm going to stop here. I didn't want it to go as long as it did. But unless you have any other questions.

CHAIRWOMAN JONES: Thank you very much, Colonel Gallant.

Did you have a question, Liz?

MS. HOLTZMAN: I have a question. Are you seeing -- in other words, do I take from your testimony -- and I'm sorry. I may be confused about this, but my impression from what you're saying is that you're receiving more reports now, particularly reports of things that happened in the past?

COLONEL GALLANT: Yes.

MS. HOLTZMAN: Do you attribute this to a change in the climate in the Marines so that victims feel more confident about coming forward? Or if that's not the case, what do you attribute this to?

COLONEL GALLANT: I do. I attribute it to -- we brought up trust, trust and confidence in the leadership.

MS. HOLTZMAN: Of course I left you out of the picture, too. Maybe it's because you're there, but that could be a very important factor.

COLONEL GALLANT: This is Marine Corps-wide. This isn't just my command. I've only had four since I've been there. So this is Marine

Corps-wide.

I think both the Captain and Lieutenant General Bromberg, they brought up the point about training and getting that word out. We have had an enormous amount of training, to the point where the Marines are saying: Enough training. But I don't think we can ever let go on that. I think the training is hugely important.

I think between the training and the anti-SAPR report and the way we now have codified it, it enables us to do more. Before we had the SAPR report we really didn't know what our stats were. So I think that that has all contributed to -- and the fact that once you get something going -- and I think you brought it up, sir, where you said back in the seventies when we were trying to integrate, when we were trying to break down the racial barriers -- I think that as you educate and as you break it down and as you make it mandatory, I think that that makes a difference, and it becomes a key ingredient to leadership.

So if we take our eye off the scope -- you

can't take your eye off the scope. I think that's what this has done. I think the leadership, the training, the fact that it has become important to all the service chiefs, has been a key ingredient as to why people feel more confident.

We're telling our Marines and the Army's telling his soldiers and the Air Force is telling her airmen and he's telling his sailors: Tell us if you've got problems. We're seeing increases in domestic violence, reporting of domestic violence. So I think it's because we're saying, hey, here we are. And we've got the resources available through the family advocacy program, too. So I think it's a combination of things, the education, the eye on the ball, the eight-day SAPR report, the surveys that we have that people are doing. It's in your face. It's always there.

MS. HOLTZMAN: So it's you feel an increased confidence that if they come forward with their problems those problems will be addressed in a compassionate and professional manner?

COLONEL GALLANT: Yes.

MS. HOLTZMAN: Do you feel that that's true?
Do you have the same experience?

GENERAL BROMBERG: Yes, ma'am. We've definitely seen a rise in our reporting over last year, and some of our older cases or people who have come out, I think it's just indicative that people have trust and confidence in the system now that they're going to get -- the chain of command is going to handle the situation and they're going to get the care that they need. We have seen some older reporting as well, some a year ago, some even further back than that.

MS. HOLTZMAN: And you, Captain?

CAPTAIN DEAL: We've also done Navy-wide training. We call it SAPR fleet, SAPR leader, where every sailor in the Navy is brought to understand what sexual assault actually is, so they understand. We've done surveys after it's -- in fact, we've done surveys to ensure that each sailor understands what those reporting requirements are and what the standards are.

So in that, now that the sailors understand where their rights are and they have trust in their

command climate, now they can come forward and say, this happened to me. There might be some latency involved in that. It could be a experience a year or two before, but someone might say: This happened to me and I wasn't sure what that was.

In fact, the Department of the Navy has funded an educational play acting troupe. They're really a group of professional counselors called No Zebras. I sat in the audience of one of those in Whidbey Island, Washington, in August, and it was such a realistic training that a SARC afterwards told me there were three people who had triggers of previous incidents in their lives that came up for counseling because now they understood that the trust and confidence was there and that someone understood what they were going through at that time.

CHAIRWOMAN JONES: John.

GENERAL ALTENBURG: Do you think that the Secretary's withholding jurisdiction to the O-6 level and knocking it out from the O-3's has also enhanced confidence that it's going to get looked at, it can't

get buried by somebody who knows the NCO or knows the assailant?

CAPTAIN DEAL: Yes, sir, absolutely. I had to deal with three of those myself as an ISIC or an O-6. When it came to sexual assault, the initial disposition authority, it takes the commander out -- there's a lot of emotions that go on in an O-5 in that command. That's the most tactile, palpable time that you're in command of sailors. So bringing that to me I think did help quite a bit.

GENERAL BROMBERG: I think it makes a difference also that, what we're seeing in many areas is that sometimes you need a higher level because some people are too close to the event. Somebody else looking at the problem, not to say that you're wrong or anything else, but that you may be very, very close, especially with multiple deployments --

MS. HOLTZMAN: I'm sorry? With what?

GENERAL BROMBERG: Especially with multiple deployments. So I have deployed twice with these group of NCO's. You get to know them at a different level.

You have different relationships than what you would have after 10, 12 years of war. So raising it up a level gets someone from outside to look, and I think that also goes to that trust and confidence. You're not trying to gun for that guy below you, but you're trying to give an honest look for both the accused and the victim, and that's very important.

We've seen it in other things, not just sexual assault, in other types of things within the military, about having a more mature person with a little more experience, someone once removed from the incident, give a good objective look.

MS. FROST: I have a question.

CHAIRWOMAN JONES: Yes.

MS. FROST: Unless I'm just misunderstanding -- and this question is really for General Bromberg -- it seems like the Army in its OERS is taking a much more specific focus on the whole issue of sexual assault and the commander's response. Do you have any explanation why the Army has taken such an approach?

GENERAL BROMBERG: Yes, ma'am. I think when we talked about it with the Secretary and the Chief and the other senior leaders at the Army, it's really about we know the commanders have a role, an absolutely key and essential role, in discipline across the force in setting command expectations. He's got to have some measure of accountability and the OER is a tool to do that.

Also, we know that, speaking on the personnel side now, you can't have an OER form that changes every year if you have an institution. You have to have an OER that lasts. Our current OER has been in existence for over 16 years. I don't know what the other services are, but I bet you it's been a long time. That's how we promote and that's how you develop -- not develop, because the OER is not a developmental tool. The OER is an assessment tool. The support form is the developmental tool.

So you have to have a means to select people for higher promotion continually for year after year if you want to have a viable institution. So we talked

about it a lot, do we do a block check, do we not do a block check, right in the middle of the OER. We said, no, we're going to make it very specific. It's very clear to a commander, if you know you're going to be evaluated on command climate, that you will then pay attention to it. That was the basic.

Then since we have a new OER and we're looking at things a little differently in the new OER, we did add in the explanation under character and leadership, because it's a component of character and leadership, we do have specific language in there. We did away with all the typical X-Y block checks in the new OER. It's all verbiage focused on performance. But we do have that language in there.

MS. HOLTZMAN: Can I see the form?

GENERAL BROMBERG: I don't have any with me.

MS. HOLTZMAN: Do you mind providing that?

GENERAL BROMBERG: I'll give you our old and our new.

CHAIRWOMAN JONES: That would be great.

COLONEL HAM: The Marines gave us a form.

The other services will provide one.

CHAIRWOMAN JONES: All right. Admiral Neptun, Coast Guard.

ADMIRAL NEPTUN: Yes, ma'am. Thank you and thank each of you for your service doing this. I think it's great to have a conversation on this important topic.

I represent a service that is much, much smaller than my peers to the left and the right. We have 41,000 active duty members, 8200 reservists, 8400 civilians, and a volunteer cadre of Coast Guard auxiliarists that number 30,000. My comments are really focusing on the active duty and reserve population, but I also will include some things regarding surveys that talk about our civilian employees as well.

Our service secretary is the Secretary of Homeland Security, so that's a little different than my peers to the left and the right. I really want to start my conversation with the Commandant of the Coast Guard, Admiral Bob Papp, just going through the stage-setter

that he laid down three and a half years ago when he took over as Commandant of the Coast Guard, during the middle of the Deepwater Horizon oil spill in the Gulf of Mexico, just to give you a starting point.

He's had a career very focused on taking care of people and that follows through in everything that he's given to us in the last three and a half years as our Commandant. His first week in office, he rolled out a series of Shipmates messages. "Shipmates" for him is a term of endearment. We should all strive to be good shipmates. That's a goal that I've seen consistently from him as he has gone through the service making unit visits and all-hands presentations.

Just last week he mentioned, this past year he's traveled around the Coast Guard to the degree that we've been allowed and he's had all-hands sessions with 32,000 members of our service. So based on the numbers I started out with, that's over two-thirds of our population.

He's been very focused on taking care of your people, taking care of your shipmates, being good

shipmates, and a particular focus on not becoming a bystander and also sexual assault. So the Shipmates messages that he's rolled out -- we're up to number 26 now -- have been a conversation from the top to talk about his expectations for his entire workforce, that full spectrum that he talked to.

For example, Shipmates 3, which was rolled out day 3 on the job as Commandant: "I value every member of the Coast Guard family. Each of us is entitled to work in a respectful and professional environment. After all, respecting your shipmates is not only one of my core principles; it's part of the Coast Guard's core values of honor, respect, and devotion to duty."

As the conversation became more public about sexual assaults in the military, in January of 2012 he came out with Shipmates Message No. 19, where he really focused on sexual assault, hazing, harassment, discrimination, things that undermine morale and degrade readiness. He basically laid it out for all of us and said: "This will stop. It's a violation of law,

it's clearly not in our policies, and it's nowhere near any of the service standards that we all are expected to live up to. And we will not tolerate any of that behavior in the Coast Guard."

So from there all of his operational commanders go down and have been tasked to carry that message to the mess deck, which is how we describe our all-hands sessions, where you gather the tens, the twenties, the hundreds, and just have a conversation about things like this.

He said: "Let me be clear. There are no bystanders in the Coast Guard. Our duty is to respect our shipmates and that demands that each of us have the courage to take immediate action to prevent or stop these incidents from happening, whether at work or on liberty when away from our jobs." And he mandated that each commanding officer and officer in charge in the Coast Guard read that at a quarters setting.

We have commanding officers that are officers just like all of us are. We also have enlisted officers in charge in the Coast Guard. Well over 100

of our smaller units have enlisted officers in charge. Typically they're E-7's, a chief petty officer, through E-9, a master petty officer, equivalent to senior NCO's in the other services.

They are the most likely person you would see if you were assisted by the Coast Guard or were going through a law enforcement boarding by the Coast Guard. A unit that is run by an enlisted officer in charge is probably who you're going to meet out in a public setting. They're held to the same standards that commanding officers are held to and they're also compelled to watch out for their people the same way that any commanding officer or good supervisor is required to do.

So we rolled out a SAPR program in 2012 that provided much more specific information about how commanding officers and officers in charge are required to take care of their people in the realm of sexual assaults. It was a bit of a training opportunity, a learning experience, where people had to learn the difference between restricted reports and unrestricted

reports, and what does an officer in charge or a commanding officer do when that occurs.

What came from that, using best practices from the other services, was a checklist of requirements, so that the commanding officer or officer in charge has a checklist of things to do. We took the investigation of sexual assault reports out of the hands of commanding officers and put that into the hands of the Coast Guard Investigative Service, the CGIS. Each of our services has an equivalent to be able to do that. They are the experts. They've got special training thanks to a program that the Army has hosted, where they go for several weeks and really fine-hone their investigative techniques so that they can become effective sexual assault investigators.

We also have SARC's, our sexual assault response coordinators, like the other services do. They are specially trained program coordinators scattered across the Coast Guard. They too have been given special training and they have licensing requirements that we should have full compliance with

early next year.

We also have a host of volunteer victim advocates that help commanding officers and officers in charge be responsive, receptive, to reports from members of our service, just like the other ones do.

I want to talk briefly about the surveys that we use. DEOCS has been spoken about quite a bit and you had a session with all the services this morning talking about DEOCS. We use that as well. Our requirement is that a new commanding officer or officer in charge when they come into a new position, during the first six months will produce a DEOCS survey for his or her entire command. That's revisited annually thereafter and those officers in charge and commanding officers are encouraged to send that information up to their supervisor.

In my last assignment, when I was a district commander in New England, I asked my sector commanders, the next echelon down, to roll those up to me so we could have a frank conversation about how things were going. I never saw any problems being able to do that.

That's how we deal with the fast-return DEOCS information in our service. But we do more. Triannually we take part in the health-related behavior survey. It's a DOD tool. We'll be doing that again next year. In 2011, the last time it was done, we were the only service that took on the module that talked about sexual behavior and sexual preference. There was a module of discussion, that's still being evaluated, so that we can understand what that is all about for our crew members.

The federal employee viewpoint survey is a tool that's used for the civilian employees in the Coast Guard and that's a cadre of about 8400 people. The employee viewpoint survey tends to roll up to organizational level for its inputs. You don't have a unit-level response to it, so it really provides a macro view of the senses of the enlisted -- excuse me -- the civilian workforce of the Coast Guard and what they feel about how well they're being taken care of, how well they're being treated, their opportunities to move up and do things, to get training, to get education.

Coast Guard had 57 percent response. We've historically had a really good outcome, very high within the Department of Homeland Security and very high across the government writ large, where people report phenomenal satisfaction with their place in the Coast Guard.

DMDC also does a workplace gender relations survey. We've taken part in that in the past. We have another one coming up early next year. That's managed by Defense Management Data Center -- Defense Manpower Management Data Center, excuse me. It's going to be very focused on some SAPR questions. As a service we've been able to inject some particular points so we can start the inquiry more focused down on SAPR-type questions.

Another one that is unique to I think the services here is an organizational assessment survey. We've been doing that since 1998. It really got its best form in 2002 when it became an online tool. It's conducted biennially. It's held most of its structure since 2002. This next cycle, which will begin probably

in January or February, we're inserting six questions that focus on sexual harassment and sexual assault, so we can really fine-tune the responses across our workforce.

We get 50 to 60 percent of all of the Coast Guard population that takes part in that survey. So it's very helpful. It will drill down to the unit level. It's set up so that anything that discriminates down to a pool of five people or smaller, it doesn't provide clarity in terms of gender or race or anything like that. And it's not administered to cadres of people that are less than 16, so it can maintain its anonymity.

It's very helpful because we have a decade of useful information to monitor and to trend across time in the workforce.

The Coast Guard's done very well in leadership, diversity, teamwork communication, and work environment criteria, which is informative to us that we're doing some good things, but we can never rest on our laurels and just accept that as good enough. It

allows us to focus on doing those things even better, and I think it's a very helpful tool.

That's one of those things where as a commanding officer they're given that data, and you can get a macro view of the service. You can also get some comparison views from other agencies, like DFAS is an example of a big DOD entity that uses it. Parts of Health and Human Services, parts of the Social Security Administration use it. So you can get a government view as well and set your component up for: How are we doing across government writ large?

So it's very, very helpful for us. Our commanding officers at all levels really focus on the information that comes out of those surveys, so that they can act on it strategically, but also act on things tactically if that's indicated.

In 2011 we stood up a SAPR task force and pulled in participants from junior members in all these different workforce areas right on up to the most senior members, just to get a sense of what are the important things. Things were bucketed into four categories of

focus area that rolled into our SAPR program strategic plan.

One of them is climate, where we really need to focus on workplace climate. Prevention, the very important aspect of getting better at reducing sexual assaults. The response, so that we can do it smarter, better, without burdening victims any more than is necessary, so that they can build confidence, remove stigma, and try to drive down to zero in the years ahead. And then accountability is the fourth goal.

My peers have been talking about their evaluations. We have evaluations as well. Our enlisted members have an enlisted employee review. It focuses on 28 competencies that cover a host of things dealing with performance, leadership, taking care of people, and just how they do their jobs. It varies as you go from junior enlisted member through journeyman up to the masters of their craft.

We're right in the process now of changing the form, starting with the most senior members, working our way down. I took a note under required comments

about sexual assault and I think I'll have a conversation with the chief petty officer of the Coast Guard about that aspect, because I think, as in EEO and other things, that's been a very helpful tool to compel compliance and keep part of the conversation within the service.

On the officer side, we have officer evaluation reports, OER's, like other service members do. We have a range of one through seven in a variety of categories, but I think what's uniquely different about our evaluations is that there's a lot of room to write about the specifics of performance. Those are things that are description of duties, your technical competencies, your professionalism, taking care of your people, your potential for positions of greater responsibility, and then comparison with your peers across the Coast Guard.

For enlisted members, we do semi-annual evaluations up through E-6. For the senior enlisted members, E-7 through E-9, they have an annual evaluation and, just like my peer services, there can be events that

cause a special evaluation -- a nonjudicial punishment, getting a DUI, doing a court-martial. Things like that compel an evaluation as well.

On the officer side, OER's. Junior members have a semi-annual cycle. Once they get through their time as an O-3, as a lieutenant, those become annual. There are other instances that require special OER's as well, that cause things to stand out.

I don't know if you're going to be asking me questions about promotion boards and panels and things like that, but it's very, very competitive in the officer arena, especially in a time of downsizing, where you really can't have too many scars on a record and those do stand out in the officer evaluation reports. I've been on a variety of those panels and boards as a midgrade and senior officer, and as those percentages tighten up even further we're sending some incredibly talented people home. But clearly, anybody that has a blemish where they showed irresponsibility, lack of respect, are going to be abundantly clear because the commanding officers have a lot of space to write about

their observations and comparisons with others in that particular arena.

Some of the things that we've done since the SAPR campaign rolled out. We've had increased training for our Coast Guard Investigative Service investigators, our special victim advocate attorneys, and then also the SAPR counselors, the SARC's, so that they can improve their understanding of what they do.

Victim advocates. We had almost a thousand volunteer to do that volunteer function in the Coast Guard. Our need is about 550 or so, so we have more than enough. They're not all necessarily in the right places. They've been trained, they've been vetted for background checks and so forth. So that we're managing victim advocates exactly like the other services do as well.

That will all roll into the metrics that DSAD offers, so that the SARC's can load sexual assault info, training requirements, things like that. The Army is being loaded into DSAD right now. The Coast Guard will be next, early next year, I hope, so that we can do

comparisons of data across all of the services and then make judgments appropriately in terms of how we're doing.

I think it's interesting to talk about just the timing for all these different surveys that have been coincidental possibly, but a lot of their frequency is coming into view as this is really a good time to be looking at health-related behaviors, to not just poll the military workforce, but to make sure that we have our eyes on our civilian workforce.

And then also the organizational assessment survey, which is our best of tools, that has a longer view. That's a 120-question survey, so we have a lot of background, over a decade, that is helpful for commanding officers, and our ability to tweak that every two years, a little bit more for the focus items, will help keep it relevant in the decades and years ahead.

I think I'll stop there and see if you have any questions or comments you have for me.

CHAIRWOMAN JONES: Yes?

MS. FROST: You mentioned your, I think you

called it, a special victim advocate attorneys.

ADMIRAL NEPTUN: Yes, ma'am.

MS. FROST: So you have that program in place?

ADMIRAL NEPTUN: We do.

MS. FROST: How long?

ADMIRAL NEPTUN: It started in July of this year. Again, we leveraged the great training opportunity that the Army provides. We have a small cadre of special victim advocate attorneys. We hope to build more in the years ahead. We had some Congressional legislation that put six additional SARC's into the mix and some number of special victim advocate attorneys, so that we can build that out and make it more responsive.

We're geographically dispersed. We're not in garrison like most -- many DOD facilities. So we're scattered across the country and overseas as well. But we have 13 bases in the Coast Guard that are key to all of the mission support things that go with deployed units and people that are working in the country, taking

care of ships and crews and so forth.

So we will use those 13 bases, the key locations, to provide a place to work from for our SARC's. The special victim advocates may be scattered around to some of those, but they will be centrally in Washington, D.C., so they can be responsive as need be. But we would have geographic dispersal so that we can be very responsive.

Our CGIS investigators are also scattered across the country and overseas, so that they too can be responsive. Then the victim advocates are from Guam to Puerto Rico and all of the places in between.

CHAIRWOMAN JONES: Liz?

MS. HOLTZMAN: Admiral, I didn't hear any specific question on sexual assault in terms of the evaluation of commanders for promotional purposes or other purposes. Do you have a form that will do that? Or how are you going to deal with that issue?

ADMIRAL NEPTUN: Well, the evaluations, whether they're enlisted or officer, have a lot of room right now, ma'am.

MS. HOLTZMAN: I understand that, but that's going to be voluntary. Writing comments is voluntary. How do you make this a systematic part of the evaluation. The handling of sexual assaults and the command climate with respect to sexual assaults, how does that become a systematic part of the evaluation of a commander's performance? Because I think that that's going to have a major impact on how seriously the commanders take this, addressing the problem.

ADMIRAL NEPTUN: Yes, ma'am.

MS. HOLTZMAN: And so it won't be just a flash in the pan. There's a lot of publicity about it this year. Maybe next year there will be no publicity about it. Maybe there will be a different subject. So how do we ensure that this is a matter that gets systematic specific attention?

ADMIRAL NEPTUN: We don't have systemic language that deals specifically with that in the enlisted evaluations or the officer evaluations or the civilian evaluations, for that matter. There is an opportunity with the enlisted evaluations for me to have

a conversation about the explicit discussion of those, and I think we could probably get there without too much trouble.

As General Bromberg said, our OER's change some over time. Our last big change was about eight years ago. But they tend to look about the same over time. One of the take-aways for me in this discussion today was, do we really need to be explicit about sexual assault, rather than allowing that to roll into the comments, which is -- that falls in the mentoring, taking care of your people arena. It's not direct.

So I will take that back and have a conversation with my peers and my boss to see if that's something that is worthwhile, to avoid the flash in the pan, as you describe. We're in this for the long haul and our goal is to get down to zero for sexual assaults in the Coast Guard. I think we can get very, very close to that. It's going to take a lot of command focus, and it starts at the top, works its way down.

We had a sexual assault seminar at Andrews Air Force Base about a month ago. We pulled in 150

people to talk about the topic of sexual assault and how we're doing as a service. Part of that was bystander training, to give people the tools to be responsive to, what do I do when I'm out in a foreign port and things aren't going well because of alcohol? What tools do I have to avoid becoming a bystander?

That's driven top-down. That was also provided bottom-up, as: You need to give us something that helps us deal through that uncomfortable situation of the people that aren't necessarily thinking clearly and need some help to separate out.

So in that discussion, the junior members that were part of that came and said: You know, it's all about building trust at the command level. We have a small number of restricted sexual assault reports. I'd like that to be zero, because I think there's a component of trust of command at that level.

If we get to the point where we put explicit language in an OER and an EER that specifically talks about sexual assault, I think that may have an opportunity to build some confidence that this is being

taken care of very aggressively and up front. So I absolutely get your point of view on that.

But we have -- for boards and panels, we've got great guidelines that are put out by our Commandant, that really is all about taking care of your people. There is really a zero tolerance for any sexual misconduct, whether that's sexual harassment right on up through low or higher levels of sexual assault. Those people are removed from our services as quickly as a board or panel will allow that to occur.

So it's discussed in the OER's, it can be discussed in the EER's, and I think we'll work on that.

MS. HOLTZMAN: Well, I guess my question about that, though, is that if it's not an explicit metric, if it's not an explicit issue, then how do you assure the public and how do you track what's happening? Because it's a little bit like -- I think the new bill is going to change this, but you can take into account a person's character and performance in the military in terms of deciding whether or not to bring criminal charges, okay. So if someone's not being prosecuted

you don't know whether it's because no crime was committed or because they thought this was really a good guy or gal.

If we want to change culture in the military, there are some people who might think, well, this person has a great record of heroism and bravery in combat and all the rest and does fabulous work in the military, but there's a sexual assault here or there's a tolerance of it, and how do we deal with it?

Unless we know that people are actually grappling with that, we don't know. How does the public get assured, how do people that are enlisted in the military get assured, how does the top brass in the military get assured, that this is really being focused on?

When it's part of the general subject of leadership, how does one know?

ADMIRAL NEPTUN: Okay.

MS. HOLTZMAN: It's just a question I have. I'm not somebody who's ever been involved with these kinds of forms and I don't know how they're done in the

military. But it's a question I'm raising and it's occurred from the testimony of the others here.

I don't see that same issue with regard to the Marines. Maybe I didn't read it properly. But I don't see where an issue of sexual assault is explicitly mentioned in the Marine document, either.

ADMIRAL NEPTUN: Let's talk about the evaluations and then the public view. The evaluations are reported up to chain of command, so a supervisor consults with the member being evaluated. That supervisor has a supervisor. There are three layers of review in all of our commands, whether it's an enlisted evaluation or an officer evaluation, and it works its way up. That does not become public information. That's loaded into the records --

MS. HOLTZMAN: I don't mean that, in that sense. I mean if you can't measure -- I'm not asking for any individual information on a person, no, no, no. I'm not talking about that. I'm just talking about how the public can be assured. The statistics that you're giving now about, for example, more reports coming

forward, particularly about older complaints, you can draw some inferences from that. That helps to assure the public that people in the military have more confidence. You're not saying you're giving the names of the people who are coming forward.

So excuse me for not being explicit about that or unclear about that.

ADMIRAL NEPTUN: The public reporting piece -- that's part of the reason we're going into DSAD, because we've managed by other databases and spreadsheets to inform through the Joint Chiefs of Staff when they go to the Hill for a hearing to talk through how the services are doing.

We're rolling into DSAD next year and that will become a public touch point for how the services are doing, because that information comes out on the Hill, those are the numbers that are reported, and those are the things that can be read in the Washington Post and other places where they do a deeper dive beyond just the headlines in the hearing. That information is going to be part of what DSAD can provide to all of us.

I think it's also important that commanding officers have a frank conversation with their people. We've had over a year of public discourse within our service. I mentioned our Commandant going around, and he's talked about sexual assault and no bystanders with 32,000 people over the last year. When I was a field commander I was doing the same thing.

None of that is flash in the pan. That's been consistently the messaging over the last three and a half years, and it even goes farther back than that when you look at the organizational assessment survey and how that information is brought out in an all-hands setting to have conversations about how we can do things better.

Commanding officers are tasked to take care of their people and to take care of them well. That's where I think the surveys are helpful, and then the individual counseling that goes with the evaluations accompanies that as well on an individual basis.

COLONEL TURNER: May I?

CHAIRWOMAN JONES: Yes, Colonel.

COLONEL TURNER: General Bromberg, what is the definition of "substantiated" or "retaliated" in your 27 September '13 officer assessment document that requires mandatory reporting if it's substantiated or if it's retaliated? What are those definitions in the determination?

GENERAL BROMBERG: The determination of "substantiated," it's not just based on credible evidence. It's based on there's been an allegation and now there's enough evidence there where it's a substantiated incident as a result of an investigation or some other means that says, yes, this really did happen and that person or that subject did definitely commit that act, or there's enough evidence there that would lead to some kind of administrative action.

COLONEL TURNER: Yes, sir. I'm sorry, I didn't articulate well. I'm trying to figure out who makes that substantiated determination? Are you relying on the MCIO or the CID?

GENERAL BROMBERG: It's going to be a combination of -- well, it's the commander's

responsibility, but this will be the CID in combination with the SJA with the commander, just like we do it today. It's not so much the -- it's not -- once the incident's been substantiated at the unit or against the individual. It's not so much trying to find the substantiation, but after that fact has been substantiated. Does that make sense?

COLONEL TURNER: It does, sir. So my question then is, that process can take a long time, and the commander or whoever is being rated may be PCS'ed, moved to a new assignment.

GENERAL BROMBERG: It would be flagged. What we do is -- the assumption would be here that if there's an allegation, that at that point there's an investigation going on. What we do, we call it a flag, which means that prevents any favorable personnel action. He shouldn't be promoted, he shouldn't be allowed to move or anything else.

Then once that case is adjudicated, whether it's substantiated or not substantiated, then that action will take place. So we hold OER's and we don't

process an OER in the Army while you're under investigation, particularly if you're rating other people.

COLONEL TURNER: So if you're a unit-level commander and you have somebody in your unit who has a substantiated incident, who is pending investigation -- we don't know if it's substantiated yet -- that unit commander won't move until we find out the disposition?

GENERAL BROMBERG: Let's just say I'm a commander and there's an allegation against me, and so now there's an investigation going on. The chain of command normally under most circumstances -- I say normally -- will suspend that commander. The junior will become the acting commander, and you wait until the investigation is concluded.

If there were to be a PCS for some particular reason -- there might be in a sexual assault case because you have expedited transfer of the victim; you can also transfer the accused -- then that whole process will move with them. But they wouldn't get an OER at that point. The OER won't be given until you're done with

the investigation, because if you're substantiated there's probably going to be some kind of activity going on, either a letter of reprimand or a court-martial or Article 15, which would result in some other action. That was the intent.

COLONEL TURNER: Yes, sir, and I hear that for the unit commander who's involved in his own misconduct. But I also see in your policy that they're to be evaluated -- they must note the incident and explain if they have a subordinate in their unit.

GENERAL BROMBERG: Right.

COLONEL TURNER: So how do you link that ongoing investigation into a subordinate when a commander PCS's?

CHAIRWOMAN JONES: What's a PCS?

GENERAL BROMBERG: Permanent change of station, a move from one place to the next place.

CHAIRWOMAN JONES: Thank you.

GENERAL BROMBERG: The intent is that, so if I have an investigation going on in my organization and you're my boss and now I'm up for reassignment to go

somewhere, you'd assess me up to that point on how well I've handled that investigation, if I've done all the right things, if I've given the -- one of the things I saw in the survey results is -- and I've talked to many victims -- no one tells me what's going on.

Well, we have within our regulations that every 30 days the victim gets an update, and that's a commander responsibility. It's not the investigating officer's responsibility, not the lawyer's responsibility. The commander's supposed to tell that person.

So if I haven't done that and there's evidence of that, then I would evaluate the fact that you haven't supported the program. And I could do that even on a reassignment.

GENERAL HAM: If I may, Colonel. I think the point is that if there's an ongoing investigation of a sexual assault in my unit and it's time for me to be reassigned, the allegation has not been substantiated or not substantiated, with the regulation or the policy as it stands now there is no mandated

comment for me as I depart. The successor in command will inherit that and he or she will have a mandatory comment once the case is substantiated or not.

COLONEL TURNER: But can you ever catch back up with the individual who left in the beginning of it while it's still under investigation? They may have been there three-quarters of the time.

GENERAL BROMBERG: I think because it's a new policy, I would say as we work through it I think there will be an assessment, because the visibility is so high now. Some of these, as you know, will go on. They'll span fiscal years. I think you'll look at that officer, how he handles the multitude of responsibilities.

We felt it was important enough that we just didn't look at the officer's behavior, but how was he supporting the rest of the program.

CHAIRWOMAN JONES: Thank you very much. We appreciate your coming. It's been very helpful. To the extent we don't have your forms, I know you're going to provide them. Thank you for that.

(Recess from 2:57 p.m. to 3:14 p.m.)

SUBCOMMITTEE DISCUSSION AND PLANNING

CHAIRWOMAN JONES: Go ahead, Shannon.

MS. GREEN: She did send us a clean copy of the bill --

CHAIRWOMAN JONES: I can't hear you. Sorry.

MS. GREEN: We have a clean copy of the bill. I'll hand that out. They sent us some questions. I'm not real sure why, why they sent us the questions. But they're critiques of the bill and they asked that we provide them to -- that I provide them to the panel. So I'll give those to you.

MS. FROST: Who are the questions from? Excuse me?

Senator Gillibrand's office.

COLONEL HAM: They appear to be questions of the same type of technical issues that you've heard discussed. The Senator's office also sent us a copy of a short floor speech --

CHAIRWOMAN JONES: Are there answers to

those questions?

MS. GREEN: I believe there are answers addressed in the floor speech that Senator Gillibrand is going to give later today, and they provided us a copy of that. So I'm going to pass those out right now.

COLONEL HAM: Which basically addresses the technical fixes in the amendments that take care of some of the technical problems that you heard discussed.

CHAIRWOMAN JONES: That would be very helpful.

MS. GREEN: And I did see earlier Senator Gillibrand did an opening discussion of her latest proposal, and then Senator McCaskill responded to it, and then Senator Gillibrand earlier addressed some of the technical issues that she raised. So it might be worthwhile to look at some of that, if you still have questions.

Basically, folks that are co-sponsoring Senator Gillibrand's bill as well as folks opposing it are just explaining their rationale for their support. It's really interesting.

MS. HOLTZMAN: So what is actually going on right now with the Senate?

MS. GREEN: Senator McCain was speaking when I came in here.

MS. HOLTZMAN: But is there going to be a vote at some point?

MS. GREEN: As far as I understand, they've limited debate on sexual assault issues to six hours. I don't know if they're going to take a vote after that or if they will continue the debate on tomorrow.

CHAIRWOMAN JONES: Yes, John?

GENERAL ALTENBURG: I'd like to just -- I haven't read it all, but I'll just go to the second page of this thing that the Senator's office sent over in the middle: "Let me give you an example."

CHAIRWOMAN JONES: Speedy reader.

GENERAL ALTENBURG: All I did is I read four paragraphs. I'm not as far as you are yet.

But on the second page: "Let me give you an example. Some have argued that plea bargaining will not work under our system. That is not true. The

amendment transfers the commander's responsibility for convening authority to the offices of the chiefs of staff of each service. Therefore the offices will now have the authority to oversee pretrial agreements."

GENERAL HAM: But that's not who's convening authority for these crimes.

GENERAL ALTENBURG: Well, but that's absurd on its face, that they think the solution legislatively is, hey, it's going to be at the chief of staff level. There are 74 convening authorities in the Army. All at once Odierno's office is going to oversee plea agreements for 74 convening authorities or divisions or corps or whatever there are out there?

I mean, that's what we got from Professor Fidell this morning, was: Well, we can take care of that, we can take care of that.

You were spot on. When you're writing legislation you don't want to write loopholes into it. You have to be precise and specific. I think you were pointing that out to him. We've got the example on the same subject matter already with the 2006 statute,

which within two years was held unconstitutional.

COLONEL HAM: I would assume then that responsibility to oversee expert witnesses and requests for investigative assistance and things like that would also be handled by the convening authority within the chiefs of staff office, because those are currently part of the duties of the convening authority under the system, for the covered offenses.

GENERAL ALTENBURG: I think one of the big problems with her bill is that they're focused on changing everything and pulling the commander out and they have not thought through the permutations of that. This is a system that's extremely delicately balanced to protect the accused, to be efficient for the command, and all kinds of other things. And when you push in one place, as we did in 2006 with the amendment to 120, which satisfied all the victim advocates groups, but which ended up letting people go free because they got a case busted or two because of unconstitutionality, you have to think through all of that.

I'm just concerned. That's why the only

thing I really talked to Fidell about when I talked to him was: You said substantial time and we haven't had another hearing, and all at once they're racing to change. They're not even letting this committee do its job. This was set up by last year's legislation. It's supposed to take 18 months. The Secretary cut it back to 12 months. And they're racing off.

You heard these people here just in the previous hour talking about the effect of just the one thing of pulling it up to the O-6 level, that that's encouraged victims to come forward because they have some confidence it's not going to get swept away by an O-3 who's close to an E-7 alleged perpetrator.

So if that change, which is only a year old, and the victim advocates and the special victim prosecutors and the moving the victim and the moving the perpetrator now -- that's five changes in the last five years. And this panel's not being allowed to figure out yet what's the effect of that. Have we really started to get a handle on sexual assault in the military? Maybe we're already turning the corner on it, and

they're going to all at once come in here and change the whole system.

That's my concern, is that they're doing it so quickly, without even evaluating how well are we doing.

MS. HOLTZMAN: Can I?

CHAIRWOMAN JONES: Yes, go ahead, Liz.

MS. HOLTZMAN: You know, one always has higher hopes for the Congress, for the Senate. But they do things in their own way. The Lord's methods are inexplicable, too.

But the question is what's left for us. There's no way we're going to slow down this train. It's going to go. Either the bill is going to pass the Senate or it's not going to pass the Senate. If it passes the Senate, then it's got big hurdles in the House. So I think there's a lot of work for us still to do.

I would just say, looking at this quickly, really quickly, I don't think I'm satisfied at all by the answers here. For example, "we're also asked" --

she's trying to explain technical issues in the bill: "We're also asked about crimes that happen simultaneously. What happens if, during a sexual assault, crimes are also committed that fall under the old system. In order to clarify any confusion about this question, the amendment will say that all known crimes will be charged under the new system."

Well, let's just take a look at the word "known." Known by whom and known when? Known at the time of the arrest? Known at the time of the court-martial? Known at the time of when? This is not -- "all known crimes"? Somebody could argue that known crimes within that category is what's meant by this.

This doesn't clarify very much in my mind, and it raises other questions, too. I think that -- and she pooh-poohs the whole issue of plea bargains. I think that there are serious questions about that.

There may be other questions raised by this language. We haven't even had a chance to look at it.

CHAIRWOMAN JONES: Yes, we really need to look at the amendment.

MS. HOLTZMAN: Right, we need to look at the amendment. I would just suggest, Madam Chair, that we look at the amendment, we ask the military service JAG's to look at this. And we might want to circulate it to some other people aside from the military. There may be other law professors, some of whom may not be in Chile at this moment, who could look at it and also give us some thoughts about the subject.

But I think that that would be a very constructive approach that we could take, because if this does pass then we will need to be able to inform the House about these issues in this bill -- the conference, because there will be a conference committee.

And by the way, if this language is in the Senate bill, it's not in the House bill, so under the rules of the House and Senate they have opportunity to change the language, to accept the Senate amendment or to reject the Senate amendment entirely or to modify the Senate amendment.

So I think that we can make an important

contribution. That's assuming it passes. I mean, we could wait.

Do you know when the vote's going to take place?

MS. GREEN: Probably after Thanksgiving. Oh, the vote on this amendment?

MS. HOLTZMAN: Yes.

MS. GREEN: Later today or tomorrow, I would expect.

MS. HOLTZMAN: Oh. Well, then we could just wait to see. If it doesn't pass at all, then I don't know that we have to do anything. That's another question. That's up to you, Madam Chair. I'm agnostic on that.

CHAIRWOMAN JONES: The only thing I have to say is if it doesn't pass at all it may still be worth finishing our inquiry with respect to the most recent iteration of the bill, only because I would expect that it may come back again in the next legislative cycle.

MS. HOLTZMAN: Correct.

CHAIRWOMAN JONES: And we're supposed to be

weighing in on proposed legislation.

MS. GREEN: Actually, Senator Boxer actually said on the floor today -- she's one of the co-sponsors -- that absolutely it'll be an issue next year. She referenced the increasing support, so I think there's no doubt that will be an issue next year.

CHAIRWOMAN JONES: Honestly, this new version may narrow the issues. We'll all have a chance now to see what the version is. I don't think I've had an adequate -- I certainly know I haven't had an adequate look. And I'll be reading the Senator's other -- this was just sent to us?

MS. GREEN: Less than five minutes ago.

CHAIRWOMAN JONES: Okay, fine. So we can all read that as well. I think it's most important to look at the bill and see what we think it says.

GENERAL HAM: What we have here, is this the most -- is this as amended that's pending?

MS. GREEN: Yes, sir.

GENERAL HAM: That's what this is, okay.

MS. HOLTZMAN: The one that has "ARM-13-N55"

at the top.

MS. GREEN: Exactly.

GENERAL HAM: Okay.

CHAIRWOMAN JONES: And, Colonel, you're going to get our request over to I think it was the judge advocates for each of the services who wrote the October 28th letter? That would be great.

And I agree, we could circulate it more widely and ask for questions or critique.

MS. HOLTZMAN: Particularly if it passes the Senate.

CHAIRWOMAN JONES: Well, definitely, yes.

COLONEL HAM: I can tell you one thing it does is it changes how it handles Article 22. If you recall, Article 22 is the statutory provision that has who is the general court-martial convening authority. If you recall from General Pede's discussion, the original version of the amendment that you looked at just deletes a whole category of commanders. The new amendment does not do that. Instead it adds the new chief of staff convening authority. That is a major

distinction between the original version you were looking at and this version.

CHAIRWOMAN JONES: Well, depending on timing, we may want another presentation from General Pede. His chart was the best thing that ever happened as far as I was concerned.

GENERAL HAM: Based on the modifications.

CHAIRWOMAN JONES: In terms of figuring out what the legislation was actually proposing, because it is structural. There's a lot of change of structure here.

MS. HOLTZMAN: One question I would have also is can the chief of staff delegate back to the local commander? I mean, there's no way the chief of staff is going to be able to handle all of this stuff. They have to be able to delegate it to somebody. Who's going to handle it?

COLONEL HAM: Well, because it only adds to Article 22 instead of deleting from Article 22 --

MS. HOLTZMAN: So the commander's still going to have power, convening authority, over all these

crimes?

GENERAL ALTENBURG: I think the Secretary is the one.

COLONEL HAM: It allows the Secretary to designate additional convening authorities.

MS. HOLTZMAN: Okay, so there you go. You can go right back to where we are now.

COLONEL HAM: That provision was --

GENERAL HAM: For excluded offenses.

COLONEL HAM: That provision --

MS. HOLTZMAN: For excluded offenses.

COLONEL HAM: That provision was deleted under the prior version.

MS. HOLTZMAN: Oh, I see. So that's how they solved it for the excluded offenses.

GENERAL HAM: You couldn't do it for the new offenses, the serious offenses, for lack of a better term. You can't take those back to the existing convening authority.

MS. HOLTZMAN: I see. I'm sorry, I didn't understand that.

COLONEL HAM: So it leaves -- for people that held positions like General Ham as division commander, under this new version they have general court-martial convening authority still for the excluded offenses.

MS. HOLTZMAN[?]: Plus, plus the Chief of Staff, the Office of the Chief of Staff.

MS. HOLTZMAN: But why couldn't the office of the chief of staff delegate to the commanders even for the excluded -- I mean, for the included, for the serious offenses? Why not?

GENERAL HAM: Well, I think because in the draft we saw this morning it said it withheld that completely to the new --

MS. HOLTZMAN: Yes. But if you've given delegation authority to the chief of staff, what's to stop the chief of staff from delegating to whomever he or she wants?

GENERAL ALTENBURG: I think the answer is they've created a new convening authority and it's going to be a JAG O-6. So he's got to delegate it to JAG O-6's, I think, because the whole thrust of this is that JAG

officers will have the authority over the common law crimes.

MS. HOLTZMAN: I don't know. I just ask. I don't know.

COLONEL HAM: Well, the plain language is that each chief of staff "shall establish an office to convene special and general court-martials for the included offenses."

MS. HOLTZMAN: "The included"?

CHAIRWOMAN JONES: Right.

COLONEL HAM: For what we're calling the included offenses.

What is left in the amended version is Articles 133 and 134 are still left. They're excluded offenses, as they were under the original version.

GENERAL ALTENBURG: Yes, they don't really address the hybrid that Ms. Holtzman raised. They don't really go after that at all.

COLONEL HAM: There are still questions of a number of serious offenses, including those with sexual components, like child pornography, all the

imported offenses under the 18 U.S.C.

GENERAL HAM: Judge Jones, do we have in mind a timeline for ultimately opining on whether the commander should come out or not as a committee?

CHAIRWOMAN JONES: We were hoping to further that effort today, but with the new amendment and not really getting to look at the bill that we should be talking about until now, our timeline has slowed down a little bit. Let's create one, I agree.

Colonel Ham, it would be helpful to have a comment from The Judge Advocates. I would suggest that we -- I don't know that I can ask everybody to come to D.C. again. We could certainly have those of us who could come set a date, and we could have everyone else phone in, once we've had the opportunity to review the bill, look at the Senator's comments, which she sent us, and if we can get something from The Judge Advocates General of each of the services promptly that would be terrific.

Does everybody have -- well, we don't know when we'll get those comments, although I don't think

it should take too long. Do you, Colonel? All right.

I don't have my calendar. Today's the 20th.

Why don't we do this. I don't have mine and I see other people looking for theirs. Why don't we just -- let me ask each of you to send in your availability. Next week is Thanksgiving, so I don't know how much availability there would be, except possibly for a phone conference, one of those days.

Why don't we see what happens tonight with the bill. And in the mean time, Colonel Ham will send out tomorrow or the next day, which is all we have left in this week, questions about availability either for next week or the week after Thanksgiving. So why don't we just leave it at that. We'll probably know a lot more by the end of the night.

MS. HOLTZMAN: Will we send out to the JAG's?

CHAIRWOMAN JONES: Yes, I think the Colonel is going to get in touch with the JAG's immediately.

I don't know that there's much more we can do with that because of the changes. I know I would need more time to read it again and figure out.

MS. HOLTZMAN: So Senator Boxer said we're going to be back?

MS. GREEN: She made it pretty clear that this is something that's been going on for years.

MS. HOLTZMAN: So it sounds like --

MS. GREEN: And that this year a lot of progress has been made, and whether it passes or not the support has increased.

MS. HOLTZMAN: So it sounds like they're expecting to lose.

MS. GREEN: I don't know.

GENERAL HAM: Well, I think, Judge Jones, as you said, I think even if it passes in the Senate, it's a pretty tough slog in the House.

MS. HOLTZMAN: Right.

GENERAL ALTENBURG: That's why I think the role of this committee is important.

CHAIRWOMAN JONES: So win, lose, or next year, we have a role on this and it's only a question of how quickly we have to address the latest version of the bill. I think we're in a pretty good position, just

from hearing the comments and doing the work that we've already done on this, to do that. But let's wait and see what happens tonight.

Colonel, you can let us know when we can expect any submissions from The Judge Advocates General on the issues?

COLONEL HAM: Were you ready to comment on the prior version of the bill based on what you heard, or would you rather not do that at this time?

CHAIRWOMAN JONES: I don't think that there's much point to it. I think anybody who read the transcript could probably easily figure out what our issues were with the bill. At the moment it sounds like there has been an effort in the new legislation to fix some of it. I'm not sure whether it's fixed or not. So I don't know how profitable a conversation on it would be right now.

COLONEL HAM: So you're left with there were two issues, as I understood it. One is the philosophical question, which you addressed in part with regard to our allies, and then there were the

technical questions, in other words if it[?] was agreed to remove the commander would this bill or the prior bill be the way to do it.

CHAIRWOMAN JONES: Yes. Our whole effort in this session and the previous one was to actually move to the bill and to see whether -- whether you could figure out what structure it set up, whether some of the issues that we discussed today were ones that were serious enough that it couldn't just be put in a box of, oh we can fix that.

So I think that, yes, it was about the feasibility of the bill. It was whether there were -- we haven't discussed whether or not, the notion of not providing resources or thinking that you need not provide resources is correct or sensible. So we still have those to be concerned about.

Obviously, we're supposed to look at proposed legislation, so that's what we've been doing because of the immediacy of having some input on this piece of legislation.

Maybe I didn't understand your question,

Colonel. I think that this is a separate issue from what we reported out on with respect to the very narrow issue of whether there was any evidence to be taken from the experiences of our foreign allies with respect to increases in reporting by sexual assault victims. We've made that finding.

I had hoped that we might be able to make some findings with respect to the feasibility of this proposal, but I don't think we can at the moment.

Yes, John.

GENERAL ALTENBURG: There's one other way of looking at this in terms of the different decisions that we might make or opinions that we might form. That is, as a subcommittee of the Response Systems Panel -- we know why that was set up. Sexual assault is a problem in the military. Is taking the commander out going to make that better or worse or it's not going to make any difference at all, so we should do whatever the vote is?

I mean, will it in fact make it better? Some of us are probably prepared to say one way or the other whether we think pulling the commander out is a good

idea. And we probably need more. But there's been an awful lot of evidence in this room and not much of it supporting the idea of pulling the commander out of the convening authority.

CHAIRWOMAN JONES: Well, we began to discuss that before we had our last public hearing, when we brought in more evidence from victim advocates and victims. We now have that testimony. And you're right, there is a third question here, obviously, at least one more question. But the ultimate one is whether or not we think that removing the commander as suggested in this legislation is actually going to have an impact for the good in terms of the treatment of sexual assaults in the military.

I think that's obviously a discussion that we have to have. And I'd like to ask now, what additional evidence would members of the subcommittee like to hear? And I also will be asking the panel that. In fact, I think, Kyle, we submitted an inquiry to the rest of the panel with respect to additional issues on this.

COLONEL GREEN: Actually, ma'am, that was to the subcommittee members, just on specific issues.

CHAIRWOMAN JONES: I thought you also sent it to the rest of the panel.

COLONEL GREEN: No, ma'am.

CHAIRWOMAN JONES: That's fine.

COLONEL GREEN: It was just to the subcommittee so far, just to get additional topics relevant to the role of the commander. But that was more focused on topics outside the question about disposition authority. I think it's a different question in terms of what evidence we need to take.

GENERAL HAM: One question I think needs to be re-addressed, given the change in the proposed amendment with retaining the current convening authorities, is what changes -- what does that change in terms of resources? I think DOD gave us a report that said if the previous amendment were implemented \$118 million a year and X number of people. I think we ought to ask them, now with this change, do those figures -- does resourcing change?

MS. HOLTZMAN: You asked about -- I have two points I want to make. One is you asked about what additional information we need to make a decision about the role of the commander. I think if you look at the evidence we've received, we've heard from victims, we've heard from the commanders who are commanding now. We've heard from the Senator.

We haven't heard from the other category that Senator Gillibrand cites in support of her legislation, of former commanders who think that this is a really good, important change. It might be useful to hear from some former commanders on both sides of the issue, both those that she suggests and some that we can find.

I'd also think that there are a number of other subjects, really important subjects, such as the one that came up today about the extent to which evaluation of how sexual assault is handled by commanders in terms of command climate, how that's being addressed. It's very important to focus on.

It may be -- from what I've heard today, my preliminary take -- I don't know enough about this, but

my preliminary take is what the Army was doing seemed to be on the right track, and that if we didn't isolate this issue and track this issue that it could easily be swept under the rug, the issue of how commanders handle command climate with regard to sexual assault.

So I hope we can make a recommendation on that, and it's possible if, for example, the House doesn't take up this bill until April or later, that a recommendation along these lines will actually find its way -- well, I don't know if it needs legislation, so I take that back. But I think it could make a difference in their developing the evaluation forms.

MS. FROST: I think this goes back to what Professor Fidell said this morning when he said that the ultimate goal is not increased reporting or prosecutions, but a fair and balanced -- I don't want to misquote him, but public confidence in the military justice system. I think ensuring -- one way of getting that public confidence is by specifically rating commanders on that factor.

I'm not convinced that that in and of itself

is necessarily better than what some of the other services are doing. But in terms of public confidence I think it would go a long way.

CHAIRWOMAN JONES: I agree that, to get back to the question of whether or not we think taking the commander out of the role that he currently plays is or is not something that we would support. We definitely do need to hear from former commanders. I think that is a category. There are three or four of them that have spoken out. They're named, I believe, in Senator Gillibrand's --

GENERAL ALTENBURG: Kennedy and Sutton are two of them.

CHAIRWOMAN JONES: Right. And we ought to try to contact them and see if they would come in and speak with us, and look for other former commanders who might take a different opinion. I think that would be -- I agree with Ms. Holtzman that that would be worthwhile in terms of that question.

I also, I think it might be the subject of a recommendation when we're talking about in our report

about accountability to take a look at these promotion forms and see whether or not we wouldn't recommend more specificity with respect to sexual assault. I don't know which way I come out on that, but I'd like to see the forms and think about it, and it could be a possible recommendation.

MS. HOLTZMAN: Maybe we should hear, maybe we should hear some more evidence on how -- I mean, from people who are involved in personnel decisions and so forth, about whether you do need that, what difference it would make. Personally, I agree in terms of public confidence saying that that's there goes a long way. But is it really necessary? Can it be covered in other ways, and so forth? I'm agnostic because I don't know enough about that. But if you could figure out how to educate me, I'm willing to learn.

GENERAL HAM: I wouldn't want to spend -- different topic. I wouldn't want to spend a whole lot of time on it, but we've heard some anecdotal information that reporting is increasing. If the services or DOD can come back with some concrete numbers

to say -- we're now a couple months beyond the end of FY '13. Do they have FY '13 numbers? And if they could demonstrate there's a change or no change up or down, whatever that may be. And as we just heard, I felt it was an interesting comment, are the reports -- what's the timeliness of the reporting of this? Are these new incidents or are they old incidents, both of which can be positively viewed, but in different ways.

But a little more clarity on what's happening with reporting with the measures that have already been implemented.

COLONEL HAM: Yes, sir. General Patton addressed that at the very first session of the public meeting on the 7th and 8th of November. So we have all the materials from the services and from DOD-wide on the percentage increase and the numbers. So we have that information.

CHAIRWOMAN JONES: The only other comment I have, and it springs from listening to Professor Fidell this morning, I really don't believe that the House and the Senate are voting, those who choose to vote for this

bill, are voting for it because they wish to bring about a landmark change in the Uniform Code of Military Justice and have it evolve.

There's been no debate about that. There's been no specifics about that sort of a vision. This is about whether this is an effective response to sexual assault. At least that's the way I look at it. So I think we just have to keep on -- I don't think any of us aren't thinking about it that way, but I think we do have to keep our eye on the ball with respect to that.

I think another one or two subcommittee members have said this before. We need to make sure that we've looked for any and all possible evidence with respect to whether or not taking the commander out will have a positive impact on this, on the treatment of sexual assaults in the military. I think the next line of inquiry is the former commanders, and I think we should all be thinking about any- and everywhere else that we should be looking for additional evidence with respect to that.

COLONEL HAM: And how do you use the evidence

that you heard, the full panel heard, on the increased reporting that took place with the commander still in the system and before the special victim counsel program took effect in all the services except one? The question was raised, reporting has increased, but we don't know the number of -- the 26,000 number, we don't know what that is and we won't have another survey on that until 2014.

CHAIRWOMAN JONES: I think that information is helpful and shows that many of the programs show promise. But it doesn't excuse us from looking for any and all information we can find or evidence that we can find in support of, if there is any, removing the commander as a solution.

COLONEL TURNER[?]: I have two thoughts, very small. The first is UCI. One of the things we've heard several times is the bill will reduce unlawful command influence. So I don't think -- maybe I've missed it, but I haven't heard anybody explain unlawful command influence and how that process works and who it extends to. In other words, it extends to others than

just convening authorities. So it might be useful to get like a background paper or something from the services, the military services.

The second thing is we've also heard a lot about how there's a conflict of interest and that the convening authorities, usually they say commanders, know the victim or the accused. I wonder if it's possible to ask the services to ask their convening authorities, for all the cases you've referred or failed to refer in the last year, how many of you have personally worked with and on a close basis known the accused or the alleged victim?

CHAIRWOMAN JONES: I've said this before. I think it's important to talk about that issue and find the facts on it, for the simple reason that I do believe most people think that removing the commander means removing your commander in your unit or your company, as opposed to who the actual officer is now in charge of referring charges. I agree.

MS. HOLTZMAN: Plus I think, if I may add to that point, that might be a recommendation that's made

in any case by this panel, which is that if the convening authority, under whatever system you have, knows either the accused or the victim or anybody associated with the prosecution or the defense, they need to recuse themselves. They can't be the convening authority.

I don't know that you have these ethical rules, but that might be something also to consider here as a way of removing that kind of influence.

COLONEL HAM: There's already a legal requirement. There's already a legal requirement that if the convening authority has a personal interest in the outcome of the case --

MS. HOLTZMAN: That's not the same thing.

MS. FROST: But there could be an expansion.

MS. HOLTZMAN: Right.

CHAIRWOMAN JONES: Well, we should look at that rule -- I didn't know it existed, either -- and see if we want to recommend that it be expanded.

GENERAL ALTENBURG: We ought to be able to assess has this ever been an issue on appeal?

COLONEL HAM: There's case law on that. I

forget the name of it off the top of my head.

GENERAL ALTENBURG: In the broader definition as just posed, are there any cases of that nature on appeal, where it was alleged the convening authority knew the accused and should not have referred?

COLONEL HAM: In the case I'm familiar with, the name of which I can't recall, it was the special court-martial convening authority knew the victim. I believe it was a sexual assault case.

MS. HOLTZMAN: And what happened?

COLONEL HAM: As I recall, the conviction was overturned because he took some action in the case. I'd have to refresh my recollection, but I think he had a personal relationship with the victim and acted to appoint the 32 officer. So he wasn't the actual person who referred the case to trial, as I recall the facts. But this is going back.

GENERAL ALTENBURG: But the case got busted anyway?

COLONEL HAM: I'm sorry, sir?

GENERAL ALTENBURG: The case got busted

anyway?

COLONEL HAM: I believe it did. My recollection is it did. I think this was Nix. It might be Nix. I'd have to look.

GENERAL ALTENBURG: I just point out, there's already a process that accounts for that, that's all. We're raising an issue that's not really an issue, because if there's case law on it then convening authorities don't do that.

Frequently where somebody knows somebody, we just bump it up a level. If a battalion commander wants to put somebody in pretrial confinement or doesn't, you don't try to talk him into putting them into pretrial confinement. You go to his boss and you say: Hey, brigade commander, the battalion commander doesn't want to put this guy in pretrial confinement for murder; I think you should. And you caution him: Don't tell the battalion commander to do it; you sign the convening order.

The system is rich with all kinds of history and case law, because it has its own Supreme Court going

back to 1950, and there's all kinds of ways to solve these issues that exist already. We raise them because we think it's novel and we find out that it really isn't; there's a mechanism for doing all that.

But what will change that and make that difficult is pulling the commander out and putting a lawyer in. And then it's going to be, is there such a thing as unlawful convening authority influence when it's not a commander, but it's a lawyer. I mean, there are going to be all kinds of new issues based on changing this.

COLONEL HAM: I used to teach unlawful command influence at the JAG school and of course followed it as the Chief of the Defense Appellate Division. The last two unlawful command influence cases that have gone to our highest court and resulted in reversal of the case and dismissal with prejudice were staff judge advocates unlawfully attempting to recuse military judges by their actions.

One was last year. The name of the case is Salyer. And one was a couple years ago. The name of

the case is Lewis. So they were not actions of commanders, because what the law says is that anyone who acts with a, quote, "mantle of command authority," that is a commander, his highest ranking enlisted person, or staff judge advocate, or trial counsel, can do it, who acts to try to influence witnesses, judges, members, or subordinate commanders. The one we keep hearing about is subordinate commanders. That's actually probably the least common, at least in the case law -- is committing unlawful command influence.

MS. FRIED: I think the RFI's asked about conflicts of interest and how they're addressed. That information might fit in some way.

CHAIRWOMAN JONES: I didn't hear the beginning of that, Maria.

MS. FRIED: The RFI's that the services had to respond to asked about conflicts of interest.

CHAIRWOMAN JONES: You know, to your point, John, I agree that we don't have to look for issues where there aren't any, and I'm sure things are probably working quite well in many areas. But in an atmosphere

right now where the issue is can we trust the commanders and the public at large seems to believe that it's your own commander who's got all the power, an issue like the O-6, the convening authority right now, not having to recuse him or herself if they know either the accused or the victim might bring some clarity if it's not already clear in the rules.

I think it's worth looking at, I guess is all I'm saying.

COLONEL HAM: Ma'am, some other issues we identified that you might perhaps want to address. Kyle has a list.

COLONEL GREEN: Just to run down upcoming meetings or things that we have going on. We have a site visit at Fort Hood, followed by the two-day panel meeting in Austin, and then the site visit to San Antonio and Lackland. The site visits are intended to focus and provide an opportunity to be operational unit level discussions with convening authorities, subordinate commanders, senior enlisted leadership, and evaluate some of these things both at, at Fort Hood, at the

operational installation, and then at Lackland, in the training environment.

So hopefully some of the answers to the questions you've had will come from those. The members who participate in those can provide trip reports and information back that the subcommittee can use in its discussions and deliberations.

COLONEL HAM: And we know there will be two issues addressed directly relevant to this conversation. There are more than one general court-martial convening authorities at Fort Hood. I was told by the point of contact and so I asked that you hear from that general court-martial convening authority, who actually did recuse himself from a case because he knew -- the accused was his son's soccer coach or something like that. So he transferred it to another general court-martial convening authority. So that's a specific instance of what you were talking about. Hopefully you're going to be able to hear that at Fort Hood from that individual.

COLONEL TURNER: That's RCM 306.

CHAIRWOMAN JONES: Pardon me?

COLONEL TURNER: Rule for Court-martial 306 and the discussion deal with that issue.

CHAIRWOMAN JONES: And they talk about whether you know the person?

COLONEL TURNER: Substantial involvement or a variation.

CHAIRWOMAN JONES: It may be clear enough, then, right in the rules. I'll have to take a look, that's all.

COLONEL GREEN: The meeting that we have scheduled for 8 January, we'll bring in members of the training command and the JAG schools to talk about legal training for commanders and strategic training, leadership training and strategic training, leading through crises, leading through change.

So that's currently what we have set for 8 January. That may be a target to ask the -- it may be too late in terms of those former commanders who may need to put something else on the schedule.

CHAIRWOMAN JONES: I think we should talk

with the former commanders as soon as we can get them together.

COLONEL GREEN: Okay.

CHAIRWOMAN JONES: We shouldn't wait for anything, frankly.

COLONEL GREEN: Okay.

MS. HOLTZMAN: What are the two days of hearings in Texas?

COLONEL GREEN: 11 and 12.

MS. HOLTZMAN: No, but what are we going to be focused on?

COLONEL GREEN: Comparative Systems.

MS. HOLTZMAN: Oh, that's Comparative Systems, so that's not us.

CHAIRWOMAN JONES: That's not us.

COLONEL GREEN: Correct.

MS. HOLTZMAN: Okay.

COLONEL HAM: But the site visits, ma'am, if you're able to go on --

MS. HOLTZMAN: Oh, I didn't understand.

COLONEL HAM: The three different

subcommittees will have an agenda of their own. So the site visits will focus for you.

MS. HOLTZMAN: Okay, I'm sorry. I misunderstood.

COLONEL GREEN: Some of the other topics that were brought up were: reviewing collateral misconduct and how commanders address collateral misconduct and the scope of the sexual assault allegations; investigative resources, what resources commanders have to address these and how they work with the investigating agencies; alcohol involvement and social environment and how commanders influence and control alcohol and the maintenance of an effective social environment; and then commander responsibility both to the accused and to the victims.

We've taken testimony already in that to some degree, but more of a systemic approach in terms of what the commander's obligations are to both of those.

So those are the topics so far that I've received from the subcommittee.

GENERAL HAM: It might be interesting,

again, as we ask The Judge Advocates General specifically in their response to the new amendment, proposed amendment, to ask them to address any Defense issues with the amendment as it's proposed.

CHAIRWOMAN JONES: I think some of those issues may also be being looked at by one or both of the other subcommittees, like collateral misconduct, from a different vantage point perhaps. But we should coordinate that. I should. I'm just saying that on the record. With your help, Kyle.

COLONEL GREEN: Yes, ma'am.

COLONEL HAM: I think the final one we discussed was whether there are alternatives other than commander in, commander out, like increasing the authority of the judge in different stages of the process.

CHAIRWOMAN JONES: Did you say increasing the authority of?

COLONEL HAM: In other words, instead of looking at the question simply as should the commander be in, should the commander be out, is there another part

of the system you can balance.

CHAIRWOMAN JONES: I think it was Professor Hansen who suggested that he might have some ideas about how you select the panel, for instance, the courts-martial panel. We could certainly take up that issue as well.

COLONEL GREEN: You've received some of the other professors who provided ethical guidelines recommendations. There are a number of things short of an all-or-nothing system that have been suggestions and materials have been provided to the panel that would broaden that or provide some basis on which to make some analysis.

CHAIRWOMAN JONES: So have we worked long enough and hard enough today?

GENERAL ALTENBURG: I think so.

CHAIRWOMAN JONES: We have a number of issues now that we've put out that we know we have to accomplish in our examination before we come up with a final report certainly. In the meantime, we'll continue to focus on the latest amendments, the new

bill, if you will, or the amended bill from Senator Gillibrand.

And I will try to get -- I think we still need to get further evidence with respect to the ultimate question here in terms of whether taking the commander out would be a useful response to sexual assaults. So we're going to get as many former commanders as we can. We have -- we know a number of them that are in support of removing the commander and you'll endeavor to find some former commanders, Colonel Ham and any other panel member or subcommittee member who may know of any, and give you that information.

Before the end of the week, you'll be asked what your availability is, and we'll just figure out whether it's going to be next week by phone -- I don't know that anybody wants to travel Thanksgiving Week -- or the first week in December.

GENERAL HAM: So we will be meeting at 2:00 o'clock on Thursday.

(Laughter.)

CHAIRWOMAN JONES: There you go.

All right. You can order us, can't you, General? We have two Generals here who could order us to be here.

Thanks, everybody. I think we made some progress here.

MS. FRIED: The meeting is adjourned.

(Whereupon, at 3:58 p.m., the meeting was adjourned.)